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# City of Grand Island



## Monday, December 30, 2013 Special Meeting Packet

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### **City Council:**

**Linna Dee Donaldson**  
**John Gericke**  
**Peg Gilbert**  
**Chuck Haase**  
**Julie Hehnke**  
**Vaughn Minton**  
**Mitchell Nickerson**  
**Bob Niemann**  
**Mike Paulick**

### **Mayor:**

**Jay Vavricek**

### **City Administrator:**

**Mary Lou Brown**

### **City Clerk:**

**RaNae Edwards**

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**5:30 PM**  
**Council Chambers - City Hall**  
**100 East 1st Street**

## **Call to Order**

**This is an open meeting of the Grand Island City Council. The City of Grand Island abides by the Open Meetings Act in conducting business. A copy of the Open Meetings Act is displayed in the back of this room as required by state law.**

**The City Council may vote to go into Closed Session on any agenda item as allowed by state law.**

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## **Invocation**

## **Pledge of Allegiance**

## **Roll Call**

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### **A - SUBMITTAL OF REQUESTS FOR FUTURE ITEMS**

Individuals who have appropriate items for City Council consideration should complete the Request for Future Agenda Items form located at the Information Booth. If the issue can be handled administratively without Council action, notification will be provided. If the item is scheduled for a meeting or study session, notification of the date will be given.

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### **B - RESERVE TIME TO SPEAK ON AGENDA ITEMS**

This is an opportunity for individuals wishing to provide input on any of tonight's agenda items to reserve time to speak. Please come forward, state your name and address, and the Agenda topic on which you will be speaking.



# **City of Grand Island**

**Monday, December 30, 2013**

**Special Meeting**

## **Item E-1**

### **Public Hearing on Acquisition of Drainage Easements in Pleasant View 14th Subdivision (Bosselman)**

**Staff Contact: John Collins, P.E. - Public Works Director**

# **Council Agenda Memo**

**From:** Terry Brown PE, Manager of Engineering Services

**Meeting:** December 30, 2013

**Subject:** Public Hearing on Acquisition of Drainage Easements in Pleasant View 14<sup>th</sup> Subdivision (Bosselman)

**Item #'s:** E-1 & G-5

**Presenter(s):** John Collins PE, Public Works Director

## **Background**

Nebraska State Statutes stipulate that the acquisition of property requires a public hearing to be conducted with the acquisition approved by the City Council. Drainage easements are needed in the Pleasant View 14<sup>th</sup> Subdivision to accommodate adequate drainage of the area. The easement will allow for the construction, operation, maintenance, extension, repair, replacement, and removal of utilities within the easement.

## **Discussion**

To allow for adequate drainage the developer of Pleasant View 14<sup>th</sup> Subdivision is dedicating two (2) separate ten (10) foot drainage easements within this subdivision. The attached sketch details where these easements will be located.

## **Alternatives**

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

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

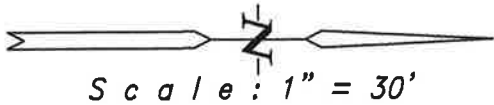


### **Recommendation**

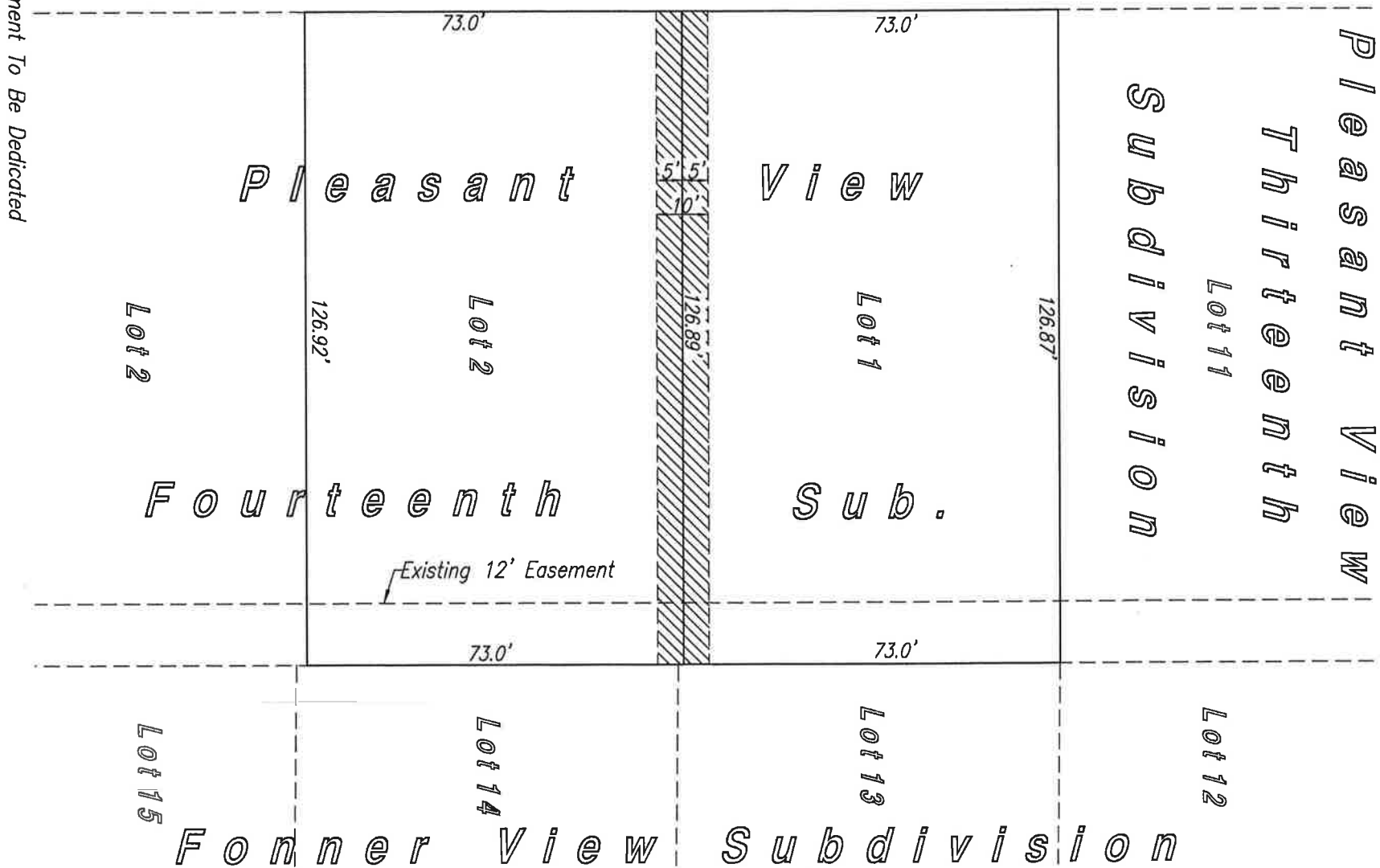
City Administration recommends that the Council conduct a Public Hearing and approve acquisition of the Easements.

### **Sample Motion**

Move to approve the acquisition of the Easements.



Sun Valley Drive



—Indicates Easement To Be Dedicated

**Description (10' Wide Drainage Easement)**

A Ten (10.00) foot wide tract of land comprising the southerly Five (5.00) feet of Lot One (1) and the Northerly Five (5.00) feet of Lot Two (2), Pleasant View Fourteenth Subdivision, all in the City of Grand Island, Nebraska, said tract containing 0.029 acres (1267 Sq. Ft.) more or less.

**Exhibit 'A'**

Date : December 13, 2013

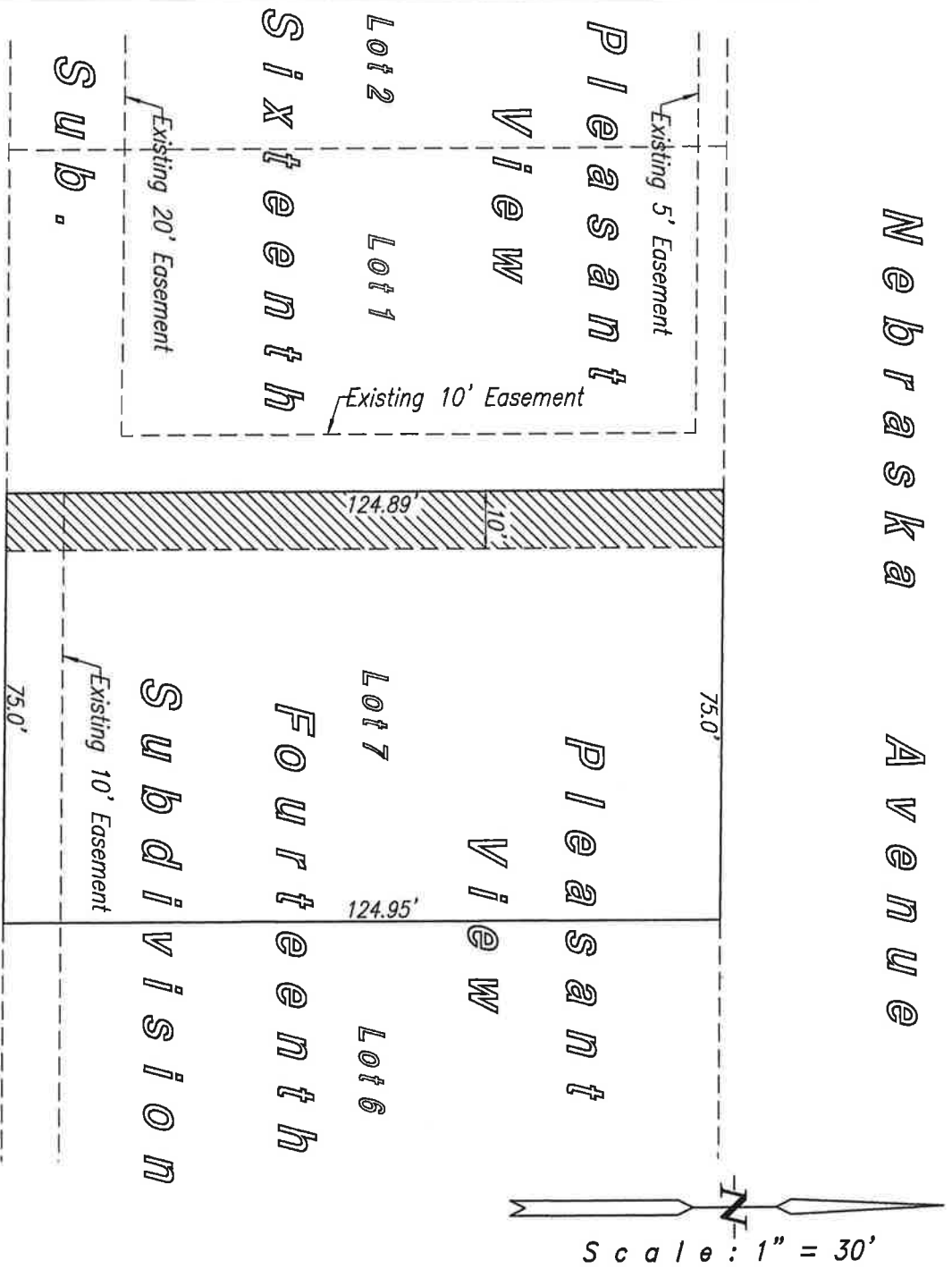
Sheet No. 1 of 1



R. Gockwell & Associates, Inc.  
ENGINEERING & SURVEYING

2510 NORTH WEBB ROAD, GRAND ISLAND, NEBRASKA 68802 P.O. BOX 549  
E-MAIL: [surveyor@ocusa.net](mailto:surveyor@ocusa.net) PHONE (308) 382-1472 FAX (308) 382-1423

## Nebtraskav Avenue



 -Indicates Easement To Be Dedicated

Description (10' Wide Easement)

*A Ten (10.00) foot wide tract of land comprising the westerly Ten (10.00) feet of Lot Seven (7), Pleasant View Fourteenth Subdivision, all in the City of Grand Island, Nebraska, said tract containing 0.029 acres (1249 Sq. Ft.) more or less.*

**Exhibit 'A'**

Date : December 13, 2013

Sheet No. 1 Of 1



2510 NORTH WEBB ROAD, GRAND ISLAND, NEBRASKA 68802 P.O.BOX 549  
E-MAIL [surveyor@cccusa.net](mailto:surveyor@cccusa.net) PHONE (308) 382-1472 FAX (308) 382-1423



# **City of Grand Island**

**Monday, December 30, 2013**

**Special Meeting**

## **Item F-1**

**#9463 - Consideration to Amend and Restate the City of Grand Island, Nebraska Police Officers' Retirement System Plan and Trust**

**Staff Contact: Jaye Monter, Finance Director**

# **Council Agenda Memo**

**From:** Jaye Monter, Finance Director

**Meeting:** December 30, 2013

**Subject:** Consideration to Amend and Restate the City of Grand Island, Nebraska Police Officer's and Firefighter's Retirement System Plan and Trust

**Item #'s:** F-1 & F-2

**Presenter(s):** Jaye Monter, Finance Director

## **Background**

On December 17, 2013 Council postponed Ordinances 9463 and 9464 to the December 30, 2013 Special Council meeting in order to allow Council more time to review all restated documents and to allow both pension committees time to meet and review all restated documents with representatives from the law firm who prepared the restated documents.

The retirement plan documents are scheduled to be restated every five years pursuant to IRS Revenue Procedure 2007-44. A restatement must incorporate into the plan documents all changes in the federal tax and state retirement plan laws and regulations since the last restatement.

On December 23, 2013 a joint meeting of the Police and Fire Pension Committees was held for the purposes of reviewing the restated plans. City staff, Thomas McKeon and Will Bradshaw of Fitzgerald, Schorr, Barmettler and Brennan of Omaha were available and answered questions posed by committee members. The Police Pension Committee unanimously approved a resolution expressing their support for the plan. The Fire Pension Committee did not have a quorum present but Chairman Scott Kuehl stated for the record his approval as well.

## **Discussion**

Attached is a synopsis of the changes since the plans were unanimously approved by Council with Ordinances 9195 and 9196 on October 28, 2008. The synopsis and plan document changes were prepared by Thomas McKeon, Attorney at law from Fitzgerald,

Schorr, Barnettler & Brennan, P.C., and L.L.O. in Omaha. Adoption of these changes will insure required compliance of each plan.

Failure to restate the retirement plan documents results in disqualification of the plan and loss of related tax benefits. In simple terms, this means all employees who participate in these plans would lose the tax advantage and would need to pay taxes on their retirement contributions and investment earnings. Disqualification may also result in employer assessed penalties from the IRS.

A copy of both 120 page plan documents and both 23 page Adoption Agreements along with red-line versions is available at the City Clerk's office for review.

### **Alternatives**

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

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

### **Recommendation**

City Administration recommends that the Council approve to amend and restate the Police Officer's and Firefighter's Retirement System Plan and Trust.

### **Sample Motion**

Move to approve to amend and restate the Police Officer's and Firefighter's Retirement System Plan and Trust.

## Municipal Retirement Plans 2013 Restatement

### *Synopsis of Changes*

The IRS has placed all retirement plans on a staggered restatement schedule. Under the schedule, governmental plans were required to be restated to incorporate all amendments and changes in tax and other laws and related guidance, and if desired filed with the IRS for a determination letter, by January 31, 2009; and then every five years thereafter. In accordance with this schedule, the plan documents again have been restated to incorporate all amendments and changes in tax and other laws and related guidance, and if desired filed with the IRS for a determination letter, by January 31, 2014. Following is a synopsis of some of the primary changes to the restated basic plan document and accompanying adoption agreements since they were last restated.

1. Incorporate changes to tax laws, including the Pension Protection Act of 2006, Heroes Earnings Assistance and Relief Tax Act of 2008 (“HEART Act”) and the Worker, Retiree, and Employer Recovery Act of 2008 (“WRERA”) and IRS guidance.
2. Changes include:
  - Permissible retirement dates for distributions pursuant to federal law.
  - Reference revised qualified plan IRS correction procedure.
  - Federal law changes to applicable mortality table and interest rate for benefit calculations and limitations.
  - HEART Act of 2008 provisions regarding treatment of plan participants who die or become disabled while performing qualified military service.
  - Additional revisions regarding:
    - Benefit limitation pursuant to Internal Revenue Code section 415.
    - Expanded rollovers between plans pursuant to IRS guidance.
    - Domestic relations orders not disqualified by certain timing issues.
  - Specify basis for exemption of governmental plans from certain qualified plan requirements.
3. Update various plan provisions consistent with latest IRS guidance regarding desired language as found in IRS listings of required modifications and cumulative list.
4. Incorporate changes made by the Nebraska Legislature in 2012 to statutory provisions governing police retirement systems (LB 1082).
5. Other revisions to eliminate superseded provisions or integrate the foregoing changes into the adoption agreements and basic plan document.

337168-1

**City of Grand Island  
Police and Firefighter Plans  
Summary/Origin of Changes  
2013**

**ADOPTION AGREEMENT.**      Numbering tracks adoption agreement.

**A.      ESTABLISHMENT, EFFECTIVE DATE, ETC.**

(2)      **Effective Date.**      General effective date of restatement, subject to other effective dates specifically stated in documents.

**Origin:**      *Amendment No. 1, Section 3.1.1 – “Plan Years beginning after December 31, 2003”*

(4)      **Retirement Committee:**      Current retirement committee members specified.

**B,      ELIGIBILITY REQUIREMENTS**

(4)      **Plan Entry Date:**

(b)      Clarify plan entry date provisions. Not an issue for police and fire plans providing for immediate plan entry upon employment.

**C.      MANDATORY EMPLOYEE CONTRIBUTIONS**

(1)      **Amount of Contribution.**

(a)(i) through (iii)      L.B. 1082 (2012).      Police Plan employee contribution increased 6% to 7% from 2013 to 2014.

**Origin:**      *Amendment No. 2, Article 2, Section III.A(2) (a) through (c)*

**E.      ALLOCATION OF CITY CONTRIBUTIONS AND FORFEITURES**

(1)      **Amount of Contribution.**

(a)      LB 1082 (2012).      Employer contribution equal to 100% of employee contribution.

**Origin:**      *Amendment No. 2, Article 2, Section III.B*

(7)      “Recognized Compensation” Minor edits to clarify interrelationship of sections (7) and (8) of the adoption agreement and definitions in Section 1 of the basic plan document. Not an issue for police and fire plans that use statutory definition of “salary,” as required.



## **H. ROLLOVERS**

- (1) Rollover contributions by Participants include after-tax contributions, if elected.

**Origin:** IRS Listing of Required Modifications (10/2011) #51 (Section 4)

## **I. VESTING OF REGULAR ACCOUNTS**

### **(2) Employer Accounts**

- (iv) Seven Year Vesting (Police): L.B. 1082 (2012). Police plan vesting schedule reduced from 10 to 7 years beginning 7/1/2012.

**Origin:** *Amendment No. 2, Article 2, Section IV.D*

- (4) L.B. 1082 (2012). 100% Vesting upon attaining age 60 while employed as a police officer.

**Origin:** *Amendment No. 2, Article 2, Section IV.D*

- (6) In-Service Distributions. In-service distributions before normal retirement date not allowed per federal law. Not an issue for police and fire plans that require termination of employment for distributions.

**Origin:** *Amendment No. 1, Sections 2.1(c), 2.4 and 8.1*

- N. ACCELERATED DISTRIBUTIONS.** Change made to reflect prohibition on in-service distributions described in I(6) described above. Not an issue for police and fire plans that require termination of employment for distributions.

**Origin:** *Amendment No. 1, Sections 2.1(c), 2.4 and 8.1 - change reflects prohibition on in-service distributions*

- P. MANDATORY DISTRIBUTION ALTERNATIVES.** Clarify consistency of fire and police plans in cashing out vested account balances that are less than \$3,500.

**BASIC MUNICIPAL EMPLOYEES PLAN AND TRUST AGREEMENT.** Numbering tracks basic plan document.

1.1.22 Normal Retirement Date. Normal retirement date must not be less than 55 except if substantially all plan participants are qualified public safety employees.

**Origin:** *Treasury Regulations Section 1.401(a)-1(b)(2)(i) & (v)*

1.1.31 Regular Interest. Delete reference to January 1, 1984 per LB 1082

**Origin:** *Amendment No. 2, Article 2, Section II(A)*

1.1.32 Regular Pay

(a) Police Plans. Changes to definition per LB 1082.

**Origin:** *Amendment No. 2, Article 2, Section II(B)*

2.1 Initial Entry into Plan. Clarifying changes made to plan entry date provisions. Not an issue for police and fire plans that provide immediate plan entry upon employment.

3.6 Limitation on Allocations and Benefits (Internal Revenue Code Section 415)

3.6.3,

3.6.6 &

3.6.9(b), (d) Corrections/Definitions for IRC Section 415 Limitations

**Origin:** *IRS Revenue Procedure 2013-12*  
*IRS Listing of Required Modifications (10/2011) #31, Sections 2.3 and 4.7*

3.6.9(i) Annual Benefit. .

**Origin:** *Amendment No. 1, Section 3.1.1*

I. Benefit Forms Not Subject to section 417(e)(3)

a. Limitation Years Beginning Before July 1, 2007.

b. Limitation Years Beginning On or After July 1, 2007.

Both “a” and “b”: Reference applicable mortality table now found in Appendix B

**Origin:** *Amendment No. 1, Section 3.2.2(b) & 3.2.3(b)*

II. Benefit Forms Subject to Section 417(e)(3)

- a. Annuity Starting Date in Small Plans for Plan Years . . .

**Origin:** *Amendment No. 1, Section 3.3.2*

- b. Annuity Starting Date in Plan Years Beginning After 2005

**Origin:** *Amendment No. 1, Section 3.3.3*

Also, moved the paragraph following subsection “b” to Appendix B, Section B(1).

- c. Annuity Starting Date in Plan Years Beginning in 2004 or 2005

**Origin:** *Amendment No. 1, Section 3.3.4(b) and following*

3.6.9(n) Maximum Permissible Benefit

II. Adjustment for Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or after Age 65.

- a. Adjustment of defined benefit dollar limitation for benefit commencement before age 62.

II. Limitation Years Beginning On or After July 1, 2007.

- C. Notwithstanding . . . the age –adjusted dollar limit . . . shall not decrease on account of . . . .

**Origin:** *IRS Listing of Requirement Modifications (10/2011) #40, Section 6.9(b)(i)(II)(c)*

3.7 Code Section 436 Benefit Restrictions. Benefit restrictions under Internal Revenue Code Section 436 that apply if a plan is underfunded.

**Origin:** *Amendment No. 1, Sections 2.1(d), 2.5 & Article XII*

- (a) Governmental Plan Exception. Governmental plans are exempt from requirements of Internal Revenue Code Section 436.

**Origin:** *Amendment No. 1, Article XII, Section (a)(2)(B)*

3.7.1 2008 and 2009 Plan Years. Internal Revenue Code Section 436 provisions for 2008 and 2009.

**Origin:** *Amendment No. 1, Article XII, Sections (a) through (i) and the end of Article XII*

3.7.2 2010 and Later Plan Years. Internal Revenue Code Section 436 provisions for 2010 and later.

**Origin:** *Internal Revenue Service Notice 2011-96 including model Internal Revenue Code Section 436 provisions*

#### 5.1.3 Distribution of Vested Account Upon Termination of Employment

(a) & (d) Cash Out Distribution. Corresponding changes to those described above for paragraph “P” of the Adoption Agreement.

(b) Lump sum distribution permitted.

**Origin:** *Amendment No. 2, Article IV, Section A*

(f) Participant Distribution Notification.

**Origin:** *Amendment No. 1, Article VI*

5.2 Amendment to Comply with Section 415. Substitute “separation from service” with “severance from employment” for certain purposes of the Internal Revenue Code.

**Origin:** *Amendment No. 1, Article XI*

6.5.1 Same explanation as 5.1.3(a) & (d) above.

7.1.1 Distribution of Matured Account. Distribution within 180 days (vs. prior requirement of 90 days).

**Origin:** *Amendment No. 1, Section 6.1*

#### 7.2 Distribution Requirements

7.2.1 Delete superseded provisions before 2003.

7.2.1.20 2009 Required Minimum Distributions. Suspend 2009 required minimum distributions.

**Origin:** *Amendment No. 1, Article XV*

7.2.2 Special Rule for Governmental Plans. Special rule for required minimum distributions.

**Origin:** *2012 IRS Cumulative List; 2009 final Treasury Regulations 401(a)(9)*

7.6 Optional Forms of Distribution. Annuity contract distributed from plan must be nontransferable.

**Origin:** *IRS Listing of Required Modifications (2013) #50*

- (h) Qualified optional survivor annuity. Optional survivor annuities upon election of surviving spouse.

**Origin:** *Amendment No. 1, Article IX*

## 7.12 Rollovers

### 7.12.1 Definitions

- (a) Eligible rollover distributions. After-tax rollovers allowed.

**Origin:** *Amendment No. 1, Section 5.1*  
*IRS Listing of Required Modifications (2013) #55, Section 2.1*

- (b) Eligible retirement plan. Expand plans to which direct rollover may be made, including Roth IRA.

**Origin:** *Amendment No. 1, Sections 10.1*  
*IRS Listing of Required Modifications (2013) #55, Section 2.2*

- (c) Distributee. Allow nonspouse beneficiaries to directly roll over qualifying distributions to IRAs.

**Origin:** *Amendment No. 1, Sections 2.1(b), 2.3 & 4.1 – 4.4*  
*IRS Listing of Required Modifications (2013) #55, Section 2.3*

- 8. Inalienability of Benefits. Qualified domestic relations order does not fail solely due to certain timing issues.

**Origin:** *Amendment No. 1, Article VII*

## 12.3 Retirement Committee

- (i) Police and Fire Plans.

(4) & (5) Annual and Quadrennial Reports. Moved provisions to Section 12.13 as applicable to all municipal plans for which reporting is required by state law.

14.1 Accelerated Distributions.

- (a) Hardship distribution events. Not an issue for police and fire plans requiring retirement or other termination of employment for distributions.

**Origin:** *IRS Listing of Required Modifications (2011)*

15.1 Heroes Earnings Assistance and Relief Tax Act of 2008. Required changes for participants who die or are disabled while performing qualified military duty.

**Origin:** *Amendment No. 1, Sections 2.1(e), 2.6 & Article XIII  
IRS Listing of Required Modifications (10/2011) #86*

Appendix B Actuarial Equivalencies and Actuarial and Mortality Assumptions

- A. January 1, 2008 effective date of applicable interest rate and mortality table under Internal Revenue Code Section 417(e), as amended by the Pension Protection Act of 2006 (“PPA 2006”). Special effective date for mortality table for Internal Revenue Code Section 415 purposes – “plan years beginning after December 31, 2008.”

**Origin:** *Amendment No. 1, Section 14.1 for general 1/1/08 effective date*

*Amendment No. 1, Sections 2.1(a) & 3.3.3(c) for special mortality table –  
“plan years beginning after December 31, 2008.”*

1. **Applicable Interest Rate.** Applicable interest rate under Internal Revenue Code Section 417(e), as amended by PPA 2006.

**Origin:** *Amendment No. 1, Sections 2.1(f), 2.7 & 14.2*

2. **Applicable Mortality Table.** Applicable mortality table under Internal Revenue Code Section 417(e), as amended by PPA 2006.

**Origin:** *Amendment No. 1, Sections 2.1(a), 2.2, 3.3.3(c) & 14.3*

- B. Applicable interest rate and mortality table in effect before January 1, 2008 (January 1, 2009 for mortality table for Internal Revenue Code Section 415 purposes).

**Origin:** *Internal Revenue Code Section 417(e) and applicable IRS guidance before being amended*

**BASIC MUNICIPAL EMPLOYEES  
PLAN AND TRUST AGREEMENT  
FOR  
CITY OF GRAND ISLAND, NEBRASKA  
POLICE OFFICERS' RETIREMENT  
SYSTEM PLAN AND TRUST**

| (201308)

| [328780334458](#)

## BASIC MUNICIPAL EMPLOYEES

### PLAN AND TRUST AGREEMENT

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## BASIC MUNICIPAL EMPLOYEES

### PLAN AND TRUST AGREEMENT

This Basic Municipal Employees Plan and Trust Agreement consisting of a Defined Contribution Plan and Trust Agreement and the related Adoption Agreement(s) as executed by the City and Trustee constitute and are integral parts of a retirement plan and trust established by the City and are designed to comply with the provisions of the Internal Revenue Code of the United States (the "Code") dealing with plans and trusts of such character and, in particular, Sections 401(a) and 501(a) thereof [and including without limitation sections 401\(a\)\(9\), 401\(a\)\(9\)\(G\), 401\(a\)\(16\), 401\(a\)\(31\), and 401\(a\)\(37\).](#)

#### SECTION 1

##### Introduction

1.1 Definitions. As used herein, the following terms shall have the following meanings:

1.1.1 Accounts - As indicated in the Adoption Agreement, the following Accounts or Account classifications may be maintained under this Plan, in addition to any other account specified elsewhere herein:

(a) Total Account - A Participant's entire interest in the Plan, including his Employer Account and his Employee Account.

(b) Employer Account - The Account maintained for each Participant to which is credited his allocable share of the Employer's contributions and forfeitures under the Plan, together with any increase or decrease thereon.

(c) Employee Account - The Account maintained for each Participant to which is credited his Employee Contributions under the Plan, together with any increase or decrease thereon.

(d) Matured Account - The portion of a Participant's Total Account which is Vested in him upon the occurrence of an Event of Maturity, together with an increase or decrease thereon.

The Trustee shall not be required to maintain separate investments for any Account; provided, however, no investments in Insurance Contracts shall be made from Voluntary Contributions Accounts. The portion of the Account balance derived from nondeductible employee contributions is the Employee's total Account balance multiplied by a fraction, the numerator of which is the total amount of nondeductible employee contributions less withdrawals and the denominator of which is the sum of the numerator and the total contributions made by the Employer on behalf of the Employee less withdrawals. For this purpose, contributions include contributed amounts used to provide ancillary benefits and withdrawals include only amounts distributed to the Employee and do not reflect the cost of any death benefits.

1.1.2 Actuarial Equivalent - Equality in value of the aggregate amount of benefit expected to be received under different forms of benefit or at different times determined as of a given date as adopted by the City or the Retirement Committee for use by the Plan. Actuarial Equivalencies shall be specified in or determined in accordance with Appendix B. If benefits under the Plan are obtained through the purchase of an annuity contract, the Actuarial Equivalent of any such form of benefit shall be the amount of the benefit which can be purchased or otherwise provided by the Participant's Retirement Value. All actuarial and mortality assumptions adopted by the City or the Retirement Committee shall be on a sex-neutral basis and such assumptions shall be stated in Appendix B.

1.1.3 Agreement - The "Basic Municipal Employees Plan and Trust Agreement" and the related "Adoption Agreement" as approved and adopted by the Employer as the official statement of its qualified retirement plan to be effective from and after the Effective Date (if the Employer's adoption of the Agreement is the establishment of a new qualified retirement plan) or the Supplemental Effective Date (if the Employer's adoption is the amendment and restatement of a preexisting qualified retirement plan), as the same may be from time to time thereafter amended.

1.1.4 Annual Valuation Date - Unless indicated otherwise herein or in the Adoption Agreement, December 31.

1.1.5 Annuity Contract - The contract or contracts issued by one or more life insurance companies or designated trusts and purchased by the Plan in order to provide any of the benefits described in this Agreement. Annuity conversion rates in any such contract shall be specified on a sex-neutral basis.

1.1.6 Beneficiary - The person or persons designated by a Participant in a written instrument designated by and filed with the Retirement Committee prior to the Participant's death to receive death benefits which may be payable under the Plan.

1.1.7 City - The municipality chartered in the state of Nebraska which adopts this Agreement by executing the Adoption Agreement.

1.1.8 Effective Date - The date (set forth in the Adoption Agreement) as of which the Employer first established this Plan.

1.1.9 Eligibility Service - A measure of an Employee's service with the Employer (stated as a number of years) which is equal to the number of computation periods in which the Employee is credited with one thousand (1,000) or more Hours of Service; subject, however, to such of the following rules as are applicable under the Adoption Agreement:

(a) Computation Periods - The computation periods for determining the Employee's Eligibility Service (and One-Year Breaks in Service as applied to his Eligibility Service) shall be (as indicated in the Adoption Agreement) either:

(i) The twelve (12) consecutive month period beginning with the date the Employee first performs an Hour of Service plus all Plan Years beginning after the date the employee first performs an Hour of Service (irrespective of any termination of employment and subsequent reemployment), or

(ii) The twelve (12) consecutive month period beginning with the date the Employee first performs an Hour of Service plus all twelve (12) consecutive month periods commencing on annual anniversaries of such date (irrespective of any termination of employment and subsequent reemployment).

If, in the Adoption Agreement, the computation periods selected for the computation of years of Eligibility Service are determined under Section 1.1.9(a)(i) above, an Employee who is credited with one thousand (1,000) Hours of Service in the computation period beginning on the date the Employee first performs an Hour of Service and also is credited one thousand (1,000) Hours of Service in the computation period which is the first Plan Year beginning after the date the Employee first performs an Hour of Service, he shall be credited with two (2) years of Eligibility Service notwithstanding that the same Hours of Service are counted in both (overlapping computation periods).

(b) Completion - A year of Eligibility Service shall be deemed completed only as of the last day of the computation period irrespective of the date in such period that the Employee completes one thousand (1,000) Hours of Service. (Fractional years of Eligibility Service shall not be credited.)

(c) Eligibility Rule of Parity - In the case of a Participant who does not have any nonforfeitable right to the account balance derived from Employer Contributions, Years of Service before a period of Consecutive one-year breaks in service will not be taken into account in computing eligibility service if the number of consecutive one-year breaks in service in such period equals or exceeds the greater of five or the aggregate number of years of service. Such aggregate number of years of service will not include any years of service disregarded under the preceding sentence by reason of prior breaks in service.

If a participant's years of service are disregarded pursuant to the preceding paragraph, such participant will be treated as a new employee for eligibility purposes. If a participant's years of service may not be disregarded pursuant to the preceding paragraph, such participant shall continue to participate in the plan, or, if terminated, shall participate immediately upon reemployment.

1.1.10 Employee - Any individual who is a paid employee of the Employer maintaining the Plan as defined in the Adoption Agreement.

The term Employee shall also include any Leased Employee deemed to be an employee of any employer described in the previous paragraph as provided in Code section 414.

1.1.11 Employer - The City which adopts this Agreement by executing the Adoption Agreement.

The Employer is the "named fiduciary", as that term is defined in ERISA, for all purposes of this Plan, to the extent that the provisions of ERISA regarding "named fiduciary" are applicable to this Plan.

1.1.12 Event of Maturity - Any of the occurrences described in Section 6 by reason of which a Participant or Beneficiary may become entitled to a distribution from the Plan.

1.1.13 Fire Plan - A plan created and maintained pursuant to Neb. Rev. Stat. Sections 16-1020 to 16-1042 for the purpose of investing payroll deductions and contributions by a city of the first class to a retirement system established for firefighters of such city, the provisions of which statutes, as enacted or amended from time to time, are incorporated herein by this reference and shall control over any inconsistent terms hereof so long as not contrary to the law applicable to plans intended to be qualified under Internal Revenue Code Section 401(a).

1.1.14 Forfeiture - The portion of a Participant's Employer Account, if any, which is not Vested in him upon an Event of Maturity.

1.1.15 Fund - The assets of the Plan held by the Trustee from time to time, including all assets initially transferred to and held by the Trustee, together with all subsequent contributions of the Employer and the Participants and the investments and reinvestments, earnings, gains and losses thereon.

1.1.16 Funding Agent - Any bank, trust company, life insurance company, thrift institution, credit union, or investment management firm selected by the City or Retirement Committee (subject to the approval of the City for Fire Plans) to hold or invest the funds of the Plan.

1.1.17 Highly Compensated Employee - The term "Highly Compensated Employee" includes highly compensated active Employees and highly compensated former Employees.

~~Effective for years beginning on or after January 1, 1997, a~~ highly compensated active employee includes any Employee who had compensation from the Employer in the preceding year in excess of \$80,000, as adjusted from time to time in the same manner as under Code section 415(d), except that the base period is the calendar quarter ending September 30, 1996. Compensation for purposes of this section shall be as defined in Code section 415(c)(3) and determined by the Employer.

| The determination of whether a former employee is a highly compensated former Employee is based on the rules applicable to determining Highly Compensated Employee status in effect for the determination year, in accordance with Treasury Regulation section 1.414(q)-IT, A-4 and Notice 97-45 as updated from time to time.

The determination of who is a Highly Compensated Employee will be made in accordance with Section 414(q) of the Code and the regulations thereunder.

1.1.18 Hours of Service - A measure of an Employee's service with the Employer (in Recognized Employment with respect to Police and Fire Plans) determined for a particular computation period, equal to the sum of the number of hours credited to the Employee according to the election made in the Adoption Agreement and the following rules:

(a) Paid Duty - An Hour of Service shall be credited for each hour for which the Employee is paid, or entitled to payment, for the performance of duties for the Employer. These Hours of Service shall be credited to the Employee for the computation period or periods in which the duties are performed.

(b) Paid Nonduty - An Hour of Service shall be credited for each hour for which the Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including Disability), layoff, jury duty, military duty or leave-of-absence; provided, however, that:

(i) No more than five hundred one (501) Hours of Service shall be credited on account of a single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period);

(ii) No Hours of Service shall be credited on account of payments made under a plan maintained solely for the purpose of complying with the applicable worker's compensation, employment compensation or disability insurance laws;

(iii) No Hours of Service shall be credited on account of payments which solely reimburse the Employee for medical or medically related expenses incurred by the Employee;

(iv) Payments shall be deemed made by or due from the Employer, whether made directly or indirectly from a trust fund or an insurer to which the Employer contributes or pays premiums.

These Hours of Service shall be credited to the Employee for the computation period for which payment is made or, if the payment is not computed by reference to units of time, the hours shall be credited to the first computation period in which the event for which any part of the payment is made occurred.

(c) Back Pay - An Hour of Service shall be credited for each hour of which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer. The same Hours of Service credited under paragraphs (a) or (b) shall not be credited under this paragraph (c). The crediting of Hours of Service under this paragraph (c) for periods and payments described in paragraph (b) shall be subject to all the limitations of that paragraph. These hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains, rather than the computation period in which the award, agreement or payment is made.

(d) Unpaid Absences - For all purposes of this Plan:

(i) Leaves-of-Absence - An assumed eight (8) hour day and forty (40) hour week shall be credited during each unpaid leave-of-absence authorized by the Employer under uniform rules of non-discriminatory application; provided, however, that, if the Employee does not return to employment for any reason other than death, Disability or attainment of his Normal Retirement Date at the expiration of the leave-of-absence, such Hours of Service shall not be credited.

(ii) Military Leaves - An assumed eight (8) hour day and forty (40) hour week shall be credited during service in the Armed Forces of the United States if the Employee both entered such service and returned to employment with the Employer from such service under circumstances entitling him to reemployment rights granted veterans under federal law; provided, however, that, if the Employee does not return to employment for any reason other than death, Disability or attainment of Normal Retirement Date within the time prescribed by law for the retention of veteran's reemployment rights, such Hours of Service shall not be credited.

(e) Special Rules - Department of Labor regulations at 29 C.F.R. Sec. 2530.200b-2 are hereby, by reference, incorporated herein for the purpose of calculating and crediting Hours of Service; though neither ERISA nor said regulations otherwise are applicable if this is a governmental plan as defined in Code section 414(d). For periods prior to the ERISA date, Hours of Service may be determined using whatever records are reasonably accessible and by making whatever calculations are necessary to determine the approximate number of Hours of Service completed during such prior period. If this Plan is maintained by the Employer as the plan of a predecessor employer, Hours of Service will be credited for employment with that predecessor employer as if it were the Employer. Hours of Service shall be credited for employment with other members of an affiliated service group (under Code section 414(m)), a controlled group of corporations (under Code section 414(b)), or a group of trades or businesses under common control (under Code section 414(c)), of which the adopting employer is a member, and any other entity required to be aggregated with the Employer pursuant to Code section 414(o) and the regulations thereunder. Hours of Service will also be credited for any individual considered an Employee for purposes of this Plan under Code section 414(n) or Code section 414(o) and regulations thereunder.

(f) Maternity and Paternity Absences - Solely for purposes of determining whether a Break in Service, as defined in Section 1.1.23, for participation and vesting purposes has occurred in a computation period, an individual who is absent from work for maternity or paternity reasons shall receive credit for the Hours of Service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, eight hours of service per day of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of a birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement. The Hours of Service credited under this paragraph shall be credited (1) in the computation period in which the absence begins if the crediting is necessary to prevent a Break in Service for that period, or (2) in all other cases, in the following computation period.

1.1.19 Leased Employee - ~~Effective for years beginning on or after January 1, 1997, t~~The term "Leased Employee" means any person (other than an Employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Code section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient. Contributions or benefits provided a Leased

Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer.

A Leased Employee shall not be considered an Employee of the recipient if: (i) such Employee is covered by a money purchase pension plan providing: (1) a nonintegrated Employer contribution rate of at least 10 percent of compensation, as defined in Code section 415(c)(3), but including amounts contributed pursuant to a salary reduction agreement which are excludable from the Employee's gross income under Code section 125, section 402(a)(8), section 402(h) section 403(b), or, effective January 1, 2001, Code section 132(f)(4), (2) immediate participation, and (3) full and immediate vesting; and (ii) Leased Employees do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

1.1.20 Limitation Year - A calendar year, or the twelve (12) consecutive month period selected by the Employer in the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made. Effective for Limitation Years beginning on or after July 1, 2007, the Limitation Year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year.

1.1.21 Net Earnings - The amount by which income or gain realized from the investments of the Fund exceeds the amount of any realized losses from such investments during the calendar year.

1.1.22 Normal Retirement Date - As indicated in the Adoption Agreement: (i) the date upon which a Participant attains his sixty-fifth (65th) birthday or, (ii) the later of the date a Participant attains age sixty-five (65) or the fifth (5th) anniversary of the date he first commenced Participation in the Plan, or (iii) such earlier time as the Employer may designate (though not less than 55 unless substantially all participants in the Plan are qualified public safety employees as defined in applicable regulations and other guidance). The Normal Retirement Date may not be later than the age at which the Employer requires Employees eligible to participate in the Plan to retire on account of attained age. The normal form of benefit is a single life annuity commencing on the normal retirement date.

1.1.23 One Year Break in Service - A computation period during which the Participant has not completed more than five hundred (500) Hours of Service. (A One-Year Break in Service shall be deemed to occur only on the last day of such computation period. Unless otherwise specified, the computation period shall be the Plan Year.)

1.1.24 Participant - An Employee of the Employer who becomes a Participant in the Plan pursuant to Section 2 hereof. An Employee who has become a Participant shall be considered to continue as a Participant in the Plan until the date of his death, or, if earlier, the earliest date as of which the Participant no longer has any Account under the Plan.

1.1.25 Plan - The qualified retirement plan and trust of the Employer maintained pursuant to this Agreement, as amended from time to time (and which may have been previously in existence pursuant to a Prior Plan Statement).

1.1.26 Plan Year - The twelve (12) consecutive month period ending on any Annual Valuation Date or as otherwise indicated in the Adoption Agreement.

1.1.27 Police Plan - A plan created and maintained pursuant to Neb. Rev. Stat. Sections 16-1001 to 16-1019 for the purpose of investing payroll deductions and contributions by a city of the first class to a retirement system established for police officers of such city, the provisions of which statutes, as enacted or amended from time to time, are incorporated herein by this reference and shall control over any inconsistent terms hereof so long as not contrary to the law applicable to plans intended to be qualified under Internal Revenue Code Section 401(a).



1.1.28 Prior Plan Statement - The written instrument or instruments or the series of written instruments under which this Plan was established and maintained from time to time prior to the Supplemental Effective Date. (If this Plan was first established by the Employer's approval and adoption of this Agreement, there will have been no Prior Plan Statement and all references thereto shall be disregarded.) To the extent a Prior Plan Statement exists, benefits provided to Participants may be affected by the provisions of such Prior Plan Statement.

1.1.29 Recognized Compensation - As elected by the Employer in the Adoption Agreement, Recognized Compensation will mean all of each Participant's (a) W-2 earnings or (b) wages as defined under Code Section 3401(a), (c) compensation (as that term is defined in Code section 415(c)(3) and Treasury Regulations, section 1.415(c)-2(d)(2)), or (d) such other compensation as specified in the Adoption Agreement. For any self-employed individual covered under the Plan, Recognized Compensation will mean earned income. Except as elected elsewhere in this Plan, Recognized Compensation shall include only that compensation which is actually paid to the Participant during the applicable period, and the applicable period shall be the period elected by the Employer in the Adoption Agreement. If the Employer makes no election, the applicable period shall be the Plan Year.

Notwithstanding the above, if elected by the Employer in the Adoption Agreement, Recognized Compensation shall include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includable in the gross income of the Employee under Code sections 125, 402(e)(3), 402(h)(1)(B), 403(b), or, effective January 1, 2001, Code section 132(f)(4). Effective for Plan and Limitation Years beginning on or after January 1, 1998, reference to section 125 [\(unless otherwise provided in the Adoption Agreement\)](#) shall include deemed section 125 compensation. Deemed section 125 compensation is an amount that is excludable under Code section 106 that is not available to a participant in cash in lieu of group health coverage under a section 125 arrangement solely because the participant is unable to certify that he or she has other health coverage. Amounts are deemed section 125 compensation only if the Employer does not request or collect information regarding the Employee's other health coverage as part of the enrollment process for the health plan.

For Plan Years commencing after December 31, 1988 and before January 1, 1996, the Annual Recognized Compensation of each Participant taken into account under the Plan for any year shall not exceed \$200,000, as adjusted by the Secretary at the same time and in the same manner as under Code section 415(d), except that the dollar increase in effect on January 1 of any calendar year is effective for plan years beginning with or within 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, 1996 and before January 1, 2002, the Annual Recognized Compensation of each Employee taken into account under the Plan shall not exceed \$150,000, as adjusted by the Commissioner for increases in the cost-of-living in accordance with Code section 401(a)(17)(B).

For any Plan Year beginning on or after January 1, 2002, the annual compensation of each Employee taken into account under this Plan shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. Annual compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination periods). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

If a determination period consists of fewer than 12 months the annual compensation limit is an amount equal to the otherwise applicable annual compensation 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 12.

If compensation for any prior determination period is taken into account in determining an Employee's allocations or benefits for the current Plan Year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. For this purpose, in determining allocations or benefits in Plan Years beginning on or after January 1, 1989 and before January 1, 1996, the annual compensation limit in effect for determination periods beginning before January 1, 1989 is \$200,000. In determining benefits in



Plan Years beginning on or after January 1, 1996 and before January 1, 2002, the annual compensation limit in effect for determination periods beginning before January 1, 2002 is \$150,000, as adjusted. In determining benefits in Plan Years beginning on or after January 1, 2002, the annual compensation limit in effect for determination periods beginning before that date is \$200,000.

Unless otherwise provided under the Plan, each Code section 401(a)(17) Employee's Accrued Benefit under this Plan will be the greater of the Accrued Benefit determined for the Employee under (a) or (b) below:

(a) the Employee's Accrued Benefit determined with respect to the benefit formula applicable for the Plan Year beginning on or after January 1, 1996, as applied to the Employee's total Years of Service taken into account under the Plan for the purposes of benefit accruals, or

(b) the sum of:

(i) the Employee's Accrued Benefit as of the last day of the last Plan Year beginning before January 1, 1996, frozen in accordance with Treasury Regulation section 1.401(a)(4)-13, and

(ii) the Employee's Accrued Benefit determined under the benefit formula applicable for the Plan Year beginning on or after January 1, 1996, as applied to the Employee's Years of Service credited to the Employee for Plan Years beginning on or after January 1, 1996, for purposes of benefit accruals.

A Code section 401(a)(17) Employee means a Participant whose current accrued benefit as of a date on or after the first day of the first Plan Year beginning on or after January 1, 1996, is based on Recognized Compensation for a year beginning prior to the first day of the first Plan Year beginning on or after January 1, 1996, that exceeded \$150,000.00.

1.1.30 Recognized Employment - for all years, that employment, as set forth in the Adoption Agreement, recognized for the purpose of participation in the benefits of this Plan; excluding, however, all

(a) Employees included in a unit of Employees covered by an agreement found by the Secretary of Labor to be a collective bargaining agreement between Employee representatives and the Employer, if there is evidence that retirement benefits were the subject of good faith bargaining between such Employee representatives and the Employer and such bargaining agreement or applicable state law does not provide for participation by such Employees in this Plan. For this purpose, the term "Employee representatives" does not include any organization more than half of whose numbers are Employees who are owners, officers or executives of the Employer; and,

(b) Employees of the Employer who are nonresident aliens receiving no earned income from the Employer which constitutes income from sources within the United States unless the Adoption Agreement specifically provides that they shall participate in this Plan.

In the event an Employee who is not a member of the eligible class of Employees becomes a member of the eligible class, such Employee will participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

1.1.31. Regular Interest - The rate of interest earned each calendar year ~~beginning January 1, 1984 which is~~ equal to the rate of net earnings realized for the calendar year from the investments of the Fund. For Fire Plans, the Retirement Committee shall annually report the amount of regular interest earned for each year.

1.1.32 Regular Pay -

(a) Police Plans – Effective April 16, 2012, (The average Salary of a Participant for the 5 years preceding the date such Participant elects to retire, the five years preceding his or her death, or the 5 years preceding the date of Disability, whichever is earliest, except that for any Participant who retires, dies or becomes disabled after July 15, 1992, Regular Pay shall mean the average Salary of the Participant for the period of 5 consecutive years preceding such elective retirement, death or date of Disability which produces the highest average.

(b) Fire Plans - The Salary of a Participant at the date such Participant elects to retire or terminate employment with the City.

(c) Regular Pay shall be limited by Code section 401(a)(17) in the same manner as described in 1.1.29 above.

1.1.33 Retirement Committee or Committees - The Retirement Committee created under Section 12.3 for general supervision of the Plan and to perform the duties stated in this Agreement and those other duties as are properly delegated in this Agreement, by law or otherwise by the City to the Retirement Committee.

1.1.34 Retirement Date -

- 1) The first of the month immediately following the last day of work in the following cases:
  - a. Normal Retirement Date (defined above)
  - b. Early Retirement Date:
    - i. Police: Attainment of age 55 and completion of 21 years of service.
    - ii. Fire: Attainment of age 50 and completion of 21 years of service with the City, in which case the firefighter will receive the actuarial equivalence of the pension benefit he or she would otherwise receive upon attainment of age 55.
  - c. Disability: Retire or be retired as a result of a Permanent Disability (defined in Section 7.3.3(a)) in the line of duty, in which the police officer or firefighter, as the case may be, will receive the applicable pension benefit described herein.
- 2) Fire Plan Special Rule: The first of the month immediately following the attainment of age 55 for a Fire Plan Participant who terminates employment with the City after 21 years of service. Upon attainment of age 55, the firefighter will receive the applicable retirement pension benefit described herein.
- 3) Other. The first of the month immediately following the last day of work after attaining such other age specified in the Adoption Agreement.

1.1.35 Retirement Value – Subject to any benefit provided in any Prior Plan Statement(s), if any for a Participant, the accumulated value of the Participant's Employee Account and Employer Account. The Retirement Value consists of the sum of the contributions made or transferred to such accounts by the Participant and by the City on the Participant's behalf and the Regular Interest credited to the accounts as of the date of computation, reduced by any realized losses which were not taken into account in determining Regular Interest in any year, and further 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 Plan as determined by the Retirement Committee. The Retirement Value shall be reduced by the amount of all distributions made to or on the behalf of the Participant from the Plan, and shall be further reduced each year by the appropriate share of the investment costs of the Fund. Such valuation shall be computed annually as of December 31 and at such other times as the Retirement Committee shall direct on a nondiscriminatory basis. If separate investment accounts are established, a Participant's Retirement Value with respect to such accounts shall be equal to the value of his or her separate investment accounts as determined pursuant to provisions of Nebraska statute as applicable to the Plan.

1.1.36 Salary -

(a) Police Plans - All amounts paid to a Participant by the City for personal services as reported on the Participant's federal income tax withholding statement, including the Participant's contributions picked up by the City as provided in this Agreement and any salary reduction contributions which are excludable from income for federal income tax purposes pursuant to Code sections 125 or 457.

(b) Fire Plans - The base rate of pay, excluding overtime, callback pay, clothing allowances, and other such benefits as reported on the participant's federal income tax withholding statement including the Participants' contributions picked up by the City as provided in this Agreement and any salary reduction contributions which are excludable from income for federal income tax purposes pursuant to Code sections 125 or 457.

(c) Salary shall be limited by Code section 401(a)(17) in the same manner as described in 1.1.29 above. Effective for Plan and Limitation Years beginning on or after January 1, 1998, any reference in (a) or (b) above shall include deemed section 125 compensation. Deemed section 125 compensation is an amount that is excludable under Code section 106 that is not available to a participant in cash in lieu of group health coverage under a section 125 arrangement solely because the participant is unable to certify that he or she has other health coverage. Amounts are deemed section 125 compensation only if the Employer does not request or collect information regarding the Employee's other health coverage as part of the enrollment process for the health plan.

1.1.37 Straight Life Annuity - An annuity payable in equal installments in the form of a single life annuity for the life of the Participant (with no ancillary benefits and terminating upon the Participant's death) and to which Employees do not contribute and under which no rollover contributions (as defined in Code sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)) are taken into account, but taking into account social security supplements and benefits transferred from another defined benefit plan (other than transfers of distributable benefits).

1.1.38 Supplemental Effective Date - Except as otherwise specified in this Plan or required by applicable law or regulations or other guidance thereunder, (i) the Supplemental Effective Date shall be the date of an amendment by the Employer of this Plan and Trust or a Prior Plan Statement as specified in the Adoption Agreement and (ii) the following general Supplemental Effective Dates shall apply with respect to amended or restated Plan documents for changes in applicable laws, regulations or other guidance -

The Supplemental Effective Date of the restatement of the Plan intended to comply with the Tax Reform Act of 1986 is the first day of the Plan Year commencing after December 31, 1986, except that the effective date of the eligibility conditions in Section 2, the contribution and/or allocation formula in Section 3, and the vesting provisions of Section 5 is the first day of the Plan Year commencing after December 31, 1988; or, as otherwise specifically designated in this Basic Plan. The general Supplemental Effective Date of the Plan intended to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") shall be the first Plan Year and Limitation Year beginning after December 31, 2001, unless otherwise specified in the this Plan or required by applicable law or regulations or other guidance thereunder. The Supplemental Effective Date of Plan provisions intended to comply with the Pension Protection Act of 2006, Heroes, Earnings Assistance and Relief Tax Act of 2008, and Worker, Retiree, and Employer Recovery Act of 2008 (together the 2006 through 2008 acts referred to herein as "PPA") shall be the first Plan Year and Limitation Year beginning after December 31, 2003, unless otherwise specified in the Plan or required by applicable law, regulations or other guidance. The Supplemental Effective Date of applicable provisions of the Plan for Nebraska Legislative Bill 1082 (2012), if any, shall be April 16, 2012, unless otherwise provided in the Plan or required by applicable law or guidance.

1.1.39 Taxable Wage Base ("TWB") - The Taxable Wage Base ("TWB") is the maximum annual amount of earnings which may be considered wages for a year under Code section 3121(a)(1), as amended, in effect at the beginning of the Plan Year.

1.1.40 Tax Rate - The Tax Rate shall be the percentage equal to the portion of rate of tax attributable to Old-Age Insurance under Code section 3111(a), as amended, in effect as of the beginning of the Plan Year.

1.1.41 Trustee - The Trustee shall be designated in the Adoption Agreement. For Police and Fire Plans, the Trustee of any trust fund shall be a designated funding agent which is qualified to act as a fiduciary in the state of Nebraska, the City treasurer, an appropriate City officer authorized to administer funds of the City, or any combination thereof. The terms of any trust agreement adopted and executed by the City and Trustee separate and apart from this document shall be supplemental and additional to, and incorporated by reference into, this document to the extent not contrary to terms contained herein. If any terms of any such separate trust document conflict with the terms of this document, the terms of this document shall control.

1.1.42 Valuation Date - The Annual Valuation Date and any other valuation date selected under Section 1.1.35 or Section 4 hereof.

1.1.43 Vested - Nonforfeitable, i.e., a claim obtained by a Participant or his Beneficiary to that part of an immediate or deferred benefit hereunder which arises from the Participant's service, which is unconditional, and which is legally enforceable against the Plan.

1.1.44 Vesting Service - A measure of an Employee's service with the Employer (stated as a number of years) which is equal to the number of computation periods in which the Employee is credited with one thousand (1,000) or more Hours of Service; subject, however, to such of the following rules as are applicable under the Adoption Agreement:

(a) Computation Periods - The computation periods for determining the Employee's Vesting Service shall be Plan Years. Hours of Service will also be credited for any individual considered an Employee for the purposes of this Plan under Code section 414(n).

(b) Completion - A year of Vesting Service shall be deemed completed as of the date in the computation period that the Employee completes one thousand (1,000) Hours of Service. (Fractional years of Vesting Service shall not be credited.)

(c) Pre-Effective Date Service - Vesting Service before the Effective Date shall be credited according to whichever of the following rules the Employer indicates in the Adoption Agreement:

(i) Vesting Service shall not be credited with respect to periods of employment before the Effective Date of this Plan or a predecessor plan and shall be credited for the period from the Effective Date to the Supplemental Effective Date as if the rules of this Agreement had then been in effect; provided, however, that periods of employment before the ERISA date, if such provisions of ERISA are applicable to this Plan, shall be disregarded in determining Vesting Service if such periods would have been disregarded under the rules of the Plan as in effect immediately before the ERISA date.

(ii) Vesting Service shall be credited with respect to all periods before the Effective Date as if the rules of this Agreement had then been in effect; provided, however, that periods of employment before the ERISA Date, if such provisions of ERISA are applicable to this Plan, shall be disregarded in determining Vesting Service if such periods would have been disregarded under the rules of the Plan as in effect

immediately before the ERISA Date. The provisions of this subsection (ii) shall be the default rule and control absent an affirmative election in the Adoption Agreement.

The ERISA Date is the date as of which this Plan was first required to comply with the vesting and eligibility requirements of the Employee Retirement Income Security Act of 1974, if applicable to the Plan, as a condition of tax qualification.

(d) Police and Fire Plans - Participants shall be credited with all years of service in Recognized Employment completed after 1965 (after August 7, 1965 for Fire Plan) for the purpose of determining years of Vesting Service.

(e) Age 18 - If so indicated in the Adoption Agreement, computation periods completed prior to the beginning of the computation period in which the Employee attained the age designated in the Adoption Agreement shall be disregarded in determining the Employee's Vesting Service.

1.2 Special Rules for Employer's Computing Service on the Basis of Elapsed Time. For Employers using the elapsed time method of crediting service, the following definitions replace the definitions of Year of Service, Break in Service and Hour of Service definitions.

For purposes of determining an Employee's initial or continued eligibility to participate in the Plan or the nonforfeitable interest in the Participant's Account Balance derived from Employer contributions, (except for periods of service which may be disregarded on account of the "rule of parity") an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee's first day of employment or reemployment (in Recognized Employment with respect to Police and Fire Plans) with the Employer and ending on the date a Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive credit for any period of severance of less than 12 consecutive months. Fractional periods of a year will be expressed in terms of days.

For purposes of this Section, Hour of Service shall mean each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer.

A Break in Service is a period of severance of at least 12 consecutive months.

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

In the case of an individual who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a termination of employment. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

Each Employee will share in Employer contributions for the period beginning on the date the Employee commences participation under the plan and ending on the date on which such Employee severs employment with the Employer or is no longer a member of an eligible class of Employees.

1.3 Gender, Number and Headings. In this Agreement, the pronouns "he," "him" and "his," referring to a Participant or Beneficiary, shall also refer to and include females as well as males, and the singular, when used in this agreement, shall include the plural, and the plural the singular, except when the context otherwise requires. Section, subsection and paragraph headings used herein are not part of this Agreement and shall not be used or considered in determining the proper meaning, purpose or intention hereof.

1.4 Return of Employer Contribution. In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made incident to that initial qualification by the Employer must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such other date as the Secretary of the Treasury may prescribe.

The Trustee, upon written request from the Employer, must return to the Employer the amount of the Employer's contribution made by the Employer by mistake of fact. The Trustee will not return any portion of the Employer's contribution under the provisions of this paragraph more than one year after the Employer made the contribution by mistake of fact.

The Trustee will not increase the amount of the Employer contribution returnable under this Section 1.4 for any earnings attributable to the contribution, but the Trustee will decrease the Employer contribution returnable for any losses attributable to it. The Trustee may require the Employer to furnish it whatever evidence the Trustee deems necessary to enable the Trustee to confirm the amount the Employer has requested be returned is properly returnable under ERISA, if such provisions of ERISA are applicable to the Plan.

1.5 Amendment of Prior Plan Statement. If this Plan is adopted as an amendment of an earlier Plan Statement of which the Trustee was not the Trustee, the Employer has caused, or will forthwith cause, the transfer of the existing fund to the Trustee to be held in trust for the purposes contained and set forth in this Agreement.

1.6 Supplemental Elections, Information and Plan Provisions. The elections, information and provisions made, provided and specified in the section of the Adoption Agreement corresponding to this Section of the Basic Plan Document shall be deemed a part of an incorporated into this Plan notwithstanding anything in this Basic Plan document or the Adoption Agreement to the contrary.

## SECTION 2

### Eligibility and Participation

2.1 Initial Entry into Plan. If this Agreement is approved and adopted as an amendment of a Prior Plan Statement, each Employee who immediately before the Supplemental Effective Date was a Participant in the Plan and who on the Supplemental Effective Date continues in Recognized Employment shall continue as a Participant in this Plan.

Each other Employee of the Employer as specified in the Adoption Agreement shall become a Participant on the first date:

(a) that such person is in Recognized Employment, ~~and as designated by the Employer in the Adoption Agreement,~~

(b) that is the first day of the specified period not more than six months after the Employee satisfies age and service requirements specified in the Adoption Agreement,

~~(c) that is also not earlier than the first (1st) day of the first (1st) month or the first (1st) day of the seventh (7th) month of the Plan Year, whichever first occurs after the Employee has both satisfied the age and service requirements set forth in the Adoption Agreement,~~

~~(e) —~~that is the first day of the Plan Year in which the Employee has satisfied the age and service requirements specified in the Adoption Agreement, ~~or~~

(d) that is the first (1st) day of the first (1st) month or the first (1st) day of the seventh (7th) month of the Plan Year, whichever first occurs after the Employee has both satisfied the age and service requirements set forth in the Adoption Agreement, or

(e) ~~as otherwise specified in the Adoption Agreement that is the first day of the Plan Year following the Plan Year in which the Employee has satisfied the age and service requirements specified in the Adoption Agreement.~~

2.2 Special Rules for Former Participants and Eligible Classes. A Participant whose employment with the Employer terminates and who subsequently is reemployed by the Employer shall immediately reenter the Plan as a Participant upon his return to Recognized Employment. In the event a Participant is no longer a member of an eligible class of Employees and becomes ineligible to participate but has not incurred a Break in Service, such Employee will participate immediately upon returning to an eligible class of Employees. Except for Police and Fire Plans, if such a Participant incurs a Break in Service, eligibility will be determined under the Break in Service rules of the Plan. For Police and Fire Plans, a Participant immediately will participate upon returning to Recognized Employment of the Police or Fire Plan.

In the event an Employee who is not a member of an eligible class of Employees becomes a member of an eligible class, such Employee will participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

2.3 Annual Certification. As of each Annual Valuation Date during the continuance of the Plan, the Employer shall certify in writing the names of all Participants who are entitled to participate in the Employer contribution for the Plan Year ending on that date and all other facts that may be required to enable the Trustee to perform its duties hereunder.

## SECTION 3

### Contributions and Allocation Thereof

#### 3.1 Employee Contributions.

(a) Mandatory Employee Contributions. Each Participant shall, as a condition of employment with the City, contribute to the Plan the amount stated in the Adoption Agreement. Such payment shall be made by regular payroll deduction from periodic salary and shall be credited to Employee Accounts at least monthly. Employee Accounts shall also be credited with Regular Interest as provided in Section 4.1.

(i) If so elected by the City in the Adoption Agreement, the City shall pick up Mandatory Employee contributions, paying such contributions in lieu of contributions by Participants, and the contributions so picked up shall be treated as Employer contributions under Code section 414(h)(2) for federal income tax purposes. Participants shall not have the option to receive the contributed amounts directly instead of having them paid by the City to the Plan. The City shall withhold federal income taxes on picked up Employee contributions ~~until if required by the Internal Revenue Service Code or other applicable laws, regulations or guidance or the federal courts determine that picked up contributions shall not be included as gross income of the Employee prior to being distributed from the Plan.~~

(ii) Picked up contributions shall be paid from the same source of funds as used to pay earnings to Employees. The City shall pick up Employee contributions by salary deduction either by reducing cash salary of an Employee or by reducing cash salary and offsetting future salary increases.

(b) Voluntary Employee Contributions. If elected in the Adoption Agreement, each Employee shall be entitled to make voluntary cash contributions to the Plan to the extent and maximum amount permissible under, and subject to applicable requirements and limitations of, the Internal Revenue Code. Voluntary Contributions shall be credited to and separately accounted for under Employee Accounts and shall thereafter be credited with Regular Interest as provided in Section 4.1. Not in limitation of the foregoing, Voluntary Employee Contributions shall satisfy any special nondiscrimination or other



applicable requirements of the Code, rules, regulations and guidance, including, but not limited to, Code sections 401(a)(4) and 401(m). Any applicable requirements of Code section 401(m) shall be satisfied in accordance with Code section 401(m)-2 and Treasury Regulations section 1.401(m)-2 (which provisions are incorporated herein by this reference), using the prior year testing method and deeming the average contribution percentage for eligible nonhighly compensated employees to be 3% for the first Plan Year, unless otherwise elected by the Employer in a written addendum to the Adoption Agreement or Plan amendment, or otherwise required by applicable rules, regulations or other guidance. Provided, however, that certain provisions of the Code and corresponding rules, regulations and other guidance shall not apply if this Plan is a governmental plan as defined in Code section 414(d), including provisions that may otherwise be applicable to Voluntary Employee Contributions. (Inapplicable provisions include Code sections 401(a)(3), (4), (7), (11) through (15), (19) and (20), 401(m), 410(b), 411, 412 and 417 ~~pursuant to- For express exclusion of governmental plans from these requirements, see~~ operative provisions of these Code sections, as well as Code section 401(a)(5)(G) and the flush language following Code section 401(a)(376).)

(c) Pre-1984 Contributions. ~~Effective April 16, 2012 w~~With respect to ~~Police and~~ Fire plans only, an Employee's contributions to a qualified plan of deferred compensation maintained by the City prior to January 1, 1984 shall be transferred to his or her Employee Account without interest unless the City, at the time of the Transfer, credited interest on such contributions.

(d) All contributions in this Section 3.1 shall be credited to the Employee Accounts of Participants.

### 3.2 Employer Contributions.

(a) Police and Fire Plans. Employer contributions shall be made pursuant to (i), (ii) and (iii) below for Police and Fire Plans:

(i) The City shall contribute to the Trustee during the continuance of the Plan the amount stated in the Adoption Agreement. Employer contributions shall be credited at least monthly to Employer Accounts.

(ii) The City also shall contribute to the Employer Account of each Employee who was employed by the City on January 1, 1984 an amount equal to the Employee's contributions prior to January 1, 1984 to a qualified plan of deferred compensation maintained by the City, without interest unless the City elects to pay interest thereon. The contribution shall be made at the time the Employee retires or terminates his or her employment with the City. The City may make this contribution prior to an Employee's retirement or termination of employment; however, the City must make such contributions in a manner which does not impermissibly discriminate in favor of any Highly Compensated Employee.

(iii) The City shall make additional contributions to the Plan in amounts and at such times as are necessary to provide the minimum benefits stated in this Agreement. For Fire Plans, such additional Employer contributions shall be paid to an Unallocated Employer Account, and in all cases shall not exceed the applicable limitations of Code section 415.

(b) Other Municipal Plans.

(i) Nonintegrated. The City shall make contributions from year to year during the continuance of the Plan to the Trustee in the amount specified in the Adoption Agreement. The appropriate contribution of the Employer to the Plan, determined as herein provided, may be paid by the Employer either in cash or in kind and shall be allocated, as of the Annual Valuation Date in the Plan Year in question, to the Employer Account of Participants entitled to share therein in the same proportion that each Participant's Recognized Compensation bears to the aggregate Recognized Compensation of all Participants for that Fiscal Year.



(ii) Integrated. For Plan Years beginning after December 31, 1988 and before August 5, 1997, if the Plan is integrated and is not Top-Heavy for the Plan Year:

(1) Employer contributions and forfeitures will be allocated to each Participant's Employer Account in the ratio that the sum of each Participant's Recognized Compensation and Recognized Compensation in excess of the integration level bears to the sum of all Participants' Recognized Compensation and Recognized Compensation in excess of the integration level, but not in excess of the profit-sharing maximum disparity rate.

(2) Any remaining Employer contributions and forfeitures will be allocated to each Participant's Employer Account in the ratio that each Participant's Recognized Compensation for the Plan Year bears to all Participants' Recognized Compensation for that Plan Year.

If the Plan is not Top-Heavy, the maximum profit sharing disparity rate is equal to the lesser of:

(A) the greater of 5.7% or the Tax Rate; or,

(B) the applicable percentage determined in accordance with the following table:

If the integration level

is more than	but not more than	the applicable percentage is:
\$0	X*	5.7%
X* of TWB	80% of TWB	4.3%
80% of TWB	Y**	5.4%

\*X = the greater of \$10,000 or twenty percent (20%) of the TWB

\*\*Y = any amount more than eighty percent (80%) of the TWB but less than 100% of the TWB.

If the integration level is equal to the taxable wage base, the applicable percentage is the greater of 5.7% or the Tax Rate.

(3) Overall permitted disparity limit:

(A) Annual overall permitted disparity limit: Notwithstanding the preceding paragraph, for any Plan Year this Plan benefits any Participant who benefits under another qualified plan or simplified employee pension, as defined in Code section 408(k), maintained by the employer that provides for permitted disparity (or imputes disparity), the Employer will contribute for each Participant who either completes more than 500 Hours of Service during the Plan Year or is employed on the last day of the Plan Year an amount equal to the excess contribution percentage multiplied by the Participant's total compensation.

(B) Cumulative permitted disparity limit: Effective for Plan Years beginning on or after January 1, 1995, the cumulative permitted disparity limit for a

Participant is thirty-five (35) total cumulative permitted disparity years. Total cumulative permitted years means the number of years credited to the Participant for allocation or accrual purposes under this Plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer. For purposes of determining the Participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year. If the Participant has not benefited under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the Participant has no cumulative disparity limit.

(c) Mistake. If, after the Employer's contribution has been made and allocated, it should appear that, through oversight or a mistake of fact or law, a Participant who should have been entitled to share in such contribution received no allocation or received an allocation which was less than he should have received, the Employer may, at its election, and in lieu of reallocating such contribution, make a special make-up contribution to provide for him the same percentage of his Recognized Compensation for such Plan Year as was allocated to the Employer Accounts of other Participants for such Plan Year. A special make-up contribution shall not be permitted, and the Employer shall reallocate such contribution, if a special make-up contribution would result in a Participant receiving a greater allocation than is permitted under any law.

(d) Return of Contribution. The corpus or income of the Plan may not be diverted to or used for any other purpose than the exclusive benefit of the Participants or their Beneficiaries. Provided, however, that any contribution made by the Employer because of a mistake of fact may be returned to the Employer within one (1) year of the contribution.

If the Retirement Value of a Participant's Account is not sufficient to purchase or provide a Required Minimum Benefit required by Section 7.3, the City shall utilize such Funds as may be necessary from the Unallocated Employer Account (or from the Employer Account of the Participant in the case of a Police Plan) to purchase or provide the benefits required by such Section.

### 3.3 Eligible Participants.

(a) Police and Fire Plans. The Employer contributions (with the exception of contributions to provide a Participant a Required Minimum Benefit) shall be allocated to the accounts of all Participant Employees of the City paid compensation during the Plan Year.

(b) Other Municipal Plans.

(i) Unless otherwise specified in the Adoption Agreement, the Employer contribution and forfeitures available for allocation for the Plan Year shall be allocated to the accounts of all Participants who had at least one thousand (1,000) Hours of Service during such Plan Year and were Employees of the Employer on the last day of such Plan Year, and to the accounts of Participants who terminated their employment with the Employer within such Plan Year by reason of (i) their death, or (ii) their retirement at or after their Normal Retirement Date, or (iii) their Disability.

(ii) Except if the Plan provides for "picked up" contributions: if the Employer has so indicated in the Adoption Agreement, an Employee eligible to participate, or any present Participant, may elect not to participate in the Plan. For an election to be effective for a particular Plan Year, the Employee or Participant must file the election in writing with the Retirement Committee or City not later than 60 days prior to the last day of that Plan Year. The Employer may not make a contribution under the Plan for the Employee or for the Participant for the Plan Year for which the election is effective, nor for any succeeding Plan Year unless the Employee or Participant re-elects to participate in the Plan. After an Employee's or Participant's election not to participate has been effective for at least two Plan Years, the Employee or Participant may re-elect to participate in the Plan for any Plan Year and subsequent Plan Years. An Employee or

Participant may re-elect to participate in the Plan by filing his election in writing with the Retirement Committee not later than 60 days prior to the last day of the Plan Year for which his election is to be effective. An Employee or Participant who re-elects to participate may not again elect not to participate. An election timely filed is effective for the entire Plan Year.

A Participant who elects not to participate may not receive a distribution of his Total Account (except his Prior Voluntary Non-Deductible Account) attributable either to Employer or to Participant contributions except as provided under Section 6 or 7. However, for each Plan Year for which a Participant's election not to participate is effective, the Participant's Account, if any, continues to share in Fund earnings under Section 4. Furthermore, the Employee or the Participant receives vesting credit under Section 1.1.44 for each included Year of Service during the period the election not to participate is effective.

(c) For any Plan Year, if application of the limitations or requirements of subsection (b) would cause the Plan to fail to satisfy the requirements of Sections 401(a)(26) and/or 410(b) of the Code, if applicable to the Plan (Section 410(b) being inapplicable if this is a government plan as defined in Code section 414(d)), such subsections shall not apply and subsection (d) shall apply. Solely for the Plan Year commencing in 1989, a Participant shall be treated as benefiting under the Plan if the sole reason for the Participant's failure to receive an allocation to his account is due to the requirement that a Participant complete at least 1,000 Hours of Service during the Plan Year commencing in 1989.

(d) For a plan with respect to which paragraph (c) applies, the Employer contribution and Forfeitures available for allocation for the Plan Year shall be allocated to the accounts of all Participants; provided, however, in the event that the Employer has so indicated in the Adoption Agreement, if the Employee terminated employment during the Plan Year with not more than 500 Hours of Service, such terminated Employee shall not be allocated any portion of the Employer contribution or Forfeitures allocated for such Plan Year. If this subsection (d) applies, subsection (b) shall not apply.

3.4 Forfeitures. Except as otherwise provided in Section 6.4, and to the extent elected or otherwise provided for in the Adoption Agreement, Forfeitures shall be added to or be used to reduce the Employer's contribution. Forfeitures available for allocation in addition to or as a part of the Employer's contribution for the Fiscal Year shall be allocated as Employer contributions as provided in Section 3.2.

### 3.5 Rollover Contributions.

#### (a) Police and Fire Plans.

(i) Police. If a police officer terminates his or her employment with another city of the first class in Nebraska for the purpose of becoming a police officer employed by the City, and commences such employment with the City within one hundred and twenty days of such termination, such police officer shall be entitled to transfer to the Trustee of the Plan the full amount of his or her Employee Account and the vested portion of his or her Employer Account in the Police Officers Retirement System Fund at the time of termination so long as the transfer is made in accordance with the requirements of Section 3.5(b) below. The funds shall be transferred directly to the Employee Account of the Employee and administered thereafter by the Retirement Committee. The Employee shall otherwise be deemed a new Employee for purposes of the Plan after he or she commences employment with the City.

(ii) Fire. If a firefighter terminates his or her employment after four (4) or more years as a firefighter with another city of the first class in Nebraska, for purposes of becoming a firefighter with the City, and commences employment with the City as a firefighter within ninety (90) days after such termination, the firefighter shall be entitled to transfer to the Trustee of the Plan the full amount of his or her Employee Account and the vested portion of his or her Employer Account in the Firefighters Retirement System Fund at the time of termination so long as the transfer is made in accordance with the requirements of Section 3.5(b) below. The transferred funds shall be administered by the Retirement Committee of the Plan. The Employee

shall otherwise be deemed a new Employee for purposes of the Plan after he or she commences employment with the City.

(b) Other Municipal Plans. Notwithstanding the limitations of Section 3.6, a Participant may, if elected by the Employer in the Adoption Agreement, make a rollover contribution or direct rollover (in addition to any Employer contribution described in Section 3.2, and any Participant contribution described in Section 3.1):

(i) from a qualified plan described in Code section 401(a) or 403(a), which includes a trust exempt from federal income tax, and excludes after-tax Employee contributions; or

(ii) from a conduit individual retirement account or a conduit individual retirement annuity from a qualified plan; or

(iii) such other types of plans, effective on such dates, as specified in the Adoption Agreement.

Furthermore, an eligible Employee, prior to satisfying the Plan's eligibility condition(s), may make a rollover contribution or direct rollover to the same extent and in the same manner as a Participant. If an Employee makes a rollover contribution or direct rollover to the Trust prior to satisfying the Plan's eligibility condition(s), the Retirement Committee and Trustee shall treat the Employee as a Participant for all purposes of the Plan except that the Employee shall not share in Employee or Employer contributions or Participant forfeitures under Section 3 until he actually becomes a Participant in the Plan. If the Employee terminates employment prior to becoming a Participant, the Trustee shall distribute his rollover contribution Account to him as if it were an Employer contribution Account.

All rollover contributions and direct rollovers to the Plan shall be fully vested and made and allocated to the Rollover Account of such Participant or Employee in accordance with applicable law, including separate accounting for amounts includible and not includible in gross income.

(c) Merger of Services. To the extent Neb. Rev. Stat. Section 13-2401 is applicable to this Plan; If the Employer transfers employees who are Participants to a separate political subdivision (as defined by Neb. Rev. Stat. Section 13-2401(a)(1)), or receives employees from another political subdivision, in a merger of services, such employees who became employees of the new political subdivision, or the Employer, shall receive credit for their years of participation in the retirement system of the transferring entity for purposes of membership in the retirement system of the receiving entity. Rollovers, contributions and transfers from and between plans in such cases shall be carried out in accordance with Neb. Rev. Stat. Section 13-2401, to the extent consistent with applicable provisions of the Code.

3.6 Limitation on Allocations and Benefits. Notwithstanding anything in this Plan to the contrary, contributions and benefits under this Plan shall not exceed applicable limitations of Code Section 415, as set forth therein and the Treasury Regulations and other applicable guidance thereunder, the provisions of which are incorporated herein by this reference. More specifically, annual additions to this Plan shall not exceed the Maximum Permissible Amount, and any annual benefit from this Plan that is treated as a distribution from a defined benefit plan shall not exceed the Maximum Permissible Benefit. All such annual additions and annual benefits hereunder shall be automatically limited to a level necessary to prevent the limitations of Code section 415, as adjusted from time to time pursuant to Code section 415(d), from being exceeded with respect to any Participant. If a benefit or contribution during a Limitation Year would produce an annual benefit or annual addition in excess of the Maximum Permissible Benefit or Amount, the benefit or amount will be limited to the extent necessary so that the a-benefit or amount that does not exceed the Maximum Permissible Benefit or Amount. Provided, however, that, for purposes of the Maximum Permissible Benefit, the compensation limitation of subsection 415(b)(1)(B) shall not apply if this Plan constitutes a "governmental plan" within the meaning of Code section 414(d), pursuant to Code section 415(b)(11). Furthermore, special rules cross referenced in Treasury Regulations section 1.415(a)-1(b)(3) shall apply to the extent this Plan is a governmental plan described in said rules.

3.6.1 Single Plan. If the Participant does not participate in, and has never participated in another qualified plan maintained by the Employer or a welfare benefit fund, as defined in Code section 419(e) maintained by the Employer; or an individual medical account, as defined in Code section 415(1)(2), maintained by the Employer; or a simplified employee pension as defined by Code section 408(k), maintained by the Employer, which provides an annual addition as defined in Section 3.6.9, the amount of annual additions which may be credited to the Participant's Total 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 Employer 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. In addition to, and not in limitation of, the foregoing, distributions from the Plan (or from an annuity contract making distributions on behalf of the Plan or from an annuity contract that has been distributed under the Plan) during a limitation year that are or are treated as payments from a defined benefit plan shall not exceed the limitations of Code Section 415 and Regulations thereunder (as such limitations shall be adjusted from time to time pursuant to Code section 415(d)), the terms of which are incorporated herein by this reference. Benefits payable under this Plan shall be automatically limited as necessary to prevent the limitations of Code Section 415 from being exceeded with respect to any Participant. The foregoing shall operate automatically without discretion of the Employer.

3.6.2 Determination of Maximum Permissible Amount. Prior to determining the Participant's actual compensation for the Limitation Year, the Employer may determine the maximum permissible amount for a Participant on the basis of a reasonable estimation of the Participant's compensation for the Limitation Year, uniformly determined for all Participants similarly situated. 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.

In the case of an individual who was a participant in one or more defined benefit plans of the Employer as of the first day of the first Limitation Year beginning after December 31, 1994, the application of the limitations of this Article shall not cause the Maximum Permissible Amount for such individual under all such defined benefit plans to be less than the individual's Retirement Protection Act of 1994 (RPA '94) Old Law Benefit. The preceding sentence applies only if such defined benefit plans met the requirement of Code section 415 on December 7, 1994.

3.6.3 Disposition-Correction of Excess Amount. If, pursuant to Section 3.6.1 or as a result of the allocation of Forfeitures, there is an excess amount, the excess will be disposed of in the time and manner permitted under IRC Section 415 or other applicable laws, rules, regulations or guidance, as adopted or amended from time to time, including, but not limited to, Preambles to Final Regulations under Code Section 415, 72 FR 65, 16888 (April 5, 2007); Rev. Proc. ~~2008-50-50 (Revenue Procedure 2013-12 effective April 1, 2013)~~ ~~2006-27, Section 2.02(2) & Appendices B and C~~. To the extent permitted, the following correction methodology and order will be used:

(a) Police and Fire Plan.

(i) Any Nondeductible Voluntary Employee contributions (plus attributable earnings), to the extent that they would reduce the excess amount, will be returned to the Participant;

(ii) If after the application of Subparagraph (i) an excess amount still exists, and the Participant is covered by the Plan at the end of a Limitation Year, the excess amount in the Participant's Employer Account will be used to pay Plan administration expenses incurred by the City;

(iii) If after the application of Subparagraphs (i) and (ii) an excess amount still exists, and the Participant is covered by the Plan at the end of a Limitation Year, the

excess amount in the Participant's Employer Account will be used to reduce Employer Contributions (including any allocation of Forfeitures) for such Participant in the next Limitation year, and each succeeding Limitation Year if necessary.

(iv) If after the application of Subparagraphs (i) and (ii), an excess amount still exists and the Participant is not covered by the Plan at the end of a Limitation Year, the excess amount will be held unallocated in a suspense account. The suspense account will be applied to reduce further Employer Contributions (including allocation of any Forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary.

(b) Other Municipal Plans.

(i) Any Nondeductible Voluntary Employee Contributions (plus attributable earnings), to the extent that they would reduce the excess amount, will be returned to the Participant;

(ii) If after the application of Subparagraph (i) an excess amount still exists, and the Participant is covered by the Plan at the end of a Limitation Year, the excess amount in the Participant's Employer Account will be used to reduce Employer Contributions (including any allocation of Forfeitures) for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary.

(iii) If after the application of Subparagraph (i) an excess amount still exists, and the Participant is not covered by the Plan at the end of a Limitation Year, the excess amount will be held unallocated in a suspense account. The suspense account will be applied to reduce further Employer Contributions (including allocation of any Forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary;

(c) If a suspense account is in existence at any time during a Limitation Year pursuant to this Section, it will not participate in the allocation of the Fund's investment gains and losses. 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 Contributions 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.

(d) Notwithstanding any provision of the Plan to the contrary, effective for Limitation Years beginning on or after July 1, 2007, if the annual additions or benefits (within the meaning of Code § 415) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure ~~2006-27~~2008-50-50 ([Revenue Procedure 2013-12 effective April 1, 2013](#)) or any [amended or](#) superseding guidance, including, but not limited to, the preamble of the final Code §415 regulations.

3.6.4 Master or Prototype Plans. This Section applies if the Participant [also](#) is covered under a qualified master or prototype defined contribution plan maintained by the Employer, or a welfare benefit fund, as defined in Code section 419(e), maintained by the Employer; an individual medical account, as defined in Code section 415(1)(2), maintained by the Employer; or a simplified employer pension, maintained by the Employer, which provides an annual addition as defined in Section 3.6.9, during any Limitation Year. The annual additions which may be credited to a Participant's Total Account under this Plan for any such Limitation Year will not exceed the maximum permissible amount reduced by the annual additions credited to a Participant's Total Account under the other defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employer pensions for the same Limitation Year. If the annual additions with respect to the Participant under other defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employer pensions maintained by the Employer



are less than the maximum permissible amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's Total Account under this Plan would cause the annual additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the annual additions under all such plans for the Limitation Year will equal the maximum permissible amount. If the annual additions with respect to the Participant under such other defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employer pensions in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed or allocated to the Participant's Total Account under this Plan for the Limitation Year.

Prior to determining the Participant's actual compensation for the Limitation Year, the Employer may determine the maximum permissible amount for a Participant in the manner described in Section 3.6.2. 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.

If, pursuant to the preceding paragraph or as a result of the allocation of forfeitures, a Participant's annual additions under this Plan and such other plans would result in an excess amount for a Limitation Year, the excess amount will be deemed to consist of the annual additions last allocated, except that annual additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.

3.6.5 Amount Attributable to this Plan. If an excess amount was allocated to a Participant on an Annual Valuation Date of this Plan which coincides with an Annual Valuation Date of another plan, the excess amount attributed to this Plan will be the product of,

(a) the total excess amount allocated as of such date, multiplied by

(b) the ratio of (i) the annual additions allocated to the Participant for the Limitation Year as of such date under this Plan to (ii) the total annual additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified master or prototype defined contribution plans.

3.6.6 Correction of Excess Amount or Benefit. Any excess amount or benefit attributed to this Plan will be disposed or otherwise corrected in the manner described in Section 3.6.3. ~~Provided, however, effective for Limitation Years beginning on or after July 1, 2007 and notwithstanding any provision of the Plan to the contrary, if the annual additions or benefits (within the meaning of Code § 415) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2006-27 or any superseding guidance, including, but not limited to, the preamble of the final Code § 415 regulations.~~

3.6.7 Other Defined Contribution Plans. If the Participant is covered under another qualified defined contribution plan maintained by the Employer which is not a master or prototype plan, annual additions which may be credited to the Participant's Total Account under this Plan for any Limitation Year will be limited in accordance with Sections 3.6.4 through 3.6.6 as though the other plan were a master or prototype plan unless the Employer provides other limitations in Section K of the Adoption Agreement.

3.6.8 Other Defined Benefit Plans. If distributions hereunder are treated as payments from a defined benefit plan and the Participant is or has ever been a participant in another qualified defined benefit plan (regardless whether or not terminated) maintained by the Employer or a predecessor employer, the sum of the payments from all such plans shall not exceed applicable limitations of Code section 415(b), as adjusted from time to time pursuant to Code section 415(d). Where the Participant's employer-provided benefits under all such defined benefit plans would exceed said applicable limitations, payments under this Plan shall be limited so that the limitations under Code section 415(b) are not exceeded, unless otherwise provided in Section K of the Adoption Agreement.

3.6.9 Definitions and Special Rules.

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

(i) Employer contributions;

(ii) Employee contributions;

(iii) Forfeitures;

(iv) Amounts allocated, after March 31, 1984, to an individual medical account, as defined in Code section 415(1)(2), which is part of a pension or annuity plan maintained by the Employer 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 Code section 419A(d)(3), under a welfare benefit fund, as defined in Code section 419(e), maintained by the Employer are treated as annual additions to a defined contribution plan; and.

(v) allocations under a simplified employer pension.

For this purpose, any excess amount applied under Sections 3.6.3 or 3.6.6 in the Limitation Year to reduce Employer Contributions will be considered annual additions for such Limitation Year.

3.6.9(a)-1 Final Section 415 Regulations – Annual Additions. The Plan's definition of "annual additions" is modified as follows for Limitation Years beginning on or after July 1, 2007:

a. Restorative payments. Annual additions for purposes of Code § 415 shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under ERISA or under other applicable federal or state law, where participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to a plan made pursuant to a Department of Labor order, the Department of Labor's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under ERISA or other applicable federal or state law are not restorative payments and generally constitute contributions that are considered annual additions.

b. Other Amounts. Annual additions for purposes of Code § 415 shall not include: (1) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (2) Rollover contributions (as described in Code §§ 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (3) Repayments of loans made to a participant from the Plan; and (4) Repayments of amounts described in Code § 411(a)(7)(B) (in accordance with Code § 411(a)(7)(C)) and Code § 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code § 414(d)) as described in Code § 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.



c. Date of tax-exempt Employer contributions. Notwithstanding anything in the Plan to the contrary, in the case of an Employer that is exempt from Federal income tax (including a governmental employer), Employer contributions are treated as credited to a participant's account for a particular limitation year only if the contributions are actually made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the employer keeps its books) with or within which the particular limitation year ends.

(b) Compensation -

(i) 415 Safe Harbor Compensation. For the purpose of this Section 3.6, a Participant's earned income, wages, [differential wage payments under Code section 3401\(h\) \(for years beginning after December 31, 2008\)](#), salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer who maintains the Plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treasury Regulations, Section 1.62-2(c)) and excluding the following:

a. Employer contributions (other than elective contributions described in section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i) or 457(b)) made by the Employer to a plan of deferred compensation (including a simplified employee pension or simple retirement account, described in Code section 408(k) or (p), respectively, and whether or not qualified) to the extent not includable in the Employee's gross income for the taxable year in which contributed., and any distribution from a plan of deferred compensation (whether or not qualified and regardless whether such amounts are includible in the gross income of the Employee when distributed). However, if the Employer so provides elsewhere in this Plan, any amounts received by an Employee pursuant to a nonqualified unfunded deferred compensation plan are permitted to be considered as compensation for section 415 purposes in the year the amounts are actually received, but only to the extent such amounts are includible in the Employee's gross income;

b. Amounts realized from the exercise of a nonstatutory option, or when restricted stock (or other property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture (see Code section 83 and related regulations);

c. Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;

d. Other amounts which received special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts that are described in section 125); and

e. Other items of remuneration that are similar to any of the items listed in (a) through (d) above.

415 Safe Harbor Compensation as contained in this paragraph 3.6.9(b)-i shall be the definition of compensation for purposes of satisfying the requirements of Code

section 415 unless an alternative definition of compensation described below is elected in the Adoption Agreement.

(ii) **Alternative Definitions of Compensation.** The following alternative definition of compensation shall apply for Code Section 415 purposes if elected by the Employer in the Adoption Agreement:

a. **W-2 Wages.** Compensation is defined as wages within the meaning of Code section 3401(a) and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code sections 6041(d), 6051(a)(3), and 6052. Compensation shall be determined without regard to any rules under Code section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2)); or

b. **Section 3401(a) Wages.** Compensation is defined as wages within the meaning of Code section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2)).

c. **Such other definition of compensation for Code section 415 purposes** as specified in the Adoption Agreement.

(iii) For purposes of applying the limitations of this Section, compensation for a Limitation Year is the compensation actually paid or made available during such year.

(iv) For limitation years beginning before July 1, 2007, compensation for a Participant in a defined contribution plan who is permanently and totally disabled (as defined in Code section 22(e)(3)) 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; for Limitation Years beginning before January 1, 1997, but not for Limitation Years beginning after December 31, 1996, such imputed compensation for the disabled Participant may be taken into account only if the Participant is not a Highly Compensated Employee (as defined in Code section 414(q)), and contributions made on behalf of such Participant are nonforfeitable when made. See section 3.6.9(b)-3(d) below for limitation years beginning on or after July 1, 2007.

(v) Notwithstanding anything in this section to the contrary, effective for Limitation Years beginning on or after January 1, 1998, compensation for purposes of this Section 3.6 shall include any amount that would be included in compensation but for an election under Code section 125(a), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b); or, effective January 1, 2001, Code section 132(f)(4).

(vi) Unless elected by the Employer in the Adoption Agreement, amounts under Code Section 125 will not include any amounts that are not available to an Employee in cash in lieu of group health coverage because the Employee is unable to certify that he or she has other health coverage (deemed Section 125 compensation). If an election is made in the Adoption Agreement, for limitation years beginning after December 31, 2001 or such earlier date specified by the Employer elsewhere in this Plan, compensation shall include deemed section 125 compensation. Deemed section 125 compensation is an amount that is excludable under Code section 106 that is not available to a participant in cash in lieu of group health coverage under a section 125 arrangement solely because the participant is unable to certify that he or she has other health coverage. Amounts are deemed section 125 compensation only if the Employer does not

request or collect information regarding the Employee's other health coverage as part of the enrollment process for the health plan.

(vii) Compensation for Code section 415 purposes shall be limited under Code section 401(a)(17)(A) in the same manner as described in section 1.1.29 above.

3.6.9(b)-1 Final Section 415 Regulations - Compensation. The following shall apply to the definition of compensation for Code section 415 purposes effective for Limitation Years beginning on or after July 1, 2007:

3.6.9(b)-2 Default Provisions. Unless the Employer elects otherwise in the Adoption Agreement, the following defaults will apply:

a. The provisions of the Plan setting forth the definition of compensation for purposes of Code § 415 (hereinafter referred to as "415 Compensation"), as well as compensation for purposes of determining highly compensated employees pursuant to Code § 414(q) and for top-heavy purposes under Code § 416 (including the determination of key employees) – which top-heavy provisions shall not apply if this Plan is a governmental plan as defined in Code section 414(d) - shall be modified by (1) including payments for unused sick, vacation or other leave and payments from nonqualified unfunded deferred compensation plans (Section 3.6.9(b)-3(b) below), (2) excluding salary continuation payments for Employees on military service (Section 3.6.9(b)-3(c) below), and (3) excluding salary continuation payments for disabled Employees (Section 3.6.9(b)-3(d) below).

b. The "first few weeks rule" does not apply for purposes of 415 Compensation (Section 3.6.9(b)-4 below).

c. 415 Compensation shall include any amount described in section 3.6.9(b)-3, 3.6.9(b)-4 or 3.6.9(b)-5 that is included as compensation for purposes of making or allocating contributions under the Plan, notwithstanding any election in Section "K" of the Adoption Agreement to the contrary.

3.6.9(b)-3 415 Compensation Paid After Severance From Employment. 415 Compensation shall be adjusted, as set forth herein, subject to 3.6.9(b)-2 above and as otherwise elected in Adoption Agreement Section "K", for the following types of compensation paid after an Employee's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code § 414(b), (c), (m) or (o)). However, amounts described in subsections (a) and (b) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the Limitation Year that includes the date of such severance from employment, if later. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code § 415(c)(3), even if payment is made within the time period specified above.

a. Regular pay. 415 Compensation shall include regular pay after severance of employment if:

(1) The payment is regular compensation for services during the participant's regular working hours, or compensation for services outside the participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(2) The payment would have been paid to the participant prior to a severance from employment if the participant had continued in employment with the Employer.

b. Leave cashouts and deferred compensation. Leave cashouts shall be included in 415 Compensation, unless otherwise elected in Section "K" of the Adoption Agreement, if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in 415 Compensation, unless otherwise elected in Section "K" of the Adoption Agreement, if the compensation would have been included in the definition of 415 Compensation if it had been paid prior to the participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the participant had continued in employment with the Employer and only to the extent that the payment is includible in the participant's gross income.

c. Salary continuation payments for military service participants. 415 Compensation does not include, unless otherwise elected in Section "K" of the Adoption Agreement, payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code § 414(u)(1)). If an election is made in the Adoption Agreement to include such payments, they shall be included to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

d. Salary continuation payments for disabled Participants. Unless otherwise elected in Section "K" of the Adoption Agreement, 415 Compensation does not include compensation paid to a participant who is permanently and totally disabled (as defined in Code § 22(e)(3)). If elected, this provision shall apply to either just non-highly compensated participants, immediately before becoming disabled, or to all participants, for the period specified in Section "K" of the Adoption Agreement.

Back pay, within the meaning of Treasury Regulations section 1.415(c)-2(g)(8) shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

3.6.9(b)-4 Administrative Delay ("The First Few Weeks") Rule. 415 Compensation for a Limitation Year shall not include, unless otherwise elected in Section "K" of the Adoption Agreement, amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates. However, if elected in Section "K" of the Adoption Agreement, 415 Compensation for a Limitation Year shall include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next Limitation Year, the amounts are included on a uniform and consistent basis with respect to all similarly situated participants, and no compensation is included in more than one Limitation Year.

3.6.9(b)-5 Inclusion of Certain Nonqualified Deferred Compensation Amounts. If the Plan's definition of compensation for purposes of Code § 415 is the definition in Regulation Section 1.415(c)-2(b) (Regulation Section 1.415-2(d)(2) under the Regulations in effect for Limitation Years beginning prior to July 1, 2007) and the simplified compensation definition of Regulation 1.415(c)-2(d)(2) (Regulation Section 1.415-2(d)(10) under the Regulations in effect for Limitation Years prior to July 1, 2007) is not used, then 415 Compensation shall include amounts that are includible in the gross income of a Participant under the rules of Code § 409A or Code § 457(f)(1)(A) or because the amounts are constructively received by the Participant. [Note if the

Plan's definition of compensation is W-2 wages or wages for withholding purposes, then these amounts are already included in compensation.]

(c) Employer - For purposes of this Section 3.6, Employer shall mean the Employer that adopts this Plan, and all members of a controlled group of corporations (as defined in Code section 414(b) as modified by Code section 415(h)), all commonly controlled trades or businesses (as defined in Code section 414(c) as modified, except in the case of a brother-sister group of trades or businesses under common control, by section 415(h)), or affiliated service groups (as defined in Code section 414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the Employer pursuant to Code section 414(o).

(d) Excess Amount - The excess of the Participant's annual additions for the Limitation Year over the maximum permissible amount. Effective for Limitation Years beginning on or after July 1, 2007 and notwithstanding any provision of the Plan to the contrary, if the annual additions (within the meaning of Code § 415) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure ~~2006-27~~2008-50-50 (Revenue Procedure 2013-12 effective April 1, 2013) or any amended or superseding guidance, ~~including, but not limited to, the preamble of the final §415 regulations.~~

(e) Master or Prototype Plan - a plan the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.

(f) Maximum Permissible Amount - For Limitation Years beginning on or after January 1, 2002, 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:

(i) \$40,000, as adjusted for increases in the cost-of-living under Section 415(d) of the Code, or

(ii) 100 percent of the Participant's compensation for the Limitation Year.

The compensation limitation referred to in (ii) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code section 401(h) or Code section 419A(f)(2)) which is otherwise treated as an annual addition.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12-consecutive month period, the maximum permissible amount will not exceed the defined contribution dollar limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short Limitation Year}}{12}$$

If the Plan is terminated as of a date other than the last day of the Limitation Year, the Plan is deemed to have been amended to change its Limitation Year and the Maximum Permissible Amount shall be prorated for the short Limitation Year.

(g) Aggregation and Disaggregation of Plans. Effective for Limitation Years beginning on or after July 1, 2007 and notwithstanding any provision of the Plan to the contrary,

a. For purposes of applying the limitations of Code § 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor employer") under which the participant receives annual additions are treated as one defined contribution plan. Likewise all defined benefit plans ever maintained by the Employer are treated as one defined benefit plan. The "Employer" means the Employer that adopts this Plan and all members of a

controlled group or an affiliated service group that includes the Employer (within the meaning of Code §§ 414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code § 415(h), and shall take into account tax-exempt organizations under Regulation Section 1.414(c)-5, as modified by Regulation Section 1.415(a)-1(f)(1). For purposes of this Section:

(1) A former Employer is a "predecessor employer" with respect to a participant in a plan maintained by an Employer if the Employer maintains a plan under which the participant had accrued a benefit while performing services for the former Employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Regulation Section 1.415(f)-1(b)(2) apply as if the Employer and predecessor Employer constituted a single employer under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.

(2) With respect to an Employer of a participant, a former entity that antedates the Employer is a "predecessor employer" with respect to the participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

b. Break-up of an affiliate employer or an affiliated service group. For purposes of aggregating plans for Code § 415, a "formerly affiliated plan" of an employer is taken into account for purposes of applying the Code § 415 limitations to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an employer is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Regulation Section 1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

c. Midyear Aggregation. Two or more defined contribution plans that are not required to be aggregated pursuant to Code § 415(f) and the Regulations thereunder as of the first day of a limitation year do not fail to satisfy the requirements of Code § 415 with respect to a participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the participant's account after the date on which the plans are required to be aggregated.

(h) Predecessor Employer – If the Employer maintains a plan that provides a benefit which the Participant accrued while performing services for a former employer, the former employer is a predecessor employer with respect to the participant in the plan. A former entity that antedates the Employer is also a predecessor employer with respect to a Participant if, under

the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(i) Annual Benefit - A benefit that is payable annually in the form of a straight life annuity. Except as provided below or in the regulations under section 415, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this section 3.6.

The following provisions incorporate certain provisions of the Pension Funding Equity Act of 2004 ("PFEA"), as modified by the Pension Protection Act of 2006 and Worker, Retiree and Employer Recovery Act of 2008. Except as otherwise provided herein, eEffective for distributions in Plan Years beginning after December 31, 2003, the required determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with "I" or "II" below, as applicable. However, these provisions shall not supersede any prior election to apply the transition rule of section 101(d)(3) of the Pension Funding Equity Act of 2004 as described in IRS Notice 2004-78.

I. Benefit Forms Not Subject to section 417(e)(3). The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this section "I" if the form of the Participant's benefit is either (i) a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or (ii) an annuity that decreases during the life of the participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code section 401(a)(11)).

a. Limitation Years Beginning Before July 1, 2007. For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed using whichever of the following produces the greater annual amount: (i) the interest rate and mortality table (or other tabular factor) specified in Appendix B for adjusting benefits in the same form; and (ii) a 5% interest rate assumption and the applicable mortality table under Code section 417 as set forth in Rev. Rul. 2001-62 defined in Appendix B for that annuity starting date.

b. Limitation Years Beginning On or After July 1, 2007. For limitation years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of (i) the annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the participant's form of benefit; and (ii) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed using a 5% interest rate assumption and the applicable mortality table under Code section 417 as set forth in Rev. Rul. 2001-62 defined in Appendix B for that annuity starting date.

II. Benefit Forms Subject to Code Section 417(e)(3): The straight life annuity that is actuarially equivalent to the participant's form of benefit shall be determined under this paragraph-subsection II if the form of the participant's benefit is other than a benefit form described in subsection "I" above. In this case, the actuarially equivalent straight life annuity shall be determined as follows:



a. Annuity Starting Date in Small Plans for Plan Years Beginning in 2009 and Later. Notwithstanding anything in this Plan to the contrary, if the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in or after 2009, and if the Plan is maintained by an eligible employer as defined in Code Section 408(p)(2)(C)(i), the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount:

(i) The interest rate and the mortality table (or other tabular factor) specified in Appendix B for adjusting benefits in the same form; and

(ii) 5.5 percent interest rate assumption and the applicable mortality table described in Appendix B

~~a. — b. —~~ Annuity Starting Date in Plan Years Beginning After 2005. Except as provided in immediately preceding subsection "a", if the annuity starting date of the participant's form of benefit is in a plan year beginning after December 31, 2005, the actuarially equivalent straight life annuity is equal to the greatest of (i) the annual amount of the straight life annuity commencing at the same annuity stating date that has the same actuarial present value as the participant's form of benefit, computed using the interest rate and mortality table (or other tabular factor) specified in Appendix B of the Plan for adjusting benefits in the same form; (ii) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using a 5.5% interest rate assumption and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2), (determined in accordance with Code section 417 Appendix B as set forth in Rev. Rul. 2001-62; and (iii) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using the applicable interest rate for the distribution under Treasury Regulations Section 1.417(e)-1(d)(3) (determined in accordance with Appendix B) — on 30-year Treasury securities as specified by the Commissioner for the lookback month for the stability period, and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with defined in Appendix B), divided by 1.05.

~~Unless otherwise elected by the Employer in a written addendum to this Plan, (i) the stability period is the successive period of one calendar month which contains the annuity starting date for the distribution and for which the applicable interest rate remains constant, and (ii) the lookback month is the first calendar month preceding the first day of the stability period. Notwithstanding anything in this paragraph or election of the Employer regarding stability period or lookback month, a plan amendment that changes the date for determining the applicable interest rate (including an indirect change as a result of a change in plan year), shall not be given effect with respect to any distribution during the period commencing one year after the later of the amendment's effective date or adoption date, if, during such period and as a result of such amendment, the participant's distribution would be reduced.~~

c. Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the annuity starting date of the participant's form of benefit is in a plan year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at



the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using whichever of the following produces the greater annual amount: (i) the interest rate and mortality table (or other tabular factor) specified in Appendix B of the plan for adjusting benefits in the same form; and (ii) a 5.5% interest rate assumption and the applicable mortality table for the distribution under Code section 417 Treasury Regulations Section 1.417(e)-1(d)(2) as set forth in Rev. Rul. 2001-62.

(b) However, this subsection does not supersede any prior election to apply the transition rule of section 101(d)(3) as described in Notice 2004-78.

(j) RPA '94 Old Law Benefit. The Participant's Accrued Benefit under the terms of the Plan as of January 1, 2000 (the RPA '94 Freeze Date), for the Annuity Starting Date and optional form and taking into account the limitations of Code section 415, as in effect on December 7, 1994, including the participation requirements under Code section 415(b)(5). In determining the amount of a Participant's RPA '94 Old Law Benefit, the following shall be disregarded:

I. any plan amendment increasing benefits adopted after the RPA '94 Freeze Date; and

II. any cost of living adjustments that become effective after such date.

A Participant's RPA '94 Old Law Benefit is not increased after the RPA '94 Freeze Date, but if the limitations of Code section 415, as in effect on December 7, 1994, are less than the limitations that were applied to determine the Participant's RPA '94 Old Law Benefit on the RPA '94 Freeze Date, then the Participant's RPA '94 Old Law Benefit will be reduced in accordance with such reduced limitation. If, at any date after the RPA '94 Freeze Date, the Participant's total plan benefit, before the application of Code section 415, is less than the Participant's RPA '94 Old Law Benefit, the RPA '94 Old Law Benefit will be reduced to the Participant's total plan benefit.

(k) Employee Contributions. Employee contributions, rollovers and transfers, and benefits or limitations attributable or applicable thereto, shall be determined in accordance with Treasury Regulations, section 1.415(b)-1(b)(2) and (3).

(l) Benefit Increases. Benefit increases as a result of an increase in a limitation of Code section 415, if any, shall be provided to all Employees participating in the Plan having at least one hour of service on or after the first day of the limitation year ending on or after the date that the change becomes effective

(m) Limitation Years. Provisions of this section 3.6 adopted to comply with final Treasury Regulations under Code section 415 shall be effective for limitation years beginning on or after July 1, 2007, and application of such provisions shall not cause applicable Code section 415 limitations for any Participant to be less than the Participant's benefits under all qualified plans of the Employer as of the end of the limitation year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007; provided the provisions of such plans both adopted and in effect before April 5, 2007 satisfied all applicable laws, rules and regulations in effect as of the end of the last limitation year beginning before July 1, 2007, as described in Treasury Regulations, section 1.415(a)-1(g)(4)

(n) Maximum Permissible Benefit. Pursuant to Code section 415(b)(11), the maximum permissible benefit for a governmental plan described in Code section 414(d) means the defined benefit dollar limitation set forth in Code section 415(b)(1)(A), subject to adjustment pursuant to Code section 415(d) periodically and as follows.

I. Adjustment for Less Than 10 Years of Participation or Service: If the Participant has less than 10 years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction – (i) the numerator of which is the number of years (or part thereof, but not less than one year) of participation in the Plan, and (ii) the denominator of which is 10, pursuant to the rules set forth in Treasury Regulations, Section 1.415(b)-1(g)(1).

II. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or after Age 65: Effective for benefits commencing in limitation years ending after December 31, 2001, the defined benefit dollar limitation shall be adjusted if the annuity starting date of the participant's benefit is before age 62 or after age 65, as follows.

a. Adjustment of defined benefit dollar limitation for benefit commencement before age 62:

*I. Limitation Years Beginning Before July 1, 2007.*

If the annuity starting date for the participant's benefit is prior to age 62 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted above as necessary if less than 10 years of participation) with actuarial equivalence computed using whichever of the following produces the smaller annual amount (i) the interest rate specified in Appendix B and the mortality table (or other tabular factor) specified in Appendix B; or (ii) a 5-percent interest rate assumption and the applicable mortality table under Code section 417 as set forth in Rev. Rul. 2001-62.

*II. Limitation Years Beginning on or After July 1, 2007.*

A. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted above for years of participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for the annuity starting date ~~as~~ under Code section 417 as set forth in Rev. Rul. 2001-62 (and

expressing the Participant's age based on completed calendar months as of the annuity starting date).

B. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the Participant's annuity starting date is the lesser of the limitation determined under subsection A above and the defined benefit dollar limitation (adjusted above for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Participant's annuity starting date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Section 3.6.

C. Notwithstanding any other provisions of this subsection 3.6.9(n)(II)(a), the age-adjusted dollar limit applicable to a Participant shall not decrease on account of an increase in age or the performance of additional services.

b. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65.

I. *Limitation Years Beginning Before July 1, 2007.* If the annuity starting date for the participant's benefit is after age 65 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation with actuarial equivalence computed using whichever of the following produces the smaller amount: (1) the interest rate and mortality table specified in Appendix B or (2) a 5% interest rate assumption and the applicable mortality table as defined under Code section 417 as set forth in Rev. Rul. 2001-62.

II. *Limitation Years Beginning on or after July 1, 2007.*

A. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan does

not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted above for years of participation less than 10, if required), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date as defined under Code section 417 as set forth in Rev. Rul. 2001-62 (and expressing the Participant's age based on completed calendar months as of the annuity starting date).

B. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the Participant's annuity starting date is the lesser of the limitation determined under preceding subsection A and the defined benefit dollar limitation (adjusted above for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Section 3.6. For this purpose the adjusted immediately commencing straight life annuity under the Plan at the Participant's annuity starting date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

c. Notwithstanding the other requirements of this subsection "3.6.9(n)II" ~~no adjustment shall be made to~~ adjusting the defined benefit dollar limitation for the Participant's annuity starting date under section 3.6.9(n)(II)(a)(I), 3.6.9(n)(II)(a)(II)(A), 3.6.9(n)(II)(b)(I), 3.6.9(n)(II)(b)(II)(A), no adjustment shall be made to reflect the probability of a Participant's death between the annuity

starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, if any, as defined in Section 417(c) of the Internal Revenue Code, upon the Participant's death.

Adjustments provided under the Code for benefit commencement before age 62 shall not apply to a governmental plan with respect to any "qualified participant" pursuant to Treasury Regulations section 1.415(b)-1(d)(3).

(o) The application of this Section 3.6 revised for final regulations under Code section 415 adopted April 5, 2007 shall not cause the Maximum Permissible Benefit or Amount of any Participant to be less than the Participant's benefit or allocation under this and all other defined benefit or defined contribution plans of the Employer or predecessor employer as of the end of the limitation year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Code section 415 in effect as of the end of the last limitation year beginning before July 1, 2007, as described in Treasury Regulations section 1.415(a)-1(g)(4).

**3.7 Code Section 436 Benefit Restrictions.** Except as otherwise provided herein or by applicable law, regulations or other guidance, benefits restrictions of Code Section 436 apply to single employer plans in Plan Years beginning after December 31, 2007.

(a) **Governmental Plan Exception.** Notwithstanding anything in this Section 3.7 to the contrary, Code section 436, the benefit restrictions thereunder and the provisions of Section 3.7 below shall not apply to this Plan to the extent it is a governmental plan within the meaning of Code section 414(d) and exempt from the requirements of Code sections 401(a)(29) and 436 by reason of being exempt from the funding requirements of Code section 412.

**3.7.1 2008 and 2009 Plan Years.** The provisions of this Section 3.7.1 shall apply to Plan Years beginning after December 31, 2007 and before January 1, 2010.

(a) **Application of Section 3.7.1.**

(1) This Section 3.7.1 only applies to single employer plans (a plan that is not a multiemployer plan within the meaning of Code Section 414(f)) and does not apply to a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers.

(A) **Multiple Employer Plans.** In the case of a multiple employer plan to which Code Section 413(c)(4)(A) applies, Code Section 436 applies separately with respect to each employer under the plan, as if each employer maintained a separate plan. Thus, the benefit limitations under Code Section 436 could apply differently to participants who are employees of different employers under such a multiple employer plan. In the case of a multiple employer plan to which Code Section 413(c)(4)(A) does not apply (that is, a plan described in Code Section 413(c)(4)(B) that has not made the election for Code Section 413(c)(4)(A) to apply), Code Section 436 applies as if all participants in the plan were employed by a single employer.

(B) **Governmental Plans.** Code Section 436 benefit restrictions and other provisions described in this Section 3.7.1 shall not apply to this Plan to the extent it is a governmental plan

within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being exempt from the funding requirements of Code Section 412.

(2) The limitations described in Subsections (b), (c) and (e) do not apply to the Plan for the first five (5) Plan Years of the Plan. Except as otherwise provided by the Commissioner in guidance of general applicability, the Plan Years taken into account for this purpose include the following (in addition to Plan Years during which the Plan was maintained by the Employer):

(A) Plan Years when the Plan was maintained by a predecessor employer within the meaning of Regulations Section 1.415(f)-1(c)(1);

(B) Plan years of another defined benefit plan maintained by a predecessor employer within the meaning of Regulations Section 1.415(f)-1(c)(2) within the preceding five years if any Participants in the Plan participated in that other defined benefit plan (even if the Plan maintained by the Employer is not the plan that was maintained by the predecessor employer); and

(C) Plan years of another defined benefit plan maintained by the Employer within the preceding five years if any Participants in the Plan participated in that other defined benefit plan.

(3) Notwithstanding anything in this Section 3.7.1 to the contrary, the provision of Code Section 436 and the Regulations thereunder are incorporated herein by reference.

(4) For Plans that have a valuation date other than the first day of the Plan Year, the provisions of Code Section 436 and this Section 3.7.1 will be applied in accordance with Regulations.

**(b) Funding-Based Limitation on Shutdown Benefits and Other Unpredictable Contingent Event Benefits**

(1) In general. If a Participant is entitled to an “unpredictable contingent event benefit” payable with respect to any event occurring during any Plan Year, then such benefit may not be provided if the “adjusted funding target attainment percentage” for such Plan Year (A) is less than sixty percent (60%) or, (B) sixty percent (60%) or more, but would be less than sixty percent (60%) percent if the “adjusted funding target attainment percentage” were redetermined applying an actuarial assumption that the likelihood of occurrence of the “unpredictable contingent event” during the Plan Year is one hundred percent (100%).

(2) Exemption. Paragraph (1) shall cease to apply with respect to any Plan Year, effective as of the first day of the Plan Year, upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(iii).

**(c) Limitations on Plan Amendments Increasing Liability for Benefits**

(1) In general. No amendment which has the effect of increasing liabilities of the Plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any Plan Year if the “adjusted funding target attainment percentage” for such Plan Year is:

(A) less than eighty percent (80%), or

(B) eighty percent (80%) or more, but would be less than eighty percent (80%) if the benefits attributable to the amendment were taken into account in determining the “adjusted funding target attainment percentage.”

(2) Exemption. Paragraph (c)(1) above shall cease to apply with respect to a Plan amendment upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(iv).

(3) Exception for certain benefit increases. Paragraph (1) shall not apply to any amendment as otherwise provided in Regulations Section 1.436-1(c).

**(d) Limitations on Prohibited Payments**

(1) Funding percentage less than sixty percent (60%). If the Plan's "adjusted funding target attainment percentage" for a Plan Year is less than sixty percent (60%), then a Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" on or after the applicable "Section 436 measurement date."

(2) Bankruptcy. A Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" that occurs during any period in which the Employer is a debtor in a case under Title 11, United States Code, or similar Federal or State law. The preceding sentence shall not apply to payments made within a Plan Year with an "annuity starting date" that occurs on or after the date on which the enrolled actuary of the Plan certifies that the "adjusted funding target attainment percentage" of the Plan is not less than one hundred percent (100%).

(3) Limited payment if percentage at least sixty percent (60%) but less than eighty percent (80%) percent.

(A) In general. If the Plan's "adjusted funding target attainment percentage" for a Plan Year is sixty percent (60%) or greater but less than eighty percent (80%), then a Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" on or after the applicable "Section 436 measurement date," unless the present value (determined in accordance with Code Section 417(e)(3)) of the portion of the benefit that is being paid in a "prohibited payment" (which portion is determined under paragraph (C)(i) below) does not exceed the lesser of:

(i) fifty (50) percent of the amount of the present value (determined in accordance with Code Section 417(e)(3)) of the benefit payable in the optional form of benefit that includes the prohibited payment; or

(ii) 100% of the "PBGC maximum benefit guarantee amount."

(B) Bifurcation if optional form unavailable.

(i) Requirement to offer bifurcation. If an optional form of benefit that is otherwise available under the terms of the plan is not available as of the "annuity starting date" because of the application of Regulations Section 1.436-1(d)(3)(i), then the Participant or Beneficiary may elect to:

(1) Receive the unrestricted portion of that optional form of benefit (determined under the rules of Regulations Section 1.436-1(d)(3)(iii)(D)) at that "annuity starting date," determined by treating the unrestricted portion of the benefit as if it were the Participant's or Beneficiary's entire benefit under the plan;

(2) Commence benefits with respect to the Participant's or Beneficiary's entire benefit under the Plan in any other optional form of



benefit available under the Plan at the same “annuity starting date” that satisfies Regulations Section 1.436-1(d)(3)(i); or

(3) Defer commencement of the payments to the extent described in Regulations Section 1.436-1(d)(5).

(ii) Rules relating to bifurcation. If the Participant or Beneficiary elects payment of the unrestricted portion of the benefit as described in Regulations Section 1.436-1(d)(3)(ii)(A)(1), then the Participant or Beneficiary may elect payment of the remainder of the Participant’s or Beneficiary’s benefits under the Plan in any optional form of benefit at that “annuity starting date” otherwise available under the Plan that would not have included a “prohibited payment” if that optional form applied to the entire benefit of the Participant or Beneficiary. The rules of Regulations Section 1.417(e)-1 are applied separately to the separate optional forms for the “unrestricted portion of the benefit” and the remainder of the benefit (the restricted portion).

(iii) Plan alternative that anticipates election of payment that includes a “prohibited payment.” With respect to every optional form of benefit that includes a “prohibited payment” and that is not permitted to be paid under Regulations Section 1.436-1 (d)(3)(i), for which no additional information from the Participant or Beneficiary (such as information regarding a Social Security leveling optional form of benefit) is needed to make that determination, rather than wait for the Participant or Beneficiary to elect such optional form of benefit, the Plan will provide for separate elections with respect to the restricted and unrestricted portions of that optional form of benefit.

(C) Definitions applicable to limited payment option. The following definitions apply for purposes of this subsection (d)(3).

(i) Portion of benefit being paid in a prohibited payment. If a benefit is being paid in an optional form for which any of the payments is greater than the amount payable under a straight life annuity to the Participant or Beneficiary (plus any Social Security supplements described in the last sentence of Code Section 411(a)(9) payable to the Participant or Beneficiary) with the same “annuity starting date,” then the portion of the benefit that is being paid in a “prohibited payment” is the excess of each payment over the smallest payment during the Participant’s lifetime under the optional form of benefit (treating a period after the “annuity starting date” and during the Participant’s lifetime in which no payments are made as a payment of zero).

(ii) PBGC maximum benefit guarantee amount. The “PBGC maximum benefit guarantee amount” is the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under Code Section 417(e)) of the maximum benefit guarantee with respect to a Participant (based on the Participant’s age or the Beneficiary’s age at the “annuity starting date”) under ERISA Section 4022 for the year in which the “annuity starting date” occurs.

(iii) Unrestricted portion of the benefit:

(1) General rule. Except as otherwise provided in this paragraph (iii), the unrestricted portion of the benefit with respect to any optional form of benefit is fifty percent (50%) of the amount payable under the optional form of benefit.



(2) Special rule for forms which include Social Security leveling or a refund of employee contributions. For an optional form of benefit that is a prohibited payment on account of a Social Security leveling feature (as defined in Regulations Section 1.411(d)-3(g)(16)) or a refund of employee contributions feature (as defined in Regulations Section 1.411(d)-3(g)(11)), the unrestricted portion of the benefit is the optional form of benefit that would apply if the Participant's or Beneficiary's Accrued Benefit were fifty percent (50%) smaller.

(3) Limited to PBGC maximum benefit guarantee amount. After the application of the preceding rules of this paragraph (iii), the unrestricted portion of the benefit with respect to the optional form of benefit is reduced, to the extent necessary, so that the present value (determined in accordance with Code Section 417(e)) of the unrestricted portion of that optional form of benefit does not exceed the "PBGC maximum benefit guarantee amount."

(D) Other Rules.

(i) One time application. If a Participant with respect to whom a prohibited payment (or a series of prohibited payments under a single optional form of benefit) is made pursuant to paragraph (d)(3)(A) or (B) above, no additional prohibited payment may be made with respect to that Participant during any consecutive Plan Years for which prohibited payments are limited under this subsection (d).

(ii) Treatment of beneficiaries. For purposes of this subparagraph (d)(3), benefits provided with respect to a Participant and any Beneficiary of the Participant (including an alternate payee, as defined in Code Section 414(p)(8)) are aggregated. If the only benefits paid under the plan with respect to the Participant are death benefits payable to the Beneficiary, then paragraph (d)(3)(C)(i) of this section is applied by substituting the lifetime of the Beneficiary for the lifetime of the Participant. If the Accrued Benefit of a Participant is allocated to such an alternate payee and one or more other persons, then the "unrestricted amount" of (d)(3)(C)(iii) is allocated among such persons in the same manner as the accrued benefit is allocated, unless a qualified domestic relations order (as defined in Code Section 414(p)(1)(A)) with respect to the Participant or the alternate payee provides otherwise.

(iii) Treatment of annuity purchases and plan transfers. This paragraph (d)(3)(D)(iii) applies for purposes of applying subsections (d)(3)(A) and (d)(3)(C)(iii). In the case of a prohibited payment described in Regulations Section 1.436-1(j)(6)(i)(B) (relating to purchase from an insurer), the present value of the portion of the benefit that is being paid in a prohibited payment is the cost to the plan of the irrevocable commitment and, in the case of a prohibited payment described in Regulations Section 1.436-1(j)(6)(i)(C) (relating to certain plan transfers), the present value of the portion of the benefit that is being paid in a prohibited payment is the present value of the liabilities transferred (determined in accordance with Code Section 414(l)). In addition, the present value of the accrued benefit is substituted for the present value of the benefit payable in the optional form of benefit that includes the prohibited payment in Regulations Section 1.436-1(d)(3)(i)(A).

(4) Exception. This subsection (d) shall not apply for any Plan Year if the terms of the Plan (as in effect for the period beginning on September 1, 2005, and ending with such Plan Year) provide for no benefit accruals with respect to any Participant during such period.

(5) Right to delay commencement. If a Participant or Beneficiary requests a distribution in an optional form of benefit that includes a “prohibited payment” that is not permitted to be paid under paragraph (d)(1), (d)(2), or (d)(3) of this Section 3.7.1, then the Participant retains the right to delay commencement of benefits in accordance with the terms of the plan and applicable qualification requirements (such as Code Sections 411(a)(11) and 401(a)(9)).

(6) “Prohibited payment.” For purposes of this subsection (d), the term “prohibited payment” means:

(A) Any payment for a month that is in excess of the monthly amount paid under a single life annuity (plus any Social Security supplements described in the last sentence of Code Section 411(a)(9)), to a Participant or Beneficiary whose “annuity starting date” occurs during any period a limitation under paragraph (d) is in effect;

(B) Any payment for the purchase of an irrevocable commitment from an insurer to pay benefits; and

(C) Any transfer of assets and liabilities to another plan maintained by the same Employer (or by any member of the Employer’s controlled group) that is made in order to avoid or terminate the application of Code Section 436 benefit limitations; and

(D) Any other amount that is identified as a prohibited payment by the Commissioner in revenue rulings and procedures, notices, and other guidance published in the Internal Revenue Bulletin.

Such term shall not include the payment of a benefit which under Code Section 411(a)(11) may be immediately distributed without the consent of the Participant. Furthermore, in the case of a Beneficiary that is not an individual, the amount that is a prohibited payment is determined by substituting the monthly amount payable in installments over 240 months that is actuarially equivalent to the benefit payable to the Beneficiary, as provided in Regulations Section 1.436-1(j)(6)(ii).

**(e) Limitation on Benefit Accruals for Plans with Severe Funding Shortfalls**

(1) In general. If the Plan’s “adjusted funding target attainment percentage” for a Plan Year is less than sixty percent (60%), benefit accruals under the Plan shall cease as of the “section 436 measurement date.” If the Plan is required to cease benefit accruals under this subsection (e), then the Plan is not permitted to be amended in a manner that would increase the liabilities of the Plan by reason of an increase in benefits or establishment of new benefits. The preceding sentence applies regardless of whether an amendment would otherwise be permissible under subsections (c)(2) or (c)(3) of this Section 3.7.1.

(2) Exemption. Paragraph (1) shall cease to apply with respect to any Plan Year, effective as of the first day of the Plan Year, upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(v).

(3) Temporary modification of limitation. In the case of the first Plan Year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, the provisions of (e)(1) above shall be applied by substituting the Plan’s “adjusted funding target attainment percentage” for the preceding Plan Year for such percentage for such Plan Year, but only if the “adjusted funding target attainment percentage” for the preceding year is greater.

**(f) Rules Relating to Contributions Required to Avoid or Terminate Benefit Limitations**

The application of the Code Section 436 benefit limitations may be avoided or terminated in

accordance with any of the rules set forth in Code Section 436 and Regulations Section 1.436-1(f).

(g) **Presumed Underfunding for Purposes of Benefit Limitations**

(1) **Presumption of continued underfunding.**

(A) In general. This paragraph (g)(1) applies to a Plan for a Plan Year if a limitation under subsection (b), (c), (d), or (e) applied to the Plan on the last day of the preceding Plan Year. If this paragraph (g)(1) applies to a Plan, then the first day of the Plan Year is a "Section 436 measurement date" and the presumed "adjusted funding target attainment percentage" for the Plan is the percentage under paragraph (g)(1)(B) or (C) of this subsection, whichever applies to the Plan, beginning on that first day of the Plan Year and ending on the date specified in subparagraph (g)(1)(D) of this section.

(B) **Rule where preceding year certification issued during preceding year.**

(i) General rule. In any case in which the Plan's enrolled actuary has issued a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year preceding the current Plan Year before the first day of the current Plan Year, the presumed "adjusted funding target attainment percentage" of the Plan for the current Plan Year is equal to the prior Plan Year "adjusted funding target attainment percentage" until it is changed under Regulations Section 1.436-1(h)(1)(iv).

(ii) Special rule for late certifications. If the certification of the adjusted funding target attainment percentage for the prior Plan Year occurred after the first day of the 10th month of that prior Plan Year, the Plan is treated as if no such certification was made, unless the certification took into account the effect of any unpredictable contingent event benefits that are permitted to be paid based on unpredictable contingent events that occurred, and any Plan amendments that became effective, during the prior Plan Year but before the certification (and any associated Code Section 436 contributions).

(C) **No certification for preceding year issued during preceding year.**

(i) Deemed percentage continues. In any case in which the Plan's enrolled actuary has not issued a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" of the Plan for the Plan Year preceding the current Plan Year during that prior Plan Year, the presumed "adjusted funding target attainment percentage" of the Plan for the current Plan Year is equal to the presumed "adjusted funding target attainment percentage" that applied on the last day of the preceding Plan Year until the presumed "adjusted funding target attainment percentage" is changed under Regulations Section 1.436-1(h)(1)(iii)(B) or (h)(1)(iv).

(ii) Enrolled actuary's certification in following year. In any case in which the Plan's enrolled actuary has issued the certification under Regulations Section 1.436-1(h)(4) of the adjusted funding target attainment percentage of the Plan for the Plan Year preceding the current Plan Year on or after the first day of the current Plan Year, the date of that prior Plan Year certification is a new "Section 436 measurement date" for the current Plan Year. In such a case, the presumed adjusted funding target attainment percentage for the current Plan Year is equal to the prior Plan Year adjusted funding target attainment percentage (reduced by 10 percentage points if Regulations Section 1.436-1(h)(2)(iv) applies to the Plan) until it is changed under Regulations Section 1.436-1(h)(1)(iv). The rules of Regulations Section 1.436-1(h)(1)(ii)(B) apply for purposes of determining

whether the enrolled actuary has issued a certification of the adjusted funding target attainment percentage for the prior Plan Year during the current Plan Year.

(D) Duration of use of presumed “adjusted funding target attainment percentage.” If this paragraph (g)(1) applies to a Plan for a Plan Year, then the presumed “adjusted funding target attainment percentage” determined under this paragraph (g)(1) applies until the earliest of:

(i) The first day of the 4th month of the Plan Year if paragraph (g)(2) of this section applies;

(ii) The first day of the 10th month of the Plan Year if paragraph (g)(3) of this section applies;

(iii) The date of a change in the presumed adjusted funding target attainment percentage under Regulations Section 1.436-1(g)(4); or

(iv) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the “adjusted funding target attainment percentage” for the Plan Year.

(2) Presumption of underfunding beginning on first day of 4th month for certain underfunded plans. This paragraph (2) applies to a Plan for a Plan Year if the enrolled actuary for the Plan has not issued a certification of the “adjusted funding target attainment percentage” for the Plan Year before the first day of the 4th month of the Plan Year, and the Plan’s “adjusted funding target attainment percentage” for the preceding Plan Year was either (1) at least sixty percent (60%) but less than seventy percent (70%); or (2) at least eighty percent (80%) but less than ninety percent (90%). This paragraph (2) also applies to a Plan for the first effective Plan Year if the enrolled actuary for the Plan has not issued a certification of the “adjusted funding target attainment percentage” for the Plan Year before the first day of the 4th month of the Plan Year, and the prior Plan Year “adjusted funding target attainment percentage” is at least seventy percent (70%) but less than eighty percent (80%).

(A) Presumed adjusted funding target attainment percentage. Application of this paragraph. If this paragraph (2) applies to a Plan for a Plan Year and the date of the enrolled actuary’s certification of the “adjusted funding target attainment percentage” under Regulations Section 1.436-1(h)(4) for the prior Plan Year (taking into account the special rules for late certifications under Regulations Section 1.436-1(h)(1)(ii)(B)) occurred before the first day of the 4th month of the current Plan Year, then, commencing on the first day of the 4th month of the current Plan Year:

(i) The presumed “adjusted funding target attainment percentage” of the Plan for the Plan Year is reduced by 10 percentage points; and

(ii) The first day of the 4th month of the Plan Year is a “Section 436 measurement date.”

(B) Certification for prior Plan Year. If this paragraph (2) applies to a Plan and the date of the enrolled actuary’s certification of the “adjusted funding target attainment percentage” under Regulations Section 1.436-1(h)(4) for the prior Plan Year (taking into account the rules for late certifications under Regulations Section 1.436-1(h)(1)(ii)(B)) occurs on or after the first day of the 4th month of the current Plan Year, then, commencing on the date of that prior Plan Year certification:

(i) The presumed “adjusted funding target attainment percentage” of the Plan for the current Plan Year is equal to 10 percentage points less than the prior Plan Year “adjusted funding target attainment percentage”; and

(ii) The date of the prior Plan Year certification is a “Section 436 measurement date.”

(C) Duration of use of presumed “adjusted funding target attainment percentage.”  
If this paragraph (2) applies to a Plan for a Plan Year, the presumed adjusted funding target attainment percentage determined under this paragraph (2) applies until the earliest of:

(i) The first day of the 10th month of the Plan Year if paragraph (3) of this section applies;

(ii) The date of a change in the presumed “adjusted funding target attainment percentage” under Regulations Section 1.436-1(g)(4); or

(iii) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the “adjusted funding target attainment percentage” for the Plan Year.

(3) Presumption of underfunding beginning on first day of 10th month. In any case in which no certification of the specific adjusted funding target attainment percentage for the current Plan Year under Regulations Section 1.436-1(h)(4) is made with respect to the Plan before the first day of the 10th month of the Plan Year, then, commencing on the first day of the 10th month of the current Plan Year:

(A) The presumed “adjusted funding target attainment percentage” of the Plan for the Plan Year is presumed to be less than sixty percent (60%); and

(B) The first day of the 10th month of the Plan Year is a “Section 436 measurement date.”

**(h) Treatment of Plan as of Close of Prohibited or Cessation Period.**

(1) Application to prohibited payments and accruals.

(A) Resumption of prohibited payments. If a limitation on prohibited payments under section (d) of this Section 3.7.1 applied to a Plan as of a “Section 436 measurement date,” but that limit no longer applies to the Plan as of a later “Section 436 measurement date,” then the limitation on prohibited payments under the Plan does not apply to benefits with “annuity starting dates” that are on or after that later “Section 436 measurement date.” Any amendment to eliminate an optional form of benefit that contains a prohibited payment with respect to an “annuity starting date” during a period in which the limitations of Code Section 436(d) and Regulations Section 1.436-1(d) do not apply to the Plan is subject to the rules of Code Section 411(d)(6).

(B) Resumption of benefit accruals. If a limitation on benefit accruals under Regulations Section 1.436-1(e) applied to a Plan as of a “Section 436 measurement date,” but that limit no longer applies to the Plan as of a later “Section 436 measurement date,” then that limitation does not apply to benefit accruals that are based on service on or after that later “Section 436 measurement date,” except to the extent that the Plan provides that benefit accruals will not resume when the limitation ceases to apply. The Plan will comply with the rules relating to partial years of participation and the prohibition on double proration under Department of Labor regulation 29 CFR Section 2530.204-2(c) and (d).

(2) Restoration of options and missed benefit accruals. Participants who had an “annuity starting date” within a period during which a limitation under Regulations Section 1.436-1(d) applied to the Plan will not be provided with the opportunity to have a new “annuity starting date” (which would constitute a new “annuity starting date” under Code Sections 415 and 417) under which the form of benefit previously elected may be modified, subject to applicable qualification requirements, once the limitations of Regulations Section 1.436-1(d) cease to apply. However, subject to the rules of Regulations Section 1.436-1(c)(3), the Plan will automatically restore benefit accruals that had been limited under Code Section 436(e) as of the “Section 436 measurement date” that the limitation ceases to apply.

(3) Shutdown and other unpredictable contingent event benefits. If unpredictable contingent event benefits with respect to an unpredictable contingent event that occurs during the Plan Year are not permitted to be paid after the occurrence of the event because of the limitations of Code Section 436(b) and Regulations Section 1.436-1(b), but are permitted to be paid later in the Plan Year as a result of additional contributions under Regulations Section 1.436-1(f)(2) or pursuant to the enrolled actuary’s certification of the “adjusted funding target attainment percentage” for the Plan Year that meets the requirements of Regulations Section 1.436-1(g)(5)(ii)(B), then those unpredictable contingent event benefits must automatically become payable, retroactive to the period those benefits would have been payable under the terms of the Plan (other than Plan terms implementing the requirements of Code Section 436(b)). If the benefits do not become payable during the Plan Year in accordance with the preceding sentence, then the Plan is treated as if it does not provide for those benefits. However, all or any portion of those benefits can be restored pursuant to a Plan amendment that meets the requirements of Code Section 436(c) and Regulations Section 1.436-1(c) and other applicable qualification requirements.

(4) Treatment of Plan amendments that do not take effect. If a Plan amendment does not take effect as of the effective date of the amendment because of the limitations of Code Section 436(c) and Regulations Section 1.436-1, but is permitted to take effect later in the Plan Year as a result of additional contributions under paragraph Regulations Section 1.436-1(f)(2) or pursuant to the enrolled actuary’s certification of the “adjusted funding target attainment percentage” for the Plan Year that meets the requirements of paragraph Regulations Section 1.436-1(g)(5)(ii)(C), then the Plan amendment must automatically take effect as of the first day of the Plan Year (or, if later, the original effective date of the amendment). If the Plan amendment cannot take effect during the Plan Year, then it must be treated as if it were never adopted, unless the Plan amendment provides otherwise.

(i) **Definitions.** Defined terms shall have the meaning set forth below and as contained in Regulations Section 1.436-1(j) and shall be interpreted consistent with said Regulations.

(1) The term “adjusted funding target attainment percentage” means the “funding target attainment percentage” per paragraph (A) below, and increasing each of the amounts under subparagraphs (A) and (B) of Code Section 430(d)(2) by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in Code Section 414(q)) which were made by the Plan during the preceding two (2) Plan Years.

(A) The term “funding target attainment percentage” has the same meaning given such term by Code Section 430(d)(2) and the Regulations thereunder, except as otherwise provided herein. However, in the case of Plan Years beginning in 2008, the “funding target attainment percentage” for the preceding Plan Year may be determined using such methods of estimation as the Secretary may provide.

(B) Application to plans which are fully funded without regard to reductions for funding balances.

(1) In general. In the case of a Plan for any Plan Year, if the “funding

target attainment percentage” is one hundred percent (100%) or more (determined without regard to the reduction in the value of assets under Code Section 430(f)(4)), the “funding target attainment percentage” for purposes of paragraphs (1) and (1)(A) above shall be determined without regard to such reduction.

(2) Transition rule. Subparagraph (B)(1) shall be applied to Plan Years beginning after 2007 and before 2011 by substituting for “one hundred percent (100%)” the applicable percentage determined in accordance with the following table:

In the case of a Plan Year beginning in calendar year:                      The applicable percentage is:

<u>2008</u>	<u>92%</u>
<u>2009</u>	<u>94%</u>
<u>2010</u>	<u>96%</u>

(3) Subparagraph (B)(2) shall not apply with respect to the current Plan Year unless the “funding target attainment percentage” (determined without regard to the reduction in the value of assets under Code Section 430(f)(4)) of the Plan for each preceding Plan Year beginning after 2007 and before the current Plan Year was not less than the applicable percentage with respect to such preceding Plan Year determined under subparagraph (B)(2).

(2) Section 436 measurement date. A “Section 436 measurement date” is the date that is used to determine when the limitations of Code Sections 436(d) and 436(e) apply or cease to apply, and is also used for calculations with respect to applying the limitations of sections (b) and (c) of this Section 3.7.1.

(3) Annuity starting date. The term “annuity starting date” means the annuity starting date as defined in Regulations Section 1.436-1(j)(2).

(4) Unpredictable contingent event benefit. The term “unpredictable contingent event benefit” means an unpredictable contingent event as defined in Regulations Section 1.436-1(j)(9).

3.7.2 2010 and Later Plan Years. The provisions of this Section 3.7.2 shall apply to Plan Years beginning on or after January 1, 2010.

Part I. Limitations Applicable If the Plan's Adjusted Funding Target Attainment Percentage Is Less Than 80 Percent or If the Plan Sponsor Is In Bankruptcy

Section 1. Limitations Applicable If the Plan's Adjusted Funding Target Attainment Percentage Is Less Than 80 Percent, But Not Less Than 60 Percent.

Notwithstanding any other provisions of the Plan, if the Plan's adjusted funding target attainment percentage for a Plan Year is less than 80 percent (or would be less than 80 percent to the extent described in Section 1 (b) below) but is not less than 60 percent, then the limitations set forth in this Section 1 apply.

(a) 50 Percent Limitation on Single Sum Payments, Other Accelerated Forms of Distribution, and Other Prohibited Payments. A Member or beneficiary is not permitted to elect, and the Plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date on or after the applicable section 436 measurement date, and the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other

payment or transfer that is a prohibited payment, unless the present value of the portion of the benefit that is being paid in a prohibited payment does not exceed the lesser of:

(i) 50 percent of the present value of the benefit payable in the optional form of benefit that includes the prohibited payment; or

(ii) 100 percent of the PBGC maximum benefit guarantee amount (as defined in § 1.436-1 (d)(3)(iii)(C) of the Treasury Regulations).

The limitation set forth in this Section 1(a) does not apply to any payment of a benefit which under § 411 (a)(11) of the Internal Revenue Code may be immediately distributed without the consent of the Member.

If an optional form of benefit that is otherwise available under the terms of the Plan is not available to a Member or beneficiary as of the annuity starting date because of the application of the requirements of this Section 1(a), the Member or beneficiary is permitted to elect to bifurcate the benefit into unrestricted and restricted portions (as described in § 1.436-1 (d)(3)(iii)(D) of the Treasury Regulations). The Member or beneficiary may also elect any other optional form of benefit otherwise available under the Plan at that annuity starting date that would satisfy the 50 percent/PBGC maximum benefit guarantee amount limitation described in this Section 1(a), or may elect to defer the benefit in accordance with any general right to defer commencement of benefits under the Plan. During a period when this Section 1(a) applies to the Plan, Members and beneficiaries are permitted to elect payment in any optional form of benefit otherwise available under the Plan that provides for the current payment of the unrestricted portion of the benefit (as described in § 1.436-1 (d)(3)(iii)(D) of the Treasury Regulations), with a delayed commencement for the restricted portion of the benefit (subject to other applicable qualification requirements, such as §§ 411(a)(11) and 401(a)(9) of the Internal Revenue Code).

(b) Plan Amendments Increasing Liability for Benefits. No amendment to the Plan that has the effect of increasing liabilities of the Plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable shall take effect in a Plan Year if the adjusted funding target attainment percentage for the Plan Year is:

(i) Less than 80 percent; or

(ii) 80 percent or more, but would be less than 80 percent if the benefits attributable to the amendment were taken into account in determining the adjusted funding target attainment percentage.

The limitation set forth in this Section 1(b) does not apply to any amendment to the Plan that provides a benefit increase under a Plan formula that is not based on compensation, provided that the rate of such increase does not exceed the contemporaneous rate of increase in the average wages of Members covered by the amendment.

## **Section 2. Limitations Applicable If the Plan's Adjusted Funding Target Attainment Percentage Is Less Than 60 Percent.**

Notwithstanding any other provisions of the Plan, if the Plan's adjusted funding target attainment percentage for a Plan Year is less than 60 percent (or would be less than 60 percent to the extent described in Section 2(b) below), then the limitations in this Section 2 apply.

(a) Single Sums, Other Accelerated Forms of Distribution, and Other Prohibited Payments Not Permitted. A Member or beneficiary is not permitted to elect, and the Plan



shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date on or after the applicable section 436 measurement date, and the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment. The limitation set forth in this Section 2(a) does not apply to any payment of a benefit which under § 411(a)(11) of the Internal Revenue Code may be immediately distributed without the consent of the Member.

(b) Shutdown Benefits and Other Unpredictable Contingent Event Benefits Not Permitted to Be Paid. An unpredictable contingent event benefit with respect to an unpredictable contingent event occurring during a Plan Year shall not be paid if the adjusted funding target attainment percentage for the Plan Year is:

(i) Less than 60 percent; or

(ii) 60 percent or more, but would be less than 60 percent if the adjusted funding target attainment percentage were redetermined applying an actuarial assumption that the likelihood of occurrence of the unpredictable contingent event during the Plan Year is 100 percent.

(c) Benefit Accruals Frozen. Benefit accruals under the Plan shall cease as of the applicable section 436 measurement date. In addition, if the Plan is required to cease benefit accruals under this Section 2(c), then the Plan is not permitted to be amended in a manner that would increase the liabilities of the Plan by reason of an increase in benefits or establishment of new benefits.

Section 3. **Limitations Applicable If the Plan Sponsor Is In Bankruptcy.** Notwithstanding any other provisions of the Plan, a Member or beneficiary is not permitted to elect, and the Plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date that occurs during any period in which the Plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, except for payments made within a Plan Year with an annuity starting date that occurs on or after the date on which the Plan's enrolled actuary certifies that the Plan's adjusted funding target attainment percentage for that Plan Year is not less than 100 percent. In addition, during such period in which the Plan sponsor is a debtor, the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment, except for payments that occur on a date within a Plan Year that is on or after the date on which the Plan's enrolled actuary certifies that the Plan's adjusted funding target attainment percentage for that Plan Year is not less than 100 percent. The limitation set forth in this Section 3 does not apply to any payment of a benefit which under § 411(a)(11) of the Internal Revenue Code may be immediately distributed without the consent of the Member.

Section 4. **Provisions Applicable After Limitations Cease to Apply.** Subject to provisions of the Plan document freezing the Plan:

(a) Resumption of Prohibited Payments. If a limitation on prohibited payments under Section 1(a), Section 2(a), or Section 3 above applied to the Plan as of a section 436 measurement date, but that limit no longer applies to the Plan as of a later section 436 measurement date, then that limitation does not apply to benefits with annuity starting dates that are on or after that later section 436 measurement date.

(b) Resumption of Benefit Accruals. If a limitation on benefit accruals under Section 2(c) applied to the Plan as of a section 436 measurement date, but that limitation no longer applies to the Plan as of a later section 436 measurement date, then benefit accruals shall resume prospectively and that limitation does not apply to benefit accruals that are based on service on or after that later section 436 measurement date, except as otherwise

provided under the Plan. The Plan shall comply with the rules relating to partial years of participation and the prohibition on double proration under Department of Labor regulation 29 CFR §2530.204-2(c) and (d). In addition, benefit accruals that were not permitted to accrue because of the application of Section 2(c) shall be restored when that limitation ceases to apply if the continuous period of the limitation was 12 months or less and the Plan's enrolled actuary certifies that the adjusted funding target attainment percentage for the Plan Year would not be less than 60 percent taking into account any restored benefit accruals for the prior Plan Year.

(c) Shutdown and Other Unpredictable Contingent Event Benefits. If an unpredictable contingent event benefit with respect to an unpredictable contingent event that occurs during the Plan Year is not permitted to be paid after the occurrence of the event because of the limitation of Section 2(b), but is permitted to be paid later in the same Plan Year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the adjusted funding target attainment percentage for the Plan Year that meets the requirements of §1.436-1 (g)(5)(ii)(B) of the Treasury Regulations), then that unpredictable contingent event benefit shall be paid, retroactive to the period that benefit would have been payable under the terms of the Plan (determined without regard to Section 2(b)). If the unpredictable contingent event benefit does not become payable during the Plan Year in accordance with the preceding sentence, then the Plan is treated as if it does not provide for that benefit.

(d) Treatment of Plan Amendments That Do Not Take Effect. If a Plan amendment does not take effect as of the effective date of the amendment because of the limitation of Section 1(b) or Section 2(c), but is permitted to take effect later in the same Plan Year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the adjusted funding target attainment percentage for the Plan Year that meets the requirements of § 1.436-1(g)(5)(ii)(C) of the Treasury Regulations), then the Plan amendment must automatically take effect as of the first day of the Plan Year (or, if later, the original effective date of the amendment). If the Plan amendment cannot take effect during the same Plan Year, then it shall be treated as if it were never adopted, unless the Plan amendment provides otherwise.

Section 5. **Notice Requirement.** See section 101(j) of ERISA and Notice 2012-46 and any related IRS published guidance for rules requiring the plan administrator of a single employer defined benefit pension plan to provide a written notice to Members and beneficiaries within 30 days after certain specified dates if the plan has become subject to a limitation described in Section 1 (a), Section 2, or Section 3.

Section 6. **Methods to Avoid or Terminate Benefit Limitations.** See § 436(b)(2), (c)(2), (e)(2), and (f) of the Internal Revenue Code and §1.436-1(f) of the Treasury Regulations for rules relating to employer contributions and other methods to avoid or terminate the application of the limitations set forth in Sections 1 through 3 for a Plan Year. In general, the methods a Plan sponsor may use to avoid or terminate one or more of the benefit limitations under Sections 1 through 3 for a Plan Year include employer contributions and elections to increase the amount of Plan assets which are taken into account in determining the adjusted funding target attainment percentage, making an employer contribution that is specifically designated as a current year contribution that is made to avoid or terminate application of certain of the benefit limitations, or providing security to the Plan.

Section 7. **Special Rules.**

(a) Rules of Operation for Periods Prior to and After Certification of Plan's Adjusted Funding Target Attainment Percentage

(i) In General. Section 436(h) of the Internal Revenue Code and §1.436-1(h) of the Treasury Regulations set forth a series of presumptions that apply

(1) before the Plan's enrolled actuary issues a certification of the Plan's adjusted funding target attainment percentage for the Plan Year and

(2) if the Plan's enrolled actuary does not issue a certification of the Plan's adjusted funding target attainment percentage for the Plan Year before the first day of the 10<sup>th</sup> month of the Plan Year (or if the Plan's enrolled actuary issues a range certification for the Plan Year pursuant to §1.436-1 (h)(4)(ii) of the Treasury Regulations but does not issue a certification of the specific adjusted funding target attainment percentage for the Plan by the last day of the Plan Year).

For any period during which a presumption under § 436(h) of the Internal Revenue Code and § 1.436-1 (h) of the Treasury Regulations applies to the Plan, the limitations under Sections 1 through 3 are applied to the Plan as if the adjusted funding target attainment percentage for the Plan Year were the presumed adjusted funding target attainment percentage determined under the rules of § 436(h) of the Internal Revenue Code and § 1.436-1(h)(1), (2), or (3) of the Treasury Regulations. These presumptions are set forth in Sections 7(a)(ii) through (iv).

(ii) Presumption of Continued Underfunding Beginning First Day of Plan Year. If a limitation under Section 1, 2, or 3 applied to the Plan on the last day of the preceding Plan Year, then, commencing on the first day of the current Plan Year and continuing until the Plan's enrolled actuary issues a certification of the adjusted funding target attainment percentage for the Plan for the current Plan Year, or, if earlier, the date Section 7(a)(iii) or Section 7(a)(iv) applies to the Plan:

(1) The adjusted funding target attainment percentage of the Plan for the current Plan Year is presumed to be the adjusted funding target attainment percentage in effect on the last day of the preceding Plan Year; and

(2) The first day of the current Plan Year is a section 436 measurement date.

(iii) Presumption of Underfunding Beginning First Day of 4<sup>th</sup> Month. If the Plan's enrolled actuary has not issued a certification of the adjusted funding target attainment percentage for the Plan Year before the first day of the 4<sup>th</sup> month of the Plan Year and the Plan's adjusted funding target attainment percentage for the preceding Plan Year was either at least 60 percent but less than 70 percent or at least 80 percent but less than 90 percent, or is described in §1.436-1(h)(2)(ii) of the Treasury Regulations, then, commencing on the first day of the 4<sup>th</sup> month of the current Plan Year and continuing until the Plan's enrolled actuary issues a certification of the adjusted funding target attainment percentage for the Plan for the current Plan Year, or, if earlier, the date Section 7(a)(iv) applies to the Plan:

(1) The adjusted funding target attainment percentage of the Plan for the current Plan Year is presumed to be the Plan's adjusted funding target attainment percentage for the preceding Plan Year reduced by 10 percentage points; and

(2) The first day of the 4<sup>th</sup> month of the current Plan Year is a section

436 measurement date.

(iv) Presumption of Underfunding On and After First Day of 10<sup>th</sup> Month. If the Plan's enrolled actuary has not issued a certification of the adjusted funding target attainment percentage for the Plan Year before the first day of the 10<sup>th</sup> month of the Plan Year (or if the Plan's enrolled actuary has issued a range certification for the Plan Year pursuant to §1.436-1(h)(4)(ii) of the Treasury Regulations but has not issued a certification of the specific adjusted funding target attainment percentage for the Plan by the last day of the Plan Year), then, commencing on the first day of the 10<sup>th</sup> month of the current Plan Year and continuing through the end of the Plan Year:

(1) The adjusted funding target attainment percentage of the Plan for the current Plan Year is presumed to be less than 60 percent; and

(2) The first day of the 10<sup>th</sup> month of the current Plan Year is a section 436 measurement date.

(b) New Plans, Plan Termination, Certain Frozen Plans, and Other Special Rules.

(i) First 5 Plan Years. The limitations in Section 1 (b), Section 2(b), and Section 2(c) do not apply to a new plan for the first 5 Plan Years of the plan, determined under the rules of §436(i) of the Internal Revenue Code and §1.436-1(a)(3)(i) of the Treasury Regulations.

(ii) Plan Termination. The limitations on prohibited payments in Section 1 (a), Section 2(a), and Section 3 do not apply to prohibited payments that are made to carry out the termination of the Plan in accordance with applicable law. Any other limitations under this section of the Plan do not cease to apply as a result of termination of the Plan.

(iii) Exception to Limitations on Prohibited Payments Under Certain Frozen Plans. The limitations on prohibited payments set forth in Sections 1(a), 2(a), and 3 do not apply for a Plan Year if the terms of the Plan, as in effect for the period beginning on September 1, 2005, and continuing through the end of the Plan Year, provide for no benefit accruals with respect to any Members. This Section 7(b)(iii) shall cease to apply as of the date any benefits accrue under the Plan or the date on which a Plan amendment that increases benefits takes effect.

(iv) Special Rules Relating to Unpredictable Contingent Event Benefits and Plan Amendments Increasing Benefit Liability. During any period in which none of the presumptions under Section 7(a) apply to the Plan and the Plan's enrolled actuary has not yet issued a certification of the Plan's adjusted funding target attainment percentage for the Plan Year, the limitations under Section 1(b) and Section 2(b) shall be based on the inclusive presumed adjusted funding target attainment percentage for the Plan, calculated in accordance with the rules of §1.436-1(g)(2)(iii) of the Treasury Regulations.

(c) Special Rules Under PRA 2010.

(i) Payments Under Social Security Leveling Options. For purposes of determining whether the limitations under Section 1(a) or 2(a) apply to payments under a social security leveling option, within the meaning of §436(j)(3)(C)(i) of the Internal Revenue Code, the adjusted funding target attainment percentage for a Plan Year shall be determined in accordance with the "Special Rule for Certain Years" under § 436(j)(3) of the Internal Revenue

Code and any Treasury Regulations or other published guidance thereunder issued by the Internal Revenue Service.

(ii) Limitation on Benefit Accruals. For purposes of determining whether the accrual limitation under Section 2(c) applies to the Plan, the adjusted funding target attainment percentage for a Plan Year shall be determined in accordance with the "Special Rule for Certain Years" under § 436(j)(3) of the Internal Revenue Code (except as provided under section 203(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, if applicable).

(d) Interpretation of Provisions. The limitations imposed by this section of the Plan shall be interpreted and administered in accordance with §436 of the Internal Revenue Code and §1.436-1 of the Treasury Regulations.

#### Section 8. Definitions.

The definitions in the following Treasury Regulations apply for purposes of Sections 1 through 7: § 1.436-1(j)(1) defining adjusted funding target attainment percentage; § 1.436-1(j)(2) defining annuity starting date; § 1.436-1(j)(6) defining prohibited payment; § 1.436-1(j)(8) defining section 436 measurement date; and § 1.436-1(j)(9) defining an unpredictable contingent event and an unpredictable contingent event benefit.

Part II. Multiple Employer Plan Rules. If the Plan is a multiple employer plan, the following provisions apply depending on whether §413(c)(4)(A) of the Internal Revenue Code applies to the Plan.

1. If this is a multiple employer plan to which § 413(c)(4)(A) of the Internal Revenue Code applies, including if the election described in §413(c)(4)(B) has been made, then the rules in Sections 1 through 8 of Part I above apply separately to each employer under the Plan, as if each such employer maintained a separate plan; and

2. If this is a multiple employer plan to which §413(c)(4)(A) of the Internal Revenue Code does not apply, then the rules in Sections 1 through 8 of Part I above apply as if all Members in the Plan are employed by a single employer.

### SECTION 4

#### Valuation, Adjustment and Investment of Accounts

4.1 Annual Valuation and Adjustment of Accounts. The Trustee shall value the Fund (or, if applicable, each subfund established pursuant to Section 4.4) as of each Annual Valuation Date, which valuation shall reflect, as nearly as possible, the then fair market value of the assets comprising such fund or subfund (including income accumulations therein). In making such valuations, the Trustee may rely upon information supplied by an Investment Manager having investment responsibility over assets of the Fund or a particular subfund. The Trustee shall then adjust each Account (including undistributed Matured Accounts) or portion thereof which is invested in the Fund or a particular subfund for its proportionate share in any increase or decrease in the value of such Fund or subfund as so determined. Employee contributions, n~~Non~~deductible voluntary contributions, deductible contributions, rollover contributions and transfers from qualified retirement plans, if any, made by or on behalf of any Participant for the Plan Year shall then be posted to his ~~Employee proper~~ Account(s) and credited to the Fund (or the appropriate subfund or subfunds or otherwise in accordance with the investment elections then in effect for such Participant); the Employer contributions and Forfeitures, if any, for the Plan Year shall then be posted to the Employer Accounts of Participants entitled thereto and credited to the Fund (or the appropriate subfund or subfunds or otherwise in accordance with the investment elections then in effect for such Participant); and Regular Interest shall then be posted to the ~~Employee and Employer proper~~ Accounts and credited to the Fund (or the appropriate subfund or subfunds or otherwise in accordance with the investment elections then in effect for such Participant).

4.2 Intermediate Valuations and Adjustments. If a Participant's Matured Account is to be distributed as of a date which is not the Annual Valuation Date, the Employer on a uniform, nondiscriminatory and consistent basis may direct the Trustee to make an intermediate valuation and adjustment for such Account as of any date designated by the Trustee in a nondiscriminatory manner that is coincident with, preceding or following the date as of which such distribution is to occur. For investment purposes, unless elected otherwise by the Employer in the Adoption Agreement, the Trustee may make such intermediate valuation and adjustment of Participant Accounts as designated by the Trustee in a nondiscriminatory manner.

4.3 Management and Investment of Fund.

(a) Police Plan. The Fund shall be invested under the general direction of the Retirement Committee. The City, (or the Retirement Committee if delegated such function by the City) shall select and contract with a Funding Agent to hold or invest the assets of the Plan and to provide the benefits hereunder. The City or Committee may select and contract with Investment Managers registered under the Investment Advisers Act of 1940 to invest, reinvest, and otherwise manage such portion of the assets of the Plan as may be assigned by the City or Committee. The Fund shall be invested pursuant to the policies established by the Nebraska Investment Council.

If Participant investment direction is permitted in the Adoption Agreement, the City shall establish separate investment accounts for each Employee for the purpose of allowing each Employee to direct the investment of all or a portion of his or her Employee Account and/or Employer Account, subject to such rules and limitations as imposed by law, the City or the Retirement Committee.

(b) Fire Plan. The Fund shall be invested by the Retirement Committee. The City, subject to the approval of the Retirement Committee, shall contract with a Funding Agent to hold or invest the assets of the Plan and to provide the benefits hereunder. The Retirement Committee, subject to the approval of the City, may select an Investment Manager. The City, subject to the approval of the Retirement Committee, may contract with Investment Managers registered under the Investment Advisers Act of 1940 to invest, reinvest, and otherwise manage such portion of the assets of the Plan as may be assigned by the City or Retirement Committee.

The Retirement Committee shall establish an investment plan which allows each Employee of the Plan to allocate all contributions to his or her Employee Account and, if he or she commenced his or her employment after January 1, 1984, his or her Employer Account, to the various investment options or combinations of investment options described in the investment plan. Each Employee shall have the option of investing his or her Employee Account and, if he or she commenced his or her employment after January 1, 1984, his or her Employer Account, in any proportion, including full allocation, in any investment option offered by the Plan. Upon the direction of the City by election in the Adoption Agreement, Employees employed on January 1, 1984, may have the option to allocate their Employer Account to various investment options or combinations of investment options in any proportion, including full allocation, in any investment option offered by the Plan. Each Employee shall be given a summary of the investment plan and a detailed current description of each investment option prior to making or revising his or her allocation.

4.4 All Plans. Subject to any permitted Participant investment direction or other provisions of the Plan, The Fund in the hands of the Trustee, together with all additional contributions made thereto and together with income thereof, which shall be accumulated as hereinafter provided, shall be controlled, managed, invested, reinvested and ultimately paid and distributed to Participants by the Trustee with all the powers, rights and discretions generally possessed by Trustees, and with all the additional powers, rights and discretions hereinafter conferred upon the Trustee. To the extent permitted by the Employer, the Fund may be divided into two or more subfunds for the purpose of investment. In addition, the Trustee may invest in any form of investment authorized by Section 10, provided, however, that no portion of a Participant's Voluntary Deductible Account shall be invested in Insurance Contracts. All amounts shall be credited with Regular Interest after being contributed to the Plan.

4.5 Individual Subfunds. A subfund or subfunds shall be created consisting of the Accounts of Participants who are permitted to direct the investment of their Accounts, as provided in Sections 4.3 and 10.11 hereof.

## SECTION 5

### Vesting

#### 5.1 Employer Accounts.

5.1.1 Progressive Vesting. The Employer Account of each Participant shall become Vested in him in accordance with the Schedule in Section I set forth in the Adoption Agreement; provided, however, that the Vested percentage of a Participant's Employer Account determined as of the Supplemental Effective Date (or the date of actual, formal adoption of this Agreement by the Employer, if later) shall be not less than such Vested percentage computed under the Prior Plan Statement, if any, as of that date.

5.1.2 Full Vesting. Notwithstanding any of the foregoing provisions for progressive vesting of Employer Accounts of Participants, the entire Employer Account of each Participant shall be fully vested in him upon the earliest occurrence of any of the following events while in the employment of the Employer:

- (a) His death,
- (b) His attainment of his Normal Retirement Date or his attainment of any earlier age specified in the Adoption Agreement,
- (c) His retirement on account of his Disability,
- (d) A complete termination of the Plan or a complete discontinuance of Employer contributions hereto,
- (e) A partial termination of the Plan which is effective as to him, or
- (f) As provided in relevant state statute governing Police or Fire Plans.

#### 5.1.3 Distribution of Vested Account Upon Termination of Employment.

- (a) Cash Out Distributions. Notwithstanding anything in this Plan to the contrary:
  - (i) ~~Fire Plan. If an Employee terminates service before his or her Retirement Date, and the value of the Employee's Vested Retirement Value is less than \$3,500, such Employee shall, upon request within one year of such termination, be paid his or her Vested Retirement Value in the form of a single lump sum payment.~~
  - (ii) ~~All Other Plans (including Police Plans and excluding Fire Plans). Effective for distributions on or after March 28, 2005, For all Plans, effective January 1, 2014, and~~ except as otherwise specified by the Employer in the Adoption Agreement, if an Employee terminates service, and the value of the Employee's Vested Retirement Value derived from Employer and Employee contributions is not greater than \$1,000, the Employee will automatically receive a distribution of the value of the entire Vested portion of such Account balance if the Employee does not elect to transfer or roll over such distribution to an eligible retirement plan or to receive it directly, and the nonvested portion will be treated as a Forfeiture. For purposes of this Section, if the value of an Employee's Vested account balance is zero, the Employee shall be deemed to have received a distribution of such Vested account balance. A Participant's Vested account balance shall not include accumulated deductible Employee contributions within the meaning of Code section 72(o)(5)(B) for Plan



Years beginning prior to January 1, 1989. ~~For distributions before March 28, 2005, “not greater than \$5,000” (“less than \$3,500” for Police Plans) was substituted for “not greater than \$1,000” in this paragraph.~~

(iii) Before January 1, 2014: If an Employee participating in a Fire Plan terminates service before his or her Retirement Date, and the value of the Employee's Vested Retirement Value is less than \$3,500, such Employee shall, upon request within one year of such termination, be paid his or her Vested Retirement Value in the form of a single lump-sum payment. For all other plans (including Police Plans and excluding Fire Plans), effective for distributions on or after March 28, 2005, and except as otherwise specified by the Employer in the Adoption Agreement, if an Employee terminates service, and the value of the Employee's Vested Retirement Value derived from Employer and Employee contributions is not greater than \$1,000, the Employee will automatically receive a distribution of the value of the entire Vested portion of such Account balance if the Employee does not elect to transfer or roll over such distribution to an eligible retirement plan or to receive it directly, and the nonvested portion will be treated as a Forfeiture. For purposes of this Section, if the value of an Employee's Vested account balance is zero, the Employee shall be deemed to have received a distribution of such Vested account balance. A Participant's Vested account balance shall not include accumulated deductible Employee contributions within the meaning of Code section 72(o)(5)(B) for Plan Years beginning prior to January 1, 1989. For distributions before March 28, 2005, “not greater than \$5,000” (“less than \$3,500” for Police Plans) was substituted for “not greater than \$1,000” in this paragraph.

If an Employee terminates service and elects (in accordance with the requirements of Section 7) to receive the value of the Employee's Vested Account balance, the nonvested portion will be treated as a Forfeiture. If the Employee elects to have distributed less than the entire Vested portion of the Account balance derived from Employer contributions, the part of the nonvested portion of such Account that will be treated as a Forfeiture is the total nonvested portion multiplied by a fraction, the numerator of which is the amount of the distribution attributable to Employer contributions and the denominator of which is the total value of the Vested Employer-derived Account balance.

For distributions made under this subsection after December 31, 2001 and before March 28, 2005, the value of an Employee's nonforfeitable Account balance shall be determined without regard to that portion of the Account balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Code. For distributions on or after March 28, 2005, the \$1,000 threshold (or other threshold specified in the Adoption Agreement) is determined including any such rollover contributions (and earnings thereon) within the meaning of the specified Code sections. If a greater threshold than \$1,000 is established in the Adoption Agreement, any distribution greater than \$1,000 that is made without the Participant's consent shall be automatically rolled over to an individual retirement plan pursuant to Code section 401(a)(31)(B).

(b) Non Cash-Out Distributions

(i) Fire Plans. If a Participant in a Fire Plan terminates employment before his or her Retirement Date, the Participant may request and receive, as a lump-sum payment the Retirement Value of his or her Employee Account as determined at the Valuation Date preceding his or her termination of employment. Such Participant, if vested, may in lieu thereof, receive a deferred pension benefit or lump-sum benefit in an amount purchased or provided by the Vested Retirement Value at the date of retirement. The Vested Retirement Value at such Retirement Date shall consist of the then accumulated value of the Employee's Account at the date of retirement as reduced by any lump-sum distributions received prior to retirement, together with a vested percentage of the accumulated value of the Participant's Employer Account at the date of retirement.



(ii) All Other Plans (including Police Plans and excluding Fire Plans). If a Participant terminates service with the City prior to his or her Normal or Early Retirement Date, the Participant may request and receive a lump-sum payment of the Retirement Value of his or her Employee Account as determined as of the Valuation Date preceding his or her termination of employment. The Participant, if Vested, shall also receive a deferred pension benefit in an amount purchased or provided by the Vested Retirement Value at the date of retirement. The Vested Retirement Value at such retirement date shall consist of the accumulated value of the Participant's Employee Account, reduced by any lump-sum distribution prior to retirement, plus the vested portion of the accumulated value of the Participant's Employer Account on the date of Retirement.

(iii) Effective ~~January 1, 1997~~ April 16, 2012, a Participant may elect upon his or her termination of employment to receive his or her Vested Retirement Value in the form of a single lump sum payment, notwithstanding any prior Plan provision to the contrary limiting lump sum distributions to Participants who have a Retirement Date on or after January 1, 1997.

Before April 16, 2012, the Plan provided: Effective January 1, 1997, a Participant may elect upon his or her termination of employment to receive his or her Vested Retirement Value in the form of a single lump sum payment. For a Participant whose termination of employment was prior to January 1, 1997, this election shall be available only if the City had adopted a lump-sum distribution option for terminating Participants in the funding medium established for the retirement system.

Upon any lump sum payment of a terminating Participant's Retirement Value, such Participant will not be entitled to any deferred pension benefit and the City and the ~~retirement system~~ Plan shall have no further obligations to pay such Participant or his or her Beneficiaries any benefits.

(iv) If the lump-sum payment is not requested upon termination prior to the Retirement Date, the Participant shall receive a deferred vested benefit or lump-sum benefit in an amount purchased or provided by the Vested Retirement Value of the Employee and Employer Accounts on the retirement date; provided, however, if the Participant would have received a distribution under this Section but for the fact that the Participant's Vested Account Balance exceeded \$1,000, when the Participant terminated service and if, at a later time, such account balance is reduced so it does not exceed \$1,000, the Administration Committee may distribute such Account Balance and the non-vested portion will be treated as a forfeiture.

(c) If an Employee receives a distribution pursuant to this Section 5.1.3 and the Employee resumes employment covered under the Plan, the Employee's Employer-derived Account Balance will be restored, if permitted in the Adoption Agreement, to the amount on the date of the distribution, if the Employee repays to the Plan the full amount of the distribution attributable to Employer contributions before the earlier of:

(i) 5 years after the first date on which the Participant is subsequently reemployed by the Employer; or

(ii) the date on which the Participant incurs five consecutive one-year Breaks in Service following the date of the distribution. This latter condition also applies if the Participant makes repayment within the Plan Year in which he incurs five consecutive one-year Breaks in Service which would result in a complete Forfeiture of the amount otherwise subject to restoration.

If elected by the Employer in the Adoption Agreement, if an Employee is deemed to receive a distribution pursuant to this Section 5.1.3, and the Employee resumes employment covered under this Plan before the date the Participant incurs five consecutive one-year Breaks in Service, upon the reemployment of such Employee, the Employer-derived Account Balance of the Employee will be restored to the amount on the date of such deemed distribution.

A Participant's Employer-derived Account Balance shall not be restored if:

(i) the Participant's Employer-derived Account Balance was 100% nonforfeitable at the time of the cash-out distribution; or

(ii) the Participant incurred five consecutive One-Year Breaks in Service.

A Participant may not receive a cash-out distribution under this Section 5.1.3 if, prior to the time the Trustee actually makes the cash-out distribution, the Participant returns to employment with the Employer.

(d) ~~In the case of any plan other than a Fire Plan, if~~ If the value of the Participant's Account Balance derived from Employer and Employee contributions (other than accumulated Voluntary Deductible Employee contributions) exceeds \$1,000 ~~(before March 28, 2005, "exceeds \$1,000" was "is less than \$3,500" for Police Plans, and "is less than \$5,000" for plans other than a Police Plan),~~ the Participant must consent to any distribution from such Account Balance unless otherwise provided in the Adoption Agreement. ~~Participant consent is required for distributions from Fire Plans regardless of amount.~~

(e) Amounts forfeited or treated as Forfeitures shall be reallocated as provided in Section 6.4.

(f) Participant Distribution Notification. To the extent the particular requirement is applicable to the Plan:

(i) 180-Day Notice Period. Effective for notices in Plan Years beginning after December 31, 2006, the 90-day maximum notice period of Code Sections 402(f) (rollover notice), 411(a)(11) (participant's consent to distribution), and 417 (notice regarding the joint and survivor and qualified optional survivor annuity and qualified preretirement annuity rules) shall be increased to 180 days, and any reference to the 90-day maximum notice period shall be deemed changed to 180 days.

(ii) Effect of Delayed Distribution. Notices given to Participants pursuant to Code Section 411(a)(11), if applicable, in Plan Years beginning after December 31, 2006 shall include a description of the consequences of failing to defer a distribution, and

(iii) Relative Values. Notices to Participants shall include the relative values of the various optional forms of benefit under the Plan satisfying the requirements of Internal Revenue Code Section 417(a)(3), to the extent applicable to the Plan. This provision, if applicable to the Plan, is effective as of the applicable effective date set forth in Treasury Regulations (i.e., to qualified pre-retirement survivor annuity explanations provided on or after July 1, 2004; to qualified joint and survivor annuity explanations with respect to any distribution with an annuity starting date that is on or after February 1, 2006, or on or after October 1, 2004 with respect to any optional form of benefit that is subject to the requirements of Code Section 417(e)(3) if the actuarial present value of that optional form is less than the actuarial present value as determined under Code Section 417(e)(3)).

Provided, however, any requirement of this subsection (f) shall not apply to the extent (i) it is inapplicable to a governmental plan defined in Code section 414(d), pursuant to the flush language of Code Section 401(a) and Code Section 411(e)(1)(B) and other applicable provisions of the Code, regulations and guidance, and (ii) this Plan is a governmental plan.

5.2. Amendment to Comply with Section 415. An adopting Employer may amend the Plan by adding overriding Plan language to the Adoption Agreement where such language is necessary to satisfy Sections 415, and/or 416 if applicable to the Plan, of the Code because of the required aggregation of multiple plans under these Sections. Effective for any Plan Year beginning after December 31, 2001, any provisions of the Plan setting forth top-heavy provisions of Code section 416, to the extent Code section 416 is applicable to the Plan, are modified by

substituting the term "separation from service" with "severance from employment." Provided, however, top-heavy provisions shall not apply if this Plan is a governmental plan within the meaning of Code section 414(d).

5.3 Other Accounts. The Employee and Matured Account of each Participant shall be fully Vested in him at all times.

## SECTION 6

### Maturity and Distributable Events

6.1 Events of Maturity. A Participant's Total Account shall mature upon the earliest occurrence of any of the following Events of Maturity while in the employment of the Employer:

- (a) His termination of employment with the Employer.
- (b) Termination of this Plan.

Provided, however, that with the exception of Police and Fire Plans, a transfer from Recognized Employment to employment with the Employer that is other than Recognized Employment or a transfer for the employment of one Employer Participating in this Plan to another such Employer shall not constitute an Event of Maturity, though in all cases, even involving a Police or Fire Plan, a transferring Participant shall cease participating in this Plan if as a result of the transfer he or she becomes eligible under another Plan that is qualified under Code Section 401(a).

6.2 Determination of Matured Benefit. Upon the occurrence of an Event of Maturity effective as to a Participant, the Trustee shall determine the value of his Total Account as of the Valuation Date contemporaneous with, following or next preceding the Event of Maturity, and the Vested portion thereof shall be his Matured Account.

6.3 Effect of Maturity Upon Further Participation in the Plan. On the occurrence of an Event of Maturity, a Participant shall cease to have any interest in the Plan or the Fund other than his right to receive distribution of his Matured Account, as provided in Sections 6 & 7 hereof; except that (a) his Matured Account or the portion thereof from time to time undistributed shall be increased or decreased, as the case may be, by any increase or decrease in the value of the Fund and by any income thereon or expense allocated thereto, and (b) he shall be entitled to share in the Employer contributions for the Plan Year in which such Event of Maturity occurred only to the extent provided in the Agreement. He shall not share in any Employer contribution for Plan Years after the Plan Year in which such Event of Maturity occurred, unless he shall continue to be or thereafter again become a Participant hereunder, as hereinbefore provided.

6.4 Disposition of Nonvested Portion of Account. If any portion of a Participant's Employer Account is not Vested in him upon the occurrence of an Event of Maturity effective as to him, such portion treated as a forfeiture under Section 5.1.3 shall be disposed of as follows:

6.4.1. Police and Fire Plans.

(a) Police Plan. Any Forfeitures shall first be used as of the Reallocation Date to meet the expense charges incurred by the City with respect to administration of the Plan, and the remainder, if any, shall be applied to reduce City contributions which otherwise are required to fund benefits under the Plan.

(b) Fire Plan. Any Forfeiture shall be deposited as of the Reallocation Date in the Unallocated Employer Account. If the actuarial evaluation of the Fund required herein shows that the assets of the Unallocated Employer Account are sufficient to provide for the projected plan liabilities, such forfeitures shall instead be used to meet the expenses incurred by the City in connections with administering the Plan, and the remainder, if any, shall be applied to reduce City contributions which otherwise would be required to fund benefits under the Plan.

6.4.2 All Other Plans - Reallocation to Other Participants. As elected in the Adoption Agreement:

(a) Added to Employer Contribution. As of the Reallocation Date, any Forfeitures shall be added to the Employer contribution, if any, for such Plan Year and allocated as provided in Section 3.3 hereof to the Employer Accounts of those Participants who are eligible to share in the allocation of the Employer contribution, if any, as of such Reallocation Date.

(b) Reduce Employer Contribution. As of the Reallocation Date, any Forfeitures shall be used to reduce Employer contributions for the Plan Year and succeeding Plan Years until totally reallocated under Section 3.4 to other Participants.

6.4.3 Reallocation Date. As elected by the Employer in the Adoption Agreement, the Reallocation Date under Section 6.4 shall be:

(a) the next succeeding Valuation Date after an amount is treated as a Forfeiture, or

(b) the earlier of the Valuation Date of the Plan Year in which a Participant incurs 5 consecutive One-Year Breaks in Service or his Account is no longer subject to restoration; or the date the Participant receives a cash-out distribution of the nonforfeitable percentage of his or her Account as a result of termination of participation in the Plan. (Accounts held under this Section 6.4.3(b) are increased or decreased, as the case may be, by any increase or decrease in the Fund and by any income thereon.)

6.4.4 Restoration. Amounts treated as Forfeitures under Section 6.4.3(a) and Accounts held under Section 6.4.3(b) are subject to the restoration provisions of Section 5.1.3 if elected by the Employer in the Adoption Agreement.

6.5 Other Distributable Events. Distribution of some or all of the Participant's Total Account will occur:

(a) If elected by the Employer in the Adoption Agreement, and subject to the consent of the Participant (and the Participant's spouse) if required, after the Participant's Normal Retirement Date.

(b) At and after a Participant's or Beneficiary's Required Beginning Date under Section 7.

(c) In the case of a Plan which provides for Participant Loans, default under the terms of a Participant Loan, to the extent of the amount in default.

(d) Subject to the consent of the Participant, upon the Participant's attainment of early retirement date, if allowed under the terms of the Plan (in-service distribution upon attaining early retirement age or date not allowed in the case of a pension plan).

Distributions pursuant to this Section 6.5 shall not affect a right of a Participant who continues in Recognized Employment to share in Employer contributions and allocation of Forfeitures as otherwise determined under this Plan.

6.5.1 Termination of Employment - Police and Fire Plans. Notwithstanding any provision in this Agreement to the contrary, a deferred benefit which is payable to a Participant whose employment with the City was terminated prior to his or her death or retirement before his or her Retirement Date shall be payable on the first of the month immediately following the Participant attaining 60 years of age (55 years of age for Fire Plan Participant). The Participant has the option to commence benefit payments as of the first day of the month after the Participant attains 55 years of age and has completed 25 years of service with the City (50 years of age and 21 years of service for Fire Plan Participant). An election for early commencement of benefits shall be made by the Participant in writing prior to the payment of such

benefits. Benefits shall be paid in a form permitted in this Agreement for payment of benefits upon retirement and properly elected by the Participant in writing prior to the commencement of such benefits. Unless otherwise provided in the Adoption Agreement, The City shall have the option to pay any Participant's Retirement Value in the form of a lump sum payment if such Vested Retirement Value is not greater than \$1,000 ("less than \$3,500" for Police Plans before March 28, 2005) on the date of his or her termination of employment (for Fire Plan Participants, the City can make a lump sum payment upon request of the Participant within one year of termination of employment if the Vested Retirement Value upon such termination is less than \$3,500). Participants also have the option of transferring the Employee Account and the vested portion of the Employer Account if the requirements of Section 3.5 are satisfied.

6.5.2 Early Retirement Swing Employment - Fire Plans. Notwithstanding any provision in the Agreement to the contrary, A Fire Plan Participant may retire or be retired and receive the applicable benefit upon the attainment of age 55 while employed by the City as a firefighter, in accordance with Neb. Rev. Stat. Section 16-1028. An election for early commencement of benefits shall be made by the Participant, in writing, prior to the payment of such benefits. Benefits shall be paid in a form permitted in the Agreement for payment of benefits upon retirement and properly elected by the Participant in writing prior to the commencement of such benefits.

(e) The City shall have the option to pay a Participant's Vested Retirement Value in the form of a single lump sum payment to the extent permitted by Section 5.1.3 if such Vested Retirement Value does not exceed \$1,000 on the date of his or her termination of employment, except as otherwise provided in the Adoption Agreement. Participants shall have the option of transferring the Employee Account and the Vested portion of the Employer Account if the requirements of Section 3.5 are satisfied.

## SECTION 7

### Distribution

7.1 Time of Distribution. Subject to the provisions of this Section 7 and any required Participant consent, upon the occurrence of an Event of Maturity effective as to a Participant and after the Participant's Matured Account has been determined, the Trustee will make or commence distribution of such Matured Account as follows:

7.1.1 Distribution from Matured Account. Unless otherwise provided herein or the Participant elects otherwise, distribution of a Participant's Matured Account shall commence on the first day of the month ~~following the date which is within 31 to 18090 days after an Event of Maturity, or within an administratively practicable time thereafter (before January 1, 2007, distributions commenced on the first day of the month following the date which is 90 days after an Event of Maturity).~~

7.2 Distribution Requirements.

~~7.2.1 Distributions in calendar years beginning after December 31, 1984 and ending before January 1, 2003.~~

~~7.2.1.1 Supersession. The requirements of this Section 7.2.1 shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Section 7.2 apply to calendar years beginning after December 31, 1984 and ending before January 1, 2003.~~

~~7.2.1.2 Requirements. Notwithstanding any provision of the Plan to the contrary, all distributions required under this Section 7.2.1 shall be determined and made in accordance with Code section 401(a)(9) and the proposed regulations thereunder published in the Federal Register on July 27, 1987; provided, however, distributions made during the 2002 calendar year were made in accordance with the regulations that were published in the Federal Register on January 17, 2001.~~

~~7.2.1.3 Required Beginning Date. The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's required beginning date.~~

~~7.2.1.4 Limits on Distribution Periods. As of the first distribution calendar year, distributions, if not made in a single sum, may only be made over one of the following periods (or a combination thereof):~~

- ~~(a) the life of the Participant,~~
- ~~(b) the life of the Participant and a designated beneficiary,~~
- ~~(c) a period certain not extending beyond the life expectancy of the Participant, or~~
- ~~(d) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated beneficiary.~~

~~7.2.1.5 Determination of Amount to be Distributed Each Year. If the Participant's interest is to be distributed in other than a single sum, the following minimum distribution rules shall apply on or after the required beginning date:~~

~~(a) If a Participant's benefit is to be distributed over (1) a period not extending beyond the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and the Participant's designated beneficiary or (2) a period not extending beyond the life expectancy of the designated beneficiary, the amount required to be distributed for each calendar year, beginning with distributions for the first distribution calendar year, must at least equal the quotient obtained by dividing the Participant's benefit by the applicable life expectancy.~~

~~(b) For calendar years beginning before January 1, 1989, if the Participant's spouse is not the designated beneficiary, the method of distribution selected must assure that at least 50% of the present value of the amount available for distribution is paid within the life expectancy of the Participant.~~

~~(c) For calendar years beginning after December 31, 1988, the amount to be distributed each year, beginning with distributions for the first distribution calendar year shall not be less than the quotient obtained by dividing the Participant's benefit by the lesser of (1) the applicable life expectancy or (2) if the Participant's spouse is not the designated beneficiary, the applicable divisor determined from the table set forth in Q&A 4 of Section 1.401(a)(9)-2 of the proposed Treasury Regulations. Distributions after the death of the Participant shall be distributed using the applicable life expectancy in Section 7.2.1.5(a) above as the relevant divisor without regard to proposed Treasury Regulation section 1.401(a)(9)-2.~~

~~(d) The minimum distribution required for the Participant's first distribution calendar year must be made on or before the Participant's required beginning date. The minimum distribution for other calendar years, including the minimum distribution for the distribution calendar year in which the Employee's required beginning date occurs, must be made on or before December 31 of that distribution calendar year.~~

~~(e) If the Participant's benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Code section 401(a)(9) and the proposed regulations thereunder.~~

~~7.2.1.6 Distribution Beginning before Death. If the Participant dies after distribution of his or her interest has begun, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.~~

~~7.2.1.7 Distribution Beginning after Death. If the Participant dies before distribution of his or her interest begins, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (a) or (b) below:~~

~~(a) — if any portion of the Participant's interest 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 immediately following the calendar year in which the Participant died;~~

~~(b) — if the designated beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with (a) above shall not be earlier than the later of (1) December 31 of the calendar year immediately following the calendar year in which the Participant died and (2) December 31 of the calendar year in which the Participant would have attained age 70½.~~

~~If the Participant has not made an election pursuant to this Section 7.2.1.7 by the time of his or her death, the Participant's designated beneficiary must elect the method of distribution no later than the earlier of (1) December 31 of the calendar year in which distributions would be required to begin under this Section, or (2) December 31 of the calendar year which contains the fifth anniversary of the date of death of the Participant. If the Participant has no designated beneficiary, or if 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 anniversary of the Participant's death.~~

~~For purposes of this Section 7.2.1.7, if the surviving spouse dies after the Participant, but before payments to such spouse begin, the provisions of this Section 7.2.1.7, with the exception of paragraph (b) herein, shall be applied as if the surviving spouse were the Participant.~~

~~For the purposes of Sections 7.2.1.6 and 7.2.1.7, any amount paid to a child of the Participant will be treated as if it has been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.~~

~~For the purposes of Sections 7.2.1.6 and 7.2.1.7, distribution of a Participant's interest is considered to begin on the Participant's required beginning date (or, if this Section 7.2.1.7 is applicable, the date distribution is required to begin to the surviving spouse pursuant to this Section 7.2.1.7). 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.~~

~~7.2.1.8 Applicable Life Expectancy. The life expectancy (or joint and last survivor expectancy) calculated using the attained age of the Participant (or designated beneficiary) as of the Participant's (or designated beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date life expectancy was first calculated. If life expectancy is being recalculated, the applicable life expectancy shall be the life expectancy as so recalculated. The applicable calendar year shall be the first distribution calendar year, and if life expectancy is being recalculated such succeeding calendar year.~~

~~7.2.1.9 Designated Beneficiary. The individual who is designated as the beneficiary under the Plan in accordance with Code section 401(a)(9), the proposed regulations thereunder and Section 7.5 of this Plan~~

~~7.2.1.10 Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 7.2.1.7 above.~~

~~7.2.1.11 Life Expectancy. Life expectancy and joint and last survivor expectancy are computed by use of the expected return multiples in Tables V and VI of Section 1.72-9 of the Income Tax Regulations.~~

~~Unless otherwise elected by the Participant (or spouse, in the case of distributions described in Section 7.2.1.7(b) above) by the time distributions are required to begin, life expectancies shall not be recalculated annually. Such election shall be irrevocable as to the Participant (or spouse) and shall apply to all subsequent years. The life expectancy of a nonspouse beneficiary may not be recalculated.~~



#### 7.2.1.12 Participant's Benefit.

~~(a) The Account balance as of the last Valuation Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions or forfeitures allocated to the Account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date.~~

~~(b) Exception for Second Distribution Calendar Year. For purposes of paragraph (a) above, if any portion of the minimum distribution for the first distribution calendar year is made in the second distribution calendar year on or before the required beginning date, the amount of the minimum distribution made in the second distribution calendar year shall be treated as if it had been made in the immediately preceding distribution calendar year.~~

#### 7.2.1.13. Required Beginning Date

~~(a) General Rule. The required beginning date of a Participant is the later of (i) first day of April of the calendar year following the calendar year in which the Participant attains age 70 1/2, and (ii) April 1st of the calendar year following the calendar year in which the Participant retires.~~

~~7.2.1.14 Transitional Rule. Notwithstanding the other requirements of this Section 7.2.1, distribution on behalf of any Employee may be made in accordance with all of the following requirements (regardless of when such distribution commences):~~

~~(a) The distribution by the Fund is one which would not have disqualified such Fund under Code section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.~~

~~(b) The distribution is in accordance with a method of distribution designated by the Employee whose interest in the Fund is being distributed or, if the Employee is deceased, by a beneficiary of such Employee.~~

~~(c) Such designation was in writing, was signed by the Employee or the beneficiary, and was made before January 1, 1984.~~

~~(d) The Employee had accrued a benefit under the Plan as of December 31, 1983.~~

~~(e) The method of distribution designated by the Employee or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Employee's death, the beneficiaries of the Employee listed in order of priority.~~

~~A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Employee.~~

~~For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Employee, or the beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections 7.2.1.14(a) and (e).~~

~~If a designation is revoked, any subsequent distribution must satisfy the requirements of Section 401(a)(9) of the Code and the proposed regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Fund must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code section 401(a)(9) and the proposed regulations thereunder, but for the Code section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements in section 1.401(a)(9)-2 of the proposed Treasury Regulations. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to~~



~~be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life). In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Q&A J 2 and Q&A J 3 shall apply.~~

7.2.27.2.1 Distributions in calendar years beginning after December 31, 2002:

7.2.27.2.1.1 Supersession. This Section 7.2.27.2.1 will apply for purposes of determining required minimum distributions ~~for calendar years beginning with the 2003 calendar year~~. Notwithstanding the other provisions of this section, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

7.2.27.2.1.2 Requirements. The requirements of this Section 7.2.27.2.1 will take precedence over any inconsistent provisions of the Plan. All distributions required under this Plan will be determined and made in accordance with Internal Revenue Code section 401(a)(9), including the incidental death benefit requirement in section 401(a)(9)(G), and the Treasury Regulations thereunder, including the regulations published on April 17, 2002 and June 15, 2004.

7.2.27.2.1.2.1 Limits on Distribution Periods. As of the first distribution calendar year, distributions to a Participant, if not made in a single sum, may only be made over one of the following periods:

- a. the life of the Participant;
- b. the joint lives of the Participant and a Designated Beneficiary;
- c. a period certain not extending beyond the life expectancy of the Participant; or
- d. a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a Designated Beneficiary.

7.2.27.2.1.3 Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

7.2.27.2.1.4 Participant's Death Before Distribution Begins. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, except as provided in Sections 7.2.27.2.1.15 and 7.2.27.2.1.16, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(b) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then, except as provided in Sections 7.2.27.2.1.15 and 7.2.27.2.1.16, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(c) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth (5<sup>th</sup>) anniversary of the Participant's death.

(d) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 7.2.27.2.1.4, other than sub-section (a), will apply as if the surviving spouse were the Participant.

For purposes of this Section 7.2.27.2.1.4 and Sections 7.2.27.2.1.8 and 7.2.27.2.1.9, unless sub-

section (d) above applies, distributions are considered to begin on the Participant's Required Beginning Date. If sub-section (d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under sub-section (a) above. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under sub-section (a) above), the date distributions are considered to begin is the date distributions actually commence.

7-2-27.2.1.5 Forms of Distribution. Except for defined benefit payments described in Section 7-2-27.2.1.17 below, and unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first (1<sup>st</sup>) Distribution Calendar Year, distributions will be made in accordance with Sections 7-2-27.2.1.6 through 7-2-27.2.1.9 of this Plan. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions under such annuity will be made in accordance with the requirements of Code section 401(a)(9) and 1.401(a)(9) of the Treasury Regulations. Any part of the Participant's interest which is in the form of an individual account described in section 414(i) of the Code will be distributed in a manner satisfying the requirements of Code section 401(a)(9) and Treasury Regulations section 1.401(a)(9) that apply to individual accounts.

7-2-27.2.1.6 Amount of Required Minimum Distribution for Each Distribution Calendar Year. Except as provided in subsection 7-2-27.2.1.17 if the Participant's interest is paid in the form of an annuity, during the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(a) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation section 1.401(a)(9)-9, Q&A-2, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(b) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treasury Regulation section 1.401(a)(9)-9, Q&A-3, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

7-2-27.2.1.7 Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under Section 7-2-27.2.1.6 beginning with the first (1<sup>st</sup>) Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

7-2-27.2.1.8 Death On or After Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

(1) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one (1) for each subsequent year.

(2) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one (1) for each subsequent calendar year.

(3) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one (1) for each subsequent year.

(b) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one (1) for each subsequent year.

7.2.27.2.1.9      Death Before Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. Except as provided in Sections 7.2.27.2.1.15 and 7.2.27.2.1.16, if the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in Section 7.2.27.2.1.8.

(b) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth (5<sup>th</sup>) anniversary of the Participant's death.

(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 7.2.27.2.1.4(a), this Section 7.2.27.2.1.9 will apply as if the surviving spouse were the Participant.

7.2.27.2.1.10      Designated Beneficiary. The Designated Beneficiary is the individual who is designated by the Participant (or the Participant's surviving spouse) as the beneficiary of the Participant's interest under the Plan and is the Designated Beneficiary under Code section 401(a)(9) and Treasury Regulation section 1.401(a)(9)-4.

7.2.27.2.1.11      Distribution Calendar Year. A Distribution Calendar Year is a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 7.2.27.2.1.4. The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

7.2.27.2.1.12      Life Expectancy. Life Expectancy means the expectancy as computed by use of the Single Life Table in Treasury Regulation section 1.401(a)(9)-9, Q&A-1.

7.2.27.2.1.13      Participant's Account Balance. The Account Balance is the balance in the participant's account as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation

date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

7.2.27.2.1.14 Required Beginning Date. The Required Beginning Date is April 1<sup>st</sup> of the calendar year following the later of the calendar year in which the Participant attains age 70 ½ or the calendar year in which the Participant retires.

7.2.27.2.1.15 Participants or Beneficiaries Permitted to Elect 5-Year Rule. Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in Sections 7.2.27.2.1.4 and 7.2.27.2.1.9 of this Plan applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 7.2.27.2.1.4 of this Plan, or by September 30 of the calendar year which contains the fifth (5<sup>th</sup>) anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor beneficiary makes an election under this Section, distributions will be made in accordance with Sections 7.2.27.2.1.4 and 7.2.27.2.1.9 and, if applicable, the elections in Section 7.2.27.2.1.16 below.

7.2.27.2.1.16 Election to Apply 5-Year Rule to Distributions to Designated Beneficiaries. For all distributions, if the Participant dies before distributions begin and there is a Designated Beneficiary, distribution to the Designated Beneficiary is not required to begin by the date specified in the Plan, but the Participant's entire interest will be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth (5<sup>th</sup>) anniversary of the Participant's death. If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to either the Participant or the surviving spouse begin, this election will apply as if the surviving spouse were the Participant.

7.2.27.2.1.17 In the case of a payment that is treated as a payment from a defined benefit plan, unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 7.2.27.2.1.17.1 through 7.2.27.2.1.17.3 below. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code section 401(a)(9) and Section 1.401(a)(9) of the Treasury Regulations. Any part of the Participant's interest which is in the form of an individual account described in Code section 414(k), will be distributed in a manner satisfying the requirements of Code section 401(a)(9) and Section 1.401(a)(9) of the Treasury Regulations thereunder that apply to individual accounts.

7.2.27.2.1.17.1 Determination of Amount to be Distributed Each Year.

(a) General Annuity Requirements. If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

- (i) the annuity distributions will be paid in periodic payments made at uniform intervals not longer than one year;
- (ii) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 7.2.27.2.1.17.2 or 7.2.27.2.1.17.3;
- (iii) once payments have begun, the period will be changed only in accordance with Section 7.2.27.2.1.17.4 below;
- (iv) payments will either be nonincreasing or increase only as follows:

- (A) by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or a prior year;
- (B) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost of living index since the annuity starting date, or if later, the date of the most recent percentage increase;
- (C) by a constant percentage of less than 5 percent per year, applied not less frequently than annually;
- (D) as a result of dividend or other payments that result from actuarial gains provided:
  - (i) actuarial gain is measured not less frequently than annually,
  - (ii) the resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured),
  - (iii) the actuarial gain taken into account is limited to actuarial gain from investment experience,
  - (iv) the assumed interest rate used to calculate such actuarial gains is not less than 3%, and
  - (v) the annuity payments are not increased by a constant percentage as described in “(C)” above.
- (E) to the extent of the reduction in the amount of the Participant’s payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the beneficiary whose life was being used to determine the distribution period described in [7.2.27.2.1](#).17.2 dies or is no longer the Participant’s beneficiary pursuant to a qualified domestic relations order within the meaning of Code section 414(p);
- (F) to provide a final payment upon the Participant’s death not greater than the excess of the actuarial present value of the Participant’s accrued benefit (within the meaning of Code section 411(a)(7)) calculated using the interest rate on 30 year Treasury securities as specified by the Commissioner and described in section 3.6.9(i)(II)(a) above and mortality table set forth in Rev. Rul. 2001-62, 2001-53, I.R.B. 632 (or, if greater, the total amount of employee contributions) over the total of payments before the Participant’s death;

(G) to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Participant's death; or

(H) to pay increased benefits that result from a plan amendment.

(b) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section 7-2.27.2.1.4(a) or (b)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. All of the Participant's benefit accruals as of the last day of the first Distribution Calendar Year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.

(c) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first Distribution Calendar Year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

7-2.27.2.1.17.2 Requirements For Annuity Distributions That Commence During Participant's Lifetime.

(a) Joint Life Annuities Where the Beneficiary is Not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary, annuity payments to be made on or after the Participant's Required Beginning Date to the Designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2(c)(1) of Treasury Regulation section 1.401(a)(9)-6 to determine the applicable percentage. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the Designated Beneficiary after the expiration of the period certain.

(b) Period Certain Annuities. Unless the Participant's spouse is the sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Treasury Regulation section 1.401(a)(9)-9, Q&A-2, for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age seventy (70), the applicable distribution period for the Participant is the distribution period for age seventy (70) under the Uniform Lifetime Table set forth in Treasury Regulation section 1.401(a)(9)-9, Q&A-2, plus the excess of seventy (70) over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's spouse is the Participant's sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this subsection or the joint life and last survivor expectancy of



the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in Treasury Regulation section 1.401(a)(9)-9, Q&A-3, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

7.2.27.2.1.17.3 Requirements for Minimum Distributions After Participant Dies

(a) Death After Distributions Begin. If the Participant dies after distribution of his or her interest begins in the form of an annuity meeting the requirements of this section 7.2.27.2.1, the remaining portion of the Participant's interest, if any, will continue to be distributed over the remaining period over which distributions commenced.

(b) Death Before Distributions Begin.

(i) Participant Survived By Designated Beneficiary. If the Participant dies before the date distribution of his or her interest begins and there is a Designated Beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Section 7.2.27.2.1.4(a) or (b), over the life of the Designated Beneficiary or over a period certain not exceeding:

(A) unless the annuity starting date is before the first Distribution Calendar Year, the life expectancy of the Designated Beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or

(B) if the annuity starting date is before the first Distribution Calendar Year, the life expectancy of the Designated Beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

Election of 5 Year Rule. Participants or beneficiaries may elect on an individual basis whether the five (5) year rule or the life expectancy rule in Section 7.2.27.2.1.4 and Section 7.2.27.2.1.17.2(b) applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distributions would be required to begin under Section 7.2.27.2.1.4, or September 30 of the calendar year which contains the fifth (5<sup>th</sup>) anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor beneficiary makes an election under this subsection, distributions will be made in accordance with Sections 7.2.27.2.1.4 and 7.2.27.2.1.17.2(b).

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

(iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's

sole Designated Beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section ~~7.2.27.2.1~~.4(a).

~~7.2.27.2.1~~.17.4 Changes to Annuity Payment Period.

- (a) Permitted Changes. An annuity payment period may be changed only in association with an annuity payment increase described in Section ~~7.2.27.2.1~~.17.1(a)(iv) (or in accordance with subsection (b) below).
- (b) Reannuitization. An annuity payment period may be changed and the annuity payments modified in accordance with that change if the conditions in subsection (c) below are satisfied and:
  - (i) the modification occurs when the Participant retires or in connection with a Plan termination;
  - (ii) the payment period prior to modification is a period certain without life contingencies; or
  - (iii) the annuity payments after modification are paid under a qualified joint and survivor annuity over the joint lives of the Participant and a designated beneficiary, the Participant's spouse is the sole designated beneficiary, and the modification occurs in connection with the Participant's becoming married to such spouse.
- (c) Conditions. The conditions in this subsection (c) are satisfied if:
  - (i) the future payments after the modification satisfy the requirements of Section 409(a)(9), Section 1.401(a)(9) of the regulations, and this Section 7.2 (determined by treating the date of the changes as the new annuity starting date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Participant);
  - (ii) for purposes of Code Sections 415 and 417, the modification is treated as a new annuity starting date;
  - (iii) after taking into account the modification, the annuity (including all past and future payments) satisfies the requirements of Code Section 415 (determined at the original annuity starting date, using the interest rates and mortality tables applicable to such date); and
  - (iv) the end point of the period certain, if any, for any modified payment period is not later than the end point available to the Employee at the original annuity starting date under Code Section 401(a)(9) and this Section 7.2.

~~7.2.27.2.1~~.17.5 Payments to Surviving Child.

- (a) Special Rule. For purposes of this Section 7.2, any payments made to a Participant's surviving child until the child reaches the age of majority (or dies, if earlier) shall be treated as if such payments were made to the surviving spouse to the extent the payments become payable to the surviving spouse upon cessation of the payments to the child.
- (b) Age of Majority. For purposes of this section, a child shall be treated as having not



reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of Section 72(m)(7) when the child reaches the age of majority shall be treated as having not reached the age of majority so long as the child continues to be disabled.

7.2.27.2.1.17.6 Additional Definitions

- (a) Actuarial Gain. The difference between an amount determined using the actuarial assumptions (i.e. investment return, mortality, expense and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.
- (b) Eligible Cost of Living Index. An index described in paragraphs (b)(2), (b)(3) or (b)(4) of section 1.401(a)(9)-6, Q&A-14 of the regulations.

7.2.27.2.1.18 TEFRA section 242(b)(2) Elections

- (a) Notwithstanding the other requirements of this 7.2, distribution on behalf of any Employee who has made a designation under Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a "242(b)(2) election") may be made in accordance with all of the following requirements (regardless of when such distribution commences):
  - (i) The distribution by the Plan is one which would not have disqualified such Plan under section 401(a)(9) of the Internal Revenue Code as in effect prior to amendment by the Deficit Reduction Act of 1984,
  - (ii) The distribution is in accordance with a method of distribution designated by the Employee whose interest in the Plan is being distributed or, if the Employee is deceased, by a beneficiary of such Employee,
  - (iii) Such designation was in writing, was signed by the Employee or the beneficiary, and was made before January 1, 1984,
  - (iv) The Employee had accrued a benefit under the Plan as of December 31, 1983,
  - (v) The method of distribution designated by the Employee or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and, in the case of any distribution upon the Employee's death, the beneficiaries of the Employee listed in order of priority.
- (b) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Employee.
- (c) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Employee, or the beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections (a)(i) and (v) above.
- (d) If a designation is revoked, any subsequent distribution must satisfy the requirements of § 401(a)(9) of the Code and the regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the

end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Section 401(a)(9) of the Code and the regulations thereunder, but for the 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation directly or indirectly (for example by altering the relevant measuring life).

- (e) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Section 1.401(a)(9)-8, Q&A-14 and Q&A-15 of the regulations shall apply.

7.2.2.19 Transition Rules. The transition rules for required minimum distributions before January 1, 2003 are specified in section 7.2.1 above.

7.2.1.20 2009 Required Minimum Distributions.

(a) **Suspension of Required Minimum Distributions for 2009.** Notwithstanding anything in this Plan to the contrary, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated "Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence; and

(b) **Direct Rollovers.** For purposes of applying the direct rollover provisions of the Plan, a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code Section 401(a)(9)(H).

7.2.2 Special Rule for Governmental Plans. Notwithstanding anything in this Section 7.2 to the contrary, a governmental plan within the meaning of Code section 414(d), or an eligible governmental plan described in Treasury Regulations section 1.457-2(f), is treated as having complied with Code section 401(a)(9) for all years to which section 401(a)(9) applies to the Plan if the Plan complies with a reasonable good faith interpretation of section 401(a)(9).

**7.3 Minimum Benefits Upon Retirement, Death and Disability of Certain Police and Fire Plan Participants.** Notwithstanding any provision of this Agreement to the contrary, this Section 7.3 shall in certain circumstances provide minimum benefits to Police and Fire Plan Participants as follows:

**7.3.1 Minimum Retirement Benefits.** Participants of Police and Fire Plans, if employed on January 1, 1984 and continuously employed by the City from such date through the date of their retirement, shall receive a benefit which, when determined on a Straight Life Annuity basis, shall not be less than:

(a) Police Plan.

(i) Effective April 16, 2012, 50% of Regular Pay if retirement occurs after reaching 60 years of age and the Participant has completed 25 years of service with the City. Before April 16, 2012, the following parenthetical was included at the end:  
(or 21 Years of Service if hired prior to November 18, 1965); or

- (ii) 40% of Regular Pay if retirement occurs after reaching 55 years of age, but before reaching 60 years of age, and the Participant has completed 25 Years of Service with the City.

The Minimum Benefit provided in this Section (a) shall be paid in any form of benefit payment otherwise provided for in this Section 7. If the Minimum Benefit is paid in a form other than a straight life annuity, such benefit shall be the Actuarial Equivalent of the Minimum Benefit payable as a Straight Life Annuity.

If the Participant chooses the single lump-sum payment option, the Participant can request that the Actuarial Equivalent be equal to the average of the cost of three Annuity Contracts purchased on the open market. The Participant, Retirement Committee and City each shall submit the cost of an appropriate Annuity Contract to determine the Actuarial Equivalent.

(b) Fire Plan.

- (i) 50% of Regular Pay if retirement occurs after reaching 55 years of age and completing 21 years of service with the City; or

- (ii) the Actuarial Equivalent of the benefit which otherwise would be provided in (i) above at 55 years of age if retirement occurs after reaching 50 years of age, but before reaching age 55, and Retirement occurs after completing 21 Years of Service with the City; or

- (iii) 50% of the Salary received at the time of retirement multiplied by the ratio of Years of Service to 21 if retirement from the City occurs on or after reaching 55 years of age with less than twenty-one Years of Service with the City; or

- (iv) For termination of employment after September 9, 1993, 50% of Regular Pay if such termination of employment occurs prior to 55 years of age but after completion of 21 Years of Service with the City.

Unless an optional annuity benefit is selected by the Participant, at the death of the Participant, the same rate of pension as is provided for in this Section (b) shall be paid to the surviving spouse of such deceased Participant during such time as the surviving spouse remains unmarried and, in case there is no surviving spouse, then the minor children, if any, of such deceased Participant shall equally share such Minimum Benefit during their minority. As soon as a child of a deceased Participant ceases to be a minor, such benefit to such child shall cease.

In the event a Participant or his or her surviving beneficiaries die before the aggregate amount of Minimum Benefit payments distributed under this Section (b) equals the total amount in the Participant's Employee Account at the time of the first payment, the difference between the total amount in the Employee Account and the aggregate amount of Minimum Benefit payments distributed shall be paid in a single sum to the Participant's estate.

The Minimum Benefit provided for in this Section (b) shall be paid in any form permitted under Section 7. If the Minimum Benefit is paid in an optional annuity benefit or a single lump-sum payment, such benefit or payment shall be the Actuarial Equivalent of the annuity that would otherwise be paid to the Participant.

If the Participant chooses the single lump-sum payment option, the Participant may request that the Actuarial Equivalent be equal to the average of the cost of two Annuity Contracts purchased on the open market, if the difference between the cost of the two Annuity Contracts does not exceed 5%. The Participant and the City each shall choose one of the Annuity Contracts used for determining the Actuarial Equivalent. If the difference between the two Annuity Contracts chosen exceeds 5%, the Retirement Committee shall review the costs of the two

contracts and make a recommendation to the City Council as to the amount of the lump-sum payment to be made to the Participant. The City Council shall determine the amount of the single lump-sum payment after a hearing thereon.

(c) Retirement Benefits for Certain Firefighters Employed on August 7, 1965.

(i) All firefighters of the paid fire department of a city of the first class in Nebraska who:

(1) were serving as such on August 7, 1965;

(2) did not elect coverage under the provisions of Neb. Rev. Stat. Sections 35-204 to 35-215 as in existence prior to January 1, 1984; and

(3) served in the fire department for a period of 21 years

shall elect to retire from active service, go upon the retired list, and receive a pension of at least 50% of the amount of Salary such retiring firefighter is receiving at the time he or she goes upon the pension list. Such benefits shall be paid by the City in the same manner as firefighters upon the active list are paid.

(ii) Any such firefighter who retires on or after attaining 55 years of age with less than 21 years of service with the City shall receive a benefit of at least 50% of the Salary he or she was receiving at the time of his or her retirement multiplied by the ratio of the years of service to 21.

(iii) At the death of any such retired firefighter, the same rate of pension, as provide for herein, shall be paid to the surviving spouse of such deceased firefighter during such time as the surviving spouse shall remain unmarried and, in case there be no surviving spouse, then the minor children, if any, of such deceased firefighter, shall be paid such benefit during their minority to the age of eighteen years, except that as soon as a child of such deceased firefighter shall become eighteen years of age, such pension as to such child shall cease.

(iv) Firefighters described in subsection (c) above shall be subject to Sections 16-1029 to 16-1032 of the Nebraska statutes, but shall be exempt from Sections 16-1024, 16-1025, 16-1027, 16-1028 and 16-1033.

(v) After August 7, 1965, every firefighter subject to the provisions of Sections 35-201 to 35-203 as in existence prior to January 1, 1984 shall contribute to the City an amount equal to 5% of his or her Salary until he or she shall be entitled to retire or otherwise become eligible for a pension. No such firefighter continuing in the employment of the City as a member of such department after becoming eligible to retire shall be required to make any further contribution. Any such firefighter whose employment shall terminate, whether by discharge or otherwise, prior to the time he or she shall become entitled to a pension, and who shall have made contributions from his or her Salary as provided in this subsection shall, upon demand, be reimbursed by the City for the amount of such contributions plus interest at 5% per annum.

(vi) Nothing in the Nebraska statutes regarding the Firefighters Retirement System Fund nor any provision of this Plan shall in any manner affect the right of any person now receiving or entitled to receive, now or in the future, pension or other benefits provided for in Section 35-201 to 35-216, as they exist immediately prior to January 1, 1984, to receive such pension or other benefits in all respects the same as if such Sections remained in full force and effect.

### 7.3.2 Minimum Death Benefits.

(a) Death in the Line of Duty – Police and Fire Plans. A Participant's surviving spouse or minor children shall be paid a benefit of 50% of Regular Pay if the Participant (who with respect to a Fire Plan, is participating in a Police or the Fire Plan) died in the line of duty or as a result of injuries received while in the line of duty ("Minimum Death Benefit in the Line of Duty"). The Minimum Death Benefit in the Line of Duty shall be paid to the surviving spouse, and upon his or her remarriage or death, to the minor children during each child's minority, subject to deduction of the amounts paid as workers' compensation benefits on account of death. Each child eligible to receive benefits hereunder shall share equally in the Minimum Death Benefit in the Line of Duty until he or she reaches the age of majority. The Minimum Death Benefit in the Line of Duty to a child shall cease upon his or her reaching the age of majority.

(i) Police Plan. To the extent that the Retirement Value of the Participant's Account on the date of death exceeds the amount required to purchase or provide the Minimum Death Benefit in the Line of Duty, the excess shall be paid pursuant to Sections 6 and 7 of this Plan.

(ii) Fire Plan. In the event the surviving spouse or minor children of a deceased Participant die before the aggregate amount of payments from the Plan received by the Participant and his or her survivor beneficiaries, if any, equals the total amount in the Participant's Employee Account at the time of the first benefit payment, the difference between the total amount in the Employee Account and the aggregate amount of benefit payments made by the Plan, if any, shall be paid in a single sum to the Participant's beneficiary or, in the absence thereof, to the Participant's estate.

(iii) The Retirement Value of a Participant's Account shall be paid to the Beneficiary designated by the Participant prior to his death, or to the Participant's Estate in the absence of a designated Beneficiary, in the event that a Participant who dies in the line of duty, or as a result of injuries received in the line of duty, is not survived by a spouse or minor children. Such payment shall be made to the Beneficiary in a straight life annuity, single lump-sum or other optional form of benefit specified in this Agreement and elected by the Beneficiary.

(b) Death Not in the Line of Duty – Police and Fire Plans.

(i) Police Plan. A benefit of at least 25% of Regular Pay in the form of a Straight Life Annuity shall be paid to the surviving spouse of a deceased participant of a Police Plan who dies other than in the line of duty or as a result of injuries received in the line of duty if the Participant:

(a) was continuously employed by the City from January 1, 1984, except those who shall have been formerly employed by the City who are now in military duty, until the date of his or her death;

(b) had reached 55 years of age;

(c) had not elected to retire; and

(d) had completed at least 21 Years of Service with the City.

(ii) Fire Plan. A benefit of at least 25% of Regular Pay in the form of a Straight Life Annuity to the surviving spouse of a Participant of a Fire Plan who dies other than in the line of duty or as a result of injuries received while in the line of duty, if the Participant:

- (a) was employed by the City as a firefighter on January 1, 1984, or reemployed thereafter who, while employed as a firefighter, and entered military service and is still in military service;
- (b) dies while employed by the City;
- (c) had attained 50 years of age;
- (d) had not elected to retire; and
- (e) had 21 Years of Service with the City.

If the surviving spouse or minor children of a deceased Participant die before the aggregate amount of benefits paid to the Participant and his or her Beneficiaries equals the total amount in the Participant's Employee Account on the date of the first payment, the difference between the value of the Employee Account and the aggregate amount of benefits paid shall be paid in a single sum to the designated Beneficiary, or to the estate of the Participant in the absence of a surviving designated Beneficiary.

(iii) If the deceased Participant is not survived by a spouse or in the event the surviving spouse dies before the minor children of the Participant attain the age of majority, the pension benefit shall be paid to the Participant's minor children until they have attained the age of majority. Each minor child shall equally share in the Minimum Death Benefit. The Benefit to a child shall cease upon the child reaching the age of majority. The Benefit shall thereafter be allocated among the remaining minor children until the last remaining child dies or reaches the age of majority.

To the extent that the Retirement Value on the date of the Participant's death exceeds the amount required to purchase a Minimum Death Benefit specified in this Section 7.3, the excess shall be paid pursuant to Sections 6 & 7 of this Plan.

(c) Any payments for the benefit of a minor child shall be made on behalf of such child to the surviving parent or, if there is no surviving parent, to the legal guardian of the child.

7.3.3 Minimum Disability Benefits. The following benefits are payable to Participants of Police and Fire Plans who suffer a Disability:

(a) **Disability in the Line of Duty:** A benefit of 50% of Regular Pay shall be paid to any Participant who becomes disabled and it is determined that the disability is permanent ("Permanent Disability").

(i) **Disabled or Disability Defined:** The complete inability of the Participant, for reasons of accident or other cause while in the line of duty, to perform the duties of a firefighter as defined by fire department job descriptions or ordinance, or with respect to a Police Plan, the duties of a police officer.

(ii) A benefit payment shall be made under this Section 7.3.3(a) only upon adequate proof of the Disability. Such proof shall consist of a medical examination conducted by a competent, disinterested physician who is duly licensed to practice medicine and surgery in the state of Nebraska and who certifies to the City that the Participant is unable to perform the duties of his or her job.

(iii) The City shall have the right during the first three years of Disability payments to require the Disabled Participant to undergo a medical examination at the City's expense to determine the continuance of the Disability claimed. After such three-year period, the City may request the district court to order the Participant to submit proof

of the continuance of the Disability claimed if the City has reasonable grounds to believe the Participant is fraudulently receiving Disability payments. The City shall have the right to demand a physical examination of the Participant by a competent, disinterested physician who is duly licensed to practice medicine and surgery in the state of Nebraska and who is chosen by the City. The expense of such examination shall be borne by the City.

(iv) Temporary Disability. A Participant who receives a temporary Disability while in the line of duty shall receive his or her salary during the continuance of the Disability for a period not to exceed 12 months. If the City determines within the initial 12 month period that a Temporary Disability has become a Permanent Disability, then salary payments shall cease and the Participant shall be entitled to the payment of benefits for a Permanent Disability pursuant to Section 7.3.3(a).

(v) All payments of benefits or salary in this Section 7.3.3. shall be subject to deduction of amounts paid under the Nebraska Workers' Compensation Act. With respect to Disability payments under a Police Plan, such payments shall not commence until all credit for unused annual or sick leave and other similar credits have been fully utilized by the Disabled Participant if there will be no impairment to his or her salary during the period of Disability. Total payments to a Disabled Participant, in excess of amounts paid as workers' compensation benefits, shall not be less than the Retirement Value of the Participant's Account on the date of the Disability.

No Participant shall be entitled during any period of Temporary Disability to receive in full both his or her Salary and his or her benefits under the Nebraska Workers' Compensation Act ("Act"). All Nebraska workers' compensation benefits shall be payable in full to such firefighter as provided in the Act, but all amounts paid by the City or its insurer under the Act to any Disabled firefighter entitled to receive a Salary during such Disability shall be considered as payments on account of such Salary and shall be credited thereon. The remaining balance of such Salary, if any, shall be payable as otherwise provided herein.

(vi) Unless otherwise provided herein, the benefits provided under this Section 7.3.3 shall terminate upon the cessation of a Participant's Disability, and the Retirement Value of the Participant's Account shall be reduced by the amount of benefits distributed to the Participant hereunder, and thereafter such Account shall be held and administered in the same manner as the Account of Participants who are not disabled.

(b) Disability Not in the Line of Duty: Disability payments shall not be paid to a Participant in the event of a disability which is not received while in the line of duty.

7.4 Effect of Reemployment After Distribution Has Been Made or Commenced. In the event that a Participant is reemployed by the Employer after distribution has been made or commenced to him, the following rules shall apply:

(a) Further distribution of his Matured Account shall be suspended and the undistributed remainder of his Matured Account shall continue to be held in the Plan until another Event of Maturity effective as to him shall occur after his reemployment, it being the intent hereof that no distributions shall be made while a Participant is maintaining an employment relationship with the Employer.

(b) He shall again become a Participant in this Plan upon his return to Recognized Employment [as provided in this Plan](#).

7.5 Designation of Beneficiaries. Each Participant may designate, upon forms to be furnished by and filed with the Trustee, a Beneficiary or Beneficiaries to receive his Matured Account in the event of his death and may change or revoke any such designation and appointment from time to time. No such designation, change or

revocation shall be effective unless executed by the Participant and delivered to the Trustee during the Participant's lifetime. In the event:

- (a) the Participant shall have failed to designate a Beneficiary,
- (b) such a designation shall have been made and revoked and the Participant shall have failed to designate another, or
- (c) a Beneficiary or Co-Beneficiaries so designated shall fail to survive the Participant;

Participant's Matured Account, or the part thereof as to which such Participant's designation shall fail, as the case may be, shall be payable at the time of the failure to the first class of the following classes of automatic Beneficiaries then surviving and (except in the case of his surviving issue) in equal shares if there are then more than one in each class:

Police and Fire Plans: Participant's Estate  
Participant's surviving spouse  
Participant's surviving issue per stirpes and not per capita  
Participant's surviving parents  
Participant's surviving brothers and sisters  
Representative of Participant's estate

When used herein and, unless the Participant has otherwise specified in his Beneficiary designation, when used in a Beneficiary designation, "per stirpes" means in equal shares among living children and the issue (taken collectively) of each deceased child, with such issue taking by right of representation; "children" means issue of the first generation; and "issue" means all persons who are descended from the person referred to, either by legitimate birth to or legal adoption by him or any of his legitimately born or legally adopted descendants. The automatic Beneficiaries specified above and, unless the Participant has otherwise specified in his Beneficiary designation, the Beneficiaries designated by him shall become fixed as of the Participant's death so that, if a Beneficiary survives the Participant hereunder and then dies before receipt of all payments, such remaining payments shall be payable to the representative of such Beneficiary's estate. Any designation of Beneficiary by name that is accompanied by a description of relationship to the Participant shall be given effect without regard to whether the relationship to the Participant exists either then or at the Participant's death. Any designation of a Beneficiary only by statement of relationship to the Participant shall be effective only to designate the person or persons standing in such relationship to the Participant at the Participant's death.

7.6 Optional Forms of Distribution. As designated by the Employer in the Adoption Agreement, the optional forms of benefit payment provided by this Plan are as follows:

- (a) a single sum;
- (b) a straight life annuity;
- (c) a straight life annuity with a guarantee of at least 60 monthly payments;
- (d) an annuity payable for life of Participant and annuity to surviving beneficiary of 100%, 75% or 50%;
- (e) a combination of (a) through (d);
- (f) if so indicated in the Adoption Agreement, in kind distribution is permitted subject to Section 7.7; and
- (g) any other form designated in the Adoption Agreement.



For the portion of the death benefit that is payable to the Participant's surviving spouse, the surviving spouse may elect distribution at any time and in any form (other than a joint and survivor annuity), including a single lump-sum payment, which would have been permitted for the deceased Participant; subject, however, to the right of the City to make a cash-out distribution as described in Section 5.1.3(a) above. Similarly, the Participant's Beneficiary may elect to have the Trustee distribute the death benefit in any form (other than a joint and survivor annuity), including a single lump-sum payment, which would have been permitted for the deceased Participant, and within a period permitted under Section 7; subject, however, to the right of the City to make a cash-out distribution as described in Section 5.1.3(a) above. The Beneficiary's election is subject to any restrictions designated in writing by the Participant and not revoked as of his date of death. Such election shall be by a Participant's surviving spouse or Beneficiary made within 60 days after an Event of Maturity.

The amount of annuity benefit payable in the form of an annuity under this Section 7.6 shall be the amount paid by the Annuity Contract purchased or otherwise provided by the Participant's Vested Retirement Value as of the date of the first payment. Any Annuity Contract purchased by the Trustee may be distributed to the Participant or Beneficiary. Upon distribution of an Annuity Contract or lump-sum payment, all obligations of the Plan to the Participant or Beneficiary shall cease. Any Annuity Contract that is distributed from the Plan must be nontransferable.

A Participant who retires after reaching his or her Retirement Date may elect to defer the date of the first annuity payment or lump-sum distribution to the first day of any specified month prior to the Participant reaching 70 years of age.

Any retiring Participant whose benefit under the Plan is less than \$25 per month on the Straight Life Annuity option shall not be entitled to elect to receive annuity benefits.

Any payments for the benefit of a minor child shall be made on behalf of the child to the surviving parent or, if there is no surviving parent, to the legal guardian of the child.

(h) Effective for distributions with annuity starting dates in Plan Years beginning after December 31, 2007, a married Participant who elects to waive the qualified joint and survivor annuity form of benefit under the Plan, if said form is required under the Plan by applicable law, shall be entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity, if required of the Plan by applicable law, shall explain the terms and conditions of the "qualified optional survivor annuity." Provided, however, the following rules apply in the specified circumstances:

(i) Special Effective Date Rules.

~~(a)~~ (a) If the Plan permits retroactive annuity starting dates and a Participant elects a distribution with a retroactive annuity starting date (pursuant to Treasury Regulations Section 1.417(e)-1(b)(3)(iv)) that is before the aforementioned effective date, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of applying the rules of this subsection.

~~(b)~~ (b) In the case of a plan that is subject to Code Section 401(a)(11) and that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006 (the date of enactment of PPA '06), the changes to Code Section 417 made by Section 1004 of PPA '06 apply to distributions with annuity starting dates during plan years beginning on or after the earlier of (i) January 1, 2008 or, if later, the date on which the last collective bargaining agreement related to the plan terminates (determined without regard to any extensions to a collective bargaining agreement made after August 17, 2006), or (ii) January 1, 2009.

(ii) Definition of Qualified Optional Survivor Annuity. For purposes of this subsection (h), the term "qualified optional survivor annuity" means an immediate annuity:

(a) For the life of the Participant with a survivor annuity for the life of the Participant's spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the Participant's spouse, and

(b) Which is the actuarial equivalent of the normal form of benefit (or if this is a defined contribution plan, the amount of benefit which can be purchased with the Participant's vested Account).

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(iii) For purposes of this subsection (h), the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the Participant and the spouse). If the survivor annuity percentage is less than seventy-five percent (75%), then the "applicable percentage" is seventy-five percent (75%). If the survivor annuity percentage is equal to or greater than seventy-five percent (75%), the "applicable percentage" is fifty percent (50%)

(iv) Inapplicability to Governmental Plans. Pursuant to the flush language of Code Section 401(a) and the provisions of Code Section 411(e)(1)(A), the provisions of Code Sections 401(a)(11) and 417, and consequently this subsection (h), shall not apply to this Plan if it is a governmental plan within the meaning of Code Section 414(d).

7.7 Distribution in Kind. If so indicated in the Adoption Agreement, in the case of a single sum distribution a Participant may direct the Trustee to cause distribution of a Participant's Matured Account to be made either in a form actually held in the Fund, or in cash by converting assets other than cash to cash, or in any combination of the two foregoing ways. Provided, however, such direction is permitted where it is reasonably possible for the Trustee to comply therewith and not in conflict with the terms of this Agreement and the interests of other Participants or their Beneficiaries.

7.8 Facility of Payment. In the case of incompetency or disability, either mental or physical, of a Participant or Beneficiary entitled to receive any distribution under the Plan, payments shall be made, if the Trustee shall be advised of the existence of such condition:

(a) to the duly-appointed attorney in fact, guardian or conservator, or to the legal representative of such Participant or Beneficiary; or

(b) to a person or institution entrusted with the care or maintenance of the incompetent or disabled Participant or Beneficiary, provided such person or institution has satisfied the Trustee that the payment will be used for the best interest and assist in the care of such Participant or Beneficiary, and provided further that no prior claim for said payment has been made by a duly appointed guardian or any legal representative of such Participant or Beneficiary.

Any payment made in accordance with the foregoing provisions of this Section shall constitute a complete discharge of any liability or obligation of the Trustee and the Plan therefor.

7.9 Withdrawal from Voluntary Account. If the Employer so indicates in the Adoption Agreement, Participants may make withdrawals from time to time from their Voluntary Account. All withdrawals from a Voluntary Account shall come first from the Nondeductible Voluntary Account, and only after the Nondeductible

Voluntary Account is exhausted will a withdrawal come from the Deductible Voluntary Account. No forfeitures will occur solely because a Participant makes a withdrawal from his Voluntary Account.

7.10 When a Participant or a Beneficiary Cannot Be Found. In the case of a benefit which is payable and the Participant or Beneficiary to whom the payment is due cannot be found, the Plan Administrator shall make reasonable efforts to locate such Participant or Beneficiary. In the event such Participant or Beneficiary cannot be located, the Trustee shall treat such amount as a forfeiture subject to Section 6.4. If a benefit is forfeited because a Participant or Beneficiary cannot be found such benefit will be reinstated if a claim is made by the Participant or Beneficiary within the period permitted for making a claim under applicable law.

7.11 Determination of Required Distributions. The Retirement Committee (or Employer if no Retirement Committee has been designated) shall be responsible for determining any required distribution dates under the Plan. The Retirement Committee shall cause the Trustee to make required distributions by such dates and in an amount satisfying any minimum distribution requirements applicable thereto. The Employer agrees to hold the Trustee harmless from any failure of the Retirement Committee to perform its duties under this Section.

7.12 Rollovers. ~~This Section 7.12 applies to distributions made on or after January 1, 2002.~~ Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

7.12.1 Definitions.

(a) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code section 401(a)(9); the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); for distributions made on or after January 1, 1999, any hardship distributions; and any qualified disaster-relief distributions within the meaning of Code section 72(t)(2)(G).

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to (1) ~~a traditional~~ individual retirement account or annuity described in section 408(a) or (b) of the Code ("traditional IRA") or a Roth individual retirement account or annuity described in Code Section 408A ("Roth IRA"); or; (2) ~~for taxable years beginning after December 31, 2001 and before January 1, 2007, to a qualified trust which is part of a defined contribution, defined benefit or annuity plan described in Code Section 401(a) or 403(a), that agrees to separately account for amounts so transferred, including separately account for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or (3) for taxable years beginning after December 31, 2006, to a qualified trust~~ or to an annuity contract described in section 403(b), if such ~~trust plan~~ or contract provides for separate accounting for amounts so transferred (including earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

The Employer on a nondiscriminatory basis may elect in the Adoption Agreement or otherwise in a written addendum to this Plan to require that a distribution must be equal to at least \$200 before it qualifies as an eligible rollover distribution.

(b) **Eligible retirement plan:** An eligible retirement plan is an eligible plan under Code section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, traditional IRA, a Roth IRA, an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), or a qualified defined benefit or defined contribution plan described in Code section 401(a), that accepts the distributee's eligible rollover distribution. Additionally, the definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account, an eligible retirement plan with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual.

Effective for distributions after December 31, 2007, Participants and Beneficiaries also shall be permitted to make a direct rollover of an eligible rollover distribution from this Plan to a Roth IRA described in Code section 408A ("Roth IRA"), subject to satisfying applicable requirements of Code section 408A, regulations and IRS Notice 2008-30 and other guidance. Provided, however, for taxable years beginning before January 1, 2010, an individual cannot make a qualified rollover contribution from an eligible retirement plan other than a Roth IRA if, for the year the eligible rollover distribution is made, he or she has modified adjusted gross income exceeding \$100,000 or is married and files a separate return. For this purpose, the term "eligible rollover distribution" includes a rollover distribution described in subsection "a" above of after-tax employee contributions which are not includible in gross income, if applicable.

(c) **Distributee:** A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p), are distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2008, a distributee also includes the Participant's nonspouse Beneficiary designated under the Plan in accordance with Code section 401(a)(9)(E) and the regulations thereunder. In the case of a nonspouse Beneficiary, the direct rollover may be made only to a traditional IRA, an individual retirement account or annuity under Code section 408(a) or 408(b) or Roth IRA that is established on behalf of the Beneficiary for purposes of receiving the distribution as an inherited IRA pursuant to Code section 402(c)(11) and that will be treated as an inherited IRA pursuant to provisions of Code Section 402(c)(11). Also, in this case, the determination of any required minimum distribution under Code section 401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A 17 and 18. Following are additional requirements of nonspouse beneficiary rollovers:

(i) Applicability of Certain Code Requirements. For Plan Years beginning on or after January 1, 2010, and to the extent the particular Code section is applicable to the Plan, any direct rollover of a distribution by a nonspouse beneficiary shall be subject to:

(a) The direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B)).

(b) The notice requirements of Code Section 402(f) and

(c) The mandatory withholding requirements of Code Section 3405(c).

Before that date, any such distribution shall not be subject to said requirements. Any distribution from the Plan to a non-spouse beneficiary shall not be eligible for a 60-day (non-direct) rollover.

(ii) Trust Beneficiary. Subject to the subsection 7.12.1(c) above, if the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).

(iii) Required Minimum Distribution Not Eligible Rollover. A non-spouse beneficiary is not permitted to roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulations Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

(d) Direct rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

## SECTION 8

### Inalienability of Benefits

No benefit or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily except as provided under Code section 401(a)(13). The preceding sentence shall also apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be a qualified domestic relations order, as defined in Code section 414(p) ("QDRO"), or any domestic relations order entered before January 1, 1985. This Plan specifically permits distribution to an alternate payee under a qualified domestic relations order QDRO at any time, if the Participant consents in writing thereto, irrespective of whether the Participant has attained his earliest retirement age (as defined in Section 414(p) of the Code) under the Plan. The Plan shall not recognize any domestic relations order which alters or changes benefits, provides for a form of benefit not otherwise permitted under the Plan, increases benefits not otherwise provided by the Plan or accelerates or defers the time of payment of benefits. No Participant or Beneficiary shall have authority to any specific portion of the assets of the Plan. The City or Retirement Committee may require releases from any person as a condition to complying with any such order. Effective on or after April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a QDRO will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death. A domestic relations order described in the immediately preceding sentence shall be subject to the same requirements and protections that apply to any other QDRO.

## SECTION 9

### Amendment and Termination

9.1 Amendment. The Employer reserves the right to amend this Plan from time to time, including without limitation, the designations and elections made by it under the Adoption Agreement from time to time by adopting and executing a new Adoption Agreement, which shall be delivered to the Trustee. The Employer further

reserves the right to amend its retirement plan in its entirety by the adoption of a successor retirement plan in place of the Plan set forth herein and in the Adoption Agreement, and by entering into such agreement with the Trustee or with the successor trustee, successor trustees, or other successor funding medium selected by the Employer as may be required for the purpose of carrying such successor retirement plan into effect; provided, however, that no such amendment shall be effective so as to increase the duties of the Trustee without its consent and provided further that the right of the Employer to designate a successor retirement plan or funding medium shall be subject to the notice requirements affecting the removal of the Trustee set forth in Section 10.4 hereof.

Unless otherwise allowed or provided by applicable law, regulations or other guidance, nNo amendment shall be effective to reduce or divest the Total Account of any Participant without his consent unless the same shall have been adopted with the consent of the Secretary of Labor pursuant to the applicable provisions of the Employee Retirement Income Security Act of 1974, to the extent applicable to this Plan, or in order to comply with the provisions of the Internal Revenue Code of the United States and the regulations and rulings thereunder affecting the tax-qualified status of the Plan or to comply with the provisions of any stabilization law, regulations, orders or directives that may now or hereafter be in force, or to comply with any state law regarding retirement plans for municipal employees. Effective after September 6, 2000, an amendment may eliminate or restrict an optional form of benefit if the amendment satisfies the following:

(a) The amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit eliminated or restricted. For purposes of this condition (a), a single-sum distribution form is otherwise identical only if it is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the participant) except with respect to the timing of payments after commencement.

(b) The amendment is not effective unless the amendment provides that the amendment shall not apply to any distribution with an annuity starting date earlier than the earlier of: (i) the 90<sup>th</sup> day after the date the Participant receiving the distribution has been furnished a summary that reflects the amendment and that satisfies the ERISA requirements at 29 CFR 2520.104b-3 relating to a summary of material modifications or (ii) the first day of the second Plan Year following the Plan Year in which the amendment is adopted.

Effective after September 6, 2000, aAn amendment that meets the requirements of Treasury Regulation section 1.411(d)-3 or 1.411(d)-41.411(d) Q&A 2 and Q&A 3, to the extent applicable to the Plan, may be adopted.

Notwithstanding anything in this Plan to the contrary, pursuant to Code section 411(e)(1)(A) and 412(e)(2), requirements of Code Section 411 or 412, and corresponding provisions of this Plan, shall not apply if this Plan is a governmental plan within the meaning of Code Section 414(d), with the exception of Code section 411(e)(2).

9.2 Discontinuance of Contributions and Termination of Plan. The Employer also reserves the right, by action of its City Council, to reduce, suspend, or discontinue its contributions to this Plan and to terminate the Plan in its entirety.

9.3 Limitations. No power of amendment or of termination may be exercised so as to discriminate in favor of City officials or Highly Compensated Employees, or to permit any part of the Fund to be used for or diverted to purposes other than for the exclusive benefit of Participants or their Beneficiaries prior to the satisfaction of all liabilities with respect to such Participants and their Beneficiaries under this Plan.

9.4 Merger, Etc., with Another Plan. In the case of merger or consolidation of this Plan with, or transfer of assets and liabilities of this Plan to any other plan, each Participant shall (if such other plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is not less than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer (if this Plan had then terminated).

## SECTION 10

## Concerning the Trustee

### 10.1 Dealings with the Trustee.

(a) No person, firm or corporation dealing with the Trustee shall be required to make inquiry as to the authority of the Trustee to do any act which the Trustee shall do hereunder, and any such person, firm or corporation shall be entitled to assume conclusively that the Trustee is properly authorized to do any act which it shall do hereunder, and any such person, firm or corporation shall be under no liability to anyone whomsoever for any act done hereunder pursuant to the written direction of the Trustee.

(b) Any such person, firm or corporation may conclusively assume that the Trustee has full power and authority to receive and receipt for any money or property becoming due and payable to the Trustee, and no such person shall be bound to inquire as to the disposition or application of any money or property paid to the Trustee or paid in accordance with the written directions of the Trustee.

(c) No person, firm or corporation dealing with the Trustee shall be required to see either to the administration of the Plan or to the faithful performance by the Trustee of its duties hereunder (except to the extent required by provisions of the Employee Retirement Income Security Act of 1974, if applicable to this Plan).

10.2 Fees and Expenses from Fund. Except as provided in Section 10.3, the Trustee may pay all expenses, fees, costs and other charges reasonably incurred in the establishment, maintenance, continued qualification, reporting and disclosure, trusteeship, investment, administration and termination (including, but not limited to, legal, actuarial, accounting, and other professional fees) of the Plan from the Fund unless the Employer pays the same. In the event such items shall be paid from and out of the Fund, the Trustee, in a fair and equitable manner of its selection and depending upon the particular kind or type of service for which the expense has been incurred, shall allocate said charge to and pay it out of:

- (a) the annual Employer contribution to the Trust, or
- (b) the income of the Fund, or
- (c) the principal of the fund, including any accumulations of income that have been added thereto, or
- (d) to or out of any combination of the foregoing sources in the event the service in question has been for the benefit, protection or administration of more than one such source of payment.

The Trustee's determination in such respect made in good faith of the amount so to be allocated and charged to each such source of payment shall be binding and conclusive upon all persons interested or becoming interested in the Plan or the Fund. Each such charge of the Trustee shall be a lien upon the Fund, and, ratably, in accordance with the method of allocation used as aforesaid, shall be a lien upon the interest of Participants in the source of payment to which the same is charged until the same is paid and discharged in full.

10.3 Fire Plans. The City and the Retirement Committee shall develop a schedule of investment costs relating the investment of funds in each of the accounts in the Fund, which costs shall be paid out of the funds in such accounts or assessed to the Participants as provided in such schedule. The schedule of investment costs shall provide for the allocation of the administrative or record-keeping costs of the various investment options available to the Participants of the Plan and shall assess such costs so that each Participant pays a pro rata share of the costs based upon his or her choice of options and number of transfers among options. The costs of the actuarial evaluation of the plan, as well as all other costs related to the general operation of the Plan and not allocated pursuant to the schedule of investment costs shall be considered administrative costs and shall be paid by the City from the Unallocated Employer Account.

### 10.4 Resignation and Removal of Trustee.



(a) The Trustee may resign by giving the Employer thirty (30) days (or such shorter period as the Employer may approve in writing) written notice of its resignation by registered mail, such notice period to commence upon mailing thereof. The Employer shall thereupon appoint a successor trustee, successor trustees or other successor funding medium to assume the rights, powers and duties of the Trustee and shall promptly give the Trustee written notice by registered mail of the appointment of such successor funding medium, provided that such notice, to be effective, must be received by the Trustee not later than a date which is sixty (60) days from and after the date on which its notice of resignation was mailed to the Employer. The Trustee shall forthwith deliver to the successor funding medium and as soon as possible thereafter account to the successor funding medium for each and every Fund asset and any and all records of the Fund that are in its possession or control. Notwithstanding any of the foregoing, however, if the Trustee shall not have received written notice of the appointment of a successor funding medium within sixty (60) days after the mailing of its notice of resignation, all as hereinbefore provided, the Employer's plan set forth herein and in the Adoption Agreement [upon written approval of the Employer](#) shall terminate in its entirety, effective immediately upon the expiration of such sixty (60) day period, and the Trustee shall thereupon proceed to make distribution of the Fund assets to the Participants entitled thereto.

(b) The Employer may remove the Trustee by giving the Trustee thirty (30) days (or such shorter period as the Trustee may approve in writing) written notice of his resignation by registered mail, such notice period to commence upon the receipt thereof by the Trustee, and which written notice shall identify the successor trustee, successor trustees or other successor funding medium appointed by the Employer to assume the rights, powers and duties of the Trustee. The Trustee shall forthwith deliver to the successor funding medium and as soon as possible thereafter account to the successor funding medium for each and every Fund asset and all records of the Fund that are in its possession or control.

#### 10.5 Accountings by Trustee.

(a) The Trustee shall render to the Employer an annual account and report as soon as practicable after the Annual Valuation Date in each year showing all transactions affecting the administration of the Plan and the Fund, including, but not necessarily limited to, such information concerning the Plan and the Fund and the administration thereof by the Trustee as shall be requested in writing by the Employer.

(b) The Trustee shall also render such further reports from time to time as may be requested by the Employer and shall submit its final report and account to the Employer when it shall cease to be Trustee hereunder, whether by resignation or other cause.

(c) After giving Participants and other persons interested therein a reasonable opportunity to examine the annual account of the Trustee to the Employer as provided in (a) above, provided that no exceptions are asserted thereto by any person (including the Employer) interested therein, the Employer may settle and allow such accounts by agreement with the Trustee. Except as may be otherwise required by the Employee Retirement Income Security Act of 1974, if applicable, the Trustee shall upon such settlement and allowance be released and relieved of all liability for all matters set forth herein.

10.6 Trustee's Power to Protect Itself on Account of Taxes. The Trustee, as a condition to the making of distribution of a Participant's Matured Account during his lifetime, may require the Participant, or, in the event of his death, may require the person or persons entitled to receive his Matured Account in such event to furnish the Trustee with proof of payment of all income, inheritance, estate, transfer, legacy, and/or succession taxes, and all other taxes of any different type or kind that may be imposed under or by virtue of any state or federal statute or law upon the payment, transfer, descent or distribution of such Matured Account and for the payment of which the Trustee may, in its judgment, be directly or indirectly liable. In lieu of the foregoing, the Trustee may deduct, withhold and transmit to the proper taxing authorities any such tax which it may be permitted or required to deduct and withhold and the Matured Account to be distributed in such case shall be correspondingly reduced.

10.7 Fiduciary Duties. The Trustee and each fiduciary hereunder, in the exercise of each and every power or discretion vested in them by the provisions of this Agreement, shall be governed by the principle that no



discrimination in favor of highly compensated Employees who are Participants from time to time hereunder shall result and shall (subject to the provisions of the Employee Retirement Income Security Act of 1974 to the extent applicable to this Plan) discharge their duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and

- (a) for the exclusive purposes of:
  - (i) providing benefits to Participants and their Beneficiaries; and,
  - (ii) defraying reasonable expenses of administering the Plan;
- (b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;
- (c) by diversifying the investments of the Plan (according to the policies established by the Nebraska Investment Council for Police and Fire Plans) so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and,
- (d) in accordance with the Plan, insofar as the Plan is consistent with the provisions of the Employee Retirement Income Security Act of 1974, to the extent the same are applicable to this Plan.

Notwithstanding anything in this Agreement to the contrary, any provision hereof which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation or duty under Part 4 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, to the extent Title I is applicable to this Plan, shall, to the extent the same is inconsistent with said Part 4, be deemed void.

10.8 Prohibited Transactions. Except as may be expressly permitted by law, neither the Trustee nor any other fiduciary hereunder shall permit the Plan to engage, directly and indirectly, in any of the following transactions with a disqualified person (as defined in Section 4975 of the Internal Revenue Code of 1986):

- (a) sale or exchange, or leasing, of any property between the Plan and a disqualified person;
- (b) lending of money or other extension of credit between the Plan and a disqualified person;
- (c) furnishing of goods, services or facilities between the Plan and a disqualified person;
- (d) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of the Plan;
- (e) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of the Plan in his own interest or for his own account; or
- (f) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the Plan in connection with a transaction involving the income or assets of the Plan.

10.9 Indemnity. The Trustee shall be indemnified and held harmless by the Employer from any and all liabilities, costs and expenses (including legal expenses) arising out of any action taken by the Trustee as Trustee, fiduciary or in any other capacity with respect to this Plan, whether imposed under the Employee Retirement Income Security Act of 1974, or otherwise, except for the Trustee's negligent acts or omissions.

10.10 Investment in Insurance. If the Employer shall so designate in the Adoption Agreement, a Participant may, with the consent of the Employer and subject to such conditions as the Employer may impose, elect to have a portion of his Vested Total Account, excluding the Participant's Deductible Voluntary Account, invested in

life insurance contracts (any said insurance contract being referred to as a "contract") issued by any insurance company licensed to do business in any state subject to the following rules and conditions:

- (a) Ordinary Life - For purposes of these incidental insurance provisions, ordinary life insurance contracts are contracts with both nondecreasing death benefits and non-increasing premiums. If such contracts are purchased, less than one-half of the aggregate Employer Contributions allocated to any Participant will be used to pay the premiums attributable.
- (b) Term and Universal Life - No more than one-fourth of the aggregate Employer Contributions allocated to any Participant will be used to pay the premium on term life insurance contracts, universal life insurance contracts, and all other life insurance contracts which are not ordinary life.
- (c) Combination - The sum of one-half of the ordinary life insurance premiums and all other life insurance premiums will not exceed one-fourth of the aggregate Employer Contributions allocated to any Participant.
- (d) The Participant shall take such physical examinations and furnish such information as may be necessary to procure a contract.
- (e) All contracts shall have a uniform premium due date.
- (f) The Trustee shall be the owner of all contracts with full power to execute all insurance applications and to exercise all available options, and shall be the death beneficiary thereunder.
- (g) All amounts used to purchase term life insurance, to fund "P.S. 58" costs or to acquire any other non-cash value benefits under this Section 10.10 shall be deemed to come from Employer Accounts subject to the limits specified in paragraph (a) above. If the Participant's Employer Account is insufficient within the limitations herein contained to pay any premium on a contract when the same becomes due, the Trustee shall, unless the Participant pays to the Trustee a sum sufficient to pay such premium (any such payment being deemed a voluntary contribution hereunder), cause such contract to be rewritten for its then paid-up value, if any, and retain the same for the Participant, in which event no further premium payments shall thereafter be made thereon.
- (h) All dividends on a contract shall be used to reduce premiums. Any dividends earned on insurance contracts in excess of the amount of the current premium will be allocated to the Participant's Account for whose benefit the contract is held.
- (i) Any charge or expense of the Trustee in handling a contract shall be paid by the Employer but, if not so paid, shall be a charge against the Fund; provided that the Employer may, in its discretion, direct that any such charge or expense be deducted from the Participant's Total Account.
- (j) Any insurance company issuing contracts may deal with the Trustee alone and without the consent of any Participant or beneficiary and shall not be required to examine the provisions of the Plan, nor shall it be responsible for the failure of the Trustee to perform its duties, nor shall it be obligated to see to the application or disposition of any money paid by it to the Trustee and any such payment shall fully discharge such insurance company for the amount so paid.
- (k) For the purpose of determining the value of a contract hereunder, such contract shall be valued at the greater of the premiums theretofore paid thereon or its then cash value, but such contract shall not be considered a part of the Fund for the purpose of allocating income, market gains and losses of the Fund in accordance with Section 4 hereof.
- (l) On maturity of the Participant's Account by reason of the death of the Participant, the proceeds of any contract shall be deemed a death benefit under the Plan and shall be distributed to his Beneficiary or Beneficiaries in the manner prescribed in Section 7 hereof.

(m) On maturity of the Participant's Accounts for any reason other than death of the Participant, the Trustee shall surrender the contract for cash or an annuity and distribute the proceeds in the manner described in Section 7 hereof, distribute the contract to the Participant, or any combination of the foregoing.

(n) For the purpose of the valuation and adjustment of accounts by the Trustee and the allocation of the net income of the Fund thereto as provided in Section 4 hereof, no part of the cash value of a contract purchased hereunder shall be considered in determining the value of a Participant's Total Account.

(o) The Trustee shall apply for and will be the owner of any insurance contract purchased under the terms of this Plan. The insurance contract(s) must provide that proceeds will be payable to the Trustee, however, the Trustee shall be required to pay over all proceeds of the contract(s) to the Participant's designated beneficiary in accordance with the distribution provisions of this Plan. Under no circumstances shall the Trust retain any part of the proceeds. In the event of any conflict between the terms of this Plan and the terms of any insurance contract purchased hereunder, the Plan provisions shall control.

#### 10.11 Directed Investments.

10.11.1 Employer Direction. If so indicated in the Adoption Agreement, the Trustee shall be subject in the management and control of the Fund to the directions (to the extent not inconsistent with law) of the person or committee identified in the Adoption Agreement or certified to the Trustee by an official of the Employer. Such direction shall be subject to such restrictions as the Trustee may impose. The Trustee in acting pursuant to and in reliance on such directions shall be fully and completely indemnified and held harmless by the Employer from any liability, loss or expense (including legal fees) arising out of its actions so directed notwithstanding that such directions, and the Trustee's conduct pursuant thereto, may constitute a breach of fiduciary obligations to the Plan, the Participants and Beneficiaries.

10.11.2 Participant Direction of Investments. If the Employer shall so indicate in the Adoption Agreement, each Participant may individually direct the Trustee to segregate his Account and instruct the Trustee regarding the investment of his Account and the Trustee shall be bound by such direction and relieved of all liability for loss resulting from the exercise of such individual direction. Such direction shall be subject to such restrictions as the Plan or the Trustee may impose. Any additional fee agreed upon from time to time by the Employer and the Trustee as compensation for the right of individual direction herein granted shall be charged against the Accounts of Participants exercising such right unless paid by the Employer. The Employer may make this right of individual direction subject to such other restrictions as are deemed appropriate according to rules of uniform nondiscriminatory application. Accounts under individual direction shall not share in the allocation of income and market gains and losses as provided for the general fund in Section 4 hereof. At no time shall a Participant direct the Trustee to invest in a work of art, rug, antique, metal, gem, stamp, coin, alcoholic beverage or any other item or class of items defined as a collectible by the Secretary of Treasury.

#### 10.12 Investment Managers.

(a) Police Plan. The City or Retirement Committee may select and contract with investment managers registered under the Investment Advisers Act of 1940 to invest, reinvest, and otherwise manage such portion of the assets of the Plan as may be assigned by the City or Committee.

(b) Fire Plan. The Retirement Committee, subject to the approval of the City, may select an investment manager. The City, subject to approval of the Retirement Committee, may contract with investment managers registered under the Investment Advisers Act of 1940 to invest, reinvest, and otherwise manage such portion of the assets of the Plan as may be assigned by the City or Retirement Committee.

(c) All Other Plans. The Employer reserves the power to appoint from time to time one or more Investment Managers, who may be a person, firm, association or corporation, to direct the Trustee or

to assume the duties of the Trustee in the investment of all or any portion of the Fund. An Investment Manager shall be any person or firm which is either (1) registered as investment adviser under the Investment Advisers Act of 1940, (2) a bank, or (3) an insurance company which is qualified to perform the services of an Investment Manager under the laws of more than one state. An Investment Manager shall have such rights and responsibilities only with regard to that portion of the Fund designated by the Employer.

(d) All Plans. The Employer or Retirement Committee, as the case may be, may remove any such Investment Manager and shall have power to appoint a successor or successors from time to time in succession to any Investment Manager who shall be removed, die, resign or otherwise cease to serve hereunder. The Trustee shall follow and comply with all investment directions given to the Trustee by such Investment Manager with respect to the designated portion of the Fund, and the Trustee shall be released, indemnified and held harmless for all actions taken, or things done or omitted to be done by such Investment Manager or by the Trustee in the investment or reinvestment of the Fund pursuant to and in accordance with the directions of the Investment Manager. The reasonable fees and expenses of the Investment Manager, as agreed upon in writing by the Employer and the Investment Manager, shall be an expense chargeable to the Fund and the income derived therefrom, and shall be paid therefrom by the Trustee in such shares as between income and principal as the Trustee deems reasonable and proper, or the Employer, in its discretion, may pay the amount of such fees and expenses directly to the Investment Manager. The appointment of an Investment Manager, original or successor, by the Employer shall be made by resolution adopted by the City or Retirement Committee, as the case may be. Each such appointment shall become effective upon delivery to the Trustee of a certified copy of such resolution and a written acceptance of such appointment signed by the Investment Manager, acknowledging that it is a "fiduciary" with respect to the Plan, as defined in the Employee Retirement Income Security Act of 1974; even though ERISA is not applicable to this Plan if it is a governmental plan within the meaning of Code section 414(d), the ERISA definition of "fiduciary" shall be used. Such resolution shall state what portion of the Fund shall be the investment responsibility of the Investment Manager. The removal of an Investment Manager shall be and become effective upon receipt by the Trustee of a certified copy of the resolution of the City or Retirement Committee, as the case may be, removing such adviser, accompanied by a written statement signed by an official of the City or Retirement Committee that notice of such removal has been given to such Investment Manager. The resignation of an Investment Manager shall be effective (if not, by its terms, made effective at a later date) upon receipt by the Trustee of such resignation in writing signed by the Investment Manager, and unless such resignation states on its face that notice thereof has been given to the Employer, the Trustee shall notify the Employer in writing forthwith of such resignation. Whenever and for as long as there shall be no Investment Manager appointed or acting hereunder, the powers of the Investment Manager shall be exercised by the Trustee. The powers of the Investment Manager shall be exercised by the Trustee with respect to any portion of the Fund over which the Investment Manager has not been given investment authority. No Investment Manager at any time serving hereunder shall be or become liable for the acts or defaults of any prior Investment Manager, for the acts or defaults of another Investment Manager who has investment responsibility for a separate portion of the Fund, or for the acts or defaults of the Trustee. Neither the Employer, Retirement Committee, nor any member of their governing boards shall be or become liable for the acts or omissions of any Investment Manager appointed pursuant to this Section (except to the extent that liability is imposed under the Employee Retirement Income Security Act of 1974, if such Act is applicable to this Plan).

10.13 Participant Loans. If the Employer so indicates in the Adoption Agreement that Participant loans will be allowed, effective for Participant loans made or renewed on and after the last day of the 1989 Plan Year, the Employer shall establish a Participant loan policy, separate from this Plan which shall comply with the requirements of ERISA and the Code and the Regulations issued thereunder, as amended from time to time, to the extent such requirements and Regulations are applicable to this Plan. Such loan policy shall be subject to the following:

(a) Loans shall be made available to all Participants and beneficiaries on a reasonably equivalent basis.

(b) Loans shall not be made available to Highly Compensated Employees (as defined in Section 414(g) of the Code) in an amount greater than the amount made available to other Employees.

- (c) Loans must be adequately secured and bear a reasonable interest rate.
- (d) No Participant loan shall exceed the present value of the Participant's vested accrued benefit.
- (e) In the event of a default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the Plan.
- (f) Loan repayments will be suspended under this Plan as permitted under Code section 414(u)(4).

Notwithstanding any other provision of this Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than 100% of the Participant's vested Account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the Account balance shall be adjusted by first reducing the vested Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.

~~The Plan Administrator should advise any Participant or Beneficiary that a~~ loan, which when added to the outstanding balance of all other loans to the Participant or beneficiary, would exceed the lesser of (a) \$50,000.00, reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the Plan on the date the loan is made, or (b) one-half of the present value of the Participant's vested accrued benefit, or if greater, his total accrued benefit up to \$10,000.00 will constitute a taxable distribution to the Participant to the extent such loan exceeds these limits pursuant to Section 72(p) of the Internal Revenue Code. For the purpose of the preceding sentence, all loans from all plans of the Employer are aggregated. ~~The Plan Administrator should also advise any Participant or beneficiary that, u~~Unless the express terms of the loan require repayment (principal and interest) ~~is~~ amortized in level payments, not less frequently than quarterly, over a period not extending beyond five years from the date of the loan (unless such loan is used to acquire dwelling unit which within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the Participant,) such loan shall constitute a taxable distribution to the Participant or beneficiary, unless otherwise provided by applicable law. In addition, ~~the Plan Administrator should advise any Participant or beneficiary that~~ the loan must be evidenced by a legally enforceable agreement and the terms of the agreement must demonstrate compliance with the requirements of Section 72(p)(2) and Regulation 1.72(p)-1.

An assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan under this Section 10.13.

Any loan which was in existence on August 13, 1982, shall be subject to the conditions and terms contained in said loan then in effect until the date of maturity. Any extension, renewal, renegotiation or revision of a loan after August 13, 1982, shall be considered a new loan.

**10.14 Other Powers.** In extension, but not in limitation, of the rights, powers and discretions conferred upon the Trustee herein, the Trustee shall have and may exercise from time to time in the management and custody of the assets of the Fund and, for the purpose of distribution after the termination thereof, and, for the purpose of distribution of Matured Accounts, without order or license of any court, any one or more or all of the following rights, powers and discretions:

- (a) To invest and reinvest the assets of the Fund with the care, skill prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims (and to the extent possible consistently with the most recent funding policy and method adopted ~~by the Employer~~ and communicated to the Trustee) without limitation of any statute, rule of law, or regulation of any governmental body prescribing or limiting the investment of trust assets by corporate or individual trustees, in or to certain kinds, types, or classes of investments or prescribing the portion of the Fund which may be

invested in any one property or kind, type, or class of investment; limited, however, to the extent that assets of the Fund are required to be invested pursuant to policies established by the Nebraska Investment Council. Specifically and without limiting the generality of the foregoing, the Trustee may invest and reinvest principal and accumulated income of the Fund in preferred and common stocks of any kind or class of any corporation, including but not limited to investment and small business investment companies of all types; voting trust certificates; interests in investment trusts; shares of mutual funds; interests in a common trust, variable demand note or other type of pooled or collective fund operated by the Trustee; bonds, notes and debentures, secured or unsecured; mortgages on real or personal property; covered call options; deposits in a commercial or savings bank or a savings and loan association; insurance contracts on the life of any "keyman" or shareholder of the Employer; conditional sales contracts; real estate and leases, unless the Plan restricts investments according to policies established by the Nebraska Investment Council. Unless otherwise provided by policies established by the Nebraska Investment Council applicable to this particular Plan, investment of the entire Fund in common stocks shall be deemed appropriate at any phase of the economic business cycle, but it is not, however, the purpose hereof to direct that the Fund shall be invested either entirely or to any extent whatsoever in such common stocks.

(b) To sell, exchange or otherwise dispose of any asset of whatsoever character at any time held by the Trustee in trust hereunder.

(c) To segregate any part or portion of the Fund for the purpose of administration or distribution thereof and, in its sole discretion, to hold the Fund uninvested whenever and for so long as, in the Trustee's discretion, the same is likely to be required for the payment in cash of Matured Accounts or of Total Accounts normally expected to mature in the near future, or whenever, and for as long as, market conditions are uncertain, or for any other reason which, in the Trustee's discretion, requires such action or makes such action advisable.

(d) To retain and employ such attorneys, agents and servants as may be necessary or desirable, in the opinion of the Trustee, in the administration of the Fund, and to pay them such reasonable compensation for their services as may be agreed upon as an expense of administration of the Fund (which may be paid from the principal of the Fund, current income or current forfeitures prior to reallocation or reduction of the Employer's contribution), including power to employ and retain counsel upon any matter of doubt as to the meaning of or interpretation to be placed upon this Agreement or any provisions thereof with reference to any question arising in the administration of the Fund or pertaining to the distribution thereof or pertaining to the rights and liabilities of the Trustee hereunder or to the rights and claims of Participants and Beneficiaries, and the Trustee, in any such event, may act in reliance upon the advice, opinions, records, statements and computations of any attorneys and agents and on the records, statements, and computations of any servants so selected by it in good faith and shall be released and exonerated of and from all liability to anyone in so doing (except to the extent that liability is imposed under the Employee Retirement Income Security Act of 1974 and relevant provisions of such Act are applicable to this Plan).

(e) To institute, prosecute, and maintain, or to defend, any proceeding at law or in equity concerning the Plan or Fund or the assets thereof or any claims thereto, or the interests of Participants and Beneficiaries hereunder at the sole cost and expense of the Fund and/or at the sole cost and expense of the Total Account of the Participant that may be concerned therein or that may be affected thereby as, in the Trustee's opinion, shall be fair and equitable in each case, and to compromise, settle and adjust all claims and liabilities asserted by or against the Plan or Fund or asserted by or against the Trustee, on such terms as the Trustee, in each such case, shall deem reasonable and proper, but the Trustee shall be under no duty or obligation to institute, prosecute, maintain, or defend any suit, action, or other legal proceedings unless it shall be indemnified to its satisfaction against all expenses and liabilities which it may sustain or anticipate by reason thereof.

(f) To institute, participate in and join in any plan of reorganization, readjustment, merger, or consolidation with respect to the issuer of any securities held by the Trustee hereunder, and to use any other means of protecting and dealing with any of the assets of the Fund which it believes reasonably necessary or proper and, in general, to exercise each and every other power or right with respect to each asset or investment held by it hereunder as individuals generally have and enjoy with respect to their own assets and investments, including power to vote upon any securities or other assets having voting power which it may

hold from time to time, and to give proxies with respect thereto, with or without power of substitution or revocation, and to deposit assets or investments with any protective committee, or with trustees or depositories designated by any such committee or by any such trustees or any court.

(g) In any matter of doubt affecting the meaning, purpose or intent of any provision of this Agreement, to determine such meaning, purpose of intent; and the determination of the Trustee in any such respect shall be binding and conclusive upon all persons interested or who may become interested in the Plan or the Fund.

(h) To require, as a condition to distribution of any Matured Account, proof of identity or of authority of the person entitled to receive the same, including power to require reasonable indemnification on that account as a condition precedent to its obligation to make distribution hereunder.

(i) To collect, receive, receipt and give acquittance for all payments that may be or become due and payable on account of any asset in trust hereunder which has not, by act of the Trustee taken pursuant thereto, been made payable to others, and payment thereof by the company issuing the same, or by the party obligated thereon, as the case may be, when made to the Trustee hereunder or to any person or persons designated by the Trustee, shall acquit, release and discharge such company or obligated party from any and all liability on account thereof.

(j) To determine from time to time, as required for the purpose of distribution or for the purpose of allocating Fund income or for any other purpose of the Plan, the then value of the Fund and of the Accounts in the Fund, the Trustee, in each such case, using and employing for that purpose the fair market value of each of the assets constituting the Fund. Each such determination so made by the Trustee in good faith shall be binding and conclusive upon all persons interested or becoming interested in the Plan or the Fund.

(k) To receive and retain Employer contributions in a form other than cash in the form in which the same are received until such time as the Trustee, in its sole discretion, deems it advisable to sell or otherwise dispose of such assets; to carry all investments of the Fund or any part thereof in its own name or in the name of any nominee selected by it, without designation of the trust capacity in which the same is held, but with the same liability for any act or default of any such nominee as for its own act or default.

(l) Except to the extent otherwise provided in Section 4.4 or herein, to co-mingle, for investment purposes, the assets of the Fund with the assets of any other qualified retirement plan fund of the Employer, provided that the records of the Trustee shall reflect the relative interests of the separate trusts in such commingled fund.

(m) To grant an option or options for the sale or other disposition of a Fund asset, including the issuance of options for the purchase of common stock held by the Fund in return for the receipt of a premium from the optionee (it being expressly intended that said options may be in form in terms to permit their being freely traded on an option exchange) and including the repurchase of any such option granted, or in lieu thereof, the repurchase of an option identical in terms to the one issued.

(n) To have and to exercise such other and additional powers as may be advisable or proper in its opinion for the effective, economical and equitable administration of the Fund.

(o) If so provided in the Adoption Agreement, one (1) or more declarations of trust executed by the Trustee (or by banks or trust companies affiliated in ownership with the Trustee) shall be incorporated by reference into this Agreement and notwithstanding any other provision of the Agreement to the contrary, the Trustee may cause all or any part of the Fund, without limitation as to amount, to be commingled with the money of trusts created by others by causing such money to be invested as a part of any or all of the funds created by said declarations of trust and the Fund so added to any of said funds shall be subject to all of the provisions of said declarations of trust as the same may be amended from time to time.

(p) If the Employer has so indicated in the Adoption Agreement, the Trustee is specifically authorized and empowered to invest Plan assets in deposit accounts or securities offered by the Trustee, its affiliates or other designated financial or securities institutions, unless the Plan is subject to the policies of the Nebraska Investment Council and such investments are contrary to such policies.

## SECTION 11

### Certifications - Rules and Regulations

11.1 Certificates of Fact by Employer. The Employer shall determine and certify ~~to the Trustee~~ from time to time as required ~~by the provisions of this Agreement~~ or as requested ~~by the Trustee~~ all pertinent information required for the administration of the Plan of which the Employer has knowledge, including, without limiting the generality and effect of the foregoing:

- (a) The names of employees eligible from time to time to become Participants in the Plan;
- (b) The Recognized Compensation of each Participant;
- (c) The date of birth, date of hire, retirement date, Eligibility Service, and Vesting Service of each Participant;
- (d) The occurrence of any Event of Maturity or any One-Year Break in Service;
- (e) The adoption of any rules or regulations with respect to the Plan and the administration, maintenance, maturity, or distribution of benefits thereunder;
- (f) The occurrence with respect to Participants of temporary layoffs, leaves-of-absence, service with the Armed Forces of the United States, or transfers to other employment;
- (g) The most recent written statement of a funding policy and method adopted by the Employer which shall be adopted and reviewed from time to time by the Employer and communicated to the Trustee. The Trustee shall not be required to compel the Employer to adopt, review or communicate said funding policy.
- (h) Any other information useful or necessary ~~to the Trustee~~ in the administration of the Plan.

11.2 Rules and Regulations. Any rule not in conflict or at variance with the provisions hereof may be adopted by the Employer and, upon furnishing a certified copy thereof to the Trustee, the same shall thereupon become effective, unless a later effective date shall be specified therein, in which case it shall become effective on the date so specified.

### 11.3 Method of Executing Instruments.

- (a) Certifications of fact or written notices to be made or consents to be given by the Employer, or the Retirement Committee if delegated such authority, pursuant to any provision of this Plan may be signed in the name of the Employer or Retirement Committee, as may be the case, by any officer thereof who has been authorized to make such certification or to give such notices or consents and may be relied and acted upon by the Trustee as authorized, valid and complete in form and in substance and as made with the authority of the Employer until written notice of termination of such authority with respect to any such signing officer shall be given by the Employer to the Trustee.
- (b) Any instrument, certification of fact, or written notice required, necessary or advisable to be made or given by the Trustee may be signed by any authorized officer or employee of the Trustee, and each and every such instrument, when so signed and delivered, shall be valid and binding.



11.4 Claims Procedure. Except as otherwise provided herein, the Employer shall establish a procedure for the resolution of disputes and disposition of claims arising under this Plan. Until modified by the Employer, this procedure is as follows:

(a) Original Claim. Any Employee, former Employee or Beneficiary of such Employee or former Employee may, if he so desires, file with the Employer a written claim for benefits under this Plan. Within ninety (90) days after the filing of such a claim, the Employer shall notify the claimant, in writing, whether his claim is upheld or denied in whole or in part, or notify the claimant in writing of the specific special circumstances requiring a specified amount of additional time (but not more than one hundred eighty (180) days from the date the claim was filed) to reach a decision on the claim. If the claim is denied in whole or in part, the Employer shall state in writing:

(i) The specific reasons for the denial;

(ii) Specific references to the pertinent provisions of the Agreement on which the denial is based;

(iii) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and,

(iv) An explanation of the claim review procedure set forth in this Section.

(b) Claim Review Procedure. Within sixty (60) days after receipt of notice that his claim has been denied in whole or in part, the claimant may file with the Employer a written request for a review and may, in conjunction therewith, submit written issues and comments. Within sixty (60) days after the filing of such a request for review, the Employer shall notify the claimant, in writing, whether upon review the claim was upheld or denied in whole or in part or furnish claimant a written notice describing specific special circumstances requiring a specified amount of additional time (but not more than one hundred twenty (120) days from the date the request for review was filed) to reach a decision on the request for review. The Employer's decision on the request for review shall be served on the claimant in writing.

(c) General Rules.

(i) No inquiry or question shall be deemed to be a claim for a request for a review of a denied claim unless made in accordance with the claim procedure.

(ii) All decisions on claims and on requests for reviews of denied claims are made by the Employer. The Employer may require that any claim for benefits and any request for a review hereunder must be filed on forms to be furnished by the Employer upon request.

(iii) The Employer may, in its discretion, hold one or more hearings on a claim or a request for a review of a denied claim.

(iv) Claims may be represented by a lawyer or other representative, but the Employer reserves the right to require the claimant to furnish written authorization.

(v) If a decision or notice is not received by a claimant within the time specified, the claim or request for review of a denied claim shall be deemed to have been denied.

(vi) Prior to filing a claim, or a request for a review of a denied claim, the claimant or his representative shall have a reasonable opportunity to review a copy of the Plan and all other pertinent documents in the possession of the Employer.

11.5 Information Furnished by Participants. Neither the Employer, nor the Retirement Committee, nor the Trustee shall be liable or responsible for any error in the computation of the Total Account or Matured Account of a Participant resulting from any misstatement of fact made by the Participant, directly or indirectly, to the

Employer, the Retirement Committee, or the Trustee and used by them in determining his Total Account, or Matured Account, and neither the Employer, nor the Retirement Committee, nor the Trustee shall be obligated or required to increase the Total Account or Matured Account of such Participant which, on discovery of the misstatement, is found to be understated as a result of such misstatement by the Participant, but the Total Account or Matured Account of any Participant which is overstated by reason of any such misstatement shall be reduced to the amount appropriate for him in view of the truth. Any refund received on reduction of a Total Account or Matured Account so made shall be treated in the same manner as Forfeitures in the Adoption Agreement.

## SECTION 12

### Plan Administration

12.1 Trustee. Except to the extent provided herein or in Section 4 or 10, the Trustee shall have the exclusive authority to manage and control the assets of the Fund and their custody.

12.2 Delegation of Duties. Functions generally assigned to the Employer shall be discharged by its officers or may be delegated and allocated as provided herein. Except as provided in Section 12.5, the Employer may delegate or redelegate and allocate and reallocate to one or more persons or to a committee of persons jointly or severally, and whether or not such persons are officers or employees, such functions assigned to the Employer hereunder as it may from time to time deem advisable.

Without limiting the generality of the foregoing, functions which may be delegated or redelegated include:

- (a) To act for the Employer to employ and supervise the doctor of medicine or any other person or employee for the purposes of this Plan;
- (b) To act for the Employer to make the determinations and certifications contemplated in this Agreement;
- (c) To act for the Employer to prepare, distribute, receive and maintain the forms and records required by the Plan;
- (d) To act for the Employer to prepare and file the necessary reports and documents with governmental agencies or make required disclosures to Participants, Beneficiaries or other employees;
- (e) To act for the Employer to adopt and establish the rules and procedures authorized under this Agreement and to interpret them;
- (f) To act for the Employer in consultation with the Trustee or other qualified person to establish and review a funding policy and method and to communicate the same to the Trustee; and,
- (g) To contract with or appoint others in writing (on behalf of the Plan) to assume functions expressly delegated or allocated or redelegated or reallocated to them and to specify in writing the scope of and any limitations of their authority.

12.3 Retirement Committee. The Employer reserves the power to create and establish at any time a Retirement Committee, which shall serve as the Plan Administrator, of such size and composition as the Employer may from time to time determine to carry out fiduciary and administrative responsibilities under the Plan in accordance with the following rules:

- (a) If a Retirement Committee is created, the Employer may delegate to it any delegable fiduciary and administrative responsibilities (other than responsibility to manage or control the assets of the Plan) to the Retirement Committee. Without limiting the generality of the foregoing, the Employer may delegate to the Committee any or all of the fiduciary and administrative responsibilities permitted to be delegated or allocated pursuant to Section 12.2. In addition, the Retirement Committee (or Employer if no

Retirement Committee has been established) shall have the power described in Sections 10.14(g) and 10.14(n).

(b) The exercise of any such power by the Committee and the certification thereof by a member of that Committee shall have the same force and effect as if such action were taken by the Employer.

(c) With respect to each action which the Retirement Committee may take pursuant to the provisions hereof, the Trustee shall be relieved of all liability and be fully protected in acting in reliance on any advice of the Retirement Committee so given by it or in conformity to any rule or regulation so adopted by it or on the basis of any certification made by it.

(d) Until authorization and creation of a Retirement Committee and thereafter, to the extent that rule making and other powers as aforesaid shall not be granted to such Committee, or in the event the Employer, after creating a Retirement Committee, shall discontinue the same or reduce its power and authority (the right so to do being hereby reserved to the Employer), such power shall be vested or become revested, as the case may be, in the Employer.

(e) Any Retirement Committee created as aforesaid shall have power to organize and to delegate to such of its members as it shall select authority to make certifications of fact hereunder and otherwise execute or authenticate rules, advisory opinions or instructions, and other instruments adopted or authorized by the Committee.

(f) The Retirement Committee may adopt such bylaws or regulations as it deems desirable for the conduct of its affairs and may appoint a secretary, who need not be a member of the Committee, to keep its records and otherwise assist the Committee in the performance of its duties. The Committee shall keep a record of all its proceedings and acts and shall keep all books of account, records and other data as may be necessary for the proper administration of the Plan. The Committee shall notify the Trustee and Employer of any action taken by the Committee, and when required, shall notify any other interested person or persons.

(g) Members of the Retirement Committee shall serve without compensation, but their reasonable expenses shall be an expense of the administration of the Fund and shall be paid by the Employer or, if not, paid by the Trustee from and out of the Fund.

(h) Neither the Employer, any member of its Board of Directors, nor the Trustee shall be or become liable for any acts or omissions of the Retirement Committee or any member thereof appointed pursuant to this Section (except to the extent that the Employer, the Board of Directors or the Trustee, as the case may be, may be liable pursuant to the Employee Retirement Income Security Act of 1974, if applicable).

(i) Police and Fire Plans: Notwithstanding any provision of this Section 12.3 to the contrary, a Retirement Committee shall be established to supervise the general operation of the Plan. The number and members of the Retirement Committee shall be in accordance with the relevant statutes of Nebraska, as amended from time to time. The City shall continue to be responsible for the general administration of the Plan unless specific functions or all functions with regard to the administration of the Plan are delegated, by ordinance, to the Retirement Committee. Whenever duties or powers are vested in the City or the Retirement Committee under the Plan or applicable state law, or whenever the Plan or such law fails to specifically allocate the duties or powers of administration of the Plan, such powers or duties shall be vested in the City unless such powers or duties have been delegated by ordinance to the Retirement Committee.

In addition to those duties delegated to the Retirement Committee in the Agreement, by law or by ordinance, the Retirement Committee shall perform the following duties:

- (1) Provide each employee a summary of plan eligibility requirements and benefits provisions;

(2) Provide, within 30 days after a request is made by a Participant, a statement describing the amount of benefits such Participant is eligible to receive;

(3) Make available for review an annual report of the Plan's operations describing both the amount of contributions to the Plan from Employee and Employer sources, and an identification of the total assets of the Plan;

~~(4) Beginning December 31, 1998, file such reports with the State of Nebraska or its instrumentalities as required from time to time by applicable law. Commencing in 1999, the annual report required to be filed with the Public Employees Retirement Board and the members of the Nebraska Retirement Systems Committee of the Legislature shall include:~~

~~(i) The number of persons participating in the retirement Plan;~~

~~(ii) The contribution rates of Participants in the Plan;~~

~~(iii) Plan assets and liabilities;~~

~~(iv) The names and positions of persons administering the Plan;~~

~~(v) The names and positions of persons investing Plan assets;~~

~~(vi) The form and nature of investments;~~

~~(vii) A full description of investment policies and options available to Plan participants;~~

~~(viii) For the defined benefit component of the Plan, if any, the levels of benefits of Participants, the number of Participants eligible for benefits and the total present value of such Participants' benefits, as well as the funding source to pay for such benefits.~~

~~(5) Beginning December 31, 1998, and every four years thereafter, the Retirement Committee shall have a quadrennial report prepared with respect to the defined benefit component of the Plan, if any, and file the same with the Public Employees Retirement Board, with a copy submitted to the members of the Nebraska Retirement Systems Committee of the Legislature. Such report shall consist of a full actuarial analysis of the Plan. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the Plan.~~

The Retirement Committee of Fire Plans shall also have the following additional duties:

(1) Elect a chairperson, a vice-chairperson, and such other officers as the Committee deems appropriate;

(2) Hold regular quarterly meetings and special meetings upon the call of the chairperson;

(3) Conduct meetings pursuant to Open Meetings Act of the Nebraska Revised Statutes; and

(4) Provide each Employee a summary of plan eligibility requirements, benefit provisions, and investment options available to such Employee.

Members of the Retirement Committee of a Fire Plan shall, subject to the approval of the City Council, be reimbursed for their actual and necessary expenses incurred in carrying out their duties. Such reimbursement shall be paid from the Unallocated Employer Account to the extent not allocated or assessed pursuant to the schedule of investment costs. Retirement Committee members of a Police Plan shall not be reimbursed for their expenses incurred in carrying out their duties.

12.4. Benefits Errors. If the Retirement Committee determines that the Plan has overpaid or underpaid a benefit to a Participant or Beneficiary, it shall have authority to correct the error in accordance with EPCRS or other applicable guidance. In the event of an overpayment, the Committee shall be authorized to, in addition to any other remedy, offset future benefits payments by the amount of the overpayment with Regular Interest. A Participant whose benefit under the Plan is adjusted by the Retirement Committee may request a review by the City Council of such adjustment.

12.5 Employer Action. The City Council of the Employer or its designee shall have the exclusive authority, which authority may not be delegated to:

(a) Amend this Agreement.

(b) Terminate the Plan.

(c) Except as otherwise provided elsewhere herein, appoint or remove a Trustee or an Investment Manager.

12.6 Limitation on Authority. The Trustee shall not be liable for or on account of any payment made by it pursuant to order of the Employer; or for any investment, retention or sale made by it in accordance with the provisions of this Agreement; or for any loss to or diminution in the Fund resulting therefrom, unless such liability for loss or diminution arises under the provisions of the Employee Retirement Income Security Act of 1974, ~~or~~ if applicable to this Plan by the terms of the Act. No action taken by any person, board or committee, if authority to take such action has been delegated or redelegated to it hereunder, shall be the responsibility of any person except as may be required by the provisions of the Employee Retirement Income Security Act of 1974, if applicable to this Plan by the terms of the Act, relating to the responsibility of fiduciaries for the acts of other fiduciaries.

The responsibility and obligations of the Trustee shall be strictly limited to those set forth in this Agreement. The Trustee shall have no authority or duty to determine the existence, nature or extent of any individual's rights in the Fund or under the Plan or question any determination made by the Employer regarding the same. Except to the extent imposed by provisions of the Employee Retirement Income Security Act of 1974, if applicable to this Plan, no fiduciary shall have the duty to question whether any other fiduciary is fulfilling all of the responsibility imposed upon such other fiduciary by the Act, as the same may be amended from time to time, or by any regulations or rulings issued thereunder and applicable to the Plan. The Trustee shall not be responsible in any way for the manner in which the Employer carries out its responsibilities under this Agreement.

12.7 Dual Capacity. Individuals, firms, corporations or partnerships identified herein or delegated or allocated authority or responsibility hereunder may serve in more than one fiduciary capacity.

12.8 Administrator. If no other Plan Administrator is named in the Adoption Agreement, then the Employer shall be the Plan Administrator for purposes of Section 3(16)(A) of the Employee Retirement Income Security Act of 1974, to the extent such Section of the Act is applicable to this Plan.

12.9 Named Fiduciaries. The Employer shall be the named fiduciary for the purposes of the Employee Retirement Income Security Act of 1974, to the extent the Act is applicable to this Plan.

12.10 Service of Process. In the absence of any designation to the contrary, in any legal proceeding, including arbitration, involving the Plan, the City Clerk of the Employer is designated as agent for the receipt of service of process directed to the Plan.

12.11 Conflict of Interest. If any member of the Committee or any officer or Employee of the Employer to whom authority has been delegated or redelegated hereunder shall also be a Participant in this Plan, he shall have

no authority as such member, officer or employee with respect to any matter specially affecting his individual interest hereunder, all such authority being reserved exclusively to the other members, officers, or Employees, as the case may be, to the exclusion of such Participant, and such Participant shall act only in his individual capacity in connection with any such matter.

12.12 Residual Authority. In the event the Employer, Committee, or other person designated as having the authority to act or a duty to act on any matter hereunder, is prevented by death, dissolution, incapacity or other similar cause from acting hereunder and there is no other person then empowered to act on such matter, the Trustee shall be empowered to act in its place.

12.13 State Reporting.

1.7 (a) General. Beginning December 31, 1998, such reports shall be filed with the State of Nebraska or its instrumentalities as required from time to time by applicable law.

1.8

1.9 (b) Police, Fire and Neb. Rev. Stat. Section 19-3501 Municipal Plans.

(1) Annual Report. In addition to immediately preceding provisions of this Section 12.13, commencing in 1999, an annual report shall be filed as required for each Police Plan, Fire Plan or other municipal Plan established pursuant to Neb. Rev. Stat. Section 19-3501. The report shall be filed with the Public Employees Retirement Board and the Auditor of Public Accounts and include:

(i) The number of persons participating in the retirement Plan;

(ii) The contribution rates of Participants in the Plan;

(iii) Plan assets and liabilities;

(iv) The names and positions of persons administering the Plan;

(v) The names and positions of persons investing Plan assets;

(vi) The form and nature of investments;

(vii) A full description of investment policies and options available to Plan participants;

(viii) For the defined benefit component of the Plan, if any, the levels of benefits of Participants, the number of Participants eligible for benefits and the total present value of such Participants' benefits, as well as the funding source to pay for such benefits.

(2) Quadrennial Report. In addition to immediately preceding provisions of this Section 12.13, beginning December 31, 1998, and every four years thereafter any required quadrennial report shall be prepared with respect to the defined benefit component of the Plan, if any, and filed with the Public Employees Retirement Board, with a copy submitted to the Auditor of Public Accounts. Such report shall consist of a full actuarial analysis of the Plan. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the Plan.

1.7 (3) The Auditor of Public Accounts may, but is not required to, prepare a review of the reports described in this Section 12.13 in accordance with Nebraska Statutes.

## SECTION 13

### In General

#### 13.1 Disclaimers.

(a) Neither the terms of this Plan, nor the benefits hereunder, nor the continuance thereof shall be a term of the employment of any Employee, and the Employer shall not be obliged to continue this Plan.

(b) The terms of this Plan shall not give any Employee the right to be retained in the employment of the Employer.

(c) Neither the Trustee, nor the Retirement Committee, nor the Employer, nor its officers in any way guarantee the Fund against loss or depreciation, nor do they guarantee the payment of any benefit or amount which may become due and payable hereunder to any Participant or to any Beneficiary or to any creditor of a Participant, a Beneficiary or the Trustee. Each Participant, Beneficiary or other person entitled at any time to payments hereunder shall look solely to the assets of the Fund for such payments or to the Matured Account distributed to any Participant or Beneficiary, as the case may be, for such payments. In each case where a Matured Account shall have been distributed to a former Participant or a Beneficiary or to the person or any one of a group of persons entitled jointly to the receipt thereof and which purports to cover in full the benefits hereunder, such former Participant, or Beneficiary, or such person or persons, as the case may be, shall have no further right or interest in the other assets of the Fund.

(d) Neither the Retirement Committee, nor the Employer nor any of its officers shall in any manner be liable to any Participant, Beneficiary, or other person for any act or omission of the Trustee (except to the extent that liability is imposed under the Employee Retirement Income Security Act of 1974 and the operative provisions of such Act which impose liability are applicable to this Plan).

(e) Neither the Trustee, nor the Retirement Committee, nor the Employer or its officers shall be under any liability or responsibility (except to the extent that liability is imposed under the Employee Retirement Income Security Act of 1974 and the operative provisions of such Act which impose liability are applicable to this Plan), for failure to effect any of the objectives or purposes of this Plan by reason of loss or fluctuation in the value of Fund or for the form, genuineness, validity, sufficiency or effect of any Fund asset at any time held hereunder, or for the failure of any person, firm or corporation indebted to the Fund to pay such indebtedness as and when the same shall become due or for any delay occasioned by reason of any applicable law, order, or regulation or by reason of any restriction or provision contained in any security or other asset held by the Fund.

(f) Except as is otherwise provided in the Employee Retirement Income Security Act of 1974, to the extent such Act is applicable to this Plan, the Employer, its officers, the Trustee, the members of the Committee and other fiduciaries shall not be liable for an act or omission of another person with regard to a fiduciary responsibility that has been allocated to or delegated to such other person pursuant to the terms of this Plan or pursuant to procedures set forth in this Plan.

13.2 Duration of Fund. This Plan and the Fund shall continue, if not terminated prior thereto, for the period necessary to develop the benefits intended to be developed hereunder for all original Participants and for all Employees who shall hereafter become Participants hereunder. The Fund from time to time hereunder shall at all times be separate and apart from the assets of the Employer, and no part thereof shall be or become available to the Employer or to creditors of the Employer under any circumstances.

13.3 Continuity. If this Agreement is adopted as an amendment of a Prior Plan Statement, the tenure and membership of any committee previously appointed, the rules of administration adopted and the Beneficiary designations in effect under the Prior Plan Statement immediately before the Supplemental Effective Date shall, to the extent not inconsistent with this Agreement, continue in full force and effect until altered as provided herein.

13.4 State Law. This Agreement has been executed and delivered in the state of organization of the Employer and has been drawn in conformity to the laws of Nebraska and shall be construed and enforced in accordance with the laws of the state of incorporation of the Employer to the extent not preempted by federal law.

13.5 Execution in Counterparts. The Adoption Agreement to this Agreement may be executed in any number of counterparts, each of which, without production of the others, shall be deemed to be an original.

## SECTION 14

### Accelerated Distributions

14.1 Accelerated Distributions. A Qualified Participant, provided this Plan is not a pension plan, may elect to receive distribution under the then Vested amount of his Total Account as necessary to satisfy an immediate and heavy financial need, ~~and~~ subject to the following provisions as are so indicated in the Adoption Agreement.

(a) The following financial needs are considered immediate and heavy: expenses incurred or necessary for medical care, described in Code § 213(d), of the Qualified Participant, the Qualified Participant's spouse or dependents; the purchase (excluding mortgage payments) of a principal residence for the Qualified Participant; payment of tuition and related educational fees for up to the next 12 months of post-secondary education for the Qualified Participant, the Qualified Participant's spouse, children or dependents; payments necessary to prevent the eviction of the Qualified Participant from, or a foreclosure on the mortgage of, the Qualified Participant's principal residence; payments for funeral or burial expenses for the Qualified Participant's deceased parent, spouse, child or dependent; and expenses to repair damage to the Qualified Participant's principal residence that would qualify for a casualty loss deduction under Code § 165 (determined without regard to whether the loss exceeds 10 percent of adjusted gross income). The last two needs (funeral expenses and home repair) only apply to Plan Years beginning after 2005.

(b) A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the employee only if:

(i) The distribution is not in excess of the amount of the immediate and heavy financial need (including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution);

(ii) The Qualified Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans under all plans maintained by the Employer; and

(iii) All plans maintained by the Employer provide that the Qualified Participant's elective deferrals (and employee contributions), if any, will be suspended for 6 months (12 months, for hardship distributions before 2002) after the receipt of the hardship distribution.

~~(a) To reimburse the Participant for the expenses of medical and hospital care attributable to the sickness, accident or other disabling cause affecting him or a member of his family who is dependent upon him for care and support;~~

~~(b) To alleviate a financial hardship or emergency affecting the Participant or his dependent family; or,~~

~~(c) To defray the cost of the education of any member of the Participant's family who is dependent upon him for care and support; or,~~

~~(d) To pay, in whole or in part, for the construction, purchase or improvement of a home or homesite for the Participant and his family or to discharge, in whole or in part, a mortgage or other security interest therein.~~

Each and every such accelerated distribution shall first be made from and charged to the Participant's Voluntary Account, if any, pursuant to Section 7.9 hereof, then against his Rollover Account, if any, and lastly, against his Employer Account.



14.2 Qualified Participant. For the purpose of this Section 14, the term Qualified Participant means a Participant who has completed two (2) years of participation under this Plan.

14.3 Amount of Accelerated Distribution. For the purposes of this Section 14, the maximum amount which may be distributed as an Accelerated Distribution shall not exceed the value of the then Vested Retirement Valuepercentage of the Participant's Employer-Accounts reduced by any prior distributions and the aggregate amount of Employer Contributions credited to the Participant's Employer Account during the two-year period preceding such Accelerated Distribution.

14.4 Distributions After Normal Retirement Date. In the case of a Money Purchase Pension Plan or a Profit Sharing Plan, if elected by the Employer in the Adoption Agreement, a Participant may, with the consent of his spouse, if required, elect to receive some or all of his Vested Total Account after such Participant's Normal Retirement Date, notwithstanding that an Event of Maturity has not occurred with respect to such Participant. The amount available for distribution, at any time, shall be determined under Section 14.3.

14.5 No Forfeitures. No Forfeitures will occur solely because a Participant receives an Accelerated Distribution.

## SECTION 15

### Uniformed Services Employment and Reemployment Rights Act ("USERRA")

Notwithstanding any provisions of this Agreement to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code section 414(u).

#### 15.1 Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act") Provisions.

15.1.1 Death benefits. In the case of a death of a Participant occurring on or after January 1, 2007, if the Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than contributions or benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment on the day preceding the Participant's death and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

15.1.2 Benefit accrual. If, pursuant to a written Plan amendment adopted and executed by the City, the City elects to apply this Section 15.1.2, then effective on or after the effective date specified in said Plan amendment, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated said employment on the actual date of death or disability; provided, however, that all such individuals performing qualified military service for the employer (as determined under Code sections 414(b), (c), (m), and (o)) who die or become disabled as a result of performing qualified military service prior to reemployment by the employer shall be credited with service and benefits on reasonably equivalent terms.

(a) Determination of benefits. The Plan will determine the amount of employee contributions, if any, of an individual treated as reemployed under this Section 15.1.2 for purposes of applying Code Section 414(u)(8)(C) on the basis of the individual's average actual employee contributions for the lesser of: (i) the 12-month period of service with the employer immediately prior to qualified military service; or (ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.

15.1.3 Differential wage payments. For years beginning after December 31, 2008:

(a) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), shall be treated as an employee of the employer making the payment.

(b) the differential wage payment shall be treated as compensation for purposes of Code Section 415(c)(3) and Regulations Section 1.415(c)-2 (e.g. for purposes of Code Section 415, top heavy provisions of Code Section 416 and determination of highly compensated employees under Code Section 414(q), to the extent said provisions are applicable to the Plan), and

(c) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) (or any corresponding Plan provisions, including, but not limited to, Plan provisions related to the average deferral percentage or average contribution percentage, to the extent applicable) by reason of any contribution or benefit which is based on the differential wage payment. Differential wage payments (as described herein) shall constitute compensation for all Plan purposes.

(i) Nondiscrimination Requirements. — Provided, however, for purposes of subparagraph (c), all employees of the employer (as determined under Code Section 414(b), (c), (m) and (o)) performing service in the uniformed services described in Code Section 3401(h)(2)(A) shall be entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions or accrue other benefits, if contributions or other benefit accruals are permitted or provided, based on the payments on reasonably equivalent terms (taking into account the provisions of Code Section 410(b)(3), (4) and (5) to the extent applicable).

15.1.4 Deemed Severance. The Plan does not permit distribution upon deemed severance of employment.

CITY OF GRAND ISLAND, NEBRASKA, Employer

By: \_\_\_\_\_  
(Printed Name) (Title)

Date: \_\_\_\_\_

WELLS FARGO BANK, Trustee

By: \_\_\_\_\_  
(Printed Name) (Title)

Date: \_\_\_\_\_

## **APPENDIX A**

### **Trustee Fees**

As determined under a service agreement adopted between the City and the Trustee from time to time, which is incorporated herein by this reference.

## APPENDIX B

### Actuarial Equivalencies and Actuarial and Mortality Assumptions

Unless otherwise specified below, in any group annuity contract, custodial account or other permissible arrangement used to fund the retirement system, or in an addendum to this Plan, (any and all of which are incorporated herein by this reference), the Actuarial Equivalent of a pension or benefit payable under this plan shall be determined with the applicable mortality table and applicable interest rate defined in Code Section 417(e)(3); provided, however, that if benefits are obtained through the purchase of an Annuity Contract, the Actuarial Equivalent shall be determined by the amount of benefit that can be purchased or provided by the Participant's Retirement Value, together with any additional amounts which the Employer may be required to contribute as provided under the Plan. Annuity conversion rates provided in an Annuity Contract and all other actuarial and mortality assumptions shall be on a sex-neutral basis. If the benefit is not paid through the purchase of an Annuity Contract, it shall be paid from the Participant's Account(s).

A. Notwithstanding anything in this Plan to the contrary and, except as provided in regulations or other guidance of the Pension Benefit Guaranty Corporation (PBGC) and IRS, to the extent applicable to the Plan, the following provisions shall apply in determining the amount payable to a Participant having an annuity starting date in a Plan Year beginning on or after January 1, 2008; provided, however, for purposes of Code Section 415 and related provisions of this Plan, changes to the "applicable mortality table" described in subsection "2" below shall be effective for years beginning after December 31, 2008.

1. **Applicable interest rate.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate" used for purposes of Code Section 417(e), the definition of "applicable interest rate" under Code Section 417(e) shall apply, and any provision of the Plan prescribing the use of the annual rate of interest on 30-year U.S. Treasury securities shall be deemed amended and implemented by instead using the rate of interest determined by applicable interest rate described by Code Section 417(e) after its amendment by the Pension Protection Act of 2006. Specifically, the applicable interest rate shall be the adjusted first, second, and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C) for the calendar month (lookback month) before the first day of the Plan Year in which the annuity starting date occurs (stability period), or such other lookback month and stability period as elected by the Employer in a written addendum to this Plan. For this purpose, the first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code Section 430(h)(2)(C) if:

- (a) Code Section 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section, and
- (b) Code Section 430(h)(2)(G)(i)(II) were applied by substituting "Section 417(e)(3)(A)(ii)(II) for "Section 412(b)(5)(B)(ii)(II)," and
- (c) The applicable percentage under Code Section 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.

2. **Applicable mortality assumption.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable mortality table," the definition of "applicable mortality table" under Code Section 417(e)(3)(B) for the calendar year in which the stability period begins shall apply, and any provision of this Plan directly or indirectly prescribing the use of the mortality table described in Revenue Ruling 2001-62 shall be deemed amended to prescribe the use of the applicable annual mortality table within the meaning of Code Section 417(e)(3)(B), as initially described in Revenue Ruling 2007-67.

B. Before the applicable effective dates specified in subsection "A" above, the following provisions

applied:

1. “Applicable interest rate” means the interest rate on 30 year Treasury securities as specified by the Commissioner) for the lookback month for the stability period described below. Unless otherwise elected by the Employer in a written addendum to this Plan, (i) the stability period is the successive period of one calendar month which contains the annuity starting date for the distribution and for which the applicable interest rate remains constant, and (ii) the lookback month is the first calendar month preceding the first day of the stability period. Notwithstanding anything in this paragraph or election of the Employer regarding stability period or lookback month, a plan amendment that changes the date for determining the applicable interest rate (including an indirect change as a result of a change in plan year), shall not be given effect with respect to any distribution during the period ending one year after the later of the amendment’s effective date or adoption date, if, during such period and as a result of such amendment, the participant’s distribution would be reduced.

2. “Applicable mortality table” means the applicable mortality table under Code Section 417 as set forth in Rev. Rul. 2001-62

Interest Rate: \_\_\_\_\_

Mortality Table: \_\_\_\_\_

## APPENDIX C

### Investment Choices

Investment options permitted under the Plan shall be as specified below or from time to time specified by the Plan Administrator or in other governing documents or instruments, which shall be incorporated herein by this reference

**ADOPTION AGREEMENT**

**CITY OF GRAND ISLAND,**

**NEBRASKA POLICE OFFICERS' RETIREMENT SYSTEM**

**PLAN AND TRUST**

**TO BE USED WITH**

**BASIC MUNICIPAL EMPLOYEES PLAN AND TRUST AGREEMENT**

**THIS IS TO CERTIFY THAT:**

The following was adopted by Ordinance by the City of Grand Island, Nebraska, by its City Council, at a meeting thereof duly called and held on \_\_\_\_\_, 20\_\_:

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

SECTION 2. The Plan is required by applicable tax law to be amended and restated into a restated plan document incorporating prior amendments and changes to tax laws, regulations and other guidance, including ~~without limitation~~ the Pension Protection Act of 2006, Heroes, Earnings Assistance and Relief Tax Act of 2008, and Worker, Retiree, and Employer Recovery Act of 2008, and changes to the Police Retirement Plan Statutes. For this purpose, there has been presented to the City a proposed retirement plan and trust embodied in instruments entitled "Adoption Agreement" together with a "Basic Municipal Employees Plan and Trust Agreement" ("Basic Plan Document") as an integral part thereof (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.

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 in this Ordinance 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 the City Administrator determines necessary or appropriate to obtain a favorable ruling or as otherwise required for the qualified status of the Plan.

This Adoption Agreement is the Adoption Agreement referred to in the foregoing Ordinance, and the designations and elections hereinafter set forth are those made by the City in accordance with said Ordinance, to-wit:

**A. ESTABLISHMENT, EFFECTIVE DATE, AND CITY DATA:**

- (1) \_\_\_\_\_ establishes on \_\_\_\_\_, \_\_\_\_\_, a Retirement Plan and Trust to be known as \_\_\_\_\_  
\_\_\_\_\_ Plan and Trust ("Plan") effective \_\_\_\_\_, \_\_\_\_\_ (Effective Date).

OR

- (2) X amends, restates and continues the City of Grand Island, Nebraska Police Officers' Retirement System Plan and Trust, ("Plan"), originally established on January 1, 1984. This amendment and restatement is effective January 1, 2004, unless otherwise specified herein or in the Basic Plan Document or required under applicable law or regulations or guidance thereunder. (Supplemental Effective Date).

- (3) City's Address:  
Street: 100 E. 1<sup>st</sup> Street, P.O. Box 1968  
City, State, Zip Code: Grand Island, Nebraska 68801  
Attention: Ms. Tami Herald  
Telephone: (308) 385-5444

- (4) Retirement Committee: ~~Kerry Cole, Danny Dubbs, Kelly Mossman, Mark Dreher, David Springer and Dick Rabe, Michael Nelson, Eric Olson, James Olson, Todd Dvorak and Jaye Monter~~ subject to such changes from time to time pursuant to Section 12.3(i) of the Basic Plan Document.

- (5) Plan Administrator: the City of Grand Island, Nebraska, with the exception of any administrative functions expressly delegated from time to time to the Retirement



Committee herein or in or under the Basic Plan Document or otherwise by direction of the Mayor and City Council.

- (6) City's Taxpayer Identification No.: 47-6006205
- (7) City's Fiscal Year: October 1 – September 30
- (8) The Plan serial number ("PN") assigned to this Plan by the City for reporting and disclosure purposes is: 002
- (9) The last day of the Plan Year shall be December 31 and the Annual Valuation Date shall be December 31 [Sections 1.1.26 and 1.1.4]
- (10) The last day of the Plan's Limitation Year shall be December 31 [Section 1.1.20] *(All qualified retirement plans maintained by the City shall have the same Limitation Year.)*

## **B. ELIGIBILITY REQUIREMENTS**

- (1) **Age Requirement.** The minimum age which each Employee must attain before becoming a Participant in the Plan is age N/A.
- (2) **Service Requirement.** To become a Participant in the Plan, each Employee must complete at least N/A year(s) of Eligibility Service. *(Not Applicable for Police and Fire Plans. Not more than five (5) years for other Plans.)* If year(s) of service selected is or includes a fractional year, an Employee will not be required to complete any specified number of Hours of Service to receive credit for such fractional year.
- (3) The computation period for Eligibility Service will be *(Not Applicable for Fire and Police Plans)* Check One: NA

\_\_\_ as set forth in Section 1.1.9(a)(i), the year beginning with the date the Employee first performs an Hour of Service and then Plan Years.

\_\_\_ as set forth in Section 1.1.9(a)(ii), based upon years commencing on the date the Employee first performs an Hour of Service\* and anniversaries thereof.

Upon reemployment, former Participants shall again participate in the Plan under the immediate reentry rule of Section 2.2.

- (4) Plan Entry Date shall be *(check one)*:

- ☒ (a) the first day of service in Recognized Employment with the City (*Police and Fire Plans*).
- ☐ (b) the first day of the month (specify period e.g., the week, Plan Year, the month, etc., but not more than six months) following the Employee's satisfaction of the Eligibility Requirements [Section 2.1(d)]
- ☐ (c) the first day of the Plan Year in which the Employee first satisfies the Eligibility Requirements. [Section 2.1(c)]
- ☐ (d) the first day of the first month or the first day of the seventh month of the Plan Year, whichever occurs first, following the Employee's satisfaction of the Eligibility Requirements. [Section 2.1(b)]
- ☐ (e) Other \_\_\_\_\_

(5) **Recognized Employment.** Recognized Employment is service in the employment of the City in those job classifications indicated below (*place "X" on blank(s) indicating selection*): [Section 1.1.30]

- ☒ (a) All Employees of the City employed as police officers.
- ☐ (b) All Employees of the City employed as fire fighters.
- ☐ (c) All Employees of the City as that term is defined in Section 1.1.10.
- ☐ (d) All common law Employees of the City.
- ☐ (e) Salaried Employees of the City.
- ☐ (f) Hourly Employees of the City.
- ☐ (g) Employees who are not covered by any retirement plan established by the City.
- ☐ (h) Other (*specify*): \_\_\_\_\_.

(6) **Participation Election:** (*check one*)

Employees and Participants

☐ have

☒ do not have (*Police and Fire*)

a participation election provided in Section 3.3(b).

### C. MANDATORY EMPLOYEE CONTRIBUTIONS

*[Section 3.1]*

- (1) **Amount of Contribution.** The Employee contribution to the Trustee for each Plan Year shall be:

☒ (a) (i) Through September 30, 2013, a sum equal to six percent (6%) of his or her Salary.  
(ii) Beginning October 1, 2013 through September 30, 2015, a sum equal to six and one-half percent (6 ½ %) of his or her Salary, and  
(iii) Beginning October 1, 2015, a sum equal to seven percent (7%) of his or her Salary. (*Police*)

☐ (b) Six and one-half percent (6 1/2%) of his or her Salary. (*Fire*)

☐ (c) Other: \_\_\_\_\_

- (2) **Employee Contributions:**

☒ shall (*Police and Fire*)

☐ shall not

be picked up by the City and treated as Employer contributions as permitted under Section 414(h) of the Code.

### D. VOLUNTARY EMPLOYEE CONTRIBUTIONS

☒ shall (*Police and Fire*)

☐ shall not

be permitted to the maximum amount allowed under the Internal Revenue Code.

### E. ALLOCATION OF CITY CONTRIBUTIONS AND FORFEITURES

*[Sections 3.2 and 6.4]*

- (1) **Amount of Contribution.** Subject to the limitations of Section 3, the City's contribution to the Trustee for each Plan Year shall be: *(Select one option only. Complete blanks as applicable.)*

☒ (a) To the Employer Account of each Participant, a sum equal to 100% of the amounts deducted from the Participant's periodic Salary as Mandatory Employee Contributions above (effective April 16, 2012) Six percent (6%) of each Participant's Salary.  
*(Police)*

☐ (b) Thirteen percent (13%) of each Participant's Salary. *(Fire)*

☐ (c) Other: \_\_\_\_\_

**Treatment of Forfeitures:** *(Select one unless Item I(2)(a) is elected in which case this provision does not apply.) [Sections 6.4.1 and 6.4.2]*

☒ (a) Forfeitures shall first be used to pay administration costs of the Plan and then used to reduce City contributions. *(Police)*

☐ (b) Forfeitures shall be allocated to the Unallocated Employer Account, and if the Unallocated Employer Account is sufficient to meet Plan liabilities, then forfeitures shall first be used to pay expenses of administration and then to reduce City contributions.  
*(Fire)*

☐ (c) Forfeitures will be added to the City contribution for allocation.

☐ (d) Forfeitures will reduce City contributions.

- (2) Is the Plan integrated with Social Security?

☐ Yes ☒ No *(Police and Fire)*

***(If yes, complete items E, 3-6 and 11; if no, complete items E, 7-11).***

***NOTE: Items E, 3-6 and 11 relate to an integrated plan. Contributions are allocated pursuant to Section 3-3 of the Plan.***

- (3) "Recognized Compensation" shall be defined to mean all of each Participant's:  
*(place "X" to indicate selection)*

☐ (a) W-2 earnings; or,

☐ (b) Wages as defined in Code Section 3401(a); or

- \_\_\_ (c) Compensation as that term is defined in Section 3.6.9(b)(i) of the Plan;
- \_\_\_ (d) Provided, that Recognized Compensation defined in (a) through (c) shall include amounts described in Sections 3.6.9(b)(vi) and 3.6.9(b)-2 as “default provisions” unless otherwise elected below (*select all that apply*):
- \_\_\_ (1) Exclude leave cashouts and deferred compensation (*Section 3.6.9(b)-3(b)*)
- \_\_\_ (2) Include military continuation payments (*Section 3.6.9(b)-3(c)*)
- \_\_\_ (3) Include disability continuation payments (*Section 3.6.9(b)-3(d)*):
- \_\_\_ (a) For nonhighly compensated Employees only; or
- \_\_\_ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_.
- \_\_\_ (4) Apply the administrative delay (“first few weeks”) rule (*Section 3.6.9(b)-4*); and/or
- \_\_\_ (5) Include “deemed” section 125 compensation pursuant to 3.6.9(b)-vi.
- \_\_\_ (e) Other \_\_\_\_\_

which is actually paid to the Participant during

- \_\_\_ the Plan Year
- \_\_\_ the taxable year ending with or within the Plan Year
- \_\_\_ the Limitation Year ending with or within the Plan Year.
- \_\_\_ a consecutive 12-month period ending with or within the Plan Year beginning with the \_\_\_\_ day of \_\_\_\_\_(*enter month*).

#### Recognized Compensation

- \_\_\_ shall include
- \_\_\_ shall not include

Employee contributions picked up by the City under Section 414(h), and City contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Employee under Sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b) or 457 of the Code.

- (4) If an Employee participates in the Plan for only a portion of the year, his Recognized Compensation for the year *[check one]*:

\_\_\_ shall

\_\_\_ shall not

include otherwise Recognized Compensation during the portion of the year during which he was not a Participant in the Plan.

- (5) "Integration Level" is defined as *(place "X" next to definition selected and complete appropriate blanks)*

\_\_\_ (a) For any Plan Year, an amount equal to \$\_\_\_\_\_*(insert stated dollar amount not to exceed the Taxable Wage Base in effect at the beginning of the Plan Year).*

\_\_\_ (b) For any Plan Year, an amount equal to \_\_\_% *(not more than 100%)* of the Taxable Wage Base in effect at the beginning of the Plan Year.

\_\_\_ (c) For any Plan Year, an amount equal to the lesser of: (i) \$\_\_\_\_\_*(insert stated dollar amount)*; or (ii) the Taxable Wage Base in effect beginning at the Plan Year.

- (6) Participants who have been credited with a Year of Service for a Plan Year but who terminate employment before the last day of the Plan Year (check one) :

\_\_\_ shall

\_\_\_ shall not

share in the City contribution and reallocation of the forfeitures for that Plan Year. If shall not is elected, designate any exceptions that apply:

\_\_\_ death

\_\_\_ retirement at or after Normal Retirement Date

\_\_\_ disability.

*NOTE: Items E, 7-11 relate to a nonintegrated plan. Contributions are allocated directly on Recognized Compensation. (Section 3.3(b)).*

- (7) Subject to ~~an exclusion in~~ limitations in Item (7) or (8) or as otherwise provided in Section 1 of the Basic Plan Document, "Recognized Compensation" shall be defined to mean all of each Participant's (place "X" to indicate selection, check only one)

- ☐ (a) W-2 earnings;
- ☐ (b) Wages as defined in Code Section 3401(a); or
- ☐ (c) Compensation as that term is defined in Section 3.6.9(b)(i) of the Plan;
- ☐ (d) Provided, that Recognized Compensation defined in (a) through (c) shall include amounts described in Sections 3.6.9(b)(vi) and 3.6.9(b)-2 as "default provisions" unless otherwise elected below (select all that apply):
- ☐ (1) Exclude leave cashouts and deferred compensation (Section 3.6.9(b)-3(b))
- ☐ (2) Include military continuation payments (Section 3.6.9(b)-3(c))
- ☐ (3) Include disability continuation payments (Section 3.6.9(b)-3(d)):
- ☐ (a) For nonhighly compensated Employees only; or
- ☐ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.
- ☐ (4) Apply the administrative delay ("first few weeks") rule (Section 3.6.9(b)-4); and/or
- ☐ (5) Include "deemed" section 125 compensation pursuant to 3.6.9(b)-vi.
- ☒ (e) Salary as that term is defined in Section 1.1.36(a) of the Plan (Police);
- ☐ (f) Salary as that term is defined in Section 1.1.36(b) of the Plan (Fire); or

\_\_\_\_ (f) Other

\_\_\_\_\_  
\_\_\_\_\_

which is actually paid to the Participant during

X the Plan Year.

\_\_\_\_ the taxable year ending with or within the Plan year.

\_\_\_\_ the Limitation Year ending with or within the Plan year.

Recognized compensation (*Police and Fire Plans see definition of "Salary" in Section 1.1.36 of the Basic Plan Document*)

\_\_\_\_ shall include

\_\_\_\_ shall not include

Employee contributions picked up by the City pursuant to Section 414(h), and City contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Employee under Sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b) or 457 of the Code.

(8) "Recognized Compensation" shall not include: (*place "X" to indicate exclusion(s) and complete blank, if applicable*) **N/A**

\_\_\_\_ (a) overtime, shift, holiday and vacation pay

\_\_\_\_ (b) bonuses

\_\_\_\_ (c) commissions, but not more than the first \$\_\_\_\_\_ thereof  
(*insert dollar limitation desired, if any*)

\_\_\_\_ (d) overtime, callback pay, clothing allowances and other such benefits reported on Employee federal withholding statement  
(*Fire*).

(9) If an Employee participates in the Plan for only a portion of the year, his Recognized Compensation for the year [*check one*]:

\_\_\_\_ shall

X shall not



include otherwise Recognized Compensation during the portion of the year during which he was not a Participant in the Plan.

- (10) Participants who have been credited with a Year of Service for a Plan Year but who terminate employment before the last day of the Plan Year. (*Check one*):

☒ shall (*Police and Fire*)

☐ shall not

share in the City contribution and reallocation of forfeitures for that Plan Year. If shall not is elected, designate any exceptions that apply:

☐ death

☐ retirement at or after their Normal Retirement Date

☐ disability

- (11) Forfeitures will be reallocated [*Sections 6.4.2 and 6.4.3*]

☒ as of the following Valuation Date

☐ after a Participant incurs 5 consecutive One Year Breaks in Service or his Account is no longer subject to restoration.

#### **F. INTEREST**

☒ shall

☐ shall not

be paid on Employer Contributions pursuant to Section 3.2(a)(ii) of the Plan.

#### **G. WITHDRAWAL OF PRIOR VOLUNTARY CONTRIBUTIONS**

If this Plan or a predecessor plan previously permitted Voluntary Contributions, Participants:

☐ are

☒ are not

permitted to withdraw their voluntary contributions before an Event of Maturity. [*Section 7.9*]

## H. ROLLOVERS

(1) Rollover contributions by Participants [Section 3.5]

X are permitted as specified in Section 3.5. In addition to the plans specified in Section 3.5, rollover contributions and direct rollovers may be made from the following types of plans as of the specified effective date(s) (*specify all that apply*):

X (a) annuity contract described in Code section 403(b), effective for distributions after \_\_\_\_\_ (December 31, 2001 if no date specified)

X (b) eligible plan under Code section 457(b) which is maintained by a state or political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state, effective for distributions after \_\_\_\_\_ (December 31, 2001 if no date specified)

\_\_\_\_\_ [Including after-tax employee contributions from the plans or contracts checked above, with separate accounting required for amounts includible and not includible in gross income \(select if applicable\).](#)

\_\_\_\_\_ are not permitted

(2) Eligible rollover distribution [Section 7.12]

X must

\_\_\_\_\_ need not

be distributions that are reasonably expected to total \$200 or more during a year.

## I. VESTING OF REGULAR ACCOUNTS

[Section 5]

(1) **Employee Accounts:** Each Employee is fully vested in his or her Employee Account at all times.

(2) **Employer Accounts:** Each Participant's Employer Account shall become Vested in him as follows (*place "X" next to formula selected and complete appropriate blanks*):

\_\_\_ (a) **Full and Immediate Vesting.** Each Employer Account shall be fully Vested in him at all times.

X (b) **Graded Vesting.** Each Participant's Employer Account shall be vested in him in accordance with the following schedule (*Choose One*):

When the Participant Has Completed  
the Following Vesting Service:

The Vested Portion of  
His Regular Account  
Will Be:\*

\_\_\_ (i) **Five Year Vesting:**

Less than 1 year	___ %
1 year but less than 2 years	___ %
2 years but less than 3 years	___ %
3 years but less than 4 years	___ %
4 years but less than 5 years	___ %
5 years or more	100 %

\_\_\_ (ii) **Seven Year Vesting\*:**

Less than 1 year	0 %
1 year but less than 2 years	0 %
2 years but less than 3 years	0 %
3 years but less than 4 years	0 %
4 years but less than 5 years	40 %
5 years but less than 6 years	60 %
6 years but less than 7 years	80 %
7 years or more	100 %

\_\_\_ (iii) **Seven Year Special Vesting (Fire):**

Less than 4 years	___ %
4 years but less than 5 years	___ %
5 years but less than 6 years	___ %
6 years but less than 7 years	___ %
7 years or more	___ %

X (iv) **Ten Year Vesting**  
**Amended to Seven**  
**Year Vesting (Police):** \_\_\_\_\_ **Through** \_\_\_\_\_ **Beginning**

June 30, 2012  
(10 Yr. Graded)

July 1, 2012  
(7 Yr. Graded)

Less than <u>2</u> years	0%	0%
<u>2</u> years but less than 3 years	0%	40%
<u>3</u> years but less than 4 years	0 %	40%
4 years but less than 5 years	40 %	60%
5 years but less than 6 years	50 %	80%
6 years but less than 7 years	60 %	80%
7 years but less than 8 years	70 %	100%
8 years but less than 9 years	80 %	
9 years but less than 10 years	90 %	
10 years or more	100 %	

- (3) In determining a Participant's Plan Years of Service, the following periods shall be disregarded: *[Section 1.1.44] (Not Applicable for Police and Fire Plans)*. N/A

\_\_\_Yes \_\_\_No Plan Years prior to the Effective Date of this Plan or a predecessor Plan. *[Yes, 1.1.44(c); No, Section 1.1.44(c)]*

\_\_\_Yes \_\_\_No Plan Years completed prior to the date upon which the Participant attained age \_\_\_\_years. *(Insert age, but not greater than age 18.) [Section 1.1.44(e)]*

- (4) Notwithstanding any of the foregoing, each Participant's Employer Account shall be 100% Vested in him upon his attainment of:

X (a) 60 (*Police*)

\_\_\_ (b) 55 (*Fire*)

\_\_\_ (c) Other \_\_\_

years of age while in the employment of the City (as a police officer, if this is a Police Plan). *(If no age is entered, it will be assumed Normal Retirement Date was intended.)*

*[Section 5.1.2]*

- (5) Normal Retirement Date is: *(place "X" next to choice selected)*

*[Section 1.1.22]*

\_\_\_ (a) The Participant's 65th birthday.

\_\_\_\_ (b) The Participant's 65th birthday or, if later, the 5th anniversary of the date the Participant first becomes a Participant.

X (c) Age 60 years (60 for Police; 55 for Fire; Otherwise not greater than the Participant's 65th birthday and not less than age 55.

(6) Early Retirement Date is age N/A years. (Specify age. In-service distribution upon attaining early retirement date is not allowed for a pension plan. Also, this provision is not applicable for Police/Fire Plans – see Section 1.1.34 of Basic Plan for definition of Early Retirement Date for Police or Fire Plan.)

(7) An Employee who returns to employment of the City in Covered Employment after terminating service

X shall

\_\_\_\_ shall not

be permitted to restore his or her Employer Account to the amount on the date of distribution. (Section 5.1.3 or 6.4.4)

## J. INVESTMENT DIRECTIONS

(1) Participants:

\_\_\_\_ are

X are not

permitted to direct the investment of a portion of their accounts into life insurance.

[Section 10.10]

(2) Participant Account Investment Direction [Section 10.11.2]

(a) Participants:

X are

\_\_\_\_ are not

permitted to direct the investment of their:

X Employee Accounts (Required of Police and Fire Plans)

X Employer Accounts (*Permitted for all types of plans, with the exception of pre-1984 contributions under Police and Fire Plans, and the Employer Account of pre-1984 hires under Fire Plans.*)

The City agrees to indemnify the Trustee and hold it harmless for the Trustee's actions taken pursuant to such direction. (*Sections 1.1.35, 4.3 and 10.11*)

(b) Separate Investment Accounts (*Police*)

The City

X may

\_\_\_ may not

direct the establishment of separate investment accounts for each Participant to allow each Participant to direct the investment of all or a portion of his or her Employee or Employer Account

If in the affirmative, enter name or title of person (or committee) authorized to communicate such directions to the Trustee: Retirement Committee. Such directions shall be in writing and the City agrees to indemnify the Trustee and hold it harmless for the Trustee's actions taken pursuant to such directions.

(3) Investment Direction [*Sections 4.3, 10 and 12*]

(a) The

\_\_\_ City

\_\_\_ may

\_\_\_ may not

X Retirement Committee (*Police and Fire*)

X may

\_\_\_ may not

direct the Trustee in the investment management of Plan assets.

(4) Participant Loans: [*Section 10.13*]

\_\_\_ are permitted

X are not permitted

## K. INTERNAL REVENUE CODE SECTION 415 LIMITATIONS

[Section 3.6]

If the City maintains or ever has maintained another qualified plan in which any Participant in this Plan is (or was) a Participant or could possibly become a Participant, the City must complete this Section. City must also complete this Section if it maintains a welfare benefit fund, as defined in Code section 419(e), an individual medical account, as defined in Code section 415(1)(2), or simplified employer pension, as defined in Code section 408(k) under which amounts are treated as annual additions with respect to any Participant in this Plan. *(Designate whether (1) or (2) applies, and complete as appropriate.)*

If a Participant is covered by another qualified plan maintained by the City:

X (1) the provisions of Sections 3.6.4 through 3.6.9 will apply;

OR

— (2) set forth the method under which the Plans will limit total annual additions or distributions to the maximum permissible amount or benefit, as applicable, and will properly reduce any excess amounts or benefits, in a manner that precludes City discretion.

\_\_\_\_\_ (Use additional continuation  
pages if alternative limitation rules are to be specified.)

415 Compensation. The definition of Compensation for Code section 415 purposes shall be 415 Safe Harbor Compensation defined in section 3.6.9(b)i of the Plan, unless an alternative definition of compensation is elected below pursuant to section 3.6.9(b)ii of the Plan (*select desired alternative definition*):

\_\_\_\_ (1) W-2 Wages; or

X (2) Section 3401(a) Wages

Modifications to 415 Compensation – Compensation for 415 purposes shall include amounts described in Sections 3.6.9(b)-2 and 3.6.9(b)(vi) as “default provisions” unless otherwise elected below (*select all that apply*).

\_\_\_\_ (1) Exclude leave cashouts and deferred compensation (*Section 3.6.9(b)-3(b)*)

(2) Include military continuation payments (*Section 3.6.9(b)-3(c)*)

- \_\_\_\_\_ (3) Include disability continuation payments (*Section 3.6.9(b)-3(d)*)
  - \_\_\_\_\_ (a) For nonhighly compensated Employees only
  - \_\_\_\_\_ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.
- \_\_\_\_\_ (4) Apply the administrative delay (“first few weeks”) rule (*Section 3.6.9(b)-4*)
- \_\_\_\_\_ (5) Include “deemed” section 125 compensation pursuant to 3.6.9(b)-vi, effective for limitation years beginning on or after January 1, 1998.

**L. CREDITING SERVICE** (*Complete (1) and (2), as appropriate.*)

- X   (1) **Hours of Service Method.** [*Section 1.1.18*] Except as provided in (2) below, for the purpose of determining an Employee's One-Year Breaks in Service [*Section 1.1.23*], Vesting Service [*Section 1.1.44*], Eligibility Service [*Section 1.1.9*] and minimum annual service requirement to share in the City contribution made for a Plan Year [*Section 3.3*], service will be determined by reference to Hours of Service according to the following: (*check one*)
  - X   (a) On the basis of the actual recorded hours for which an Employee is paid or entitled to payment.
  - \_\_\_\_\_ (b) On the basis that, without regard to his actual recorded hours, an Employee shall be credited with 10 Hours of Service for a day if under Section 1.1.18 such Employee would be certified with at least one hour of service during that day.
  - \_\_\_\_\_ (c) On the basis that, without regard to his actual recorded hours, an Employee shall be credited under 45 Hours of Service for a calendar week if under Section 1.1.18 such Employee would be credited with at least One Hour of Service during that calendar week.
  - \_\_\_\_\_ (d) On the basis of semimonthly payroll periods, an Employee shall be credited with 95 Hours of Service for a semi-monthly payroll period if under Section 1.1.18 such Employee would be credited with at least one Hour of Service during that semimonthly payroll period.
  - \_\_\_\_\_ (e) On the basis that, without regard to his actual recorded hours, an Employee shall be credited with 190 Hours of Service for a calendar month if under Section 1.1.18 such Employee would be credited with at least one Hour of Service during that calendar month.



X   (2) **Elapsed Time Method.** [Section 1.2] Notwithstanding (1) above, service will be credited based upon elapsed time for the following purposes: *(check as appropriate)*

\_\_\_ (a) None

\_\_\_ (b) All

\_\_\_ (c) Eligibility (and Eligibility Breaks in Service)

  X   (d) Vesting (and Vesting Breaks in Service)(*Police and Fire*)

\_\_\_ (e) Minimum Service for benefit accrual for a Plan Year

## M. INVESTMENTS

*[Section 10.14(p)]*

- (1) All funds of a Plan for police officers or fire fighters must be invested pursuant to the policies established by the Nebraska Investment Council.
- (2) The Trustee's collective investment fund or funds are incorporated by reference into this Agreement, as indicated in Appendix "C" of the Basic Municipal Employees Plan and Trust, or otherwise agreed by the parties in writing from time to time.
- (3) The Trustee is hereby specifically authorized and empowered to invest Plan assets in deposit accounts of Wells Fargo Bank N.A. which bear a reasonable rate of interest and securities offered by Wells Fargo Bank N.A. (*name of Trustee or financial institution*). Such specification shall be permitted in any other applicable document related to funding the Plan, which document shall be incorporated herein by this reference.

*[Section 4.2]*

- (4) **Intermediate Valuation of Accounts.** Participant accounts will be valued for investment purposes as follows: *(select one)*
  - \_\_\_ (a) Annually
  - \_\_\_ (b) Semi-annually
  - \_\_\_ (c) Quarterly

\_\_\_ (d) Monthly

X (e) Daily

#### N. ACCELERATED DISTRIBUTIONS

The following optional provisions for accelerated distributions may be made available to Plan Participants: *(Select as many as shall apply. Not applicable for Police and Fire Plans; and (1) through (4) not applicable if the Plan is a pension plan.) [Section 14]*  
N/A

\_\_\_ (1) Medical emergency

\_\_\_ (2) Financial hardships

\_\_\_ (3) Education expenses

\_\_\_ (4) Purchase of home

\_\_\_ (5) After Normal Retirement Date

#### O. OPTIONAL FORMS OF DISTRIBUTION

The optional forms of benefit payment provided by this Plan are: *(Select as many as apply. If the requirements of Code section 411(d)(6) are applicable (which is not the case if this Plan is a government plan within the meaning of Code section 414(d)), the City may not eliminate optional forms of payment for benefits which have accrued prior to the date of Plan amendment unless said requirements are satisfied.)*

X (1) a single sum

X (2) straight life annuity

X (3) straight life annuity with a guarantee of at least 60 monthly payments

X (4) annuity payable for life of Participant and annuity to surviving beneficiary of 100%, 75% or 50% as elected by the City.

\_\_\_ (5) a combination of (1) through (4)

\_\_\_ (6) if this Plan is a transferee plan, an optional form of distribution provided under the transferor plan which is required to be preserved under Code section 411(d)(6) (and the regulations issued thereunder – which is not the case if this is a government plan under Code section 414(d)) with respect

to accrued benefits of any Participant as of the date of transfer. *(Indicate name of transferor plan and date on which prior accrued benefit distribution options are protected)* \_\_\_\_\_

\_\_\_\_ (7) Other (Describe): \_\_\_\_\_.

**P. MANDATORY DISTRIBUTION ALTERNATIVES** (Section 5.1.3(a)(ii))

The following election is made in lieu of the provisions of Section 5.1.3(a)(ii) reducing the mandatory cash out amount to an amount equal to or less than \$1,000 ~~(Option for plans other than Fire Plans—Participant consent to distribution is always required for Fire Plans.)~~ (select one):

\_\_\_\_ (1) No Mandatory Cash-Outs. An Employee's Vested Retirement Value will not be distributed upon the Employee's termination of service without the Employee's prior written consent, regardless of amount.

X (2) Increased Mandatory Cash Out Amount. Upon termination of service, the Employee's Vested Retirement Value will be automatically distributed without the Employee's consent if the Vested Retirement Value is less than \$3,500 ~~if a Police Plan~~ (or not in excess of \$5,000 for plans other than Police or Fire Plans). Said distribution, if greater than \$1,000, will be paid in a direct rollover to an "individual retirement plan" designated by the Plan Administrator if the Employee does not elect to have the distribution paid in a direct rollover directly to an "eligible retirement plan" specified by the Employee in accordance with direct rollover provisions of the Plan, or to receive the distribution directly.

**Q.** The City shall periodically pay to the Trustee a fee for services rendered according to the Trustee Fee Schedule attached to the Basic Municipal Employees Plan and Trust Agreement as Appendix A or otherwise agreed to by the parties, as incorporated herein by this reference as amended from time to time. The terms of any agreement adopted and executed by the City and Trustee separate and apart from this document and defining rights and duties of the parties to said agreement shall be supplemental and additional to, and incorporated by reference into, this document to the extent not contrary to terms contained herein; and the same, if entered before the date of this Adoption Agreement, shall continue and remain in effect. If any terms of any such separate trust document conflict with the terms of this document, the terms of this document shall control.

**R. INITIAL DEPOSIT**

In the case of establishment of a new Plan, the City hereby delivers to the Trustee the sum of \$ N/A as its initial deposit to establish the Trust, and receipt of the stated sum is hereby acknowledged by the Trustee.

- S. The completion of this Adoption Agreement creates certain legal relationships and responsibilities. Accordingly, your legal counsel should review the Plan and Trust prior to the execution of this document so as to insure the suitability of the Plan and Trust for your City.

The City acknowledges that it has consulted with and has been advised by its attorney(s) with respect to the effect of entering this Plan and executing this Adoption Agreement.

Terms used in this Adoption Agreement which are defined in the Plan shall have the meaning given them in the Plan.

The City hereby agrees to the provisions of this Plan and Trust, and, in witness whereof, the City and the Trustee have caused this Agreement to be executed on the date(s) set forth below.

THE CITY OF GRAND ISLAND, NEBRASKA

By: \_\_\_\_\_

## NOTICE TO ADOPTING CITY

Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

You may contact a Wells Fargo Bank representative at 304 West 3<sup>rd</sup> Street, Grand Island, Nebraska or by calling (308) 389-4225.

In order to obtain reliance with respect to Plan qualification, the City, upon adopting and executing this Plan, must apply to the Employee Plans Determinations of the Internal Revenue Service for a determination letter.

This Adoption Agreement may only be used with the Basic Municipal Employees Plan and Trust Agreement.

CITY OF GRAND ISLAND, NEBRASKA, Employer

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

WELLS FARGO BANK, Trustee

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Date \_\_\_\_\_

ORDINANCE NO. 9463

An ordinance of the Mayor and City Council of the City of Grand Island, Nebraska to amend and restate the City of Grand Island, Nebraska Police Officers' Retirement System Plan and Trust; to authorize further actions; and to provide for repeal of conflicting Ordinances, severability and the 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 and including 16-1019 ("Police Retirement Plan Statutes"), the City maintains the City of Grand Island, Nebraska Police Officers' Retirement System Plan and Trust embodied in plan documents including an adoption agreement and basic plan document constituting an integral part thereof, as well as various amendments required by applicable law ("Plan").

SECTION 2. The Plan is required by applicable tax law to be amended and restated into a restated plan document incorporating prior amendments and changes to tax laws, regulations and other guidance, including the Pension Protection Act of 2006, Heroes, Earnings Assistance and Relief Tax Act of 2008, and Worker, Retiree, and Employer Recovery Act of 2008, and changes to the Police Retirement Plan Statutes. For this purpose, there has been presented to the City a proposed retirement plan and trust embodied in instruments entitled "Adoption Agreement" together with a "Basic Municipal Employees Plan and Trust Agreement" ("Basic Plan Document") as an integral part thereof (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.

Approved as to Form	▣ _____
December 24, 2013	▣ City Attorney

ORDINANCE NO. 9463 (Cont.)

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.

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 in this Ordinance 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 the City Administrator determines necessary or appropriate to obtain a favorable ruling or as otherwise required for the qualified status of the Plan.

SECTION 5. 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. 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,

ORDINANCE NO. 9463 (Cont.)

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

Enacted: December 30, 2013.

---

Jay Vavricek, Mayor

Attest:

---

RaNae Edwards, City Clerk





# City of Grand Island

Monday, December 30, 2013

Special Meeting

## Item F-2

### **#9464 - Consideration to Amend and Restate the City of Grand Island, Nebraska Firefighters' Retirement System Plan and Trust**

*This item relates to the aforementioned Ordinance item F-1.*

Staff Contact: Jaye Monter, Finance Director

**BASIC MUNICIPAL EMPLOYEES  
PLAN AND TRUST AGREEMENT  
FOR  
CITY OF GRAND ISLAND, NEBRASKA  
FIREFIGHTERS' RETIREMENT SYSTEM  
PLAN AND TRUST**

| (201308)

| [328780334463-1](#)

## BASIC MUNICIPAL EMPLOYEES

### PLAN AND TRUST AGREEMENT

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## BASIC MUNICIPAL EMPLOYEES

### PLAN AND TRUST AGREEMENT

This Basic Municipal Employees Plan and Trust Agreement consisting of a Defined Contribution Plan and Trust Agreement and the related Adoption Agreement(s) as executed by the City and Trustee constitute and are integral parts of a retirement plan and trust established by the City and are designed to comply with the provisions of the Internal Revenue Code of the United States (the "Code") dealing with plans and trusts of such character and, in particular, Sections 401(a) and 501(a) thereof [and including without limitation sections 401\(a\)\(9\), 401\(a\)\(9\)\(G\), 401\(a\)\(16\), 401\(a\)\(31\), and 401\(a\)\(37\).](#)

#### SECTION 1

##### Introduction

1.1 Definitions. As used herein, the following terms shall have the following meanings:

1.1.1 Accounts - As indicated in the Adoption Agreement, the following Accounts or Account classifications may be maintained under this Plan, in addition to any other account specified elsewhere herein:

(a) Total Account - A Participant's entire interest in the Plan, including his Employer Account and his Employee Account.

(b) Employer Account - The Account maintained for each Participant to which is credited his allocable share of the Employer's contributions and forfeitures under the Plan, together with any increase or decrease thereon.

(c) Employee Account - The Account maintained for each Participant to which is credited his Employee Contributions under the Plan, together with any increase or decrease thereon.

(d) Matured Account - The portion of a Participant's Total Account which is Vested in him upon the occurrence of an Event of Maturity, together with an increase or decrease thereon.

The Trustee shall not be required to maintain separate investments for any Account; provided, however, no investments in Insurance Contracts shall be made from Voluntary Contributions Accounts. The portion of the Account balance derived from nondeductible employee contributions is the Employee's total Account balance multiplied by a fraction, the numerator of which is the total amount of nondeductible employee contributions less withdrawals and the denominator of which is the sum of the numerator and the total contributions made by the Employer on behalf of the Employee less withdrawals. For this purpose, contributions include contributed amounts used to provide ancillary benefits and withdrawals include only amounts distributed to the Employee and do not reflect the cost of any death benefits.

1.1.2 Actuarial Equivalent - Equality in value of the aggregate amount of benefit expected to be received under different forms of benefit or at different times determined as of a given date as adopted by the City or the Retirement Committee for use by the Plan. Actuarial Equivalencies shall be specified in or determined in accordance with Appendix B. If benefits under the Plan are obtained through the purchase of an annuity contract, the Actuarial Equivalent of any such form of benefit shall be the amount of the benefit which can be purchased or otherwise provided by the Participant's Retirement Value. All actuarial and mortality assumptions adopted by the City or the Retirement Committee shall be on a sex-neutral basis and such assumptions shall be stated in Appendix B.

1.1.3 Agreement - The "Basic Municipal Employees Plan and Trust Agreement" and the related "Adoption Agreement" as approved and adopted by the Employer as the official statement of its qualified retirement plan to be effective from and after the Effective Date (if the Employer's adoption of the Agreement is the establishment of a new qualified retirement plan) or the Supplemental Effective Date (if the Employer's adoption is the amendment and restatement of a preexisting qualified retirement plan), as the same may be from time to time thereafter amended.

1.1.4 Annual Valuation Date - Unless indicated otherwise herein or in the Adoption Agreement, December 31.

1.1.5 Annuity Contract - The contract or contracts issued by one or more life insurance companies or designated trusts and purchased by the Plan in order to provide any of the benefits described in this Agreement. Annuity conversion rates in any such contract shall be specified on a sex-neutral basis.

1.1.6 Beneficiary - The person or persons designated by a Participant in a written instrument designated by and filed with the Retirement Committee prior to the Participant's death to receive death benefits which may be payable under the Plan.

1.1.7 City - The municipality chartered in the state of Nebraska which adopts this Agreement by executing the Adoption Agreement.

1.1.8 Effective Date - The date (set forth in the Adoption Agreement) as of which the Employer first established this Plan.

1.1.9 Eligibility Service - A measure of an Employee's service with the Employer (stated as a number of years) which is equal to the number of computation periods in which the Employee is credited with one thousand (1,000) or more Hours of Service; subject, however, to such of the following rules as are applicable under the Adoption Agreement:

(a) Computation Periods - The computation periods for determining the Employee's Eligibility Service (and One-Year Breaks in Service as applied to his Eligibility Service) shall be (as indicated in the Adoption Agreement) either:

(i) The twelve (12) consecutive month period beginning with the date the Employee first performs an Hour of Service plus all Plan Years beginning after the date the employee first performs an Hour of Service (irrespective of any termination of employment and subsequent reemployment), or

(ii) The twelve (12) consecutive month period beginning with the date the Employee first performs an Hour of Service plus all twelve (12) consecutive month periods commencing on annual anniversaries of such date (irrespective of any termination of employment and subsequent reemployment).

If, in the Adoption Agreement, the computation periods selected for the computation of years of Eligibility Service are determined under Section 1.1.9(a)(i) above, an Employee who is credited with one thousand (1,000) Hours of Service in the computation period beginning on the date the Employee first performs an Hour of Service and also is credited one thousand (1,000) Hours of Service in the computation period which is the first Plan Year beginning after the date the Employee first performs an Hour of Service, he shall be credited with two (2) years of Eligibility Service notwithstanding that the same Hours of Service are counted in both (overlapping computation periods).

(b) Completion - A year of Eligibility Service shall be deemed completed only as of the last day of the computation period irrespective of the date in such period that the Employee completes one thousand (1,000) Hours of Service. (Fractional years of Eligibility Service shall not be credited.)

(c) Eligibility Rule of Parity - In the case of a Participant who does not have any nonforfeitable right to the account balance derived from Employer Contributions, Years of Service before a period of Consecutive one-year breaks in service will not be taken into account in computing eligibility service if the number of consecutive one-year breaks in service in such period equals or exceeds the greater of five or the aggregate number of years of service. Such aggregate number of years of service will not include any years of service disregarded under the preceding sentence by reason of prior breaks in service.

If a participant's years of service are disregarded pursuant to the preceding paragraph, such participant will be treated as a new employee for eligibility purposes. If a participant's years of service may not be disregarded pursuant to the preceding paragraph, such participant shall continue to participate in the plan, or, if terminated, shall participate immediately upon reemployment.

1.1.10 Employee - Any individual who is a paid employee of the Employer maintaining the Plan as defined in the Adoption Agreement.

The term Employee shall also include any Leased Employee deemed to be an employee of any employer described in the previous paragraph as provided in Code section 414.

1.1.11 Employer - The City which adopts this Agreement by executing the Adoption Agreement.

The Employer is the "named fiduciary", as that term is defined in ERISA, for all purposes of this Plan, to the extent that the provisions of ERISA regarding "named fiduciary" are applicable to this Plan.

1.1.12 Event of Maturity - Any of the occurrences described in Section 6 by reason of which a Participant or Beneficiary may become entitled to a distribution from the Plan.

1.1.13 Fire Plan - A plan created and maintained pursuant to Neb. Rev. Stat. Sections 16-1020 to 16-1042 for the purpose of investing payroll deductions and contributions by a city of the first class to a retirement system established for firefighters of such city, the provisions of which statutes, as enacted or amended from time to time, are incorporated herein by this reference and shall control over any inconsistent terms hereof so long as not contrary to the law applicable to plans intended to be qualified under Internal Revenue Code Section 401(a).

1.1.14 Forfeiture - The portion of a Participant's Employer Account, if any, which is not Vested in him upon an Event of Maturity.

1.1.15 Fund - The assets of the Plan held by the Trustee from time to time, including all assets initially transferred to and held by the Trustee, together with all subsequent contributions of the Employer and the Participants and the investments and reinvestments, earnings, gains and losses thereon.

1.1.16 Funding Agent - Any bank, trust company, life insurance company, thrift institution, credit union, or investment management firm selected by the City or Retirement Committee (subject to the approval of the City for Fire Plans) to hold or invest the funds of the Plan.

1.1.17 Highly Compensated Employee - The term "Highly Compensated Employee" includes highly compensated active Employees and highly compensated former Employees.

~~Effective for years beginning on or after January 1, 1997, a~~ highly compensated active employee includes any Employee who had compensation from the Employer in the preceding year in excess of \$80,000, as adjusted from time to time in the same manner as under Code section 415(d), except that the base period is the calendar quarter ending September 30, 1996. Compensation for purposes of this section shall be as defined in Code section 415(c)(3) and determined by the Employer.

| The determination of whether a former employee is a highly compensated former Employee is based on the rules applicable to determining Highly Compensated Employee status in effect for the determination year, in accordance with Treasury Regulation section 1.414(q)-IT, A-4 and Notice 97-45 as updated from time to time.

The determination of who is a Highly Compensated Employee will be made in accordance with Section 414(q) of the Code and the regulations thereunder.

1.1.18 Hours of Service - A measure of an Employee's service with the Employer (in Recognized Employment with respect to Police and Fire Plans) determined for a particular computation period, equal to the sum of the number of hours credited to the Employee according to the election made in the Adoption Agreement and the following rules:

(a) Paid Duty - An Hour of Service shall be credited for each hour for which the Employee is paid, or entitled to payment, for the performance of duties for the Employer. These Hours of Service shall be credited to the Employee for the computation period or periods in which the duties are performed.

(b) Paid Nonduty - An Hour of Service shall be credited for each hour for which the Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including Disability), layoff, jury duty, military duty or leave-of-absence; provided, however, that:

(i) No more than five hundred one (501) Hours of Service shall be credited on account of a single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period);

(ii) No Hours of Service shall be credited on account of payments made under a plan maintained solely for the purpose of complying with the applicable worker's compensation, employment compensation or disability insurance laws;

(iii) No Hours of Service shall be credited on account of payments which solely reimburse the Employee for medical or medically related expenses incurred by the Employee;

(iv) Payments shall be deemed made by or due from the Employer, whether made directly or indirectly from a trust fund or an insurer to which the Employer contributes or pays premiums.

These Hours of Service shall be credited to the Employee for the computation period for which payment is made or, if the payment is not computed by reference to units of time, the hours shall be credited to the first computation period in which the event for which any part of the payment is made occurred.

(c) Back Pay - An Hour of Service shall be credited for each hour of which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer. The same Hours of Service credited under paragraphs (a) or (b) shall not be credited under this paragraph (c). The crediting of Hours of Service under this paragraph (c) for periods and payments described in paragraph (b) shall be subject to all the limitations of that paragraph. These hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains, rather than the computation period in which the award, agreement or payment is made.

(d) Unpaid Absences - For all purposes of this Plan:



(i) Leaves-of-Absence - An assumed eight (8) hour day and forty (40) hour week shall be credited during each unpaid leave-of-absence authorized by the Employer under uniform rules of non-discriminatory application; provided, however, that, if the Employee does not return to employment for any reason other than death, Disability or attainment of his Normal Retirement Date at the expiration of the leave-of-absence, such Hours of Service shall not be credited.

(ii) Military Leaves - An assumed eight (8) hour day and forty (40) hour week shall be credited during service in the Armed Forces of the United States if the Employee both entered such service and returned to employment with the Employer from such service under circumstances entitling him to reemployment rights granted veterans under federal law; provided, however, that, if the Employee does not return to employment for any reason other than death, Disability or attainment of Normal Retirement Date within the time prescribed by law for the retention of veteran's reemployment rights, such Hours of Service shall not be credited.

(e) Special Rules - Department of Labor regulations at 29 C.F.R. Sec. 2530.200b-2 are hereby, by reference, incorporated herein for the purpose of calculating and crediting Hours of Service; though neither ERISA nor said regulations otherwise are applicable if this is a governmental plan as defined in Code section 414(d). For periods prior to the ERISA date, Hours of Service may be determined using whatever records are reasonably accessible and by making whatever calculations are necessary to determine the approximate number of Hours of Service completed during such prior period. If this Plan is maintained by the Employer as the plan of a predecessor employer, Hours of Service will be credited for employment with that predecessor employer as if it were the Employer. Hours of Service shall be credited for employment with other members of an affiliated service group (under Code section 414(m)), a controlled group of corporations (under Code section 414(b)), or a group of trades or businesses under common control (under Code section 414(c)), of which the adopting employer is a member, and any other entity required to be aggregated with the Employer pursuant to Code section 414(o) and the regulations thereunder. Hours of Service will also be credited for any individual considered an Employee for purposes of this Plan under Code section 414(n) or Code section 414(o) and regulations thereunder.

(f) Maternity and Paternity Absences - Solely for purposes of determining whether a Break in Service, as defined in Section 1.1.23, for participation and vesting purposes has occurred in a computation period, an individual who is absent from work for maternity or paternity reasons shall receive credit for the Hours of Service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, eight hours of service per day of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of a birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement. The Hours of Service credited under this paragraph shall be credited (1) in the computation period in which the absence begins if the crediting is necessary to prevent a Break in Service for that period, or (2) in all other cases, in the following computation period.

1.1.19 Leased Employee - ~~Effective for years beginning on or after January 1, 1997, t~~The term "Leased Employee" means any person (other than an Employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Code section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient. Contributions or benefits provided a Leased

Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer.

A Leased Employee shall not be considered an Employee of the recipient if: (i) such Employee is covered by a money purchase pension plan providing: (1) a nonintegrated Employer contribution rate of at least 10 percent of compensation, as defined in Code section 415(c)(3), but including amounts contributed pursuant to a salary reduction agreement which are excludable from the Employee's gross income under Code section 125, section 402(a)(8), section 402(h) section 403(b), or, effective January 1, 2001, Code section 132(f)(4), (2) immediate participation, and (3) full and immediate vesting; and (ii) Leased Employees do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

1.1.20 Limitation Year - A calendar year, or the twelve (12) consecutive month period selected by the Employer in the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made. Effective for Limitation Years beginning on or after July 1, 2007, the Limitation Year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year.

1.1.21 Net Earnings - The amount by which income or gain realized from the investments of the Fund exceeds the amount of any realized losses from such investments during the calendar year.

1.1.22 Normal Retirement Date - As indicated in the Adoption Agreement: (i) the date upon which a Participant attains his sixty-fifth (65th) birthday or, (ii) the later of the date a Participant attains age sixty-five (65) or the fifth (5th) anniversary of the date he first commenced Participation in the Plan, or (iii) such earlier time as the Employer may designate [\(though not less than 55 unless substantially all participants in the Plan are qualified public safety employees as defined in applicable regulations and other guidance\)](#). The Normal Retirement Date may not be later than the age at which the Employer requires Employees eligible to participate in the Plan to retire on account of attained age. The normal form of benefit is a single life annuity commencing on the normal retirement date.

1.1.23 One Year Break in Service - A computation period during which the Participant has not completed more than five hundred (500) Hours of Service. (A One-Year Break in Service shall be deemed to occur only on the last day of such computation period. Unless otherwise specified, the computation period shall be the Plan Year.)

1.1.24 Participant - An Employee of the Employer who becomes a Participant in the Plan pursuant to Section 2 hereof. An Employee who has become a Participant shall be considered to continue as a Participant in the Plan until the date of his death, or, if earlier, the earliest date as of which the Participant no longer has any Account under the Plan.

1.1.25 Plan - The qualified retirement plan and trust of the Employer maintained pursuant to this Agreement, as amended from time to time (and which may have been previously in existence pursuant to a Prior Plan Statement).

1.1.26 Plan Year - The twelve (12) consecutive month period ending on any Annual Valuation Date or as otherwise indicated in the Adoption Agreement.

1.1.27 Police Plan - A plan created and maintained pursuant to Neb. Rev. Stat. Sections 16-1001 to 16-1019 for the purpose of investing payroll deductions and contributions by a city of the first class to a retirement system established for police officers of such city, the provisions of which statutes, as enacted or amended from time to time, are incorporated herein by this reference and shall control over any inconsistent terms hereof so long as not contrary to the law applicable to plans intended to be qualified under Internal Revenue Code Section 401(a).

1.1.28 Prior Plan Statement - The written instrument or instruments or the series of written instruments under which this Plan was established and maintained from time to time prior to the Supplemental Effective Date. (If this Plan was first established by the Employer's approval and adoption of this Agreement, there will have been no Prior Plan Statement and all references thereto shall be disregarded.) To the extent a Prior Plan Statement exists, benefits provided to Participants may be affected by the provisions of such Prior Plan Statement.

1.1.29 Recognized Compensation - As elected by the Employer in the Adoption Agreement, Recognized Compensation will mean all of each Participant's (a) W-2 earnings or (b) wages as defined under Code Section 3401(a), (c) compensation (as that term is defined in Code section 415(c)(3) and Treasury Regulations, section 1.415(c)-2(d)(2)), or (d) such other compensation as specified in the Adoption Agreement. For any self-employed individual covered under the Plan, Recognized Compensation will mean earned income. Except as elected elsewhere in this Plan, Recognized Compensation shall include only that compensation which is actually paid to the Participant during the applicable period, and the applicable period shall be the period elected by the Employer in the Adoption Agreement. If the Employer makes no election, the applicable period shall be the Plan Year.

Notwithstanding the above, if elected by the Employer in the Adoption Agreement, Recognized Compensation shall include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includable in the gross income of the Employee under Code sections 125, 402(e)(3), 402(h)(1)(B), 403(b), or, effective January 1, 2001, Code section 132(f)(4). Effective for Plan and Limitation Years beginning on or after January 1, 1998, reference to section 125 [\(unless otherwise provided in the Adoption Agreement\)](#) shall include deemed section 125 compensation. Deemed section 125 compensation is an amount that is excludable under Code section 106 that is not available to a participant in cash in lieu of group health coverage under a section 125 arrangement solely because the participant is unable to certify that he or she has other health coverage. Amounts are deemed section 125 compensation only if the Employer does not request or collect information regarding the Employee's other health coverage as part of the enrollment process for the health plan.

For Plan Years commencing after December 31, 1988 and before January 1, 1996, the Annual Recognized Compensation of each Participant taken into account under the Plan for any year shall not exceed \$200,000, as adjusted by the Secretary at the same time and in the same manner as under Code section 415(d), except that the dollar increase in effect on January 1 of any calendar year is effective for plan years beginning with or within 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, 1996 and before January 1, 2002, the Annual Recognized Compensation of each Employee taken into account under the Plan shall not exceed \$150,000, as adjusted by the Commissioner for increases in the cost-of-living in accordance with Code section 401(a)(17)(B).

For any Plan Year beginning on or after January 1, 2002, the annual compensation of each Employee taken into account under this Plan shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. Annual compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination periods). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

If a determination period consists of fewer than 12 months the annual compensation limit is an amount equal to the otherwise applicable annual compensation 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 12.

If compensation for any prior determination period is taken into account in determining an Employee's allocations or benefits for the current Plan Year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. For this purpose, in determining allocations or benefits in Plan Years beginning on or after January 1, 1989 and before January 1, 1996, the annual compensation limit in effect for determination periods beginning before January 1, 1989 is \$200,000. In determining benefits in

Plan Years beginning on or after January 1, 1996 and before January 1, 2002, the annual compensation limit in effect for determination periods beginning before January 1, 2002 is \$150,000, as adjusted. In determining benefits in Plan Years beginning on or after January 1, 2002, the annual compensation limit in effect for determination periods beginning before that date is \$200,000.

Unless otherwise provided under the Plan, each Code section 401(a)(17) Employee's Accrued Benefit under this Plan will be the greater of the Accrued Benefit determined for the Employee under (a) or (b) below:

(a) the Employee's Accrued Benefit determined with respect to the benefit formula applicable for the Plan Year beginning on or after January 1, 1996, as applied to the Employee's total Years of Service taken into account under the Plan for the purposes of benefit accruals, or

(b) the sum of:

(i) the Employee's Accrued Benefit as of the last day of the last Plan Year beginning before January 1, 1996, frozen in accordance with Treasury Regulation section 1.401(a)(4)-13, and

(ii) the Employee's Accrued Benefit determined under the benefit formula applicable for the Plan Year beginning on or after January 1, 1996, as applied to the Employee's Years of Service credited to the Employee for Plan Years beginning on or after January 1, 1996, for purposes of benefit accruals.

A Code section 401(a)(17) Employee means a Participant whose current accrued benefit as of a date on or after the first day of the first Plan Year beginning on or after January 1, 1996, is based on Recognized Compensation for a year beginning prior to the first day of the first Plan Year beginning on or after January 1, 1996, that exceeded \$150,000.00.

1.1.30 Recognized Employment - for all years, that employment, as set forth in the Adoption Agreement, recognized for the purpose of participation in the benefits of this Plan; excluding, however, all

(a) Employees included in a unit of Employees covered by an agreement found by the Secretary of Labor to be a collective bargaining agreement between Employee representatives and the Employer, if there is evidence that retirement benefits were the subject of good faith bargaining between such Employee representatives and the Employer and such bargaining agreement or applicable state law does not provide for participation by such Employees in this Plan. For this purpose, the term "Employee representatives" does not include any organization more than half of whose numbers are Employees who are owners, officers or executives of the Employer; and,

(b) Employees of the Employer who are nonresident aliens receiving no earned income from the Employer which constitutes income from sources within the United States unless the Adoption Agreement specifically provides that they shall participate in this Plan.

In the event an Employee who is not a member of the eligible class of Employees becomes a member of the eligible class, such Employee will participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

1.1.31. Regular Interest - The rate of interest earned each calendar year ~~beginning January 1, 1984 which is~~ equal to the rate of net earnings realized for the calendar year from the investments of the Fund. For Fire Plans, the Retirement Committee shall annually report the amount of regular interest earned for each year.

1.1.32 Regular Pay -

(a) Police Plans – Effective April 16, 2012, (The average Salary of a Participant for the 5 years preceding the date such Participant elects to retire, the five years preceding his or her death, or the 5 years preceding the date of Disability, whichever is earliest, except that for any Participant who retires, dies or becomes disabled after July 15, 1992, Regular Pay shall mean the average Salary of the Participant for the period of 5 consecutive years preceding such elective retirement, death or date of Disability which produces the highest average.

(b) Fire Plans - The Salary of a Participant at the date such Participant elects to retire or terminate employment with the City.

(c) Regular Pay shall be limited by Code section 401(a)(17) in the same manner as described in 1.1.29 above.

1.1.33 Retirement Committee or Committees - The Retirement Committee created under Section 12.3 for general supervision of the Plan and to perform the duties stated in this Agreement and those other duties as are properly delegated in this Agreement, by law or otherwise by the City to the Retirement Committee.

1.1.34 Retirement Date -

- 1) The first of the month immediately following the last day of work in the following cases:
  - a. Normal Retirement Date (defined above)
  - b. Early Retirement Date:
    - i. Police: Attainment of age 55 and completion of 21 years of service.
    - ii. Fire: Attainment of age 50 and completion of 21 years of service with the City, in which case the firefighter will receive the actuarial equivalence of the pension benefit he or she would otherwise receive upon attainment of age 55.
  - c. Disability: Retire or be retired as a result of a Permanent Disability (defined in Section 7.3.3(a)) in the line of duty, in which the police officer or firefighter, as the case may be, will receive the applicable pension benefit described herein.
- 2) Fire Plan Special Rule: The first of the month immediately following the attainment of age 55 for a Fire Plan Participant who terminates employment with the City after 21 years of service. Upon attainment of age 55, the firefighter will receive the applicable retirement pension benefit described herein.
- 3) Other. The first of the month immediately following the last day of work after attaining such other age specified in the Adoption Agreement.

1.1.35 Retirement Value – Subject to any benefit provided in any Prior Plan Statement(s), if any for a Participant, the accumulated value of the Participant's Employee Account and Employer Account. The Retirement Value consists of the sum of the contributions made or transferred to such accounts by the Participant and by the City on the Participant's behalf and the Regular Interest credited to the accounts as of the date of computation, reduced by any realized losses which were not taken into account in determining Regular Interest in any year, and further 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 Plan as determined by the Retirement Committee. The Retirement Value shall be reduced by the amount of all distributions made to or on the behalf of the Participant from the Plan, and shall be further reduced each year by the appropriate share of the investment costs of the Fund. Such valuation shall be computed annually as of December 31 and at such other times as the Retirement Committee shall direct on a nondiscriminatory basis. If separate investment accounts are established, a Participant's Retirement Value with respect to such accounts shall be equal to the value of his or her separate investment accounts as determined pursuant to provisions of Nebraska statute as applicable to the Plan.

1.1.36 Salary -

(a) Police Plans - All amounts paid to a Participant by the City for personal services as reported on the Participant's federal income tax withholding statement, including the Participant's contributions picked up by the City as provided in this Agreement and any salary reduction contributions which are excludable from income for federal income tax purposes pursuant to Code sections 125 or 457.

(b) Fire Plans - The base rate of pay, excluding overtime, callback pay, clothing allowances, and other such benefits as reported on the participant's federal income tax withholding statement including the Participants' contributions picked up by the City as provided in this Agreement and any salary reduction contributions which are excludable from income for federal income tax purposes pursuant to Code sections 125 or 457.

(c) Salary shall be limited by Code section 401(a)(17) in the same manner as described in 1.1.29 above. Effective for Plan and Limitation Years beginning on or after January 1, 1998, any reference in (a) or (b) above shall include deemed section 125 compensation. Deemed section 125 compensation is an amount that is excludable under Code section 106 that is not available to a participant in cash in lieu of group health coverage under a section 125 arrangement solely because the participant is unable to certify that he or she has other health coverage. Amounts are deemed section 125 compensation only if the Employer does not request or collect information regarding the Employee's other health coverage as part of the enrollment process for the health plan.

1.1.37 Straight Life Annuity - An annuity payable in equal installments in the form of a single life annuity for the life of the Participant (with no ancillary benefits and terminating upon the Participant's death) and to which Employees do not contribute and under which no rollover contributions (as defined in Code sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)) are taken into account, but taking into account social security supplements and benefits transferred from another defined benefit plan (other than transfers of distributable benefits).

1.1.38 Supplemental Effective Date - Except as otherwise specified in this Plan or required by applicable law or regulations or other guidance thereunder, (i) the Supplemental Effective Date shall be the date of an amendment by the Employer of this Plan and Trust or a Prior Plan Statement as specified in the Adoption Agreement and (ii) the following general Supplemental Effective Dates shall apply with respect to amended or restated Plan documents for changes in applicable laws, regulations or other guidance -

The Supplemental Effective Date of the restatement of the Plan intended to comply with the Tax Reform Act of 1986 is the first day of the Plan Year commencing after December 31, 1986, except that the effective date of the eligibility conditions in Section 2, the contribution and/or allocation formula in Section 3, and the vesting provisions of Section 5 is the first day of the Plan Year commencing after December 31, 1988; or, as otherwise specifically designated in this Basic Plan. The general Supplemental Effective Date of the Plan intended to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") shall be the first Plan Year and Limitation Year beginning after December 31, 2001, unless otherwise specified in the this Plan or required by applicable law or regulations or other guidance thereunder. The Supplemental Effective Date of Plan provisions intended to comply with the Pension Protection Act of 2006, Heroes, Earnings Assistance and Relief Tax Act of 2008, and Worker, Retiree, and Employer Recovery Act of 2008 (together the 2006 through 2008 acts referred to herein as "PPA") shall be the first Plan Year and Limitation Year beginning after December 31, 2003, unless otherwise specified in the Plan or required by applicable law, regulations or other guidance. The Supplemental Effective Date of applicable provisions of the Plan for Nebraska Legislative Bill 1082 (2012), if any, shall be April 16, 2012, unless otherwise provided in the Plan or required by applicable law or guidance.



1.1.39 Taxable Wage Base ("TWB") - The Taxable Wage Base ("TWB") is the maximum annual amount of earnings which may be considered wages for a year under Code section 3121(a)(1), as amended, in effect at the beginning of the Plan Year.

1.1.40 Tax Rate - The Tax Rate shall be the percentage equal to the portion of rate of tax attributable to Old-Age Insurance under Code section 3111(a), as amended, in effect as of the beginning of the Plan Year.

1.1.41 Trustee - The Trustee shall be designated in the Adoption Agreement. For Police and Fire Plans, the Trustee of any trust fund shall be a designated funding agent which is qualified to act as a fiduciary in the state of Nebraska, the City treasurer, an appropriate City officer authorized to administer funds of the City, or any combination thereof. The terms of any trust agreement adopted and executed by the City and Trustee separate and apart from this document shall be supplemental and additional to, and incorporated by reference into, this document to the extent not contrary to terms contained herein. If any terms of any such separate trust document conflict with the terms of this document, the terms of this document shall control.

1.1.42 Valuation Date - The Annual Valuation Date and any other valuation date selected under Section 1.1.35 or Section 4 hereof.

1.1.43 Vested - Nonforfeitable, i.e., a claim obtained by a Participant or his Beneficiary to that part of an immediate or deferred benefit hereunder which arises from the Participant's service, which is unconditional, and which is legally enforceable against the Plan.

1.1.44 Vesting Service - A measure of an Employee's service with the Employer (stated as a number of years) which is equal to the number of computation periods in which the Employee is credited with one thousand (1,000) or more Hours of Service; subject, however, to such of the following rules as are applicable under the Adoption Agreement:

(a) Computation Periods - The computation periods for determining the Employee's Vesting Service shall be Plan Years. Hours of Service will also be credited for any individual considered an Employee for the purposes of this Plan under Code section 414(n).

(b) Completion - A year of Vesting Service shall be deemed completed as of the date in the computation period that the Employee completes one thousand (1,000) Hours of Service. (Fractional years of Vesting Service shall not be credited.)

(c) Pre-Effective Date Service - Vesting Service before the Effective Date shall be credited according to whichever of the following rules the Employer indicates in the Adoption Agreement:

(i) Vesting Service shall not be credited with respect to periods of employment before the Effective Date of this Plan or a predecessor plan and shall be credited for the period from the Effective Date to the Supplemental Effective Date as if the rules of this Agreement had then been in effect; provided, however, that periods of employment before the ERISA date, if such provisions of ERISA are applicable to this Plan, shall be disregarded in determining Vesting Service if such periods would have been disregarded under the rules of the Plan as in effect immediately before the ERISA date.

(ii) Vesting Service shall be credited with respect to all periods before the Effective Date as if the rules of this Agreement had then been in effect; provided, however, that periods of employment before the ERISA Date, if such provisions of ERISA are applicable to this Plan, shall be disregarded in determining Vesting Service if such periods would have been disregarded under the rules of the Plan as in effect

immediately before the ERISA Date. The provisions of this subsection (ii) shall be the default rule and control absent an affirmative election in the Adoption Agreement.

The ERISA Date is the date as of which this Plan was first required to comply with the vesting and eligibility requirements of the Employee Retirement Income Security Act of 1974, if applicable to the Plan, as a condition of tax qualification.

(d) Police and Fire Plans - Participants shall be credited with all years of service in Recognized Employment completed after 1965 (after August 7, 1965 for Fire Plan) for the purpose of determining years of Vesting Service.

(e) Age 18 - If so indicated in the Adoption Agreement, computation periods completed prior to the beginning of the computation period in which the Employee attained the age designated in the Adoption Agreement shall be disregarded in determining the Employee's Vesting Service.

1.2 Special Rules for Employer's Computing Service on the Basis of Elapsed Time. For Employers using the elapsed time method of crediting service, the following definitions replace the definitions of Year of Service, Break in Service and Hour of Service definitions.

For purposes of determining an Employee's initial or continued eligibility to participate in the Plan or the nonforfeitable interest in the Participant's Account Balance derived from Employer contributions, (except for periods of service which may be disregarded on account of the "rule of parity") an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee's first day of employment or reemployment (in Recognized Employment with respect to Police and Fire Plans) with the Employer and ending on the date a Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive credit for any period of severance of less than 12 consecutive months. Fractional periods of a year will be expressed in terms of days.

For purposes of this Section, Hour of Service shall mean each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer.

A Break in Service is a period of severance of at least 12 consecutive months.

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

In the case of an individual who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a termination of employment. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

Each Employee will share in Employer contributions for the period beginning on the date the Employee commences participation under the plan and ending on the date on which such Employee severs employment with the Employer or is no longer a member of an eligible class of Employees.

1.3 Gender, Number and Headings. In this Agreement, the pronouns "he," "him" and "his," referring to a Participant or Beneficiary, shall also refer to and include females as well as males, and the singular, when used in this agreement, shall include the plural, and the plural the singular, except when the context otherwise requires. Section, subsection and paragraph headings used herein are not part of this Agreement and shall not be used or considered in determining the proper meaning, purpose or intention hereof.



1.4 Return of Employer Contribution. In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made incident to that initial qualification by the Employer must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such other date as the Secretary of the Treasury may prescribe.

The Trustee, upon written request from the Employer, must return to the Employer the amount of the Employer's contribution made by the Employer by mistake of fact. The Trustee will not return any portion of the Employer's contribution under the provisions of this paragraph more than one year after the Employer made the contribution by mistake of fact.

The Trustee will not increase the amount of the Employer contribution returnable under this Section 1.4 for any earnings attributable to the contribution, but the Trustee will decrease the Employer contribution returnable for any losses attributable to it. The Trustee may require the Employer to furnish it whatever evidence the Trustee deems necessary to enable the Trustee to confirm the amount the Employer has requested be returned is properly returnable under ERISA, if such provisions of ERISA are applicable to the Plan.

1.5 Amendment of Prior Plan Statement. If this Plan is adopted as an amendment of an earlier Plan Statement of which the Trustee was not the Trustee, the Employer has caused, or will forthwith cause, the transfer of the existing fund to the Trustee to be held in trust for the purposes contained and set forth in this Agreement.

1.6 Supplemental Elections, Information and Plan Provisions. The elections, information and provisions made, provided and specified in the section of the Adoption Agreement corresponding to this Section of the Basic Plan Document shall be deemed a part of an incorporated into this Plan notwithstanding anything in this Basic Plan document or the Adoption Agreement to the contrary.

## SECTION 2

### Eligibility and Participation

2.1 Initial Entry into Plan. If this Agreement is approved and adopted as an amendment of a Prior Plan Statement, each Employee who immediately before the Supplemental Effective Date was a Participant in the Plan and who on the Supplemental Effective Date continues in Recognized Employment shall continue as a Participant in this Plan.

Each other Employee of the Employer as specified in the Adoption Agreement shall become a Participant on the first date:

(a) that such person is in Recognized Employment, ~~and as designated by the Employer in the Adoption Agreement,~~

(b) that is the first day of the specified period not more than six months after the Employee satisfies age and service requirements specified in the Adoption Agreement,

~~(c) that is also not earlier than the first (1st) day of the first (1st) month or the first (1st) day of the seventh (7th) month of the Plan Year, whichever first occurs after the Employee has both satisfied the age and service requirements set forth in the Adoption Agreement,~~

~~(e) —~~that is the first day of the Plan Year in which the Employee has satisfied the age and service requirements specified in the Adoption Agreement, ~~or~~

(d) that is the first (1st) day of the first (1st) month or the first (1st) day of the seventh (7th) month of the Plan Year, whichever first occurs after the Employee has both satisfied the age and service requirements set forth in the Adoption Agreement, or

(e) as otherwise specified in the Adoption Agreement~~that is the first day of the Plan Year following the Plan Year in which the Employee has satisfied the age and service requirements specified in the Adoption Agreement.~~

2.2 Special Rules for Former Participants and Eligible Classes. A Participant whose employment with the Employer terminates and who subsequently is reemployed by the Employer shall immediately reenter the Plan as a Participant upon his return to Recognized Employment. In the event a Participant is no longer a member of an eligible class of Employees and becomes ineligible to participate but has not incurred a Break in Service, such Employee will participate immediately upon returning to an eligible class of Employees. Except for Police and Fire Plans, if such a Participant incurs a Break in Service, eligibility will be determined under the Break in Service rules of the Plan. For Police and Fire Plans, a Participant immediately will participate upon returning to Recognized Employment of the Police or Fire Plan.

In the event an Employee who is not a member of an eligible class of Employees becomes a member of an eligible class, such Employee will participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

2.3 Annual Certification. As of each Annual Valuation Date during the continuance of the Plan, the Employer shall certify in writing the names of all Participants who are entitled to participate in the Employer contribution for the Plan Year ending on that date and all other facts that may be required to enable the Trustee to perform its duties hereunder.

## SECTION 3

### Contributions and Allocation Thereof

#### 3.1 Employee Contributions.

(a) Mandatory Employee Contributions. Each Participant shall, as a condition of employment with the City, contribute to the Plan the amount stated in the Adoption Agreement. Such payment shall be made by regular payroll deduction from periodic salary and shall be credited to Employee Accounts at least monthly. Employee Accounts shall also be credited with Regular Interest as provided in Section 4.1.

(i) If so elected by the City in the Adoption Agreement, the City shall pick up Mandatory Employee contributions, paying such contributions in lieu of contributions by Participants, and the contributions so picked up shall be treated as Employer contributions under Code section 414(h)(2) for federal income tax purposes. Participants shall not have the option to receive the contributed amounts directly instead of having them paid by the City to the Plan. The City shall withhold federal income taxes on picked up Employee contributions ~~until if required by the Internal Revenue Service Code or other applicable laws, regulations or guidance or the federal courts determine that picked up contributions shall not be included as gross income of the Employee prior to being distributed from the Plan.~~

(ii) Picked up contributions shall be paid from the same source of funds as used to pay earnings to Employees. The City shall pick up Employee contributions by salary deduction either by reducing cash salary of an Employee or by reducing cash salary and offsetting future salary increases.

(b) Voluntary Employee Contributions. If elected in the Adoption Agreement, each Employee shall be entitled to make voluntary cash contributions to the Plan to the extent and maximum amount permissible under, and subject to applicable requirements and limitations of, the Internal Revenue Code. Voluntary Contributions shall be credited to and separately accounted for under Employee Accounts and shall thereafter be credited with Regular Interest as provided in Section 4.1. Not in limitation of the foregoing, Voluntary Employee Contributions shall satisfy any special nondiscrimination or other

applicable requirements of the Code, rules, regulations and guidance, including, but not limited to, Code sections 401(a)(4) and 401(m). Any applicable requirements of Code section 401(m) shall be satisfied in accordance with Code section 401(m)-2 and Treasury Regulations section 1.401(m)-2 (which provisions are incorporated herein by this reference), using the prior year testing method and deeming the average contribution percentage for eligible nonhighly compensated employees to be 3% for the first Plan Year, unless otherwise elected by the Employer in a written addendum to the Adoption Agreement or Plan amendment, or otherwise required by applicable rules, regulations or other guidance. Provided, however, that certain provisions of the Code and corresponding rules, regulations and other guidance shall not apply if this Plan is a governmental plan as defined in Code section 414(d), including provisions that may otherwise be applicable to Voluntary Employee Contributions. (Inapplicable provisions include Code sections 401(a)(3), (4), (7), (11) through (15), (19) and (20), 401(m), 410(b), 411, 412 and 417 ~~pursuant to- For express exclusion of governmental plans from these requirements, see~~ operative provisions of these Code sections, as well as Code section 401(a)(5)(G) and the flush language following Code section 401(a)(376).)

(c) Pre-1984 Contributions. ~~Effective April 16, 2012 w~~With respect to ~~Police and~~ Fire plans only, an Employee's contributions to a qualified plan of deferred compensation maintained by the City prior to January 1, 1984 shall be transferred to his or her Employee Account without interest unless the City, at the time of the Transfer, credited interest on such contributions.

(d) All contributions in this Section 3.1 shall be credited to the Employee Accounts of Participants.

### 3.2 Employer Contributions.

(a) Police and Fire Plans. Employer contributions shall be made pursuant to (i), (ii) and (iii) below for Police and Fire Plans:

(i) The City shall contribute to the Trustee during the continuance of the Plan the amount stated in the Adoption Agreement. Employer contributions shall be credited at least monthly to Employer Accounts.

(ii) The City also shall contribute to the Employer Account of each Employee who was employed by the City on January 1, 1984 an amount equal to the Employee's contributions prior to January 1, 1984 to a qualified plan of deferred compensation maintained by the City, without interest unless the City elects to pay interest thereon. The contribution shall be made at the time the Employee retires or terminates his or her employment with the City. The City may make this contribution prior to an Employee's retirement or termination of employment; however, the City must make such contributions in a manner which does not impermissibly discriminate in favor of any Highly Compensated Employee.

(iii) The City shall make additional contributions to the Plan in amounts and at such times as are necessary to provide the minimum benefits stated in this Agreement. For Fire Plans, such additional Employer contributions shall be paid to an Unallocated Employer Account, and in all cases shall not exceed the applicable limitations of Code section 415.

(b) Other Municipal Plans.

(i) Nonintegrated. The City shall make contributions from year to year during the continuance of the Plan to the Trustee in the amount specified in the Adoption Agreement. The appropriate contribution of the Employer to the Plan, determined as herein provided, may be paid by the Employer either in cash or in kind and shall be allocated, as of the Annual Valuation Date in the Plan Year in question, to the Employer Account of Participants entitled to share therein in the same proportion that each Participant's Recognized Compensation bears to the aggregate Recognized Compensation of all Participants for that Fiscal Year.

(ii) Integrated. For Plan Years beginning after December 31, 1988 and before August 5, 1997, if the Plan is integrated and is not Top-Heavy for the Plan Year:

(1) Employer contributions and forfeitures will be allocated to each Participant's Employer Account in the ratio that the sum of each Participant's Recognized Compensation and Recognized Compensation in excess of the integration level bears to the sum of all Participants' Recognized Compensation and Recognized Compensation in excess of the integration level, but not in excess of the profit-sharing maximum disparity rate.

(2) Any remaining Employer contributions and forfeitures will be allocated to each Participant's Employer Account in the ratio that each Participant's Recognized Compensation for the Plan Year bears to all Participants' Recognized Compensation for that Plan Year.

If the Plan is not Top-Heavy, the maximum profit sharing disparity rate is equal to the lesser of:

(A) the greater of 5.7% or the Tax Rate; or,

(B) the applicable percentage determined in accordance with the following table:

If the integration level

is more than	but not more than	the applicable percentage is:
\$0	X*	5.7%
X* of TWB	80% of TWB	4.3%
80% of TWB	Y**	5.4%

\*X = the greater of \$10,000 or twenty percent (20%) of the TWB

\*\*Y = any amount more than eighty percent (80%) of the TWB but less than 100% of the TWB.

If the integration level is equal to the taxable wage base, the applicable percentage is the greater of 5.7% or the Tax Rate.

(3) Overall permitted disparity limit:

(A) Annual overall permitted disparity limit: Notwithstanding the preceding paragraph, for any Plan Year this Plan benefits any Participant who benefits under another qualified plan or simplified employee pension, as defined in Code section 408(k), maintained by the employer that provides for permitted disparity (or imputes disparity), the Employer will contribute for each Participant who either completes more than 500 Hours of Service during the Plan Year or is employed on the last day of the Plan Year an amount equal to the excess contribution percentage multiplied by the Participant's total compensation.

(B) Cumulative permitted disparity limit: Effective for Plan Years beginning on or after January 1, 1995, the cumulative permitted disparity limit for a

Participant is thirty-five (35) total cumulative permitted disparity years. Total cumulative permitted years means the number of years credited to the Participant for allocation or accrual purposes under this Plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer. For purposes of determining the Participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year. If the Participant has not benefited under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the Participant has no cumulative disparity limit.

(c) Mistake. If, after the Employer's contribution has been made and allocated, it should appear that, through oversight or a mistake of fact or law, a Participant who should have been entitled to share in such contribution received no allocation or received an allocation which was less than he should have received, the Employer may, at its election, and in lieu of reallocating such contribution, make a special make-up contribution to provide for him the same percentage of his Recognized Compensation for such Plan Year as was allocated to the Employer Accounts of other Participants for such Plan Year. A special make-up contribution shall not be permitted, and the Employer shall reallocate such contribution, if a special make-up contribution would result in a Participant receiving a greater allocation than is permitted under any law.

(d) Return of Contribution. The corpus or income of the Plan may not be diverted to or used for any other purpose than the exclusive benefit of the Participants or their Beneficiaries. Provided, however, that any contribution made by the Employer because of a mistake of fact may be returned to the Employer within one (1) year of the contribution.

If the Retirement Value of a Participant's Account is not sufficient to purchase or provide a Required Minimum Benefit required by Section 7.3, the City shall utilize such Funds as may be necessary from the Unallocated Employer Account (or from the Employer Account of the Participant in the case of a Police Plan) to purchase or provide the benefits required by such Section.

### 3.3 Eligible Participants.

(a) Police and Fire Plans. The Employer contributions (with the exception of contributions to provide a Participant a Required Minimum Benefit) shall be allocated to the accounts of all Participant Employees of the City paid compensation during the Plan Year.

(b) Other Municipal Plans.

(i) Unless otherwise specified in the Adoption Agreement, the Employer contribution and forfeitures available for allocation for the Plan Year shall be allocated to the accounts of all Participants who had at least one thousand (1,000) Hours of Service during such Plan Year and were Employees of the Employer on the last day of such Plan Year, and to the accounts of Participants who terminated their employment with the Employer within such Plan Year by reason of (i) their death, or (ii) their retirement at or after their Normal Retirement Date, or (iii) their Disability.

(ii) Except if the Plan provides for "picked up" contributions: if the Employer has so indicated in the Adoption Agreement, an Employee eligible to participate, or any present Participant, may elect not to participate in the Plan. For an election to be effective for a particular Plan Year, the Employee or Participant must file the election in writing with the Retirement Committee or City not later than 60 days prior to the last day of that Plan Year. The Employer may not make a contribution under the Plan for the Employee or for the Participant for the Plan Year for which the election is effective, nor for any succeeding Plan Year unless the Employee or Participant re-elects to participate in the Plan. After an Employee's or Participant's election not to participate has been effective for at least two Plan Years, the Employee or Participant may re-elect to participate in the Plan for any Plan Year and subsequent Plan Years. An Employee or

Participant may re-elect to participate in the Plan by filing his election in writing with the Retirement Committee not later than 60 days prior to the last day of the Plan Year for which his election is to be effective. An Employee or Participant who re-elects to participate may not again elect not to participate. An election timely filed is effective for the entire Plan Year.

A Participant who elects not to participate may not receive a distribution of his Total Account (except his Prior Voluntary Non-Deductible Account) attributable either to Employer or to Participant contributions except as provided under Section 6 or 7. However, for each Plan Year for which a Participant's election not to participate is effective, the Participant's Account, if any, continues to share in Fund earnings under Section 4. Furthermore, the Employee or the Participant receives vesting credit under Section 1.1.44 for each included Year of Service during the period the election not to participate is effective.

(c) For any Plan Year, if application of the limitations or requirements of subsection (b) would cause the Plan to fail to satisfy the requirements of Sections 401(a)(26) and/or 410(b) of the Code, if applicable to the Plan (Section 410(b) being inapplicable if this is a government plan as defined in Code section 414(d)), such subsections shall not apply and subsection (d) shall apply. Solely for the Plan Year commencing in 1989, a Participant shall be treated as benefiting under the Plan if the sole reason for the Participant's failure to receive an allocation to his account is due to the requirement that a Participant complete at least 1,000 Hours of Service during the Plan Year commencing in 1989.

(d) For a plan with respect to which paragraph (c) applies, the Employer contribution and Forfeitures available for allocation for the Plan Year shall be allocated to the accounts of all Participants; provided, however, in the event that the Employer has so indicated in the Adoption Agreement, if the Employee terminated employment during the Plan Year with not more than 500 Hours of Service, such terminated Employee shall not be allocated any portion of the Employer contribution or Forfeitures allocated for such Plan Year. If this subsection (d) applies, subsection (b) shall not apply.

3.4 Forfeitures. Except as otherwise provided in Section 6.4, and to the extent elected or otherwise provided for in the Adoption Agreement, Forfeitures shall be added to or be used to reduce the Employer's contribution. Forfeitures available for allocation in addition to or as a part of the Employer's contribution for the Fiscal Year shall be allocated as Employer contributions as provided in Section 3.2.

### 3.5 Rollover Contributions.

#### (a) Police and Fire Plans.

(i) Police. If a police officer terminates his or her employment with another city of the first class in Nebraska for the purpose of becoming a police officer employed by the City, and commences such employment with the City within one hundred and twenty days of such termination, such police officer shall be entitled to transfer to the Trustee of the Plan the full amount of his or her Employee Account and the vested portion of his or her Employer Account in the Police Officers Retirement System Fund at the time of termination so long as the transfer is made in accordance with the requirements of Section 3.5(b) below. The funds shall be transferred directly to the Employee Account of the Employee and administered thereafter by the Retirement Committee. The Employee shall otherwise be deemed a new Employee for purposes of the Plan after he or she commences employment with the City.

(ii) Fire. If a firefighter terminates his or her employment after four (4) or more years as a firefighter with another city of the first class in Nebraska, for purposes of becoming a firefighter with the City, and commences employment with the City as a firefighter within ninety (90) days after such termination, the firefighter shall be entitled to transfer to the Trustee of the Plan the full amount of his or her Employee Account and the vested portion of his or her Employer Account in the Firefighters Retirement System Fund at the time of termination so long as the transfer is made in accordance with the requirements of Section 3.5(b) below. The transferred funds shall be administered by the Retirement Committee of the Plan. The Employee

shall otherwise be deemed a new Employee for purposes of the Plan after he or she commences employment with the City.

(b) Other Municipal Plans. Notwithstanding the limitations of Section 3.6, a Participant may, if elected by the Employer in the Adoption Agreement, make a rollover contribution or direct rollover (in addition to any Employer contribution described in Section 3.2, and any Participant contribution described in Section 3.1):

(i) from a qualified plan described in Code section 401(a) or 403(a), which includes a trust exempt from federal income tax, and excludes after-tax Employee contributions; or

(ii) from a conduit individual retirement account or a conduit individual retirement annuity from a qualified plan; or

(iii) such other types of plans, effective on such dates, as specified in the Adoption Agreement.

Furthermore, an eligible Employee, prior to satisfying the Plan's eligibility condition(s), may make a rollover contribution or direct rollover to the same extent and in the same manner as a Participant. If an Employee makes a rollover contribution or direct rollover to the Trust prior to satisfying the Plan's eligibility condition(s), the Retirement Committee and Trustee shall treat the Employee as a Participant for all purposes of the Plan except that the Employee shall not share in Employee or Employer contributions or Participant forfeitures under Section 3 until he actually becomes a Participant in the Plan. If the Employee terminates employment prior to becoming a Participant, the Trustee shall distribute his rollover contribution Account to him as if it were an Employer contribution Account.

All rollover contributions and direct rollovers to the Plan shall be fully vested and made and allocated to the Rollover Account of such Participant or Employee in accordance with applicable law, including separate accounting for amounts includible and not includible in gross income.

(c) Merger of Services. To the extent Neb. Rev. Stat. Section 13-2401 is applicable to this Plan; If the Employer transfers employees who are Participants to a separate political subdivision (as defined by Neb. Rev. Stat. Section 13-2401(a)(1)), or receives employees from another political subdivision, in a merger of services, such employees who became employees of the new political subdivision, or the Employer, shall receive credit for their years of participation in the retirement system of the transferring entity for purposes of membership in the retirement system of the receiving entity. Rollovers, contributions and transfers from and between plans in such cases shall be carried out in accordance with Neb. Rev. Stat. Section 13-2401, to the extent consistent with applicable provisions of the Code.

3.6 Limitation on Allocations and Benefits. Notwithstanding anything in this Plan to the contrary, contributions and benefits under this Plan shall not exceed applicable limitations of Code Section 415, as set forth therein and the Treasury Regulations and other applicable guidance thereunder, the provisions of which are incorporated herein by this reference. More specifically, annual additions to this Plan shall not exceed the Maximum Permissible Amount, and any annual benefit from this Plan that is treated as a distribution from a defined benefit plan shall not exceed the Maximum Permissible Benefit. All such annual additions and annual benefits hereunder shall be automatically limited to a level necessary to prevent the limitations of Code section 415, as adjusted from time to time pursuant to Code section 415(d), from being exceeded with respect to any Participant. If a benefit or contribution during a Limitation Year would produce an annual benefit or annual addition in excess of the Maximum Permissible Benefit or Amount, the benefit or amount will be limited to the extent necessary so that the a-benefit or amount that does not exceed the Maximum Permissible Benefit or Amount. Provided, however, that, for purposes of the Maximum Permissible Benefit, the compensation limitation of subsection 415(b)(1)(B) shall not apply if this Plan constitutes a "governmental plan" within the meaning of Code section 414(d), pursuant to Code section 415(b)(11). Furthermore, special rules cross referenced in Treasury Regulations section 1.415(a)-1(b)(3) shall apply to the extent this Plan is a governmental plan described in said rules.



3.6.1 Single Plan. If the Participant does not participate in, and has never participated in another qualified plan maintained by the Employer or a welfare benefit fund, as defined in Code section 419(e) maintained by the Employer; or an individual medical account, as defined in Code section 415(1)(2), maintained by the Employer; or a simplified employee pension as defined by Code section 408(k), maintained by the Employer, which provides an annual addition as defined in Section 3.6.9, the amount of annual additions which may be credited to the Participant's Total 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 Employer 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. In addition to, and not in limitation of, the foregoing, distributions from the Plan (or from an annuity contract making distributions on behalf of the Plan or from an annuity contract that has been distributed under the Plan) during a limitation year that are or are treated as payments from a defined benefit plan shall not exceed the limitations of Code Section 415 and Regulations thereunder (as such limitations shall be adjusted from time to time pursuant to Code section 415(d)), the terms of which are incorporated herein by this reference. Benefits payable under this Plan shall be automatically limited as necessary to prevent the limitations of Code Section 415 from being exceeded with respect to any Participant. The foregoing shall operate automatically without discretion of the Employer.

3.6.2 Determination of Maximum Permissible Amount. Prior to determining the Participant's actual compensation for the Limitation Year, the Employer may determine the maximum permissible amount for a Participant on the basis of a reasonable estimation of the Participant's compensation for the Limitation Year, uniformly determined for all Participants similarly situated. 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.

In the case of an individual who was a participant in one or more defined benefit plans of the Employer as of the first day of the first Limitation Year beginning after December 31, 1994, the application of the limitations of this Article shall not cause the Maximum Permissible Amount for such individual under all such defined benefit plans to be less than the individual's Retirement Protection Act of 1994 (RPA '94) Old Law Benefit. The preceding sentence applies only if such defined benefit plans met the requirement of Code section 415 on December 7, 1994.

3.6.3 Disposition-Correction of Excess Amount. If, pursuant to Section 3.6.1 or as a result of the allocation of Forfeitures, there is an excess amount, the excess will be disposed of in the time and manner permitted under IRC Section 415 or other applicable laws, rules, regulations or guidance, as adopted or amended from time to time, including, but not limited to, Preambles to Final Regulations under Code Section 415, 72 FR 65, 16888 (April 5, 2007); Rev. Proc. [2008-50 \(Revenue Procedure 2013-12 effective April 1, 2013\)](#)~~2006-27, Section 2.02(2) & Appendices B and C~~. To the extent permitted, the following correction methodology and order will be used:

(a) Police and Fire Plan.

(i) Any Nondeductible Voluntary Employee contributions (plus attributable earnings), to the extent that they would reduce the excess amount, will be returned to the Participant;

(ii) If after the application of Subparagraph (i) an excess amount still exists, and the Participant is covered by the Plan at the end of a Limitation Year, the excess amount in the Participant's Employer Account will be used to pay Plan administration expenses incurred by the City;

(iii) If after the application of Subparagraphs (i) and (ii) an excess amount still exists, and the Participant is covered by the Plan at the end of a Limitation Year, the



excess amount in the Participant's Employer Account will be used to reduce Employer Contributions (including any allocation of Forfeitures) for such Participant in the next Limitation year, and each succeeding Limitation Year if necessary.

(iv) If after the application of Subparagraphs (i) and (ii), an excess amount still exists and the Participant is not covered by the Plan at the end of a Limitation Year, the excess amount will be held unallocated in a suspense account. The suspense account will be applied to reduce further Employer Contributions (including allocation of any Forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary.

(b) Other Municipal Plans.

(i) Any Nondeductible Voluntary Employee Contributions (plus attributable earnings), to the extent that they would reduce the excess amount, will be returned to the Participant;

(ii) If after the application of Subparagraph (i) an excess amount still exists, and the Participant is covered by the Plan at the end of a Limitation Year, the excess amount in the Participant's Employer Account will be used to reduce Employer Contributions (including any allocation of Forfeitures) for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary.

(iii) If after the application of Subparagraph (i) an excess amount still exists, and the Participant is not covered by the Plan at the end of a Limitation Year, the excess amount will be held unallocated in a suspense account. The suspense account will be applied to reduce further Employer Contributions (including allocation of any Forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary;

(c) If a suspense account is in existence at any time during a Limitation Year pursuant to this Section, it will not participate in the allocation of the Fund's investment gains and losses. 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 Contributions 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.

(d) Notwithstanding any provision of the Plan to the contrary, effective for Limitation Years beginning on or after July 1, 2007, if the annual additions or benefits (within the meaning of Code § 415) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure ~~2006-27~~2008-50 ([Revenue Procedure 2013-12 effective April 1, 2013](#)) or any [amended or](#) superseding guidance, including, but not limited to, the preamble of the final Code §415 regulations.

3.6.4 Master or Prototype Plans. This Section applies if the Participant [also](#) is covered under a qualified master or prototype defined contribution plan maintained by the Employer, or a welfare benefit fund, as defined in Code section 419(e), maintained by the Employer; an individual medical account, as defined in Code section 415(1)(2), maintained by the Employer; or a simplified employer pension, maintained by the Employer, which provides an annual addition as defined in Section 3.6.9, during any Limitation Year. The annual additions which may be credited to a Participant's Total Account under this Plan for any such Limitation Year will not exceed the maximum permissible amount reduced by the annual additions credited to a Participant's Total Account under the other defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employer pensions for the same Limitation Year. If the annual additions with respect to the Participant under other defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employer pensions maintained by the Employer

are less than the maximum permissible amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's Total Account under this Plan would cause the annual additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the annual additions under all such plans for the Limitation Year will equal the maximum permissible amount. If the annual additions with respect to the Participant under such other defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employer pensions in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed or allocated to the Participant's Total Account under this Plan for the Limitation Year.

Prior to determining the Participant's actual compensation for the Limitation Year, the Employer may determine the maximum permissible amount for a Participant in the manner described in Section 3.6.2. 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.

If, pursuant to the preceding paragraph or as a result of the allocation of forfeitures, a Participant's annual additions under this Plan and such other plans would result in an excess amount for a Limitation Year, the excess amount will be deemed to consist of the annual additions last allocated, except that annual additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.

3.6.5 Amount Attributable to this Plan. If an excess amount was allocated to a Participant on an Annual Valuation Date of this Plan which coincides with an Annual Valuation Date of another plan, the excess amount attributed to this Plan will be the product of,

(a) the total excess amount allocated as of such date, multiplied by

(b) the ratio of (i) the annual additions allocated to the Participant for the Limitation Year as of such date under this Plan to (ii) the total annual additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified master or prototype defined contribution plans.

3.6.6 Correction of Excess Amount or Benefit. Any excess amount or benefit attributed to this Plan will be disposed or otherwise corrected in the manner described in Section 3.6.3. ~~Provided, however, effective for Limitation Years beginning on or after July 1, 2007 and notwithstanding any provision of the Plan to the contrary, if the annual additions or benefits (within the meaning of Code § 415) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2006-27 or any superseding guidance, including, but not limited to, the preamble of the final Code § 415 regulations.~~

3.6.7 Other Defined Contribution Plans. If the Participant is covered under another qualified defined contribution plan maintained by the Employer which is not a master or prototype plan, annual additions which may be credited to the Participant's Total Account under this Plan for any Limitation Year will be limited in accordance with Sections 3.6.4 through 3.6.6 as though the other plan were a master or prototype plan unless the Employer provides other limitations in Section K of the Adoption Agreement.

3.6.8 Other Defined Benefit Plans. If distributions hereunder are treated as payments from a defined benefit plan and the Participant is or has ever been a participant in another qualified defined benefit plan (regardless whether or not terminated) maintained by the Employer or a predecessor employer, the sum of the payments from all such plans shall not exceed applicable limitations of Code section 415(b), as adjusted from time to time pursuant to Code section 415(d). Where the Participant's employer-provided benefits under all such defined benefit plans would exceed said applicable limitations, payments under this Plan shall be limited so that the limitations under Code section 415(b) are not exceeded, unless otherwise provided in Section K of the Adoption Agreement.

3.6.9 Definitions and Special Rules.

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

(i) Employer contributions;

(ii) Employee contributions;

(iii) Forfeitures;

(iv) Amounts allocated, after March 31, 1984, to an individual medical account, as defined in Code section 415(1)(2), which is part of a pension or annuity plan maintained by the Employer 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 Code section 419A(d)(3), under a welfare benefit fund, as defined in Code section 419(e), maintained by the Employer are treated as annual additions to a defined contribution plan; and.

(v) allocations under a simplified employer pension.

For this purpose, any excess amount applied under Sections 3.6.3 or 3.6.6 in the Limitation Year to reduce Employer Contributions will be considered annual additions for such Limitation Year.

3.6.9(a)-1 Final Section 415 Regulations – Annual Additions. The Plan's definition of "annual additions" is modified as follows for Limitation Years beginning on or after July 1, 2007:

a. Restorative payments. Annual additions for purposes of Code § 415 shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under ERISA or under other applicable federal or state law, where participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to a plan made pursuant to a Department of Labor order, the Department of Labor's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under ERISA or other applicable federal or state law are not restorative payments and generally constitute contributions that are considered annual additions.

b. Other Amounts. Annual additions for purposes of Code § 415 shall not include: (1) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (2) Rollover contributions (as described in Code §§ 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (3) Repayments of loans made to a participant from the Plan; and (4) Repayments of amounts described in Code § 411(a)(7)(B) (in accordance with Code § 411(a)(7)(C)) and Code § 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code § 414(d)) as described in Code § 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

c. Date of tax-exempt Employer contributions. Notwithstanding anything in the Plan to the contrary, in the case of an Employer that is exempt from Federal income tax (including a governmental employer), Employer contributions are treated as credited to a participant's account for a particular limitation year only if the contributions are actually made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the employer keeps its books) with or within which the particular limitation year ends.

(b) Compensation -

(i) 415 Safe Harbor Compensation. For the purpose of this Section 3.6, a Participant's earned income, wages, [differential wage payments under Code section 3401\(h\) \(for years beginning after December 31, 2008\)](#), salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer who maintains the Plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treasury Regulations, Section 1.62-2(c)) and excluding the following:

a. Employer contributions (other than elective contributions described in section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i) or 457(b)) made by the Employer to a plan of deferred compensation (including a simplified employee pension or simple retirement account, described in Code section 408(k) or (p), respectively, and whether or not qualified) to the extent not includable in the Employee's gross income for the taxable year in which contributed., and any distribution from a plan of deferred compensation (whether or not qualified and regardless whether such amounts are includible in the gross income of the Employee when distributed). However, if the Employer so provides elsewhere in this Plan, any amounts received by an Employee pursuant to a nonqualified unfunded deferred compensation plan are permitted to be considered as compensation for section 415 purposes in the year the amounts are actually received, but only to the extent such amounts are includible in the Employee's gross income;

b. Amounts realized from the exercise of a nonstatutory option, or when restricted stock (or other property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture (see Code section 83 and related regulations);

c. Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;

d. Other amounts which received special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts that are described in section 125); and

e. Other items of remuneration that are similar to any of the items listed in (a) through (d) above.

415 Safe Harbor Compensation as contained in this paragraph 3.6.9(b)-i shall be the definition of compensation for purposes of satisfying the requirements of Code

section 415 unless an alternative definition of compensation described below is elected in the Adoption Agreement.

(ii) **Alternative Definitions of Compensation.** The following alternative definition of compensation shall apply for Code Section 415 purposes if elected by the Employer in the Adoption Agreement:

a. **W-2 Wages.** Compensation is defined as wages within the meaning of Code section 3401(a) and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code sections 6041(d), 6051(a)(3), and 6052. Compensation shall be determined without regard to any rules under Code section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2)); or

b. **Section 3401(a) Wages.** Compensation is defined as wages within the meaning of Code section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2)).

c. **Such other definition of compensation for Code section 415 purposes as specified in the Adoption Agreement.**

(iii) For purposes of applying the limitations of this Section, compensation for a Limitation Year is the compensation actually paid or made available during such year.

(iv) For limitation years beginning before July 1, 2007, compensation for a Participant in a defined contribution plan who is permanently and totally disabled (as defined in Code section 22(e)(3)) 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; for Limitation Years beginning before January 1, 1997, but not for Limitation Years beginning after December 31, 1996, such imputed compensation for the disabled Participant may be taken into account only if the Participant is not a Highly Compensated Employee (as defined in Code section 414(q)), and contributions made on behalf of such Participant are nonforfeitable when made. See section 3.6.9(b)-3(d) below for limitation years beginning on or after July 1, 2007.

(v) Notwithstanding anything in this section to the contrary, effective for Limitation Years beginning on or after January 1, 1998, compensation for purposes of this Section 3.6 shall include any amount that would be included in compensation but for an election under Code section 125(a), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b); or, effective January 1, 2001, Code section 132(f)(4).

(vi) Unless elected by the Employer in the Adoption Agreement, amounts under Code Section 125 will not include any amounts that are not available to an Employee in cash in lieu of group health coverage because the Employee is unable to certify that he or she has other health coverage (deemed Section 125 compensation). If an election is made in the Adoption Agreement, for limitation years beginning after December 31, 2001 or such earlier date specified by the Employer elsewhere in this Plan, compensation shall include deemed section 125 compensation. Deemed section 125 compensation is an amount that is excludable under Code section 106 that is not available to a participant in cash in lieu of group health coverage under a section 125 arrangement solely because the participant is unable to certify that he or she has other health coverage. Amounts are deemed section 125 compensation only if the Employer does not

request or collect information regarding the Employee's other health coverage as part of the enrollment process for the health plan.

(vii) Compensation for Code section 415 purposes shall be limited under Code section 401(a)(17)(A) in the same manner as described in section 1.1.29 above.

3.6.9(b)-1 Final Section 415 Regulations - Compensation. The following shall apply to the definition of compensation for Code section 415 purposes effective for Limitation Years beginning on or after July 1, 2007:

3.6.9(b)-2 Default Provisions. Unless the Employer elects otherwise in the Adoption Agreement, the following defaults will apply:

a. The provisions of the Plan setting forth the definition of compensation for purposes of Code § 415 (hereinafter referred to as "415 Compensation"), as well as compensation for purposes of determining highly compensated employees pursuant to Code § 414(q) and for top-heavy purposes under Code § 416 (including the determination of key employees) – which top-heavy provisions shall not apply if this Plan is a governmental plan as defined in Code section 414(d) - shall be modified by (1) including payments for unused sick, vacation or other leave and payments from nonqualified unfunded deferred compensation plans (Section 3.6.9(b)-3(b) below), (2) excluding salary continuation payments for Employees on military service (Section 3.6.9(b)-3(c) below), and (3) excluding salary continuation payments for disabled Employees (Section 3.6.9(b)-3(d) below).

b. The "first few weeks rule" does not apply for purposes of 415 Compensation (Section 3.6.9(b)-4 below).

c. 415 Compensation shall include any amount described in section 3.6.9(b)-3, 3.6.9(b)-4 or 3.6.9(b)-5 that is included as compensation for purposes of making or allocating contributions under the Plan, notwithstanding any election in Section "K" of the Adoption Agreement to the contrary.

3.6.9(b)-3 415 Compensation Paid After Severance From Employment. 415 Compensation shall be adjusted, as set forth herein, subject to 3.6.9(b)-2 above and as otherwise elected in Adoption Agreement Section "K", for the following types of compensation paid after an Employee's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code § 414(b), (c), (m) or (o)). However, amounts described in subsections (a) and (b) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the Limitation Year that includes the date of such severance from employment, if later. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code § 415(c)(3), even if payment is made within the time period specified above.

a. Regular pay. 415 Compensation shall include regular pay after severance of employment if:

(1) The payment is regular compensation for services during the participant's regular working hours, or compensation for services outside the participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(2) The payment would have been paid to the participant prior to a severance from employment if the participant had continued in employment with the Employer.

b. Leave cashouts and deferred compensation. Leave cashouts shall be included in 415 Compensation, unless otherwise elected in Section "K" of the Adoption Agreement, if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in 415 Compensation, unless otherwise elected in Section "K" of the Adoption Agreement, if the compensation would have been included in the definition of 415 Compensation if it had been paid prior to the participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the participant had continued in employment with the Employer and only to the extent that the payment is includible in the participant's gross income.

c. Salary continuation payments for military service participants. 415 Compensation does not include, unless otherwise elected in Section "K" of the Adoption Agreement, payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code § 414(u)(1)). If an election is made in the Adoption Agreement to include such payments, they shall be included to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

d. Salary continuation payments for disabled Participants. Unless otherwise elected in Section "K" of the Adoption Agreement, 415 Compensation does not include compensation paid to a participant who is permanently and totally disabled (as defined in Code § 22(e)(3)). If elected, this provision shall apply to either just non-highly compensated participants, immediately before becoming disabled, or to all participants, for the period specified in Section "K" of the Adoption Agreement.

Back pay, within the meaning of Treasury Regulations section 1.415(c)-2(g)(8) shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

3.6.9(b)-4 Administrative Delay ("The First Few Weeks") Rule. 415 Compensation for a Limitation Year shall not include, unless otherwise elected in Section "K" of the Adoption Agreement, amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates. However, if elected in Section "K" of the Adoption Agreement, 415 Compensation for a Limitation Year shall include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next Limitation Year, the amounts are included on a uniform and consistent basis with respect to all similarly situated participants, and no compensation is included in more than one Limitation Year.

3.6.9(b)-5 Inclusion of Certain Nonqualified Deferred Compensation Amounts. If the Plan's definition of compensation for purposes of Code § 415 is the definition in Regulation Section 1.415(c)-2(b) (Regulation Section 1.415-2(d)(2) under the Regulations in effect for Limitation Years beginning prior to July 1, 2007) and the simplified compensation definition of Regulation 1.415(c)-2(d)(2) (Regulation Section 1.415-2(d)(10) under the Regulations in effect for Limitation Years prior to July 1, 2007) is not used, then 415 Compensation shall include amounts that are includible in the gross income of a Participant under the rules of Code § 409A or Code § 457(f)(1)(A) or because the amounts are constructively received by the Participant. [Note if the



Plan's definition of compensation is W-2 wages or wages for withholding purposes, then these amounts are already included in compensation.]

(c) Employer - For purposes of this Section 3.6, Employer shall mean the Employer that adopts this Plan, and all members of a controlled group of corporations (as defined in Code section 414(b) as modified by Code section 415(h)), all commonly controlled trades or businesses (as defined in Code section 414(c) as modified, except in the case of a brother-sister group of trades or businesses under common control, by section 415(h)), or affiliated service groups (as defined in Code section 414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the Employer pursuant to Code section 414(o).

(d) Excess Amount - The excess of the Participant's annual additions for the Limitation Year over the maximum permissible amount. Effective for Limitation Years beginning on or after July 1, 2007 and notwithstanding any provision of the Plan to the contrary, if the annual additions (within the meaning of Code § 415) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure ~~2006-27~~2008-50 ([Revenue Procedure 2013-12 effective April 1, 2013](#)) or any amended or superseding guidance, ~~including, but not limited to, the preamble of the final §415 regulations.~~

(e) Master or Prototype Plan - a plan the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.

(f) Maximum Permissible Amount - For Limitation Years beginning on or after January 1, 2002, 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:

(i) \$40,000, as adjusted for increases in the cost-of-living under Section 415(d) of the Code, or

(ii) 100 percent of the Participant's compensation for the Limitation Year.

The compensation limitation referred to in (ii) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code section 401(h) or Code section 419A(f)(2)) which is otherwise treated as an annual addition.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12-consecutive month period, the maximum permissible amount will not exceed the defined contribution dollar limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short Limitation Year}}{12}$$

If the Plan is terminated as of a date other than the last day of the Limitation Year, the Plan is deemed to have been amended to change its Limitation Year and the Maximum Permissible Amount shall be prorated for the short Limitation Year.

(g) Aggregation and Disaggregation of Plans. Effective for Limitation Years beginning on or after July 1, 2007 and notwithstanding any provision of the Plan to the contrary,

a. For purposes of applying the limitations of Code § 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor employer") under which the participant receives annual additions are treated as one defined contribution plan. Likewise all defined benefit plans ever maintained by the Employer are treated as one defined benefit plan. The "Employer" means the Employer that adopts this Plan and all members of a



controlled group or an affiliated service group that includes the Employer (within the meaning of Code §§ 414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code § 415(h), and shall take into account tax-exempt organizations under Regulation Section 1.414(c)-5, as modified by Regulation Section 1.415(a)-1(f)(1). For purposes of this Section:

(1) A former Employer is a "predecessor employer" with respect to a participant in a plan maintained by an Employer if the Employer maintains a plan under which the participant had accrued a benefit while performing services for the former Employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Regulation Section 1.415(f)-1(b)(2) apply as if the Employer and predecessor Employer constituted a single employer under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.

(2) With respect to an Employer of a participant, a former entity that antedates the Employer is a "predecessor employer" with respect to the participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

b. Break-up of an affiliate employer or an affiliated service group. For purposes of aggregating plans for Code § 415, a "formerly affiliated plan" of an employer is taken into account for purposes of applying the Code § 415 limitations to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an employer is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Regulation Section 1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

c. Midyear Aggregation. Two or more defined contribution plans that are not required to be aggregated pursuant to Code § 415(f) and the Regulations thereunder as of the first day of a limitation year do not fail to satisfy the requirements of Code § 415 with respect to a participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the participant's account after the date on which the plans are required to be aggregated.

(h) Predecessor Employer – If the Employer maintains a plan that provides a benefit which the Participant accrued while performing services for a former employer, the former employer is a predecessor employer with respect to the participant in the plan. A former entity that antedates the Employer is also a predecessor employer with respect to a Participant if, under

the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(i) Annual Benefit - A benefit that is payable annually in the form of a straight life annuity. Except as provided below or in the regulations under section 415, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this section 3.6.

The following provisions incorporate certain provisions of the Pension Funding Equity Act of 2004 ("PFEA"), as modified by the Pension Protection Act of 2006 and Worker, Retiree and Employer Recovery Act of 2008. Except as otherwise provided herein, eEffective for distributions in Plan Years beginning after December 31, 2003, the required determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with "I" or "II" below, as applicable. However, these provisions shall not supersede any prior election to apply the transition rule of section 101(d)(3) of the Pension Funding Equity Act of 2004 as described in IRS Notice 2004-78.

I. Benefit Forms Not Subject to section 417(e)(3). The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this section "I" if the form of the Participant's benefit is either (i) a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or (ii) an annuity that decreases during the life of the participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code section 401(a)(11)).

a. Limitation Years Beginning Before July 1, 2007. For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed using whichever of the following produces the greater annual amount: (i) the interest rate and mortality table (or other tabular factor) specified in Appendix B for adjusting benefits in the same form; and (ii) a 5% interest rate assumption and the applicable mortality table under Code section 417 as set forth in Rev. Rul. 2001-62 defined in Appendix B for that annuity starting date.

b. Limitation Years Beginning On or After July 1, 2007. For limitation years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of (i) the annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the participant's form of benefit; and (ii) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed using a 5% interest rate assumption and the applicable mortality table under Code section 417 as set forth in Rev. Rul. 2001-62 defined in Appendix B for that annuity starting date.

II. Benefit Forms Subject to Code Section 417(e)(3): The straight life annuity that is actuarially equivalent to the participant's form of benefit shall be determined under this paragraph-subsection II if the form of the participant's benefit is other than a benefit form described in subsection "I" above. In this case, the actuarially equivalent straight life annuity shall be determined as follows:

a. Annuity Starting Date in Small Plans for Plan Years Beginning in 2009 and Later. Notwithstanding anything in this Plan to the contrary, if the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in or after 2009, and if the Plan is maintained by an eligible employer as defined in Code Section 408(p)(2)(C)(i), the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount:

(i) The interest rate and the mortality table (or other tabular factor) specified in Appendix B for adjusting benefits in the same form; and

(ii) 5.5 percent interest rate assumption and the applicable mortality table described in Appendix B

~~a. — b. Annuity Starting Date in Plan Years Beginning After 2005. Except as provided in immediately preceding subsection "a", if the annuity starting date of the participant's form of benefit is in a plan year beginning after December 31, 2005, the actuarially equivalent straight life annuity is equal to the greatest of (i) the annual amount of the straight life annuity commencing at the same annuity stating date that has the same actuarial present value as the participant's form of benefit, computed using the interest rate and mortality table (or other tabular factor) specified in Appendix B of the Plan for adjusting benefits in the same form; (ii) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using a 5.5% interest rate assumption and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2), (determined in accordance with Code section 417 Appendix B as set forth in Rev. Rul. 2001-62; and (iii) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using the applicable interest rate for the distribution under Treasury Regulations Section 1.417(e)-1(d)(3) (determined in accordance with Appendix B) — on 30-year Treasury securities as specified by the Commissioner for the lookback month for the stability period, and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with defined in Appendix B), divided by 1.05.~~

~~Unless otherwise elected by the Employer in a written addendum to this Plan, (i) the stability period is the successive period of one calendar month which contains the annuity starting date for the distribution and for which the applicable interest rate remains constant, and (ii) the lookback month is the first calendar month preceding the first day of the stability period. Notwithstanding anything in this paragraph or election of the Employer regarding stability period or lookback month, a plan amendment that changes the date for determining the applicable interest rate (including an indirect change as a result of a change in plan year), shall not be given effect with respect to any distribution during the period commencing one year after the later of the amendment's effective date or adoption date, if, during such period and as a result of such amendment, the participant's distribution would be reduced.~~

c. Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the annuity starting date of the participant's form of benefit is in a plan year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the

participant's form of benefit, computed using whichever of the following produces the greater annual amount: (i) the interest rate and mortality table (or other tabular factor) specified in Appendix B of the plan for adjusting benefits in the same form; and (ii) a 5.5% interest rate assumption and the applicable mortality table for the distribution under Code section 417 Treasury Regulations Section 1.417(e)-1(d)(2) as set forth in Rev. Rul. 2001-62.

d. However, this subsection does not supersede any prior election to apply the transition rule of section 101(d)(3) as described in Notice 2004-78.

(j) RPA '94 Old Law Benefit. The Participant's Accrued Benefit under the terms of the Plan as of January 1, 2000 (the RPA '94 Freeze Date), for the Annuity Starting Date and optional form and taking into account the limitations of Code section 415, as in effect on December 7, 1994, including the participation requirements under Code section 415(b)(5). In determining the amount of a Participant's RPA '94 Old Law Benefit, the following shall be disregarded:

I. any plan amendment increasing benefits adopted after the RPA '94 Freeze Date; and

II. any cost of living adjustments that become effective after such date.

A Participant's RPA '94 Old Law Benefit is not increased after the RPA '94 Freeze Date, but if the limitations of Code section 415, as in effect on December 7, 1994, are less than the limitations that were applied to determine the Participant's RPA '94 Old Law Benefit on the RPA '94 Freeze Date, then the Participant's RPA '94 Old Law Benefit will be reduced in accordance with such reduced limitation. If, at any date after the RPA '94 Freeze Date, the Participant's total plan benefit, before the application of Code section 415, is less than the Participant's RPA '94 Old Law Benefit, the RPA '94 Old Law Benefit will be reduced to the Participant's total plan benefit.

(k) Employee Contributions. Employee contributions, rollovers and transfers, and benefits or limitations attributable or applicable thereto, shall be determined in accordance with Treasury Regulations, section 1.415(b)-1(b)(2) and (3).

(l) Benefit Increases. Benefit increases as a result of an increase in a limitation of Code section 415, if any, shall be provided to all Employees participating in the Plan having at least one hour of service on or after the first day of the limitation year ending on or after the date that the change becomes effective

(m) Limitation Years. Provisions of this section 3.6 adopted to comply with final Treasury Regulations under Code section 415 shall be effective for limitation years beginning on or after July 1, 2007, and application of such provisions shall not cause applicable Code section 415 limitations for any Participant to be less than the Participant's benefits under all qualified plans of the Employer as of the end of the limitation year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007; provided the provisions of such plans both adopted and in effect before April 5, 2007 satisfied all applicable laws, rules and regulations in effect as of the end of the last limitation year beginning before July 1, 2007, as described in Treasury Regulations, section 1.415(a)-1(g)(4)

(n) Maximum Permissible Benefit. Pursuant to Code section 415(b)(11), the maximum permissible benefit for a governmental plan described in Code section 414(d) means the defined benefit dollar limitation set forth in Code section 415(b)(1)(A), subject to adjustment pursuant to Code section 415(d) periodically and as follows.

I. Adjustment for Less Than 10 Years of Participation or Service: If the Participant has less than 10 years of participation in the Plan, the

defined benefit dollar limitation shall be multiplied by a fraction – (i) the numerator of which is the number of years (or part thereof, but not less than one year) of participation in the Plan, and (ii) the denominator of which is 10, pursuant to the rules set forth in Treasury Regulations, Section 1.415(b)-1(g)(1).

II. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or after Age 65: Effective for benefits commencing in limitation years ending after December 31, 2001, the defined benefit dollar limitation shall be adjusted if the annuity starting date of the participant's benefit is before age 62 or after age 65, as follows.

a. Adjustment of defined benefit dollar limitation for benefit commencement before age 62:

*I. Limitation Years Beginning Before July 1, 2007.*

If the annuity starting date for the participant's benefit is prior to age 62 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted above as necessary if less than 10 years of participation) with actuarial equivalence computed using whichever of the following produces the smaller annual amount (i) the interest rate specified in Appendix B and the mortality table (or other tabular factor) specified in Appendix B; or (ii) a 5-percent interest rate assumption and the applicable mortality table under Code section 417 as set forth in Rev. Rul. 2001-62.

*II. Limitation Years Beginning on or After July 1 2007.*

A. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted above for years of participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for the annuity starting date ~~as~~ under Code section 417 as set forth in Rev. Rul. 2001-62 (and expressing the Participant's age based on completed calendar months as of the annuity starting date).

B. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the Participant's annuity starting date is the lesser of the limitation determined under subsection A above and the defined benefit dollar limitation (adjusted above for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Participant's annuity starting date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Section 3.6.

C. Notwithstanding any other provisions of this subsection 3.6.9(n)(II)(a), the age-adjusted dollar limit applicable to a Participant shall not decrease on account of an increase in age or the performance of additional services.

b. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65.

I. *Limitation Years Beginning Before July 1, 2007.* If the annuity starting date for the participant's benefit is after age 65 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation with actuarial equivalence computed using whichever of the following produces the smaller amount: (1) the interest rate and mortality table specified in Appendix B or (2) a 5% interest rate assumption and the applicable mortality table as defined under Code section 417 as set forth in Rev. Rul. 2001-62.

II. *Limitation Years Beginning on or after July 1, 2007.*

A. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit

commencement, the defined benefit dollar limitation at the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted above for years of participation less than 10, if required), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date as defined under Code section 417 as set forth in Rev. Rul. 2001-62 (and expressing the Participant's age based on completed calendar months as of the annuity starting date).

B. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the Participant's annuity starting date is the lesser of the limitation determined under preceding subsection A and the defined benefit dollar limitation (adjusted above for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Section 3.6. For this purpose the adjusted immediately commencing straight life annuity under the Plan at the Participant's annuity starting date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

c. Notwithstanding the other requirements of this subsection "3.6.9(n)II" ~~no adjustment shall be made to~~ adjusting the defined benefit dollar limitation for the Participant's annuity starting date under section 3.6.9(n)(II)(a)(I), 3.6.9(n)(II)(a)(II)(A), 3.6.9(n)(II)(b)(I), 3.6.9(n)(II)(b)(II)(A), no adjustment shall be made to reflect the probability of a Participant's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the



Participant prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, if any, as defined in Section 417(c) of the Internal Revenue Code, upon the Participant's death.

Adjustments provided under the Code for benefit commencement before age 62 shall not apply to a governmental plan with respect to any "qualified participant" pursuant to Treasury Regulations section 1.415(b)-1(d)(3).

(o) The application of this Section 3.6 revised for final regulations under Code section 415 adopted April 5, 2007 shall not cause the Maximum Permissible Benefit or Amount of any Participant to be less than the Participant's benefit or allocation under this and all other defined benefit or defined contribution plans of the Employer or predecessor employer as of the end of the limitation year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Code section 415 in effect as of the end of the last limitation year beginning before July 1, 2007, as described in Treasury Regulations section 1.415(a)-1(g)(4).

3.7 Code Section 436 Benefit Restrictions. Except as otherwise provided herein or by applicable law, regulations or other guidance, benefits restrictions of Code Section 436 apply to single employer plans in Plan Years beginning after December 31, 2007.

(a) Governmental Plan Exception. Notwithstanding anything in this Section 3.7 to the contrary, Code section 436, the benefit restrictions thereunder and the provisions of Section 3.7 below shall not apply to this Plan to the extent it is a governmental plan within the meaning of Code section 414(d) and exempt from the requirements of Code sections 401(a)(29) and 436 by reason of being exempt from the funding requirements of Code section 412.

3.7.1 2008 and 2009 Plan Years. The provisions of this Section 3.7.1 shall apply to Plan Years beginning after December 31, 2007 and before January 1, 2010.

(a) Application of Section 3.7.1.

(1) This Section 3.7.1 only applies to single employer plans (a plan that is not a multiemployer plan within the meaning of Code Section 414(f)) and does not apply to a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers.

(A) Multiple Employer Plans. In the case of a multiple employer plan to which Code Section 413(c)(4)(A) applies, Code Section 436 applies separately with respect to each employer under the plan, as if each employer maintained a separate plan. Thus, the benefit limitations under Code Section 436 could apply differently to participants who are employees of different employers under such a multiple employer plan. In the case of a multiple employer plan to which Code Section 413(c)(4)(A) does not apply (that is, a plan described in Code Section 413(c)(4)(B) that has not made the election for Code Section 413(c)(4)(A) to apply), Code Section 436 applies as if all participants in the plan were employed by a single employer.

(B) Governmental Plans. Code Section 436 benefit restrictions and other provisions described in this Section 3.7.1 shall not apply to this Plan to the extent it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being exempt from the funding requirements of Code Section



412.

(2) The limitations described in Subsections (b), (c) and (e) do not apply to the Plan for the first five (5) Plan Years of the Plan. Except as otherwise provided by the Commissioner in guidance of general applicability, the Plan Years taken into account for this purpose include the following (in addition to Plan Years during which the Plan was maintained by the Employer):

(A) Plan Years when the Plan was maintained by a predecessor employer within the meaning of Regulations Section 1.415(f)-1(c)(1);

(B) Plan years of another defined benefit plan maintained by a predecessor employer within the meaning of Regulations Section 1.415(f)-1(c)(2) within the preceding five years if any Participants in the Plan participated in that other defined benefit plan (even if the Plan maintained by the Employer is not the plan that was maintained by the predecessor employer); and

(C) Plan years of another defined benefit plan maintained by the Employer within the preceding five years if any Participants in the Plan participated in that other defined benefit plan.

(3) Notwithstanding anything in this Section 3.7.1 to the contrary, the provision of Code Section 436 and the Regulations thereunder are incorporated herein by reference.

(4) For Plans that have a valuation date other than the first day of the Plan Year, the provisions of Code Section 436 and this Section 3.7.1 will be applied in accordance with Regulations.

(b) Funding-Based Limitation on Shutdown Benefits and Other Unpredictable Contingent Event Benefits

(1) In general. If a Participant is entitled to an “unpredictable contingent event benefit” payable with respect to any event occurring during any Plan Year, then such benefit may not be provided if the “adjusted funding target attainment percentage” for such Plan Year (A) is less than sixty percent (60%) or, (B) sixty percent (60%) or more, but would be less than sixty percent (60%) percent if the “adjusted funding target attainment percentage” were redetermined applying an actuarial assumption that the likelihood of occurrence of the “unpredictable contingent event” during the Plan Year is one hundred percent (100%).

(2) Exemption. Paragraph (1) shall cease to apply with respect to any Plan Year, effective as of the first day of the Plan Year, upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(iii).

(c) Limitations on Plan Amendments Increasing Liability for Benefits

(1) In general. No amendment which has the effect of increasing liabilities of the Plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any Plan Year if the “adjusted funding target attainment percentage” for such Plan Year is:

(A) less than eighty percent (80%), or

(B) eighty percent (80%) or more, but would be less than eighty percent (80%) if the benefits attributable to the amendment were taken into account in determining the “adjusted funding target attainment percentage.”

(2) Exemption. Paragraph (c)(1) above shall cease to apply with respect to a Plan amendment

upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(iv).

(3) Exception for certain benefit increases. Paragraph (1) shall not apply to any amendment as otherwise provided in Regulations Section 1.436-1(c).

(d) Limitations on Prohibited Payments

(1) Funding percentage less than sixty percent (60%). If the Plan's "adjusted funding target attainment percentage" for a Plan Year is less than sixty percent (60%), then a Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" on or after the applicable "Section 436 measurement date."

(2) Bankruptcy. A Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" that occurs during any period in which the Employer is a debtor in a case under Title 11, United States Code, or similar Federal or State law. The preceding sentence shall not apply to payments made within a Plan Year with an "annuity starting date" that occurs on or after the date on which the enrolled actuary of the Plan certifies that the "adjusted funding target attainment percentage" of the Plan is not less than one hundred percent (100%).

(3) Limited payment if percentage at least sixty percent (60%) but less than eighty percent (80%) percent.

(A) In general. If the Plan's "adjusted funding target attainment percentage" for a Plan Year is sixty percent (60%) or greater but less than eighty percent (80%), then a Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" on or after the applicable "Section 436 measurement date," unless the present value (determined in accordance with Code Section 417(e)(3)) of the portion of the benefit that is being paid in a "prohibited payment" (which portion is determined under paragraph (C)(i) below) does not exceed the lesser of:

(i) fifty (50) percent of the amount of the present value (determined in accordance with Code Section 417(e)(3)) of the benefit payable in the optional form of benefit that includes the prohibited payment; or

(ii) 100% of the "PBGC maximum benefit guarantee amount."

(B) Bifurcation if optional form unavailable.

(i) Requirement to offer bifurcation. If an optional form of benefit that is otherwise available under the terms of the plan is not available as of the "annuity starting date" because of the application of Regulations Section 1.436-1(d)(3)(i), then the Participant or Beneficiary may elect to:

(1) Receive the unrestricted portion of that optional form of benefit (determined under the rules of Regulations Section 1.436-1(d)(3)(iii)(D)) at that "annuity starting date," determined by treating the unrestricted portion of the benefit as if it were the Participant's or Beneficiary's entire benefit under the plan;

(2) Commence benefits with respect to the Participant's or Beneficiary's entire benefit under the Plan in any other optional form of benefit available under the Plan at the same "annuity starting date" that satisfies Regulations Section 1.436-1(d)(3)(i); or

(3) Defer commencement of the payments to the extent described in Regulations Section 1.436-1(d)(5).

(ii) Rules relating to bifurcation. If the Participant or Beneficiary elects payment of the unrestricted portion of the benefit as described in Regulations Section 1.436-1(d)(3)(ii)(A)(1), then the Participant or Beneficiary may elect payment of the remainder of the Participant's or Beneficiary's benefits under the Plan in any optional form of benefit at that "annuity starting date" otherwise available under the Plan that would not have included a "prohibited payment" if that optional form applied to the entire benefit of the Participant or Beneficiary. The rules of Regulations Section 1.417(e)-1 are applied separately to the separate optional forms for the "unrestricted portion of the benefit" and the remainder of the benefit (the restricted portion).

(iii) Plan alternative that anticipates election of payment that includes a "prohibited payment." With respect to every optional form of benefit that includes a "prohibited payment" and that is not permitted to be paid under Regulations Section 1.436-1 (d)(3)(i), for which no additional information from the Participant or Beneficiary (such as information regarding a Social Security leveling optional form of benefit) is needed to make that determination, rather than wait for the Participant or Beneficiary to elect such optional form of benefit, the Plan will provide for separate elections with respect to the restricted and unrestricted portions of that optional form of benefit.

(C) Definitions applicable to limited payment option. The following definitions apply for purposes of this subsection (d)(3).

(i) Portion of benefit being paid in a prohibited payment. If a benefit is being paid in an optional form for which any of the payments is greater than the amount payable under a straight life annuity to the Participant or Beneficiary (plus any Social Security supplements described in the last sentence of Code Section 411(a)(9) payable to the Participant or Beneficiary) with the same "annuity starting date," then the portion of the benefit that is being paid in a "prohibited payment" is the excess of each payment over the smallest payment during the Participant's lifetime under the optional form of benefit (treating a period after the "annuity starting date" and during the Participant's lifetime in which no payments are made as a payment of zero).

(ii) PBGC maximum benefit guarantee amount. The "PBGC maximum benefit guarantee amount" is the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under Code Section 417(e)) of the maximum benefit guarantee with respect to a Participant (based on the Participant's age or the Beneficiary's age at the "annuity starting date") under ERISA Section 4022 for the year in which the "annuity starting date" occurs.

(iii) Unrestricted portion of the benefit:

(1) General rule. Except as otherwise provided in this paragraph (iii), the unrestricted portion of the benefit with respect to any optional form of benefit is fifty percent (50%) of the amount payable under the optional form of benefit.

(2) Special rule for forms which include Social Security leveling or a refund of employee contributions. For an optional form of benefit

that is a prohibited payment on account of a Social Security leveling feature (as defined in Regulations Section 1.411(d)-3(g)(16)) or a refund of employee contributions feature (as defined in Regulations Section 1.411(d)-3(g)(11)), the unrestricted portion of the benefit is the optional form of benefit that would apply if the Participant's or Beneficiary's Accrued Benefit were fifty percent (50%) smaller.

(3) Limited to PBGC maximum benefit guarantee amount. After the application of the preceding rules of this paragraph (iii), the unrestricted portion of the benefit with respect to the optional form of benefit is reduced, to the extent necessary, so that the present value (determined in accordance with Code Section 417(e)) of the unrestricted portion of that optional form of benefit does not exceed the "PBGC maximum benefit guarantee amount."

(D) Other Rules.

(i) One time application. If a Participant with respect to whom a prohibited payment (or a series of prohibited payments under a single optional form of benefit) is made pursuant to paragraph (d)(3)(A) or (B) above, no additional prohibited payment may be made with respect to that Participant during any consecutive Plan Years for which prohibited payments are limited under this subsection (d).

(ii) Treatment of beneficiaries. For purposes of this subparagraph (d)(3), benefits provided with respect to a Participant and any Beneficiary of the Participant (including an alternate payee, as defined in Code Section 414(p)(8)) are aggregated. If the only benefits paid under the plan with respect to the Participant are death benefits payable to the Beneficiary, then paragraph (d)(3)(C)(i) of this section is applied by substituting the lifetime of the Beneficiary for the lifetime of the Participant. If the Accrued Benefit of a Participant is allocated to such an alternate payee and one or more other persons, then the "unrestricted amount" of (d)(3)(C)(iii) is allocated among such persons in the same manner as the accrued benefit is allocated, unless a qualified domestic relations order (as defined in Code Section 414(p)(1)(A)) with respect to the Participant or the alternate payee provides otherwise.

(iii) Treatment of annuity purchases and plan transfers. This paragraph (d)(3)(D)(iii) applies for purposes of applying subsections (d)(3)(A) and (d)(3)(C)(iii). In the case of a prohibited payment described in Regulations Section 1.436-1(j)(6)(i)(B) (relating to purchase from an insurer), the present value of the portion of the benefit that is being paid in a prohibited payment is the cost to the plan of the irrevocable commitment and, in the case of a prohibited payment described in Regulations Section 1.436-1(j)(6)(i)(C) (relating to certain plan transfers), the present value of the portion of the benefit that is being paid in a prohibited payment is the present value of the liabilities transferred (determined in accordance with Code Section 414(l)). In addition, the present value of the accrued benefit is substituted for the present value of the benefit payable in the optional form of benefit that includes the prohibited payment in Regulations Section 1.436-1(d)(3)(i)(A).

(4) Exception. This subsection (d) shall not apply for any Plan Year if the terms of the Plan (as in effect for the period beginning on September 1, 2005, and ending with such Plan Year) provide for no benefit accruals with respect to any Participant during such period.

(5) Right to delay commencement. If a Participant or Beneficiary requests a distribution in an optional form of benefit that includes a “prohibited payment” that is not permitted to be paid under paragraph (d)(1), (d)(2), or (d)(3) of this Section 3.7.1, then the Participant retains the right to delay commencement of benefits in accordance with the terms of the plan and applicable qualification requirements (such as Code Sections 411(a)(11) and 401(a)(9)).

(6) “Prohibited payment.” For purposes of this subsection (d), the term “prohibited payment” means:

(A) Any payment for a month that is in excess of the monthly amount paid under a single life annuity (plus any Social Security supplements described in the last sentence of Code Section 411(a)(9)), to a Participant or Beneficiary whose “annuity starting date” occurs during any period a limitation under paragraph (d) is in effect;

(B) Any payment for the purchase of an irrevocable commitment from an insurer to pay benefits; and

(C) Any transfer of assets and liabilities to another plan maintained by the same Employer (or by any member of the Employer’s controlled group) that is made in order to avoid or terminate the application of Code Section 436 benefit limitations; and

(D) Any other amount that is identified as a prohibited payment by the Commissioner in revenue rulings and procedures, notices, and other guidance published in the Internal Revenue Bulletin.

Such term shall not include the payment of a benefit which under Code Section 411(a)(11) may be immediately distributed without the consent of the Participant. Furthermore, in the case of a Beneficiary that is not an individual, the amount that is a prohibited payment is determined by substituting the monthly amount payable in installments over 240 months that is actuarially equivalent to the benefit payable to the Beneficiary, as provided in Regulations Section 1.436-1(j)(6)(ii).

(e) Limitation on Benefit Accruals for Plans with Severe Funding Shortfalls

(1) In general. If the Plan’s “adjusted funding target attainment percentage” for a Plan Year is less than sixty percent (60%), benefit accruals under the Plan shall cease as of the “section 436 measurement date.” If the Plan is required to cease benefit accruals under this subsection (e), then the Plan is not permitted to be amended in a manner that would increase the liabilities of the Plan by reason of an increase in benefits or establishment of new benefits. The preceding sentence applies regardless of whether an amendment would otherwise be permissible under subsections (c)(2) or (c)(3) of this Section 3.7.1.

(2) Exemption. Paragraph (1) shall cease to apply with respect to any Plan Year, effective as of the first day of the Plan Year, upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(v).

(3) Temporary modification of limitation. In the case of the first Plan Year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, the provisions of (e)(1) above shall be applied by substituting the Plan’s “adjusted funding target attainment percentage” for the preceding Plan Year for such percentage for such Plan Year, but only if the “adjusted funding target attainment percentage” for the preceding year is greater.

(f) Rules Relating to Contributions Required to Avoid or Terminate Benefit Limitations

The application of the Code Section 436 benefit limitations may be avoided or terminated in accordance with any of the rules set forth in Code Section 436 and Regulations Section 1.436-1(f).

(g) Presumed Underfunding for Purposes of Benefit Limitations

(1) Presumption of continued underfunding.

(A) In general. This paragraph (g)(1) applies to a Plan for a Plan Year if a limitation under subsection (b), (c), (d), or (e) applied to the Plan on the last day of the preceding Plan Year. If this paragraph (g)(1) applies to a Plan, then the first day of the Plan Year is a "Section 436 measurement date" and the presumed "adjusted funding target attainment percentage" for the Plan is the percentage under paragraph (g)(1)(B) or (C) of this subsection, whichever applies to the Plan, beginning on that first day of the Plan Year and ending on the date specified in subparagraph (g)(1)(D) of this section.

(B) Rule where preceding year certification issued during preceding year.

(i) General rule. In any case in which the Plan's enrolled actuary has issued a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year preceding the current Plan Year before the first day of the current Plan Year, the presumed "adjusted funding target attainment percentage" of the Plan for the current Plan Year is equal to the prior Plan Year "adjusted funding target attainment percentage" until it is changed under Regulations Section 1.436-1(h)(1)(iv).

(ii) Special rule for late certifications. If the certification of the adjusted funding target attainment percentage for the prior Plan Year occurred after the first day of the 10th month of that prior Plan Year, the Plan is treated as if no such certification was made, unless the certification took into account the effect of any unpredictable contingent event benefits that are permitted to be paid based on unpredictable contingent events that occurred, and any Plan amendments that became effective, during the prior Plan Year but before the certification (and any associated Code Section 436 contributions).

(C) No certification for preceding year issued during preceding year.

(i) Deemed percentage continues. In any case in which the Plan's enrolled actuary has not issued a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" of the Plan for the Plan Year preceding the current Plan Year during that prior Plan Year, the presumed "adjusted funding target attainment percentage" of the Plan for the current Plan Year is equal to the presumed "adjusted funding target attainment percentage" that applied on the last day of the preceding Plan Year until the presumed "adjusted funding target attainment percentage" is changed under Regulations Section 1.436-1(h)(1)(iii)(B) or (h)(1)(iv).

(ii) Enrolled actuary's certification in following year. In any case in which the Plan's enrolled actuary has issued the certification under Regulations Section 1.436-1(h)(4) of the adjusted funding target attainment percentage of the Plan for the Plan Year preceding the current Plan Year on or after the first day of the current Plan Year, the date of that prior Plan Year certification is a new "Section 436 measurement date" for the current Plan Year. In such a case, the presumed adjusted funding target attainment percentage for the current Plan Year is equal to the prior Plan Year adjusted funding target attainment percentage (reduced by 10 percentage points if Regulations Section 1.436-1(h)(2)(iv) applies to the Plan) until it is changed under Regulations Section 1.436-1(h)(1)(iv). The rules of Regulations Section 1.436-1(h)(1)(ii)(B) apply for purposes of determining whether the enrolled actuary has issued a certification of the adjusted funding

target attainment percentage for the prior Plan Year during the current Plan Year.

(D) Duration of use of presumed “adjusted funding target attainment percentage.” If this paragraph (g)(1) applies to a Plan for a Plan Year, then the presumed “adjusted funding target attainment percentage” determined under this paragraph (g)(1) applies until the earliest of:

(i) The first day of the 4th month of the Plan Year if paragraph (g)(2) of this section applies;

(ii) The first day of the 10th month of the Plan Year if paragraph (g)(3) of this section applies;

(iii) The date of a change in the presumed adjusted funding target attainment percentage under Regulations Section 1.436-1(g)(4); or

(iv) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the “adjusted funding target attainment percentage” for the Plan Year.

(2) Presumption of underfunding beginning on first day of 4th month for certain underfunded plans. This paragraph (2) applies to a Plan for a Plan Year if the enrolled actuary for the Plan has not issued a certification of the “adjusted funding target attainment percentage” for the Plan Year before the first day of the 4th month of the Plan Year, and the Plan’s “adjusted funding target attainment percentage” for the preceding Plan Year was either (1) at least sixty percent (60%) but less than seventy percent (70%); or (2) at least eighty percent (80%) but less than ninety percent (90%). This paragraph (2) also applies to a Plan for the first effective Plan Year if the enrolled actuary for the Plan has not issued a certification of the “adjusted funding target attainment percentage” for the Plan Year before the first day of the 4th month of the Plan Year, and the prior Plan Year “adjusted funding target attainment percentage” is at least seventy percent (70%) but less than eighty percent (80%).

(A) Presumed adjusted funding target attainment percentage. Application of this paragraph. If this paragraph (2) applies to a Plan for a Plan Year and the date of the enrolled actuary’s certification of the “adjusted funding target attainment percentage” under Regulations Section 1.436-1(h)(4) for the prior Plan Year (taking into account the special rules for late certifications under Regulations Section 1.436-1(h)(1)(ii)(B)) occurred before the first day of the 4th month of the current Plan Year, then, commencing on the first day of the 4th month of the current Plan Year:

(i) The presumed “adjusted funding target attainment percentage” of the Plan for the Plan Year is reduced by 10 percentage points; and

(ii) The first day of the 4th month of the Plan Year is a “Section 436 measurement date.”

(B) Certification for prior Plan Year. If this paragraph (2) applies to a Plan and the date of the enrolled actuary’s certification of the “adjusted funding target attainment percentage” under Regulations Section 1.436-1(h)(4) for the prior Plan Year (taking into account the rules for late certifications under Regulations Section 1.436-1(h)(1)(ii)(B)) occurs on or after the first day of the 4th month of the current Plan Year, then, commencing on the date of that prior Plan Year certification:

(i) The presumed “adjusted funding target attainment percentage” of the Plan for the current Plan Year is equal to 10 percentage points less than the prior Plan Year “adjusted funding target attainment percentage”; and

(ii) The date of the prior Plan Year certification is a “Section 436 measurement date.”

(C) Duration of use of presumed “adjusted funding target attainment percentage.”  
If this paragraph (2) applies to a Plan for a Plan Year, the presumed adjusted funding target attainment percentage determined under this paragraph (2) applies until the earliest of:

(i) The first day of the 10th month of the Plan Year if paragraph (3) of this section applies;

(ii) The date of a change in the presumed “adjusted funding target attainment percentage” under Regulations Section 1.436-1(g)(4); or

(iii) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the “adjusted funding target attainment percentage” for the Plan Year.

(3) Presumption of underfunding beginning on first day of 10th month. In any case in which no certification of the specific adjusted funding target attainment percentage for the current Plan Year under Regulations Section 1.436-1(h)(4) is made with respect to the Plan before the first day of the 10th month of the Plan Year, then, commencing on the first day of the 10th month of the current Plan Year:

(A) The presumed “adjusted funding target attainment percentage” of the Plan for the Plan Year is presumed to be less than sixty percent (60%); and

(B) The first day of the 10th month of the Plan Year is a “Section 436 measurement date.”

(h) Treatment of Plan as of Close of Prohibited or Cessation Period.

(1) Application to prohibited payments and accruals.

(A) Resumption of prohibited payments. If a limitation on prohibited payments under section (d) of this Section 3.7.1 applied to a Plan as of a “Section 436 measurement date,” but that limit no longer applies to the Plan as of a later “Section 436 measurement date,” then the limitation on prohibited payments under the Plan does not apply to benefits with “annuity starting dates” that are on or after that later “Section 436 measurement date.” Any amendment to eliminate an optional form of benefit that contains a prohibited payment with respect to an “annuity starting date” during a period in which the limitations of Code Section 436(d) and Regulations Section 1.436-1(d) do not apply to the Plan is subject to the rules of Code Section 411(d)(6).

(B) Resumption of benefit accruals. If a limitation on benefit accruals under Regulations Section 1.436-1(e) applied to a Plan as of a “Section 436 measurement date,” but that limit no longer applies to the Plan as of a later “Section 436 measurement date,” then that limitation does not apply to benefit accruals that are based on service on or after that later “Section 436 measurement date,” except to the extent that the Plan provides that benefit accruals will not resume when the limitation ceases to apply. The Plan will comply with the rules relating to partial years of participation and the prohibition on double proration under Department of Labor regulation 29 CFR Section 2530.204-2(c) and (d).



(2) Restoration of options and missed benefit accruals. Participants who had an “annuity starting date” within a period during which a limitation under Regulations Section 1.436-1(d) applied to the Plan will not be provided with the opportunity to have a new “annuity starting date” (which would constitute a new “annuity starting date” under Code Sections 415 and 417) under which the form of benefit previously elected may be modified, subject to applicable qualification requirements, once the limitations of Regulations Section 1.436-1(d) cease to apply. However, subject to the rules of Regulations Section 1.436-1(c)(3), the Plan will automatically restore benefit accruals that had been limited under Code Section 436(e) as of the “Section 436 measurement date” that the limitation ceases to apply.

(3) Shutdown and other unpredictable contingent event benefits. If unpredictable contingent event benefits with respect to an unpredictable contingent event that occurs during the Plan Year are not permitted to be paid after the occurrence of the event because of the limitations of Code Section 436(b) and Regulations Section 1.436-1(b), but are permitted to be paid later in the Plan Year as a result of additional contributions under Regulations Section 1.436-1(f)(2) or pursuant to the enrolled actuary’s certification of the “adjusted funding target attainment percentage” for the Plan Year that meets the requirements of Regulations Section 1.436-1(g)(5)(ii)(B), then those unpredictable contingent event benefits must automatically become payable, retroactive to the period those benefits would have been payable under the terms of the Plan (other than Plan terms implementing the requirements of Code Section 436(b)). If the benefits do not become payable during the Plan Year in accordance with the preceding sentence, then the Plan is treated as if it does not provide for those benefits. However, all or any portion of those benefits can be restored pursuant to a Plan amendment that meets the requirements of Code Section 436(c) and Regulations Section 1.436-1(c) and other applicable qualification requirements.

(4) Treatment of Plan amendments that do not take effect. If a Plan amendment does not take effect as of the effective date of the amendment because of the limitations of Code Section 436(c) and Regulations Section 1.436-1, but is permitted to take effect later in the Plan Year as a result of additional contributions under paragraph Regulations Section 1.436-1(f)(2) or pursuant to the enrolled actuary’s certification of the “adjusted funding target attainment percentage” for the Plan Year that meets the requirements of paragraph Regulations Section 1.436-1(g)(5)(ii)(C), then the Plan amendment must automatically take effect as of the first day of the Plan Year (or, if later, the original effective date of the amendment). If the Plan amendment cannot take effect during the Plan Year, then it must be treated as if it were never adopted, unless the Plan amendment provides otherwise.

(i) Definitions. Defined terms shall have the meaning set forth below and as contained in Regulations Section 1.436-1(j) and shall be interpreted consistent with said Regulations.

(1) The term “adjusted funding target attainment percentage” means the “funding target attainment percentage” per paragraph (A) below, and increasing each of the amounts under subparagraphs (A) and (B) of Code Section 430(d)(2) by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in Code Section 414(q)) which were made by the Plan during the preceding two (2) Plan Years.

(A) The term “funding target attainment percentage” has the same meaning given such term by Code Section 430(d)(2) and the Regulations thereunder, except as otherwise provided herein. However, in the case of Plan Years beginning in 2008, the “funding target attainment percentage” for the preceding Plan Year may be determined using such methods of estimation as the Secretary may provide.

(B) Application to plans which are fully funded without regard to reductions for funding balances.

(1) In general. In the case of a Plan for any Plan Year, if the “funding

target attainment percentage” is one hundred percent (100%) or more (determined without regard to the reduction in the value of assets under Code Section 430(f)(4)), the “funding target attainment percentage” for purposes of paragraphs (1) and (1)(A) above shall be determined without regard to such reduction.

(2) Transition rule. Subparagraph (B)(1) shall be applied to Plan Years beginning after 2007 and before 2011 by substituting for “one hundred percent (100%)” the applicable percentage determined in accordance with the following table:

In the case of a Plan Year beginning in calendar year:                      The applicable percentage is:

<u>2008</u>	<u>92%</u>
<u>2009</u>	<u>94%</u>
<u>2010</u>	<u>96%</u>

(3) Subparagraph (B)(2) shall not apply with respect to the current Plan Year unless the “funding target attainment percentage” (determined without regard to the reduction in the value of assets under Code Section 430(f)(4)) of the Plan for each preceding Plan Year beginning after 2007 and before the current Plan Year was not less than the applicable percentage with respect to such preceding Plan Year determined under subparagraph (B)(2).

(2) Section 436 measurement date. A “Section 436 measurement date” is the date that is used to determine when the limitations of Code Sections 436(d) and 436(e) apply or cease to apply, and is also used for calculations with respect to applying the limitations of sections (b) and (c) of this Section 3.7.1.

(3) Annuity starting date. The term “annuity starting date” means the annuity starting date as defined in Regulations Section 1.436-1(j)(2).

(4) Unpredictable contingent event benefit. The term “unpredictable contingent event benefit” means an unpredictable contingent event as defined in Regulations Section 1.436-1(j)(9).

3.7.2 2010 and Later Plan Years. The provisions of this Section 3.7.2 shall apply to Plan Years beginning on or after January 1, 2010.

#### Part I. Limitations Applicable If the Plan's Adjusted Funding Target Attainment Percentage Is Less Than 80 Percent or If the Plan Sponsor Is In Bankruptcy

##### Section 1. Limitations Applicable If the Plan's Adjusted Funding Target Attainment Percentage Is Less Than 80 Percent, But Not Less Than 60 Percent.

Notwithstanding any other provisions of the Plan, if the Plan's adjusted funding target attainment percentage for a Plan Year is less than 80 percent (or would be less than 80 percent to the extent described in Section 1 (b) below) but is not less than 60 percent, then the limitations set forth in this Section 1 apply.

(a) 50 Percent Limitation on Single Sum Payments, Other Accelerated Forms of Distribution, and Other Prohibited Payments. A Member or beneficiary is not permitted to elect, and the Plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date on or after the applicable section 436 measurement date, and the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other

payment or transfer that is a prohibited payment, unless the present value of the portion of the benefit that is being paid in a prohibited payment does not exceed the lesser of:

(i) 50 percent of the present value of the benefit payable in the optional form of benefit that includes the prohibited payment; or

(ii) 100 percent of the PBGC maximum benefit guarantee amount (as defined in § 1.436-1 (d)(3)(iii)(C) of the Treasury Regulations).

The limitation set forth in this Section 1(a) does not apply to any payment of a benefit which under § 411 (a)(11) of the Internal Revenue Code may be immediately distributed without the consent of the Member.

If an optional form of benefit that is otherwise available under the terms of the Plan is not available to a Member or beneficiary as of the annuity starting date because of the application of the requirements of this Section 1(a), the Member or beneficiary is permitted to elect to bifurcate the benefit into unrestricted and restricted portions (as described in § 1.436-1 (d)(3)(iii)(D) of the Treasury Regulations). The Member or beneficiary may also elect any other optional form of benefit otherwise available under the Plan at that annuity starting date that would satisfy the 50 percent/PBGC maximum benefit guarantee amount limitation described in this Section 1(a), or may elect to defer the benefit in accordance with any general right to defer commencement of benefits under the Plan. During a period when this Section 1(a) applies to the Plan, Members and beneficiaries are permitted to elect payment in any optional form of benefit otherwise available under the Plan that provides for the current payment of the unrestricted portion of the benefit (as described in § 1.436-1 (d)(3)(iii)(D) of the Treasury Regulations), with a delayed commencement for the restricted portion of the benefit (subject to other applicable qualification requirements, such as §§ 411(a)(11) and 401(a)(9) of the Internal Revenue Code).

(b) Plan Amendments Increasing Liability for Benefits. No amendment to the Plan that has the effect of increasing liabilities of the Plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable shall take effect in a Plan Year if the adjusted funding target attainment percentage for the Plan Year is:

(i) Less than 80 percent; or

(ii) 80 percent or more, but would be less than 80 percent if the benefits attributable to the amendment were taken into account in determining the adjusted funding target attainment percentage.

The limitation set forth in this Section 1(b) does not apply to any amendment to the Plan that provides a benefit increase under a Plan formula that is not based on compensation, provided that the rate of such increase does not exceed the contemporaneous rate of increase in the average wages of Members covered by the amendment.

## Section 2. Limitations Applicable If the Plan's Adjusted Funding Target Attainment Percentage Is Less Than 60 Percent.

Notwithstanding any other provisions of the Plan, if the Plan's adjusted funding target attainment percentage for a Plan Year is less than 60 percent (or would be less than 60 percent to the extent described in Section 2(b) below), then the limitations in this Section 2 apply.

(a) Single Sums, Other Accelerated Forms of Distribution, and Other Prohibited Payments Not Permitted. A Member or beneficiary is not permitted to elect, and the Plan

shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date on or after the applicable section 436 measurement date, and the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment. The limitation set forth in this Section 2(a) does not apply to any payment of a benefit which under § 411(a)(11) of the Internal Revenue Code may be immediately distributed without the consent of the Member.

(b) Shutdown Benefits and Other Unpredictable Contingent Event Benefits Not Permitted to Be Paid. An unpredictable contingent event benefit with respect to an unpredictable contingent event occurring during a Plan Year shall not be paid if the adjusted funding target attainment percentage for the Plan Year is:

(i) Less than 60 percent; or

(ii) 60 percent or more, but would be less than 60 percent if the adjusted funding target attainment percentage were redetermined applying an actuarial assumption that the likelihood of occurrence of the unpredictable contingent event during the Plan Year is 100 percent.

(c) Benefit Accruals Frozen. Benefit accruals under the Plan shall cease as of the applicable section 436 measurement date. In addition, if the Plan is required to cease benefit accruals under this Section 2(c), then the Plan is not permitted to be amended in a manner that would increase the liabilities of the Plan by reason of an increase in benefits or establishment of new benefits.

Section 3. Limitations Applicable If the Plan Sponsor Is In Bankruptcy. Notwithstanding any other provisions of the Plan, a Member or beneficiary is not permitted to elect, and the Plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date that occurs during any period in which the Plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, except for payments made within a Plan Year with an annuity starting date that occurs on or after the date on which the Plan's enrolled actuary certifies that the Plan's adjusted funding target attainment percentage for that Plan Year is not less than 100 percent. In addition, during such period in which the Plan sponsor is a debtor, the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment, except for payments that occur on a date within a Plan Year that is on or after the date on which the Plan's enrolled actuary certifies that the Plan's adjusted funding target attainment percentage for that Plan Year is not less than 100 percent. The limitation set forth in this Section 3 does not apply to any payment of a benefit which under § 411(a)(11) of the Internal Revenue Code may be immediately distributed without the consent of the Member.

Section 4. Provisions Applicable After Limitations Cease to Apply. Subject to provisions of the Plan document freezing the Plan:

(a) Resumption of Prohibited Payments. If a limitation on prohibited payments under Section 1(a), Section 2(a), or Section 3 above applied to the Plan as of a section 436 measurement date, but that limit no longer applies to the Plan as of a later section 436 measurement date, then that limitation does not apply to benefits with annuity starting dates that are on or after that later section 436 measurement date.

(b) Resumption of Benefit Accruals. If a limitation on benefit accruals under Section 2(c) applied to the Plan as of a section 436 measurement date, but that limitation no longer applies to the Plan as of a later section 436 measurement date, then benefit accruals shall resume prospectively and that limitation does not apply to benefit accruals that are based on service on or after that later section 436 measurement date, except as otherwise

provided under the Plan. The Plan shall comply with the rules relating to partial years of participation and the prohibition on double proration under Department of Labor regulation 29 CFR §2530.204-2(c) and (d). In addition, benefit accruals that were not permitted to accrue because of the application of Section 2(c) shall be restored when that limitation ceases to apply if the continuous period of the limitation was 12 months or less and the Plan's enrolled actuary certifies that the adjusted funding target attainment percentage for the Plan Year would not be less than 60 percent taking into account any restored benefit accruals for the prior Plan Year.

(c) Shutdown and Other Unpredictable Contingent Event Benefits. If an unpredictable contingent event benefit with respect to an unpredictable contingent event that occurs during the Plan Year is not permitted to be paid after the occurrence of the event because of the limitation of Section 2(b), but is permitted to be paid later in the same Plan Year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the adjusted funding target attainment percentage for the Plan Year that meets the requirements of §1.436-1 (g)(5)(ii)(B) of the Treasury Regulations), then that unpredictable contingent event benefit shall be paid, retroactive to the period that benefit would have been payable under the terms of the Plan (determined without regard to Section 2(b)). If the unpredictable contingent event benefit does not become payable during the Plan Year in accordance with the preceding sentence, then the Plan is treated as if it does not provide for that benefit.

(d) Treatment of Plan Amendments That Do Not Take Effect. If a Plan amendment does not take effect as of the effective date of the amendment because of the limitation of Section 1(b) or Section 2(c), but is permitted to take effect later in the same Plan Year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the adjusted funding target attainment percentage for the Plan Year that meets the requirements of § 1.436-1(g)(5)(ii)(C) of the Treasury Regulations), then the Plan amendment must automatically take effect as of the first day of the Plan Year (or, if later, the original effective date of the amendment). If the Plan amendment cannot take effect during the same Plan Year, then it shall be treated as if it were never adopted, unless the Plan amendment provides otherwise.

Section 5. Notice Requirement. See section 101(j) of ERISA and Notice 2012-46 and any related IRS published guidance for rules requiring the plan administrator of a single employer defined benefit pension plan to provide a written notice to Members and beneficiaries within 30 days after certain specified dates if the plan has become subject to a limitation described in Section 1 (a), Section 2, or Section 3.

Section 6. Methods to Avoid or Terminate Benefit Limitations. See § 436(b)(2), (c)(2), (e)(2), and (f) of the Internal Revenue Code and §1.436-1(f) of the Treasury Regulations for rules relating to employer contributions and other methods to avoid or terminate the application of the limitations set forth in Sections 1 through 3 for a Plan Year. In general, the methods a Plan sponsor may use to avoid or terminate one or more of the benefit limitations under Sections 1 through 3 for a Plan Year include employer contributions and elections to increase the amount of Plan assets which are taken into account in determining the adjusted funding target attainment percentage, making an employer contribution that is specifically designated as a current year contribution that is made to avoid or terminate application of certain of the benefit limitations, or providing security to the Plan.

#### Section 7. Special Rules.

(a) Rules of Operation for Periods Prior to and After Certification of Plan's Adjusted Funding Target Attainment Percentage

(i) In General. Section 436(h) of the Internal Revenue Code and §1.436-1(h) of the Treasury Regulations set forth a series of presumptions that apply

(1) before the Plan's enrolled actuary issues a certification of the Plan's adjusted funding target attainment percentage for the Plan Year and

(2) if the Plan's enrolled actuary does not issue a certification of the Plan's adjusted funding target attainment percentage for the Plan Year before the first day of the 10<sup>th</sup> month of the Plan Year (or if the Plan's enrolled actuary issues a range certification for the Plan Year pursuant to §1.436-1 (h)(4)(ii) of the Treasury Regulations but does not issue a certification of the specific adjusted funding target attainment percentage for the Plan by the last day of the Plan Year).

For any period during which a presumption under § 436(h) of the Internal Revenue Code and § 1.436-1 (h) of the Treasury Regulations applies to the Plan, the limitations under Sections 1 through 3 are applied to the Plan as if the adjusted funding target attainment percentage for the Plan Year were the presumed adjusted funding target attainment percentage determined under the rules of § 436(h) of the Internal Revenue Code and § 1.436-1(h)(1), (2), or (3) of the Treasury Regulations. These presumptions are set forth in Sections 7(a)(ii) through (iv).

(ii) Presumption of Continued Underfunding Beginning First Day of Plan Year. If a limitation under Section 1, 2, or 3 applied to the Plan on the last day of the preceding Plan Year, then, commencing on the first day of the current Plan Year and continuing until the Plan's enrolled actuary issues a certification of the adjusted funding target attainment percentage for the Plan for the current Plan Year, or, if earlier, the date Section 7(a)(iii) or Section 7(a)(iv) applies to the Plan:

(1) The adjusted funding target attainment percentage of the Plan for the current Plan Year is presumed to be the adjusted funding target attainment percentage in effect on the last day of the preceding Plan Year; and

(2) The first day of the current Plan Year is a section 436 measurement date.

(iii) Presumption of Underfunding Beginning First Day of 4<sup>th</sup> Month. If the Plan's enrolled actuary has not issued a certification of the adjusted funding target attainment percentage for the Plan Year before the first day of the 4<sup>th</sup> month of the Plan Year and the Plan's adjusted funding target attainment percentage for the preceding Plan Year was either at least 60 percent but less than 70 percent or at least 80 percent but less than 90 percent, or is described in §1.436-1(h)(2)(ii) of the Treasury Regulations, then, commencing on the first day of the 4<sup>th</sup> month of the current Plan Year and continuing until the Plan's enrolled actuary issues a certification of the adjusted funding target attainment percentage for the Plan for the current Plan Year, or, if earlier, the date Section 7(a)(iv) applies to the Plan:

(1) The adjusted funding target attainment percentage of the Plan for the current Plan Year is presumed to be the Plan's adjusted funding target attainment percentage for the preceding Plan Year reduced by 10 percentage points; and

(2) The first day of the 4<sup>th</sup> month of the current Plan Year is a section

436 measurement date.

(iv) Presumption of Underfunding On and After First Day of 10<sup>th</sup> Month. If the Plan's enrolled actuary has not issued a certification of the adjusted funding target attainment percentage for the Plan Year before the first day of the 10<sup>th</sup> month of the Plan Year (or if the Plan's enrolled actuary has issued a range certification for the Plan Year pursuant to §1.436-1(h)(4)(ii) of the Treasury Regulations but has not issued a certification of the specific adjusted funding target attainment percentage for the Plan by the last day of the Plan Year), then, commencing on the first day of the 10<sup>th</sup> month of the current Plan Year and continuing through the end of the Plan Year:

(1) The adjusted funding target attainment percentage of the Plan for the current Plan Year is presumed to be less than 60 percent; and

(2) The first day of the 10<sup>th</sup> month of the current Plan Year is a section 436 measurement date.

(b) New Plans, Plan Termination, Certain Frozen Plans, and Other Special Rules.

(i) First 5 Plan Years. The limitations in Section 1 (b), Section 2(b), and Section 2(c) do not apply to a new plan for the first 5 Plan Years of the plan, determined under the rules of §436(i) of the Internal Revenue Code and §1.436-1(a)(3)(i) of the Treasury Regulations.

(ii) Plan Termination. The limitations on prohibited payments in Section 1 (a), Section 2(a), and Section 3 do not apply to prohibited payments that are made to carry out the termination of the Plan in accordance with applicable law. Any other limitations under this section of the Plan do not cease to apply as a result of termination of the Plan.

(iii) Exception to Limitations on Prohibited Payments Under Certain Frozen Plans. The limitations on prohibited payments set forth in Sections 1(a), 2(a), and 3 do not apply for a Plan Year if the terms of the Plan, as in effect for the period beginning on September 1, 2005, and continuing through the end of the Plan Year, provide for no benefit accruals with respect to any Members. This Section 7(b)(iii) shall cease to apply as of the date any benefits accrue under the Plan or the date on which a Plan amendment that increases benefits takes effect.

(iv) Special Rules Relating to Unpredictable Contingent Event Benefits and Plan Amendments Increasing Benefit Liability. During any period in which none of the presumptions under Section 7(a) apply to the Plan and the Plan's enrolled actuary has not yet issued a certification of the Plan's adjusted funding target attainment percentage for the Plan Year, the limitations under Section 1(b) and Section 2(b) shall be based on the inclusive presumed adjusted funding target attainment percentage for the Plan, calculated in accordance with the rules of §1.436-1(g)(2)(iii) of the Treasury Regulations.

(c) Special Rules Under PRA 2010.

(i) Payments Under Social Security Leveling Options. For purposes of determining whether the limitations under Section 1(a) or 2(a) apply to payments under a social security leveling option, within the meaning of §436(j)(3)(C)(i) of the Internal Revenue Code, the adjusted funding target attainment percentage for a Plan Year shall be determined in accordance with the "Special Rule for Certain Years" under § 436(j)(3) of the Internal Revenue



Code and any Treasury Regulations or other published guidance thereunder issued by the Internal Revenue Service.

(ii) Limitation on Benefit Accruals. For purposes of determining whether the accrual limitation under Section 2(c) applies to the Plan, the adjusted funding target attainment percentage for a Plan Year shall be determined in accordance with the "Special Rule for Certain Years" under § 436(j)(3) of the Internal Revenue Code (except as provided under section 203(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, if applicable).

(d) Interpretation of Provisions. The limitations imposed by this section of the Plan shall be interpreted and administered in accordance with §436 of the Internal Revenue Code and §1.436-1 of the Treasury Regulations.

#### Section 8. Definitions.

The definitions in the following Treasury Regulations apply for purposes of Sections 1 through 7: § 1.436-1(j)(1) defining adjusted funding target attainment percentage; § 1.436-1(j)(2) defining annuity starting date; § 1.436-1(j)(6) defining prohibited payment; § 1.436-1(j)(8) defining section 436 measurement date; and § 1.436-1(j)(9) defining an unpredictable contingent event and an unpredictable contingent event benefit.

Part II. Multiple Employer Plan Rules. If the Plan is a multiple employer plan, the following provisions apply depending on whether §413(c)(4)(A) of the Internal Revenue Code applies to the Plan.

1. If this is a multiple employer plan to which § 413(c)(4)(A) of the Internal Revenue Code applies, including if the election described in §413(c)(4)(B) has been made, then the rules in Sections 1 through 8 of Part I above apply separately to each employer under the Plan, as if each such employer maintained a separate plan; and

2. If this is a multiple employer plan to which §413(c)(4)(A) of the Internal Revenue Code does not apply, then the rules in Sections 1 through 8 of Part I above apply as if all Members in the Plan are employed by a single employer.

## SECTION 4

### Valuation, Adjustment and Investment of Accounts

4.1 Annual Valuation and Adjustment of Accounts. The Trustee shall value the Fund (or, if applicable, each subfund established pursuant to Section 4.4) as of each Annual Valuation Date, which valuation shall reflect, as nearly as possible, the then fair market value of the assets comprising such fund or subfund (including income accumulations therein). In making such valuations, the Trustee may rely upon information supplied by an Investment Manager having investment responsibility over assets of the Fund or a particular subfund. The Trustee shall then adjust each Account (including undistributed Matured Accounts) or portion thereof which is invested in the Fund or a particular subfund for its proportionate share in any increase or decrease in the value of such Fund or subfund as so determined. Employee contributions, n~~Non~~deductible voluntary contributions, deductible contributions, rollover contributions and transfers from qualified retirement plans, if any, made by or on behalf of any Participant for the Plan Year shall then be posted to his ~~Employee proper~~ Account(s) and credited to the Fund (or the appropriate subfund or subfunds or otherwise in accordance with the investment elections then in effect for such Participant); the Employer contributions and Forfeitures, if any, for the Plan Year shall then be posted to the Employer Accounts of Participants entitled thereto and credited to the Fund (or the appropriate subfund or subfunds or otherwise in accordance with the investment elections then in effect for such Participant); and Regular Interest shall then be posted to the ~~Employee and Employer proper~~ Accounts and credited to the Fund (or the appropriate subfund or subfunds or otherwise in accordance with the investment elections then in effect for such Participant).



4.2 Intermediate Valuations and Adjustments. If a Participant's Matured Account is to be distributed as of a date which is not the Annual Valuation Date, the Employer on a uniform, nondiscriminatory and consistent basis may direct the Trustee to make an intermediate valuation and adjustment for such Account as of any date designated by the Trustee in a nondiscriminatory manner that is coincident with, preceding or following the date as of which such distribution is to occur. For investment purposes, unless elected otherwise by the Employer in the Adoption Agreement, the Trustee may make such intermediate valuation and adjustment of Participant Accounts as designated by the Trustee in a nondiscriminatory manner.

4.3 Management and Investment of Fund.

(a) Police Plan. The Fund shall be invested under the general direction of the Retirement Committee. The City, (or the Retirement Committee if delegated such function by the City) shall select and contract with a Funding Agent to hold or invest the assets of the Plan and to provide the benefits hereunder. The City or Committee may select and contract with Investment Managers registered under the Investment Advisers Act of 1940 to invest, reinvest, and otherwise manage such portion of the assets of the Plan as may be assigned by the City or Committee. The Fund shall be invested pursuant to the policies established by the Nebraska Investment Council.

If Participant investment direction is permitted in the Adoption Agreement, the City shall establish separate investment accounts for each Employee for the purpose of allowing each Employee to direct the investment of all or a portion of his or her Employee Account and/or Employer Account, subject to such rules and limitations as imposed by law, the City or the Retirement Committee.

(b) Fire Plan. The Fund shall be invested by the Retirement Committee. The City, subject to the approval of the Retirement Committee, shall contract with a Funding Agent to hold or invest the assets of the Plan and to provide the benefits hereunder. The Retirement Committee, subject to the approval of the City, may select an Investment Manager. The City, subject to the approval of the Retirement Committee, may contract with Investment Managers registered under the Investment Advisers Act of 1940 to invest, reinvest, and otherwise manage such portion of the assets of the Plan as may be assigned by the City or Retirement Committee.

The Retirement Committee shall establish an investment plan which allows each Employee of the Plan to allocate all contributions to his or her Employee Account and, if he or she commenced his or her employment after January 1, 1984, his or her Employer Account, to the various investment options or combinations of investment options described in the investment plan. Each Employee shall have the option of investing his or her Employee Account and, if he or she commenced his or her employment after January 1, 1984, his or her Employer Account, in any proportion, including full allocation, in any investment option offered by the Plan. Upon the direction of the City by election in the Adoption Agreement, Employees employed on January 1, 1984, may have the option to allocate their Employer Account to various investment options or combinations of investment options in any proportion, including full allocation, in any investment option offered by the Plan. Each Employee shall be given a summary of the investment plan and a detailed current description of each investment option prior to making or revising his or her allocation.

4.4 All Plans. Subject to any permitted Participant investment direction or other provisions of the Plan, The Fund in the hands of the Trustee, together with all additional contributions made thereto and together with income thereof, which shall be accumulated as hereinafter provided, shall be controlled, managed, invested, reinvested and ultimately paid and distributed to Participants by the Trustee with all the powers, rights and discretions generally possessed by Trustees, and with all the additional powers, rights and discretions hereinafter conferred upon the Trustee. To the extent permitted by the Employer, the Fund may be divided into two or more subfunds for the purpose of investment. In addition, the Trustee may invest in any form of investment authorized by Section 10, provided, however, that no portion of a Participant's Voluntary Deductible Account shall be invested in Insurance Contracts. All amounts shall be credited with Regular Interest after being contributed to the Plan.

4.5 Individual Subfunds. A subfund or subfunds shall be created consisting of the Accounts of Participants who are permitted to direct the investment of their Accounts, as provided in Sections 4.3 and 10.11 hereof.

## SECTION 5

### Vesting

#### 5.1 Employer Accounts.

5.1.1 Progressive Vesting. The Employer Account of each Participant shall become Vested in him in accordance with the Schedule in Section I set forth in the Adoption Agreement; provided, however, that the Vested percentage of a Participant's Employer Account determined as of the Supplemental Effective Date (or the date of actual, formal adoption of this Agreement by the Employer, if later) shall be not less than such Vested percentage computed under the Prior Plan Statement, if any, as of that date.

5.1.2 Full Vesting. Notwithstanding any of the foregoing provisions for progressive vesting of Employer Accounts of Participants, the entire Employer Account of each Participant shall be fully vested in him upon the earliest occurrence of any of the following events while in the employment of the Employer:

- (a) His death,
- (b) His attainment of his Normal Retirement Date or his attainment of any earlier age specified in the Adoption Agreement,
- (c) His retirement on account of his Disability,
- (d) A complete termination of the Plan or a complete discontinuance of Employer contributions hereto,
- (e) A partial termination of the Plan which is effective as to him, or
- (f) As provided in relevant state statute governing Police or Fire Plans.

#### 5.1.3 Distribution of Vested Account Upon Termination of Employment.

- (a) Cash Out Distributions. Notwithstanding anything in this Plan to the contrary:
  - (i) ~~Fire Plan. If an Employee terminates service before his or her Retirement Date, and the value of the Employee's Vested Retirement Value is less than \$3,500, such Employee shall, upon request within one year of such termination, be paid his or her Vested Retirement Value in the form of a single lump sum payment.~~
  - (ii) ~~All Other Plans (including Police Plans and excluding Fire Plans). Effective for distributions on or after March 28, 2005, and For all Plans, effective January 1, 2014,~~ except as otherwise specified by the Employer in the Adoption Agreement, if an Employee terminates service, and the value of the Employee's Vested Retirement Value derived from Employer and Employee contributions is not greater than \$1,000, the Employee will automatically receive a distribution of the value of the entire Vested portion of such Account balance if the Employee does not elect to transfer or roll over such distribution to an eligible retirement plan or to receive it directly, and the nonvested portion will be treated as a Forfeiture. For purposes of this Section, if the value of an Employee's Vested account balance is zero, the Employee shall be deemed to have received a distribution of such Vested account balance. A Participant's Vested account balance shall not include accumulated deductible Employee contributions within the meaning of Code section 72(o)(5)(B) for Plan

Years beginning prior to January 1, 1989. ~~For distributions before March 28, 2005, “not greater than \$5,000” (“less than \$3,500” for Police Plans) was substituted for “not greater than \$1,000” in this paragraph.~~

(ii) Before January 1, 2014: If an Employee participating in a Fire Plan terminates service before his or her Retirement Date, and the value of the Employee's Vested Retirement Value is less than \$3,500, such Employee shall, upon request within one year of such termination, be paid his or her Vested Retirement Value in the form of a single lump-sum payment.

(iii) For all other plans (including Police Plans and excluding Fire Plans), effective for distributions on or after March 28, 2005, and except as otherwise specified by the Employer in the Adoption Agreement, if an Employee terminates service, and the value of the Employee's Vested Retirement Value derived from Employer and Employee contributions is not greater than \$1,000, the Employee will automatically receive a distribution of the value of the entire Vested portion of such Account balance if the Employee does not elect to transfer or roll over such distribution to an eligible retirement plan or to receive it directly, and the nonvested portion will be treated as a Forfeiture. For purposes of this Section, if the value of an Employee's Vested account balance is zero, the Employee shall be deemed to have received a distribution of such Vested account balance. A Participant's Vested account balance shall not include accumulated deductible Employee contributions within the meaning of Code section 72(o)(5)(B) for Plan Years beginning prior to January 1, 1989. For distributions before March 28, 2005, “not greater than \$5,000” (“less than \$3,500” for Police Plans) was substituted for “not greater than \$1,000” in this paragraph

If an Employee terminates service and elects (in accordance with the requirements of Section 7) to receive the value of the Employee's Vested Account balance, the nonvested portion will be treated as a Forfeiture. If the Employee elects to have distributed less than the entire Vested portion of the Account balance derived from Employer contributions, the part of the nonvested portion of such Account that will be treated as a Forfeiture is the total nonvested portion multiplied by a fraction, the numerator of which is the amount of the distribution attributable to Employer contributions and the denominator of which is the total value of the Vested Employer-derived Account balance.

For distributions made under this subsection after December 31, 2001 and before March 28, 2005, the value of an Employee's nonforfeitable Account balance shall be determined without regard to that portion of the Account balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Code. For distributions on or after March 28, 2005, the \$1,000 threshold (or other threshold specified in the Adoption Agreement) is determined including any such rollover contributions (and earnings thereon) within the meaning of the specified Code sections. If a greater threshold than \$1,000 is established in the Adoption Agreement, any distribution greater than \$1,000 that is made without the Participant's consent shall be automatically rolled over to an individual retirement plan pursuant to Code section 401(a)(31)(B).

(b) Non Cash-Out Distributions

(i) Fire Plans. If a Participant in a Fire Plan terminates employment before his or her Retirement Date, the Participant may request and receive, as a lump-sum payment the Retirement Value of his or her Employee Account as determined at the Valuation Date preceding his or her termination of employment. Such Participant, if vested, may in lieu thereof, receive a deferred pension benefit or lump-sum benefit in an amount purchased or provided by the Vested Retirement Value at the date of retirement. The Vested Retirement Value at such Retirement Date shall consist of the then accumulated value of the Employee's Account at the date of retirement as reduced by any lump-sum distributions received prior to retirement, together with a vested

percentage of the accumulated value of the Participant's Employer Account at the date of retirement.

(ii) All Other Plans (including Police Plans and excluding Fire Plans). If a Participant terminates service with the City prior to his or her Normal or Early Retirement Date, the Participant may request and receive a lump-sum payment of the Retirement Value of his or her Employee Account as determined as of the Valuation Date preceding his or her termination of employment. The Participant, if Vested, shall also receive a deferred pension benefit in an amount purchased or provided by the Vested Retirement Value at the date of retirement. The Vested Retirement Value at such retirement date shall consist of the accumulated value of the Participant's Employee Account, reduced by any lump-sum distribution prior to retirement, plus the vested portion of the accumulated value of the Participant's Employer Account on the date of Retirement.

(iii) Effective ~~January 1, 1997~~ April 16, 2012, a Participant may elect upon his or her termination of employment to receive his or her Vested Retirement Value in the form of a single lump sum payment, notwithstanding any prior Plan provision to the contrary limiting lump sum distributions to Participants who have a Retirement Date on or after January 1, 1997.

Before April 16, 2012, the Plan provided: Effective January 1, 1997, a Participant may elect upon his or her termination of employment to receive his or her Vested Retirement Value in the form of a single lump sum payment. For a Participant whose termination of employment was prior to January 1, 1997, this election shall be available only if the City had adopted a lump-sum distribution option for terminating Participants in the funding medium established for the retirement system.

Upon any lump sum payment of a terminating Participant's Retirement Value, such Participant will not be entitled to any deferred pension benefit and the City and the retirement system Plan shall have no further obligations to pay such Participant or his or her Beneficiaries any benefits.

(iv) If the lump-sum payment is not requested upon termination prior to the Retirement Date, the Participant shall receive a deferred vested benefit or lump-sum benefit in an amount purchased or provided by the Vested Retirement Value of the Employee and Employer Accounts on the retirement date; provided, however, if the Participant would have received a distribution under this Section but for the fact that the Participant's Vested Account Balance exceeded \$1,000, when the Participant terminated service and if, at a later time, such account balance is reduced so it does not exceed \$1,000, the Administration Committee may distribute such Account Balance and the non-vested portion will be treated as a forfeiture.

(c) If an Employee receives a distribution pursuant to this Section 5.1.3 and the Employee resumes employment covered under the Plan, the Employee's Employer-derived Account Balance will be restored, if permitted in the Adoption Agreement, to the amount on the date of the distribution, if the Employee repays to the Plan the full amount of the distribution attributable to Employer contributions before the earlier of:

(i) 5 years after the first date on which the Participant is subsequently reemployed by the Employer; or

(ii) the date on which the Participant incurs five consecutive one-year Breaks in Service following the date of the distribution. This latter condition also applies if the Participant makes repayment within the Plan Year in which he incurs five consecutive one-year Breaks in Service which would result in a complete Forfeiture of the amount otherwise subject to restoration.

If elected by the Employer in the Adoption Agreement, if an Employee is deemed to receive a distribution pursuant to this Section 5.1.3, and the Employee resumes employment covered under this Plan before the date the Participant incurs five consecutive one-year Breaks in Service, upon the reemployment

of such Employee, the Employer-derived Account Balance of the Employee will be restored to the amount on the date of such deemed distribution.

A Participant's Employer-derived Account Balance shall not be restored if:

- (i) the Participant's Employer-derived Account Balance was 100% nonforfeitable at the time of the cash-out distribution; or
- (ii) the Participant incurred five consecutive One-Year Breaks in Service.

A Participant may not receive a cash-out distribution under this Section 5.1.3 if, prior to the time the Trustee actually makes the cash-out distribution, the Participant returns to employment with the Employer.

(d) ~~In the case of any plan other than a Fire Plan, if~~ the value of the Participant's Account Balance derived from Employer and Employee contributions (other than accumulated Voluntary Deductible Employee contributions) exceeds \$1,000 ~~(before March 28, 2005, "exceeds \$1,000" was "is less than \$3,500" for Police Plans, and "is less than \$5,000" for plans other than a Police Plan)~~, the Participant must consent to any distribution from such Account Balance unless otherwise provided in the Adoption Agreement. Participant consent is required for distributions from Fire Plans regardless of amount.

(e) Amounts forfeited or treated as Forfeitures shall be reallocated as provided in Section 6.4.

(f) Participant Distribution Notification. To the extent the particular requirement is applicable to the Plan:

(i) 180-Day Notice Period. Effective for notices in Plan Years beginning after December 31, 2006, the 90-day maximum notice period of Code Sections 402(f) (rollover notice), 411(a)(11) (participant's consent to distribution), and 417 (notice regarding the joint and survivor and qualified optional survivor annuity and qualified preretirement annuity rules) shall be increased to 180 days, and any reference to the 90-day maximum notice period shall be deemed changed to 180 days.

(ii) Effect of Delayed Distribution. Notices given to Participants pursuant to Code Section 411(a)(11), if applicable, in Plan Years beginning after December 31, 2006 shall include a description of the consequences of failing to defer a distribution, and

(iii) Relative Values. Notices to Participants shall include the relative values of the various optional forms of benefit under the Plan satisfying the requirements of Internal Revenue Code Section 417(a)(3), to the extent applicable to the Plan. This provision, if applicable to the Plan, is effective as of the applicable effective date set forth in Treasury Regulations (i.e., to qualified pre-retirement survivor annuity explanations provided on or after July 1, 2004; to qualified joint and survivor annuity explanations with respect to any distribution with an annuity starting date that is on or after February 1, 2006, or on or after October 1, 2004 with respect to any optional form of benefit that is subject to the requirements of Code Section 417(e)(3) if the actuarial present value of that optional form is less than the actuarial present value as determined under Code Section 417(e)(3)).

Provided, however, any requirement of this subsection (f) shall not apply to the extent (i) it is inapplicable to a governmental plan defined in Code section 414(d), pursuant to the flush language of Code Section 401(a) and Code Section 411(e)(1)(B) and other applicable provisions of the Code, regulations and guidance, and (ii) this Plan is a governmental plan.

5.2. Amendment to Comply with Section 415. An adopting Employer may amend the Plan by adding overriding Plan language to the Adoption Agreement where such language is necessary to satisfy Sections 415,

and/or 416 if applicable to the Plan, of the Code because of the required aggregation of multiple plans under these Sections. Effective for any Plan Year beginning after December 31, 2001, any provisions of the Plan setting forth top-heavy provisions of Code section 416, to the extent Code section 416 is applicable to the Plan, are modified by substituting the term "separation from service" with "severance from employment." Provided, however, top-heavy provisions shall not apply if this Plan is a governmental plan within the meaning of Code section 414(d).

5.3 Other Accounts. The Employee and Matured Account of each Participant shall be fully Vested in him at all times.

## SECTION 6

### Maturity and Distributable Events

6.1 Events of Maturity. A Participant's Total Account shall mature upon the earliest occurrence of any of the following Events of Maturity while in the employment of the Employer:

- (a) His termination of employment with the Employer.
- (b) Termination of this Plan.

Provided, however, that with the exception of Police and Fire Plans, a transfer from Recognized Employment to employment with the Employer that is other than Recognized Employment or a transfer for the employment of one Employer Participating in this Plan to another such Employer shall not constitute an Event of Maturity, though in all cases, even involving a Police or Fire Plan, a transferring Participant shall cease participating in this Plan if as a result of the transfer he or she becomes eligible under another Plan that is qualified under Code Section 401(a).

6.2 Determination of Matured Benefit. Upon the occurrence of an Event of Maturity effective as to a Participant, the Trustee shall determine the value of his Total Account as of the Valuation Date contemporaneous with, following or next preceding the Event of Maturity, and the Vested portion thereof shall be his Matured Account.

6.3 Effect of Maturity Upon Further Participation in the Plan. On the occurrence of an Event of Maturity, a Participant shall cease to have any interest in the Plan or the Fund other than his right to receive distribution of his Matured Account, as provided in Sections 6 & 7 hereof; except that (a) his Matured Account or the portion thereof from time to time undistributed shall be increased or decreased, as the case may be, by any increase or decrease in the value of the Fund and by any income thereon or expense allocated thereto, and (b) he shall be entitled to share in the Employer contributions for the Plan Year in which such Event of Maturity occurred only to the extent provided in the Agreement. He shall not share in any Employer contribution for Plan Years after the Plan Year in which such Event of Maturity occurred, unless he shall continue to be or thereafter again become a Participant hereunder, as hereinbefore provided.

6.4 Disposition of Nonvested Portion of Account. If any portion of a Participant's Employer Account is not Vested in him upon the occurrence of an Event of Maturity effective as to him, such portion treated as a forfeiture under Section 5.1.3 shall be disposed of as follows:

6.4.1. Police and Fire Plans.

(a) Police Plan. Any Forfeitures shall first be used as of the Reallocation Date to meet the expense charges incurred by the City with respect to administration of the Plan, and the remainder, if any, shall be applied to reduce City contributions which otherwise are required to fund benefits under the Plan.

(b) Fire Plan. Any Forfeiture shall be deposited as of the Reallocation Date in the Unallocated Employer Account. If the actuarial evaluation of the Fund required herein shows that the assets of the Unallocated Employer Account are sufficient to provide for the projected plan



liabilities, such forfeitures shall instead be used to meet the expenses incurred by the City in connections with administering the Plan, and the remainder, if any, shall be applied to reduce City contributions which otherwise would be required to fund benefits under the Plan.

6.4.2 All Other Plans - Reallocation to Other Participants. As elected in the Adoption Agreement:

(a) Added to Employer Contribution. As of the Reallocation Date, any Forfeitures shall be added to the Employer contribution, if any, for such Plan Year and allocated as provided in Section 3.3 hereof to the Employer Accounts of those Participants who are eligible to share in the allocation of the Employer contribution, if any, as of such Reallocation Date.

(b) Reduce Employer Contribution. As of the Reallocation Date, any Forfeitures shall be used to reduce Employer contributions for the Plan Year and succeeding Plan Years until totally reallocated under Section 3.4 to other Participants.

6.4.3 Reallocation Date. As elected by the Employer in the Adoption Agreement, the Reallocation Date under Section 6.4 shall be:

(a) the next succeeding Valuation Date after an amount is treated as a Forfeiture, or

(b) the earlier of the Valuation Date of the Plan Year in which a Participant incurs 5 consecutive One-Year Breaks in Service or his Account is no longer subject to restoration; or the date the Participant receives a cash-out distribution of the nonforfeitable percentage of his or her Account as a result of termination of participation in the Plan. (Accounts held under this Section 6.4.3(b) are increased or decreased, as the case may be, by any increase or decrease in the Fund and by any income thereon.)

6.4.4 Restoration. Amounts treated as Forfeitures under Section 6.4.3(a) and Accounts held under Section 6.4.3(b) are subject to the restoration provisions of Section 5.1.3 if elected by the Employer in the Adoption Agreement.

6.5 Other Distributable Events. Distribution of some or all of the Participant's Total Account will occur:

(a) If elected by the Employer in the Adoption Agreement, and subject to the consent of the Participant (and the Participant's spouse) if required, after the Participant's Normal Retirement Date.

(b) At and after a Participant's or Beneficiary's Required Beginning Date under Section 7.

(c) In the case of a Plan which provides for Participant Loans, default under the terms of a Participant Loan, to the extent of the amount in default.

(d) Subject to the consent of the Participant, upon the Participant's attainment of early retirement date, if allowed under the terms of the Plan ([in-service distribution upon attaining early retirement age or date not allowed in the case of a pension plan](#)).

Distributions pursuant to this Section 6.5 shall not affect a right of a Participant who continues in Recognized Employment to share in Employer contributions and allocation of Forfeitures as otherwise determined under this Plan.

6.5.1 Termination of Employment - Police and Fire Plans. Notwithstanding any provision in this Agreement to the contrary, a deferred benefit which is payable to a Participant whose employment with the City was terminated prior to his or her death or retirement before his or her Retirement Date shall be payable on the first of the month immediately following the Participant attaining 60 years of age (55 years of age for Fire Plan Participant). The Participant has the option to commence benefit payments as of the

first day of the month after the Participant attains 55 years of age and has completed 25 years of service with the City (50 years of age and 21 years of service for Fire Plan Participant). An election for early commencement of benefits shall be made by the Participant in writing prior to the payment of such benefits. Benefits shall be paid in a form permitted in this Agreement for payment of benefits upon retirement and properly elected by the Participant in writing prior to the commencement of such benefits. Unless otherwise provided in the Adoption Agreement, the City shall have the option to pay any Participant's Retirement Value in the form of a lump sum payment if such Vested Retirement Value is not greater than \$1,000 ("less than \$3,500" for Police Plans before March 28, 2005) on the date of his or her termination of employment (for Fire Plan Participants, the City can make a lump sum payment upon request of the Participant within one year of termination of employment if the Vested Retirement Value upon such termination is less than \$3,500). Participants also have the option of transferring the Employee Account and the vested portion of the Employer Account if the requirements of Section 3.5 are satisfied.

6.5.2 Early Retirement Swing Employment - Fire Plans. Notwithstanding any provision in the Agreement to the contrary, A Fire Plan Participant may retire or be retired and receive the applicable benefit upon the attainment of age 55 while employed by the City as a firefighter, in accordance with Neb. Rev. Stat. Section 16-1028. An election for early commencement of benefits shall be made by the Participant, in writing, prior to the payment of such benefits. Benefits shall be paid in a form permitted in the Agreement for payment of benefits upon retirement and properly elected by the Participant in writing prior to the commencement of such benefits.

(e) The City shall have the option to pay a Participant's Vested Retirement Value in the form of a single lump sum payment to the extent permitted by Section 5.1.3 if such Vested Retirement Value does not exceed \$1,000 on the date of his or her termination of employment, except as otherwise provided in the Adoption Agreement. Participants shall have the option of transferring the Employee Account and the Vested portion of the Employer Account if the requirements of Section 3.5 are satisfied.

## SECTION 7

### Distribution

7.1 Time of Distribution. Subject to the provisions of this Section 7 and any required Participant consent, upon the occurrence of an Event of Maturity effective as to a Participant and after the Participant's Matured Account has been determined, the Trustee will make or commence distribution of such Matured Account as follows:

7.1.1 Distribution from Matured Account. Unless otherwise provided herein or the Participant elects otherwise, distribution of a Participant's Matured Account shall commence on the first day of the month ~~following the date which is within 31 to 180~~ 90 days after an Event of Maturity, or within an administratively practicable time thereafter (before January 1, 2007, distributions commenced on the first day of the month following the date which is 90 days after an Event of Maturity).

7.2 Distribution Requirements.

7.2.1 Distributions in calendar years beginning after December 31, 1984 and ending before January 1, 2003.

7.2.1.1 Supersession. ~~The requirements of this Section 7.2.1 shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Section 7.2 apply to calendar years beginning after December 31, 1984 and ending before January 1, 2003.~~

7.2.1.2 Requirements. ~~Notwithstanding any provision of the Plan to the contrary, all distributions required under this Section 7.2.1 shall be determined and made in accordance with Code section 401(a)(9) and the proposed regulations thereunder published in the Federal Register on July 27, 1987; provided, however, distributions~~



~~made during the 2002 calendar year were made in accordance with the regulations that were published in the Federal Register on January 17, 2001.~~

~~7.2.1.3 Required Beginning Date. The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's required beginning date.~~

~~7.2.1.4 Limits on Distribution Periods. As of the first distribution calendar year, distributions, if not made in a single sum, may only be made over one of the following periods (or a combination thereof):~~

- ~~(a) the life of the Participant,~~
- ~~(b) the life of the Participant and a designated beneficiary,~~
- ~~(c) a period certain not extending beyond the life expectancy of the Participant, or~~
- ~~(d) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated beneficiary.~~

~~7.2.1.5 Determination of Amount to be Distributed Each Year. If the Participant's interest is to be distributed in other than a single sum, the following minimum distribution rules shall apply on or after the required beginning date:~~

~~(a) If a Participant's benefit is to be distributed over (1) a period not extending beyond the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and the Participant's designated beneficiary or (2) a period not extending beyond the life expectancy of the designated beneficiary, the amount required to be distributed for each calendar year, beginning with distributions for the first distribution calendar year, must at least equal the quotient obtained by dividing the Participant's benefit by the applicable life expectancy.~~

~~(b) For calendar years beginning before January 1, 1989, if the Participant's spouse is not the designated beneficiary, the method of distribution selected must assure that at least 50% of the present value of the amount available for distribution is paid within the life expectancy of the Participant.~~

~~(c) For calendar years beginning after December 31, 1988, the amount to be distributed each year, beginning with distributions for the first distribution calendar year shall not be less than the quotient obtained by dividing the Participant's benefit by the lesser of (1) the applicable life expectancy or (2) if the Participant's spouse is not the designated beneficiary, the applicable divisor determined from the table set forth in Q&A 4 of Section 1.401(a)(9)-2 of the proposed Treasury Regulations. Distributions after the death of the Participant shall be distributed using the applicable life expectancy in Section 7.2.1.5(a) above as the relevant divisor without regard to proposed Treasury Regulation section 1.401(a)(9)-2.~~

~~(d) The minimum distribution required for the Participant's first distribution calendar year must be made on or before the Participant's required beginning date. The minimum distribution for other calendar years, including the minimum distribution for the distribution calendar year in which the Employee's required beginning date occurs, must be made on or before December 31 of that distribution calendar year.~~

~~(e) If the Participant's benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Code section 401(a)(9) and the proposed regulations thereunder.~~

~~7.2.1.6 Distribution Beginning before Death. If the Participant dies after distribution of his or her interest has begun, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.~~

~~7.2.1.7 Distribution Beginning after Death. If the Participant dies before distribution of his or her interest begins, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year~~

~~containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (a) or (b) below:~~

~~(a) if any portion of the Participant's interest 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 immediately following the calendar year in which the Participant died;~~

~~(b) if the designated beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with (a) above shall not be earlier than the later of (1) December 31 of the calendar year immediately following the calendar year in which the Participant died and (2) December 31 of the calendar year in which the Participant would have attained age 70 ½.~~

~~If the Participant has not made an election pursuant to this Section 7.2.1.7 by the time of his or her death, the Participant's designated beneficiary must elect the method of distribution no later than the earlier of (1) December 31 of the calendar year in which distributions would be required to begin under this Section, or (2) December 31 of the calendar year which contains the fifth anniversary of the date of death of the Participant. If the Participant has no designated beneficiary, or if 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 anniversary of the Participant's death.~~

~~For purposes of this Section 7.2.1.7, if the surviving spouse dies after the Participant, but before payments to such spouse begin, the provisions of this Section 7.2.1.7, with the exception of paragraph (b) herein, shall be applied as if the surviving spouse were the Participant.~~

~~For the purposes of Sections 7.2.1.6 and 7.2.1.7, any amount paid to a child of the Participant will be treated as if it has been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.~~

~~For the purposes of Sections 7.2.1.6 and 7.2.1.7, distribution of a Participant's interest is considered to begin on the Participant's required beginning date (or, if this Section 7.2.1.7 is applicable, the date distribution is required to begin to the surviving spouse pursuant to this Section 7.2.1.7). 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.~~

~~7.2.1.8 Applicable Life Expectancy. The life expectancy (or joint and last survivor expectancy) calculated using the attained age of the Participant (or designated beneficiary) as of the Participant's (or designated beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date life expectancy was first calculated. If life expectancy is being recalculated, the applicable life expectancy shall be the life expectancy as so recalculated. The applicable calendar year shall be the first distribution calendar year, and if life expectancy is being recalculated such succeeding calendar year.~~

~~7.2.1.9 Designated Beneficiary. The individual who is designated as the beneficiary under the Plan in accordance with Code section 401(a)(9), the proposed regulations thereunder and Section 7.5 of this Plan~~

~~7.2.1.10 Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 7.2.1.7 above.~~

~~7.2.1.11 Life Expectancy. Life expectancy and joint and last survivor expectancy are computed by use of the expected return multiples in Tables V and VI of Section 1.72-9 of the Income Tax Regulations.~~

~~Unless otherwise elected by the Participant (or spouse, in the case of distributions described in Section 7.2.1.7(b) above) by the time distributions are required to begin, life expectancies shall not be recalculated annually.~~

~~Such election shall be irrevocable as to the Participant (or spouse) and shall apply to all subsequent years. The life expectancy of a nonspouse beneficiary may not be recalculated.~~

7.2.1.12 Participant's Benefit.

~~(a) The Account balance as of the last Valuation Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions or forfeitures allocated to the Account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date.~~

~~(b) Exception for Second Distribution Calendar Year. For purposes of paragraph (a) above, if any portion of the minimum distribution for the first distribution calendar year is made in the second distribution calendar year on or before the required beginning date, the amount of the minimum distribution made in the second distribution calendar year shall be treated as if it had been made in the immediately preceding distribution calendar year.~~

7.2.1.13. Required Beginning Date

~~(a) General Rule. The required beginning date of a Participant is the later of (i) first day of April of the calendar year following the calendar year in which the Participant attains age 70 1/2, and (ii) April 1st of the calendar year following the calendar year in which the Participant retires.~~

~~7.2.1.14 Transitional Rule. Notwithstanding the other requirements of this Section 7.2.1, distribution on behalf of any Employee may be made in accordance with all of the following requirements (regardless of when such distribution commences):~~

~~(a) The distribution by the Fund is one which would not have disqualified such Fund under Code section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.~~

~~(b) The distribution is in accordance with a method of distribution designated by the Employee whose interest in the Fund is being distributed or, if the Employee is deceased, by a beneficiary of such Employee.~~

~~(c) Such designation was in writing, was signed by the Employee or the beneficiary, and was made before January 1, 1984.~~

~~(d) The Employee had accrued a benefit under the Plan as of December 31, 1983.~~

~~(e) The method of distribution designated by the Employee or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Employee's death, the beneficiaries of the Employee listed in order of priority.~~

~~A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Employee.~~

~~For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Employee, or the beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections 7.2.1.14(a) and (e).~~

~~If a designation is revoked, any subsequent distribution must satisfy the requirements of Section 401(a)(9) of the Code and the proposed regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Fund must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code section 401(a)(9) and the proposed regulations thereunder, but for the Code section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum~~

~~distribution incidental benefit requirements in section 1.401(a)(9)-2 of the proposed Treasury Regulations. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life). In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Q&A J-2 and Q&A J-3 shall apply.~~

7.2.27.2.1 Distributions in calendar years beginning after December 31, 2002:

7.2.27.2.1.1 Supersession. This Section 7.2.27.2.1 will apply for purposes of determining required minimum distributions ~~for calendar years beginning with the 2003 calendar year~~. Notwithstanding the other provisions of this section, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

7.2.27.2.1.2 Requirements. The requirements of this Section 7.2.27.2.1 will take precedence over any inconsistent provisions of the Plan. All distributions required under this Plan will be determined and made in accordance with Internal Revenue Code section 401(a)(9), including the incidental death benefit requirement in section 401(a)(9)(G), and the Treasury Regulations thereunder, including the regulations published on April 17, 2002 and June 15, 2004.

7.2.27.2.1.2.1 Limits on Distribution Periods. As of the first distribution calendar year, distributions to a Participant, if not made in a single sum, may only be made over one of the following periods:

- a. the life of the Participant;
- b. the joint lives of the Participant and a Designated Beneficiary;
- c. a period certain not extending beyond the life expectancy of the Participant; or
- d. a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a Designated Beneficiary.

7.2.27.2.1.3 Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

7.2.27.2.1.4 Participant's Death Before Distribution Begins. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, except as provided in Sections 7.2.27.2.1.15 and 7.2.27.2.1.16, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(b) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then, except as provided in Sections 7.2.27.2.1.15 and 7.2.27.2.1.16, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(c) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth (5<sup>th</sup>) anniversary of the Participant's death.

(d) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this

Section [7.2.27.2.1.4](#), other than sub-section (a), will apply as if the surviving spouse were the Participant.

For purposes of this Section [7.2.27.2.1.4](#) and Sections [7.2.27.2.1.8](#) and [7.2.27.2.1.9](#), unless sub-section (d) above applies, distributions are considered to begin on the Participant's Required Beginning Date. If sub-section (d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under sub-section (a) above. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under sub-section (a) above), the date distributions are considered to begin is the date distributions actually commence.

[7.2.27.2.1.5](#) Forms of Distribution. Except for defined benefit payments described in Section [7.2.27.2.1.17](#) below, and unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first (1<sup>st</sup>) Distribution Calendar Year, distributions will be made in accordance with Sections [7.2.27.2.1.6](#) through [7.2.27.2.1.9](#) of this Plan. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions under such annuity will be made in accordance with the requirements of Code section 401(a)(9) and 1.401(a)(9) of the Treasury Regulations. Any part of the Participant's interest which is in the form of an individual account described in section 414(i) of the Code will be distributed in a manner satisfying the requirements of Code section 401(a)(9) and Treasury Regulations section 1.401(a)(9) that apply to individual accounts.

[7.2.27.2.1.6](#) Amount of Required Minimum Distribution for Each Distribution Calendar Year. Except as provided in subsection [7.2.27.2.1.17](#) if the Participant's interest is paid in the form of an annuity, during the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(a) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation section 1.401(a)(9)-9, Q&A-2, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(b) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treasury Regulation section 1.401(a)(9)-9, Q&A-3, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

[7.2.27.2.1.7](#) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under Section [7.2.27.2.1.6](#) beginning with the first (1<sup>st</sup>) Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

[7.2.27.2.1.8](#) Death On or After Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

(1) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one (1) for each subsequent year.

(2) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year.

For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one (1) for each subsequent calendar year.

(3) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one (1) for each subsequent year.

(b) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one (1) for each subsequent year.

7-2-27.2.1.9      Death Before Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. Except as provided in Sections 7-2-27.2.1.15 and 7-2-27.2.1.16, if the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in Section 7-2-27.2.1.8.

(b) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth (5<sup>th</sup>) anniversary of the Participant's death.

(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 7-2-27.2.1.4(a), this Section 7-2-27.2.1.9 will apply as if the surviving spouse were the Participant.

7-2-27.2.1.10      Designated Beneficiary. The Designated Beneficiary is the individual who is designated by the Participant (or the Participant's surviving spouse) as the beneficiary of the Participant's interest under the Plan and is the Designated Beneficiary under Code section 401(a)(9) and Treasury Regulation section 1.401(a)(9)-4.

7-2-27.2.1.11      Distribution Calendar Year. A Distribution Calendar Year is a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 7-2-27.2.1.4. The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

7-2-27.2.1.12      Life Expectancy. Life Expectancy means the expectancy as computed by use of the Single Life Table in Treasury Regulation section 1.401(a)(9)-9, Q&A-1.

7-2-27.2.1.13      Participant's Account Balance. The Account Balance is the balance in the participant's account as of the last valuation date in the calendar year immediately preceding the



Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

7.2.27.2.1.14 Required Beginning Date. The Required Beginning Date is April 1<sup>st</sup> of the calendar year following the later of the calendar year in which the Participant attains age 70 ½ or the calendar year in which the Participant retires.

7.2.27.2.1.15 Participants or Beneficiaries Permitted to Elect 5-Year Rule. Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in Sections 7.2.27.2.1.4 and 7.2.27.2.1.9 of this Plan applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 7.2.27.2.1.4 of this Plan, or by September 30 of the calendar year which contains the fifth (5<sup>th</sup>) anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor beneficiary makes an election under this Section, distributions will be made in accordance with Sections 7.2.27.2.1.4 and 7.2.27.2.1.9 and, if applicable, the elections in Section 7.2.27.2.1.16 below.

7.2.27.2.1.16 Election to Apply 5-Year Rule to Distributions to Designated Beneficiaries. For all distributions, if the Participant dies before distributions begin and there is a Designated Beneficiary, distribution to the Designated Beneficiary is not required to begin by the date specified in the Plan, but the Participant's entire interest will be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth (5<sup>th</sup>) anniversary of the Participant's death. If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to either the Participant or the surviving spouse begin, this election will apply as if the surviving spouse were the Participant.

7.2.27.2.1.17 In the case of a payment that is treated as a payment from a defined benefit plan, unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 7.2.27.2.1.17.1 through 7.2.27.2.1.17.3 below. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code section 401(a)(9) and Section 1.401(a)(9) of the Treasury Regulations. Any part of the Participant's interest which is in the form of an individual account described in Code section 414(k), will be distributed in a manner satisfying the requirements of Code section 401(a)(9) and Section 1.401(a)(9) of the Treasury Regulations thereunder that apply to individual accounts.

7.2.27.2.1.17.1 Determination of Amount to be Distributed Each Year.

- (a) General Annuity Requirements. If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
- (i) the annuity distributions will be paid in periodic payments made at uniform intervals not longer than one year;
  - (ii) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 7.2.27.2.1.17.2 or 7.2.27.2.1.17.3;
  - (iii) once payments have begun, the period will be changed only in accordance with Section 7.2.27.2.1.17.4 below;

- (iv) payments will either be nonincreasing or increase only as follows:
- (A) by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or a prior year;
  - (B) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost of living index since the annuity starting date, or if later, the date of the most recent percentage increase;
  - (C) by a constant percentage of less than 5 percent per year, applied not less frequently than annually;
  - (D) as a result of dividend or other payments that result from actuarial gains provided:
    - (i) actuarial gain is measured not less frequently than annually,
    - (ii) the resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured),
    - (iii) the actuarial gain taken into account is limited to actuarial gain from investment experience,
    - (iv) the assumed interest rate used to calculate such actuarial gains is not less than 3%, and
    - (v) the annuity payments are not increased by a constant percentage as described in “(C)” above.
  - (E) to the extent of the reduction in the amount of the Participant’s payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the beneficiary whose life was being used to determine the distribution period described in [7.2.27.2.1](#) dies or is no longer the Participant’s beneficiary pursuant to a qualified domestic relations order within the meaning of Code section 414(p):
  - (F) to provide a final payment upon the Participant’s death not greater than the excess of the actuarial present value of the Participant’s accrued benefit (within the meaning of Code section 411(a)(7)) calculated using the interest rate on 30 year Treasury securities as specified by the Commissioner and described in section 3.6.9(i)(II)(a) above and mortality table set forth in Rev. Rul. 2001-62, 2001-53, I.R.B. 632 (or, if



greater, the total amount of employee contributions) over the total of payments before the Participant's death;

(G) to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Participant's death; or

(H) to pay increased benefits that result from a plan amendment.

(b) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section ~~7-2-27.2.1~~ 4(a) or (b)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. All of the Participant's benefit accruals as of the last day of the first Distribution Calendar Year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.

(c) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first Distribution Calendar Year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

~~7-2-27.2.1~~ 17.2 Requirements For Annuity Distributions That Commence During Participant's Lifetime.

(a) Joint Life Annuities Where the Beneficiary is Not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary, annuity payments to be made on or after the Participant's Required Beginning Date to the Designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2(c)(1) of Treasury Regulation section 1.401(a)(9)-6 to determine the applicable percentage. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the Designated Beneficiary after the expiration of the period certain.

(b) Period Certain Annuities. Unless the Participant's spouse is the sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Treasury Regulation section 1.401(a)(9)-9, Q&A-2, for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age seventy (70), the applicable distribution period for the Participant is the distribution period for age seventy (70) under the Uniform Lifetime Table set forth in Treasury Regulation section 1.401(a)(9)-9, Q&A-2, plus the excess of seventy (70) over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's spouse is the Participant's sole Designated Beneficiary and the

form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this subsection or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in Treasury Regulation section 1.401(a)(9)-9, Q&A-3, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

7.2.27.2.1.17.3 Requirements for Minimum Distributions After Participant Dies

- (a) Death After Distributions Begin. If the Participant dies after distribution of his or her interest begins in the form of an annuity meeting the requirements of this section 7.2.27.2.1, the remaining portion of the Participant's interest, if any, will continue to be distributed over the remaining period over which distributions commenced.
- (b) Death Before Distributions Begin.
  - (i) Participant Survived By Designated Beneficiary. If the Participant dies before the date distribution of his or her interest begins and there is a Designated Beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Section 7.2.27.2.1.4(a) or (b), over the life of the Designated Beneficiary or over a period certain not exceeding:
    - (A) unless the annuity starting date is before the first Distribution Calendar Year, the life expectancy of the Designated Beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
    - (B) if the annuity starting date is before the first Distribution Calendar Year, the life expectancy of the Designated Beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

Election of 5 Year Rule. Participants or beneficiaries may elect on an individual basis whether the five (5) year rule or the life expectancy rule in Section 7.2.27.2.1.4 and Section 7.2.27.2.1.17.2(b) applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distributions would be required to begin under Section 7.2.27.2.1.4, or September 30 of the calendar year which contains the fifth (5<sup>th</sup>) anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor beneficiary makes an election under this subsection, distributions will be made in accordance with Sections 7.2.27.2.1.4 and 7.2.27.2.1.17.2(b).

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

- (iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section ~~7.2.27.2.1~~.4(a).

#### ~~7.2.27.2.1~~.17.4 Changes to Annuity Payment Period.

- (a) Permitted Changes. An annuity payment period may be changed only in association with an annuity payment increase described in Section ~~7.2.27.2.1~~.17.1(a)(iv) (or in accordance with subsection (b) below).
- (b) Reannuitization. An annuity payment period may be changed and the annuity payments modified in accordance with that change if the conditions in subsection (c) below are satisfied and:
  - (i) the modification occurs when the Participant retires or in connection with a Plan termination;
  - (ii) the payment period prior to modification is a period certain without life contingencies; or
  - (iii) the annuity payments after modification are paid under a qualified joint and survivor annuity over the joint lives of the Participant and a designated beneficiary, the Participant's spouse is the sole designated beneficiary, and the modification occurs in connection with the Participant's becoming married to such spouse.
- (c) Conditions. The conditions in this subsection (c) are satisfied if:
  - (i) the future payments after the modification satisfy the requirements of Section 409(a)(9), Section 1.401(a)(9) of the regulations, and this Section 7.2 (determined by treating the date of the changes as the new annuity starting date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Participant);
  - (ii) for purposes of Code Sections 415 and 417, the modification is treated as a new annuity starting date;
  - (iii) after taking into account the modification, the annuity (including all past and future payments) satisfies the requirements of Code Section 415 (determined at the original annuity starting date, using the interest rates and mortality tables applicable to such date); and
  - (iv) the end point of the period certain, if any, for any modified payment period is not later than the end point available to the Employee at the original annuity starting date under Code Section 401(a)(9) and this Section 7.2.

#### ~~7.2.27.2.1~~.17.5 Payments to Surviving Child.

- (a) Special Rule. For purposes of this Section 7.2, any payments made to a Participant's surviving child until the child reaches the age of majority (or dies, if earlier) shall be treated as if such payments were made to the surviving spouse to the extent the payments

become payable to the surviving spouse upon cessation of the payments to the child.

- (b) Age of Majority. For purposes of this section, a child shall be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of Section 72(m)(7) when the child reaches the age of majority shall be treated as having not reached the age of majority so long as the child continues to be disabled.

7.2.27.2.1.17.6 Additional Definitions

- (a) Actuarial Gain. The difference between an amount determined using the actuarial assumptions (i.e. investment return, mortality, expense and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.
- (b) Eligible Cost of Living Index. An index described in paragraphs (b)(2), (b)(3) or (b)(4) of section 1.401(a)(9)-6, Q&A-14 of the regulations.

7.2.27.2.1.18 TEFRA section 242(b)(2) Elections

- (a) Notwithstanding the other requirements of this 7.2, distribution on behalf of any Employee who has made a designation under Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a "242(b)(2) election") may be made in accordance with all of the following requirements (regardless of when such distribution commences):
  - (i) The distribution by the Plan is one which would not have disqualified such Plan under section 401(a)(9) of the Internal Revenue Code as in effect prior to amendment by the Deficit Reduction Act of 1984,
  - (ii) The distribution is in accordance with a method of distribution designated by the Employee whose interest in the Plan is being distributed or, if the Employee is deceased, by a beneficiary of such Employee,
  - (iii) Such designation was in writing, was signed by the Employee or the beneficiary, and was made before January 1, 1984,
  - (iv) The Employee had accrued a benefit under the Plan as of December 31, 1983,
  - (v) The method of distribution designated by the Employee or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and, in the case of any distribution upon the Employee's death, the beneficiaries of the Employee listed in order of priority.
- (b) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Employee.
- (c) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Employee, or the beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections (a)(i) and (v) above.

- (d) If a designation is revoked, any subsequent distribution must satisfy the requirements of § 401(a)(9) of the Code and the regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Section 401(a)(9) of the Code and the regulations thereunder, but for the 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation directly or indirectly (for example by altering the relevant measuring life).
- (e) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Section 1.401(a)(9)-8, Q&A-14 and Q&A-15 of the regulations shall apply.

7.2.2.19 Transition Rules. The transition rules for required minimum distributions before January 1, 2003 are specified in section 7.2.1 above.

7.2.1.1920 2009 Required Minimum Distributions.

(a) **Suspension of Required Minimum Distributions for 2009.** Notwithstanding anything in this Plan to the contrary, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated "Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence; and

(b) **Direct Rollovers.** For purposes of applying the direct rollover provisions of the Plan, a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code Section 401(a)(9)(H).

7.2.2 Special Rule for Governmental Plans. Notwithstanding anything in this Section 7.2 to the contrary, a governmental plan within the meaning of Code section 414(d), or an eligible governmental plan described in Treasury Regulations section 1.457-2(f), is treated as having complied with Code section 401(a)(9) for all years to which section 401(a)(9) applies to the Plan if the Plan complies with a reasonable good faith interpretation of section 401(a)(9).

7.3 **Minimum Benefits Upon Retirement, Death and Disability of Certain Police and Fire Plan Participants.** Notwithstanding any provision of this Agreement to the contrary, this Section 7.3 shall in certain circumstances provide minimum benefits to Police and Fire Plan Participants as follows:

7.3.1 **Minimum Retirement Benefits.** Participants of Police and Fire Plans, if employed on January 1, 1984 and continuously employed by the City from such date through the date of their retirement, shall receive a benefit which, when determined on a Straight Life Annuity basis, shall not be less than:

(a) **Police Plan.**

- (i) Effective April 16, 2012, 50% of Regular Pay if retirement occurs after reaching 60 years of age and the Participant has completed 25 years of service with the

| City. Before April 16, 2012, the following parenthetical was included at the end:  
(or 21 Years of Service if hired prior to November 18, 1965); or

(ii) 40% of Regular Pay if retirement occurs after reaching 55 years of age, but before reaching 60 years of age, and the Participant has completed 25 Years of Service with the City.

The Minimum Benefit provided in this Section (a) shall be paid in any form of benefit payment otherwise provided for in this Section 7. If the Minimum Benefit is paid in a form other than a straight life annuity, such benefit shall be the Actuarial Equivalent of the Minimum Benefit payable as a Straight Life Annuity.

If the Participant chooses the single lump-sum payment option, the Participant can request that the Actuarial Equivalent be equal to the average of the cost of three Annuity Contracts purchased on the open market. The Participant, Retirement Committee and City each shall submit the cost of an appropriate Annuity Contract to determine the Actuarial Equivalent.

(b) Fire Plan.

(i) 50% of Regular Pay if retirement occurs after reaching 55 years of age and completing 21 years of service with the City; or

(ii) the Actuarial Equivalent of the benefit which otherwise would be provided in (i) above at 55 years of age if retirement occurs after reaching 50 years of age, but before reaching age 55, and Retirement occurs after completing 21 Years of Service with the City; or

(iii) 50% of the Salary received at the time of retirement multiplied by the ratio of Years of Service to 21 if retirement from the City occurs on or after reaching 55 years of age with less than twenty-one Years of Service with the City; or

(iv) For termination of employment after September 9, 1993, 50% of Regular Pay if such termination of employment occurs prior to 55 years of age but after completion of 21 Years of Service with the City.

Unless an optional annuity benefit is selected by the Participant, at the death of the Participant, the same rate of pension as is provided for in this Section (b) shall be paid to the surviving spouse of such deceased Participant during such time as the surviving spouse remains unmarried and, in case there is no surviving spouse, then the minor children, if any, of such deceased Participant shall equally share such Minimum Benefit during their minority. As soon as a child of a deceased Participant ceases to be a minor, such benefit to such child shall cease.

In the event a Participant or his or her surviving beneficiaries die before the aggregate amount of Minimum Benefit payments distributed under this Section (b) equals the total amount in the Participant's Employee Account at the time of the first payment, the difference between the total amount in the Employee Account and the aggregate amount of Minimum Benefit payments distributed shall be paid in a single sum to the Participant's estate.

The Minimum Benefit provided for in this Section (b) shall be paid in any form permitted under Section 7. If the Minimum Benefit is paid in an optional annuity benefit or a single lump-sum payment, such benefit or payment shall be the Actuarial Equivalent of the annuity that would otherwise be paid to the Participant.

If the Participant chooses the single lump-sum payment option, the Participant may request that the Actuarial Equivalent be equal to the average of the cost of two Annuity Contracts purchased on the open market, if the difference between the cost of the two Annuity Contracts

does not exceed 5%. The Participant and the City each shall choose one of the Annuity Contracts used for determining the Actuarial Equivalent. If the difference between the two Annuity Contracts chosen exceeds 5%, the Retirement Committee shall review the costs of the two contracts and make a recommendation to the City Council as to the amount of the lump-sum payment to be made to the Participant. The City Council shall determine the amount of the single lump-sum payment after a hearing thereon.

(c) Retirement Benefits for Certain Firefighters Employed on August 7, 1965.

(i) All firefighters of the paid fire department of a city of the first class in Nebraska who:

(1) were serving as such on August 7, 1965;

(2) did not elect coverage under the provisions of Neb. Rev. Stat. Sections 35-204 to 35-215 as in existence prior to January 1, 1984; and

(3) served in the fire department for a period of 21 years

shall elect to retire from active service, go upon the retired list, and receive a pension of at least 50% of the amount of Salary such retiring firefighter is receiving at the time he or she goes upon the pension list. Such benefits shall be paid by the City in the same manner as firefighters upon the active list are paid.

(ii) Any such firefighter who retires on or after attaining 55 years of age with less than 21 years of service with the City shall receive a benefit of at least 50% of the Salary he or she was receiving at the time of his or her retirement multiplied by the ratio of the years of service to 21.

(iii) At the death of any such retired firefighter, the same rate of pension, as provide for herein, shall be paid to the surviving spouse of such deceased firefighter during such time as the surviving spouse shall remain unmarried and, in case there be no surviving spouse, then the minor children, if any, of such deceased firefighter, shall be paid such benefit during their minority to the age of eighteen years, except that as soon as a child of such deceased firefighter shall become eighteen years of age, such pension as to such child shall cease.

(iv) Firefighters described in subsection (c) above shall be subject to Sections 16-1029 to 16-1032 of the Nebraska statutes, but shall be exempt from Sections 16-1024, 16-1025, 16-1027, 16-1028 and 16-1033.

(v) After August 7, 1965, every firefighter subject to the provisions of Sections 35-201 to 35-203 as in existence prior to January 1, 1984 shall contribute to the City an amount equal to 5% of his or her Salary until he or she shall be entitled to retire or otherwise become eligible for a pension. No such firefighter continuing in the employment of the City as a member of such department after becoming eligible to retire shall be required to make any further contribution. Any such firefighter whose employment shall terminate, whether by discharge or otherwise, prior to the time he or she shall become entitled to a pension, and who shall have made contributions from his or her Salary as provided in this subsection shall, upon demand, be reimbursed by the City for the amount of such contributions plus interest at 5% per annum.

(vi) Nothing in the Nebraska statutes regarding the Firefighters Retirement System Fund nor any provision of this Plan shall in any manner affect the right of any person now receiving or entitled to receive, now or in the future, pension or other benefits provided for in Section 35-201 to 35-216, as they exist immediately prior to January 1,



1984, to receive such pension or other benefits in all respects the same as if such Sections remained in full force and effect.

7.3.2 Minimum Death Benefits.

(a) Death in the Line of Duty – Police and Fire Plans. A Participant's surviving spouse or minor children shall be paid a benefit of 50% of Regular Pay if the Participant (who with respect to a Fire Plan, is participating in ~~a Police or the~~ Fire Plan) died in the line of duty or as a result of injuries received while in the line of duty ("Minimum Death Benefit in the Line of Duty"). The Minimum Death Benefit in the Line of Duty shall be paid to the surviving spouse, and upon his or her remarriage or death, to the minor children during each child's minority, subject to deduction of the amounts paid as workers' compensation benefits on account of death. Each child eligible to receive benefits hereunder shall share equally in the Minimum Death Benefit in the Line of Duty until he or she reaches the age of majority. The Minimum Death Benefit in the Line of Duty to a child shall cease upon his or her reaching the age of majority.

(i) Police Plan. To the extent that the Retirement Value of the Participant's Account on the date of death exceeds the amount required to purchase or provide the Minimum Death Benefit in the Line of Duty, the excess shall be paid pursuant to Sections 6 and 7 of this Plan.

(ii) Fire Plan. In the event the surviving spouse or minor children of a deceased Participant die before the aggregate amount of payments from the Plan received by the Participant and his or her survivor beneficiaries, if any, equals the total amount in the Participant's Employee Account at the time of the first benefit payment, the difference between the total amount in the Employee Account and the aggregate amount of benefit payments made by the Plan, if any, shall be paid in a single sum to the Participant's beneficiary or, in the absence thereof, to the Participant's estate.

(iii) The Retirement Value of a Participant's Account shall be paid to the Beneficiary designated by the Participant prior to his death, or to the Participant's Estate in the absence of a designated Beneficiary, in the event that a Participant who dies in the line of duty, or as a result of injuries received in the line of duty, is not survived by a spouse or minor children. Such payment shall be made to the Beneficiary in a straight life annuity, single lump-sum or other optional form of benefit specified in this Agreement and elected by the Beneficiary.

(b) Death Not in the Line of Duty – Police and Fire Plans.

(i) Police Plan. A benefit of at least 25% of Regular Pay in the form of a Straight Life Annuity shall be paid to the surviving spouse of a deceased participant of a Police Plan who dies other than in the line of duty or as a result of injuries received in the line of duty if the Participant:

(a) was continuously employed by the City from January 1, 1984, except those who shall have been formerly employed by the City who are now in military duty, until the date of his or her death;

(b) had reached 55 years of age;

(c) had not elected to retire; and

(d) had completed at least 21 Years of Service with the City.

(ii) Fire Plan. A benefit of at least 25% of Regular Pay in the form of a Straight Life Annuity to the surviving spouse of a Participant of a Fire Plan who dies



other than in the line of duty or as a result of injuries received while in the line of duty, if the Participant:

- (a) was employed by the City as a firefighter on January 1, 1984, or reemployed thereafter who, while employed as a firefighter, and entered military service and is still in military service;
- (b) dies while employed by the City;
- (c) had attained 50 years of age;
- (d) had not elected to retire; and
- (e) had 21 Years of Service with the City.

If the surviving spouse or minor children of a deceased Participant die before the aggregate amount of benefits paid to the Participant and his or her Beneficiaries equals the total amount in the Participant's Employee Account on the date of the first payment, the difference between the value of the Employee Account and the aggregate amount of benefits paid shall be paid in a single sum to the designated Beneficiary, or to the estate of the Participant in the absence of a surviving designated Beneficiary.

(iii) If the deceased Participant is not survived by a spouse or in the event the surviving spouse dies before the minor children of the Participant attain the age of majority, the pension benefit shall be paid to the Participant's minor children until they have attained the age of majority. Each minor child shall equally share in the Minimum Death Benefit. The Benefit to a child shall cease upon the child reaching the age of majority. The Benefit shall thereafter be allocated among the remaining minor children until the last remaining child dies or reaches the age of majority.

To the extent that the Retirement Value on the date of the Participant's death exceeds the amount required to purchase a Minimum Death Benefit specified in this Section 7.3, the excess shall be paid pursuant to Sections 6 & 7 of this Plan.

(c) Any payments for the benefit of a minor child shall be made on behalf of such child to the surviving parent or, if there is no surviving parent, to the legal guardian of the child.

7.3.3 Minimum Disability Benefits. The following benefits are payable to Participants of Police and Fire Plans who suffer a Disability:

(a) Disability in the Line of Duty: A benefit of 50% of Regular Pay shall be paid to any Participant who becomes disabled and it is determined that the disability is permanent ("Permanent Disability").

(i) Disabled or Disability Defined: The complete inability of the Participant, for reasons of accident or other cause while in the line of duty, to perform the duties of a firefighter as defined by fire department job descriptions or ordinance, or with respect to a Police Plan, the duties of a police officer.

(ii) A benefit payment shall be made under this Section 7.3.3(a) only upon adequate proof of the Disability. Such proof shall consist of a medical examination conducted by a competent, disinterested physician who is duly licensed to practice medicine and surgery in the state of Nebraska and who certifies to the City that the Participant is unable to perform the duties of his or her job.

(iii) The City shall have the right during the first three years of Disability payments to require the Disabled Participant to undergo a medical examination at the City's expense to determine the continuance of the Disability claimed. After such three-year period, the City may request the district court to order the Participant to submit proof of the continuance of the Disability claimed if the City has reasonable grounds to believe the Participant is fraudulently receiving Disability payments. The City shall have the right to demand a physical examination of the Participant by a competent, disinterested physician who is duly licensed to practice medicine and surgery in the state of Nebraska and who is chosen by the City. The expense of such examination shall be borne by the City.

(iv) Temporary Disability. A Participant who receives a temporary Disability while in the line of duty shall receive his or her salary during the continuance of the Disability for a period not to exceed 12 months. If the City determines within the initial 12 month period that a Temporary Disability has become a Permanent Disability, then salary payments shall cease and the Participant shall be entitled to the payment of benefits for a Permanent Disability pursuant to Section 7.3.3(a).

(v) All payments of benefits or salary in this Section 7.3.3. shall be subject to deduction of amounts paid under the Nebraska Workers' Compensation Act. With respect to Disability payments under a Police Plan, such payments shall not commence until all credit for unused annual or sick leave and other similar credits have been fully utilized by the Disabled Participant if there will be no impairment to his or her salary during the period of Disability. Total payments to a Disabled Participant, in excess of amounts paid as workers' compensation benefits, shall not be less than the Retirement Value of the Participant's Account on the date of the Disability.

No Participant shall be entitled during any period of Temporary Disability to receive in full both his or her Salary and his or her benefits under the Nebraska Workers' Compensation Act ("Act"). All Nebraska workers' compensation benefits shall be payable in full to such firefighter as provided in the Act, but all amounts paid by the City or its insurer under the Act to any Disabled firefighter entitled to receive a Salary during such Disability shall be considered as payments on account of such Salary and shall be credited thereon. The remaining balance of such Salary, if any, shall be payable as otherwise provided herein.

(vi) Unless otherwise provided herein, the benefits provided under this Section 7.3.3 shall terminate upon the cessation of a Participant's Disability, and the Retirement Value of the Participant's Account shall be reduced by the amount of benefits distributed to the Participant hereunder, and thereafter such Account shall be held and administered in the same manner as the Account of Participants who are not disabled.

(b) Disability Not in the Line of Duty: Disability payments shall not be paid to a Participant in the event of a disability which is not received while in the line of duty.

7.4 Effect of Reemployment After Distribution Has Been Made or Commenced. In the event that a Participant is reemployed by the Employer after distribution has been made or commenced to him, the following rules shall apply:

(a) Further distribution of his Matured Account shall be suspended and the undistributed remainder of his Matured Account shall continue to be held in the Plan until another Event of Maturity effective as to him shall occur after his reemployment, it being the intent hereof that no distributions shall be made while a Participant is maintaining an employment relationship with the Employer.

(b) He shall again become a Participant in this Plan upon his return to Recognized Employment [as provided in this Plan](#).

7.5 Designation of Beneficiaries. Each Participant may designate, upon forms to be furnished by and filed with the Trustee, a Beneficiary or Beneficiaries to receive his Matured Account in the event of his death and may change or revoke any such designation and appointment from time to time. No such designation, change or revocation shall be effective unless executed by the Participant and delivered to the Trustee during the Participant's lifetime. In the event:

- (a) the Participant shall have failed to designate a Beneficiary,
- (b) such a designation shall have been made and revoked and the Participant shall have failed to designate another, or
- (c) a Beneficiary or Co-Beneficiaries so designated shall fail to survive the Participant;

Participant's Matured Account, or the part thereof as to which such Participant's designation shall fail, as the case may be, shall be payable at the time of the failure to the first class of the following classes of automatic Beneficiaries then surviving and (except in the case of his surviving issue) in equal shares if there are then more than one in each class:

Police and Fire Plans: Participant's Estate  
Participant's surviving spouse  
Participant's surviving issue per stirpes and not per capita  
Participant's surviving parents  
Participant's surviving brothers and sisters  
Representative of Participant's estate

When used herein and, unless the Participant has otherwise specified in his Beneficiary designation, when used in a Beneficiary designation, "per stirpes" means in equal shares among living children and the issue (taken collectively) of each deceased child, with such issue taking by right of representation; "children" means issue of the first generation; and "issue" means all persons who are descended from the person referred to, either by legitimate birth to or legal adoption by him or any of his legitimately born or legally adopted descendants. The automatic Beneficiaries specified above and, unless the Participant has otherwise specified in his Beneficiary designation, the Beneficiaries designated by him shall become fixed as of the Participant's death so that, if a Beneficiary survives the Participant hereunder and then dies before receipt of all payments, such remaining payments shall be payable to the representative of such Beneficiary's estate. Any designation of Beneficiary by name that is accompanied by a description of relationship to the Participant shall be given effect without regard to whether the relationship to the Participant exists either then or at the Participant's death. Any designation of a Beneficiary only by statement of relationship to the Participant shall be effective only to designate the person or persons standing in such relationship to the Participant at the Participant's death.

7.6 Optional Forms of Distribution. As designated by the Employer in the Adoption Agreement, the optional forms of benefit payment provided by this Plan are as follows:

- (a) a single sum;
- (b) a straight life annuity;
- (c) a straight life annuity with a guarantee of at least 60 monthly payments;
- (d) an annuity payable for life of Participant and annuity to surviving beneficiary of 100%, 75% or 50%;
- (e) a combination of (a) through (d);
- (f) if so indicated in the Adoption Agreement, in kind distribution is permitted subject to Section 7.7; and

- (g) any other form designated in the Adoption Agreement.

For the portion of the death benefit that is payable to the Participant's surviving spouse, the surviving spouse may elect distribution at any time and in any form (other than a joint and survivor annuity), including a single lump-sum payment, which would have been permitted for the deceased Participant; subject, however, to the right of the City to make a cash-out distribution as described in Section 5.1.3(a) above. Similarly, the Participant's Beneficiary may elect to have the Trustee distribute the death benefit in any form (other than a joint and survivor annuity), including a single lump-sum payment, which would have been permitted for the deceased Participant, and within a period permitted under Section 7; subject, however, to the right of the City to make a cash-out distribution as described in Section 5.1.3(a) above. The Beneficiary's election is subject to any restrictions designated in writing by the Participant and not revoked as of his date of death. Such election shall be by a Participant's surviving spouse or Beneficiary made within 60 days after an Event of Maturity.

The amount of annuity benefit payable in the form of an annuity under this Section 7.6 shall be the amount paid by the Annuity Contract purchased or otherwise provided by the Participant's Vested Retirement Value as of the date of the first payment. Any Annuity Contract purchased by the Trustee may be distributed to the Participant or Beneficiary. Upon distribution of an Annuity Contract or lump-sum payment, all obligations of the Plan to the Participant or Beneficiary shall cease. Any Annuity Contract that is distributed from the Plan must be nontransferable.

A Participant who retires after reaching his or her Retirement Date may elect to defer the date of the first annuity payment or lump-sum distribution to the first day of any specified month prior to the Participant reaching 70 years of age.

Any retiring Participant whose benefit under the Plan is less than \$25 per month on the Straight Life Annuity option shall not be entitled to elect to receive annuity benefits.

Any payments for the benefit of a minor child shall be made on behalf of the child to the surviving parent or, if there is no surviving parent, to the legal guardian of the child.

(h) Effective for distributions with annuity starting dates in Plan Years beginning after December 31, 2007, a married Participant who elects to waive the qualified joint and survivor annuity form of benefit under the Plan, if said form is required under the Plan by applicable law, shall be entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity, if required of the Plan by applicable law, shall explain the terms and conditions of the "qualified optional survivor annuity." Provided, however, the following rules apply in the specified circumstances:

(i) Special Effective Date Rules.

(a) (a) If the Plan permits retroactive annuity starting dates and a Participant elects a distribution with a retroactive annuity starting date (pursuant to Treasury Regulations Section 1.417(e)-1(b)(3)(iv)) that is before the aforementioned effective date, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of applying the rules of this subsection.

(b) (b) In the case of a plan that is subject to Code Section 401(a)(11) and that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006 (the date of enactment of PPA '06), the changes to Code Section 417 made by Section 1004 of PPA '06 apply to distributions with annuity starting dates during plan years beginning on or after the earlier of (i) January 1, 2008 or, if later, the date on which the last collective bargaining agreement related to the plan terminates

(determined without regard to any extensions to a collective bargaining agreement made after August 17, 2006), or (ii) January 1, 2009.

(ii) Definition of Qualified Optional Survivor Annuity. For purposes of this subsection (h), the term "qualified optional survivor annuity" means an immediate annuity:

(a) For the life of the Participant with a survivor annuity for the life of the Participant's spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the Participant's spouse, and

(b) Which is the actuarial equivalent of the normal form of benefit (or if this is a defined contribution plan, the amount of benefit which can be purchased with the Participant's vested Account).

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(iii) For purposes of this subsection (h), the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the Participant and the spouse). If the survivor annuity percentage is less than seventy-five percent (75%), then the "applicable percentage" is seventy-five percent (75%). If the survivor annuity percentage is equal to or greater than seventy-five percent (75%), the "applicable percentage" is fifty percent (50%)

(iv) Inapplicability to Governmental Plans. Pursuant to the flush language of Code Section 401(a) and the provisions of Code Section 411(e)(1)(A), the provisions of Code Sections 401(a)(11) and 417, and consequently this subsection (h), shall not apply to this Plan if it is a governmental plan within the meaning of Code Section 414(d).

7.7 Distribution in Kind. If so indicated in the Adoption Agreement, in the case of a single sum distribution a Participant may direct the Trustee to cause distribution of a Participant's Matured Account to be made either in a form actually held in the Fund, or in cash by converting assets other than cash to cash, or in any combination of the two foregoing ways. Provided, however, such direction is permitted where it is reasonably possible for the Trustee to comply therewith and not in conflict with the terms of this Agreement and the interests of other Participants or their Beneficiaries.

7.8 Facility of Payment. In the case of incompetency or disability, either mental or physical, of a Participant or Beneficiary entitled to receive any distribution under the Plan, payments shall be made, if the Trustee shall be advised of the existence of such condition:

(a) to the duly-appointed attorney in fact, guardian or conservator, or to the legal representative of such Participant or Beneficiary; or

(b) to a person or institution entrusted with the care or maintenance of the incompetent or disabled Participant or Beneficiary, provided such person or institution has satisfied the Trustee that the payment will be used for the best interest and assist in the care of such Participant or Beneficiary, and provided further that no prior claim for said payment has been made by a duly appointed guardian or any legal representative of such Participant or Beneficiary.

Any payment made in accordance with the foregoing provisions of this Section shall constitute a complete discharge of any liability or obligation of the Trustee and the Plan therefor.

7.9 Withdrawal from Voluntary Account. If the Employer so indicates in the Adoption Agreement, Participants may make withdrawals from time to time from their Voluntary Account. All withdrawals from a Voluntary Account shall come first from the Nondeductible Voluntary Account, and only after the Nondeductible Voluntary Account is exhausted will a withdrawal come from the Deductible Voluntary Account. No forfeitures will occur solely because a Participant makes a withdrawal from his Voluntary Account.

7.10 When a Participant or a Beneficiary Cannot Be Found. In the case of a benefit which is payable and the Participant or Beneficiary to whom the payment is due cannot be found, the Plan Administrator shall make reasonable efforts to locate such Participant or Beneficiary. In the event such Participant or Beneficiary cannot be located, the Trustee shall treat such amount as a forfeiture subject to Section 6.4. If a benefit is forfeited because a Participant or Beneficiary cannot be found such benefit will be reinstated if a claim is made by the Participant or Beneficiary within the period permitted for making a claim under applicable law.

7.11 Determination of Required Distributions. The Retirement Committee (or Employer if no Retirement Committee has been designated) shall be responsible for determining any required distribution dates under the Plan. The Retirement Committee shall cause the Trustee to make required distributions by such dates and in an amount satisfying any minimum distribution requirements applicable thereto. The Employer agrees to hold the Trustee harmless from any failure of the Retirement Committee to perform its duties under this Section.

7.12 Rollovers. ~~This Section 7.12 applies to distributions made on or after January 1, 2002.~~ Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

7.12.1 Definitions.

(a) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code section 401(a)(9); the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); for distributions made on or after January 1, 1999, any hardship distributions; and any qualified disaster-relief distributions within the meaning of Code section 72(t)(2)(G).

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to (1) ~~a traditional~~ individual retirement account or annuity described in section 408(a) or (b) of the Code ~~("traditional IRA") or a Roth individual retirement account or annuity described in Code Section 408A ("Roth IRA"); or;~~ (2) ~~for taxable years beginning after December 31, 2001 and before January 1, 2007, to a qualified trust which is part of a~~ defined contribution, defined benefit or annuity plan ~~described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately account for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or (3) for taxable years beginning after December 31, 2006, to a qualified trust~~ or to an annuity contract described in section 403(b), if such ~~trust plan~~ or contract provides for separate accounting for amounts so transferred (including earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

The Employer on a nondiscriminatory basis may elect in the Adoption Agreement or otherwise in a written addendum to this Plan to require that a distribution must be equal to at least \$200 before it qualifies as an eligible rollover distribution.

(b) **Eligible retirement plan:** An eligible retirement plan is an eligible plan under Code section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, traditional IRA, a Roth IRA, an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), or a qualified defined benefit or defined contribution plan described in Code section 401(a), that accepts the distributee's eligible rollover distribution. Additionally, the definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account, an eligible retirement plan with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual.

Effective for distributions after December 31, 2007, Participants and Beneficiaries also shall be permitted to make a direct rollover of an eligible rollover distribution from this Plan to a Roth IRA described in Code section 408A ("Roth IRA"), subject to satisfying applicable requirements of Code section 408A, regulations and IRS Notice 2008-30 and other guidance. Provided, however, for taxable years beginning before January 1, 2010, an individual cannot make a qualified rollover contribution from an eligible retirement plan other than a Roth IRA if, for the year the eligible rollover distribution is made, he or she has modified adjusted gross income exceeding \$100,000 or is married and files a separate return. For this purpose, the term "eligible rollover distribution" includes a rollover distribution described in subsection "a" above of after-tax employee contributions which are not includible in gross income, if applicable.

(c) **Distributee:** A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p), are distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2008, a distributee also includes the Participant's nonspouse Beneficiary designated under the Plan in accordance with Code section 401(a)(9)(E) and the regulations thereunder. In the case of a nonspouse Beneficiary, the direct rollover may be made only to a traditional IRA or individual retirement account or annuity under Code section 408(a) or 408(b) or Roth IRA that is established on behalf of the Beneficiary for purposes of receiving the distribution as an inherited IRA pursuant to Code section 402(e)(4) and that will be treated as an inherited IRA pursuant to provisions of Code Section 402(c)(11). Also, in this case, the determination of any required minimum distribution under Code section 401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A 17 and 18. Following are additional requirements of nonspouse beneficiary rollovers:

(i) Applicability of Certain Code Requirements. For Plan Years beginning on or after January 1, 2010, and to the extent the particular Code section is applicable to the Plan, any direct rollover of a distribution by a nonspouse beneficiary shall be subject to:

(a) The direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B)).



(b) The notice requirements of Code Section 402(f) and

(c) The mandatory withholding requirements of Code Section 3405(c).

Before that date, any such distribution shall not be subject to said requirements. Any distribution from the Plan to a non-spouse beneficiary shall not be eligible for a 60-day (non-direct) rollover.

(ii) Trust Beneficiary. Subject to the subsection 7.12.1(c) above, if the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).

(iii) Required Minimum Distribution Not Eligible Rollover. A non-spouse beneficiary is not permitted to roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulations Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

(d) Direct rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

## SECTION 8

### Inalienability of Benefits

No benefit or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily except as provided under Code section 401(a)(13). The preceding sentence shall also apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be a qualified domestic relations order, as defined in Code section 414(p) ("QDRO"), or any domestic relations order entered before January 1, 1985. This Plan specifically permits distribution to an alternate payee under a ~~qualified domestic relations order~~ QDRO at any time, ~~if the Participant consents in writing thereto,~~ irrespective of whether the Participant has attained his earliest retirement age (as defined in Section 414(p) of the Code) under the Plan. The Plan shall not recognize any domestic relations order which alters or changes benefits, provides for a form of benefit not otherwise permitted under the Plan, increases benefits not otherwise provided by the Plan or accelerates or defers the time of payment of benefits. No Participant or Beneficiary shall have authority to any specific portion of the assets of the Plan. The City or Retirement Committee may require releases from any person as a condition to complying with any such order. Effective on or after April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a QDRO will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death. A domestic relations order described in the immediately preceding sentence shall be subject to the same requirements and protections that apply to any other QDRO.

## SECTION 9



## Amendment and Termination

9.1 Amendment. The Employer reserves the right to amend [this Plan from time to time, including without limitation](#), the designations and elections made by it under the Adoption Agreement from time to time by adopting and executing a new Adoption Agreement, which shall be delivered to the Trustee. The Employer further reserves the right to amend its retirement plan in its entirety by the adoption of a successor retirement plan in place of the Plan set forth herein and in the Adoption Agreement, and by entering into such agreement with the Trustee or with the successor trustee, successor trustees, or other successor funding medium selected by the Employer as may be required for the purpose of carrying such successor retirement plan into effect; provided, however, that no such amendment shall be effective so as to increase the duties of the Trustee without its consent and provided further that the right of the Employer to designate a successor retirement plan or funding medium shall be subject to the notice requirements affecting the removal of the Trustee set forth in Section 10.4 hereof.

[Unless otherwise allowed or provided by applicable law, regulations or other guidance, n](#)No amendment shall be effective to reduce or divest the Total Account of any Participant without his consent unless the same shall have been adopted with the consent of the Secretary of Labor pursuant to the applicable provisions of the Employee Retirement Income Security Act of 1974, to the extent applicable to this Plan, or in order to comply with the provisions of the Internal Revenue Code of the United States and the regulations and rulings thereunder affecting the tax-qualified status of the Plan or to comply with the provisions of any stabilization law, regulations, orders or directives that may now or hereafter be in force, or to comply with any state law regarding retirement plans for municipal employees. Effective after September 6, 2000, an amendment may eliminate or restrict an optional form of benefit if the amendment satisfies the following:

(a) The amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit eliminated or restricted. For purposes of this condition (a), a single-sum distribution form is otherwise identical only if it is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the participant) except with respect to the timing of payments after commencement.

(b) The amendment is not effective unless the amendment provides that the amendment shall not apply to any distribution with an annuity starting date earlier than the earlier of: (i) the 90<sup>th</sup> day after the date the Participant receiving the distribution has been furnished a summary that reflects the amendment and that satisfies the ERISA requirements at 29 CFR 2520.104b-3 relating to a summary of material modifications or (ii) the first day of the second Plan Year following the Plan Year in which the amendment is adopted.

[Effective after September 6, 2000, a](#)An amendment that meets the requirements of Treasury Regulation section [1.411\(d\)-3 or 1.411\(d\)-4-1.411\(d\)-Q&A-2 and Q&A-3, to the extent applicable to the Plan](#), may be adopted.

[Notwithstanding anything in this Plan to the contrary, pursuant to Code section 411\(e\)\(1\)\(A\) and 412\(e\)\(2\), requirements of Code Section 411 or 412, and corresponding provisions of this Plan, shall not apply if this Plan is a governmental plan within the meaning of Code Section 414\(d\), with the exception of Code section 411\(e\)\(2\).](#)

9.2 Discontinuance of Contributions and Termination of Plan. The Employer also reserves the right, by action of its City Council, to reduce, suspend, or discontinue its contributions to this Plan and to terminate the Plan in its entirety.

9.3 Limitations. No power of amendment or of termination may be exercised so as to discriminate in favor of City officials or Highly Compensated Employees, or to permit any part of the Fund to be used for or diverted to purposes other than for the exclusive benefit of Participants or their Beneficiaries prior to the satisfaction of all liabilities with respect to such Participants and their Beneficiaries under this Plan.

9.4 Merger, Etc., with Another Plan. In the case of merger or consolidation of this Plan with, or transfer of assets and liabilities of this Plan to any other plan, each Participant shall (if such other plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is not less than the

benefit he would have been entitled to receive immediately before the merger, consolidation or transfer (if this Plan had then terminated).

## SECTION 10

### Concerning the Trustee

#### 10.1 Dealings with the Trustee.

(a) No person, firm or corporation dealing with the Trustee shall be required to make inquiry as to the authority of the Trustee to do any act which the Trustee shall do hereunder, and any such person, firm or corporation shall be entitled to assume conclusively that the Trustee is properly authorized to do any act which it shall do hereunder, and any such person, firm or corporation shall be under no liability to anyone whomsoever for any act done hereunder pursuant to the written direction of the Trustee.

(b) Any such person, firm or corporation may conclusively assume that the Trustee has full power and authority to receive and receipt for any money or property becoming due and payable to the Trustee, and no such person shall be bound to inquire as to the disposition or application of any money or property paid to the Trustee or paid in accordance with the written directions of the Trustee.

(c) No person, firm or corporation dealing with the Trustee shall be required to see either to the administration of the Plan or to the faithful performance by the Trustee of its duties hereunder (except to the extent required by provisions of the Employee Retirement Income Security Act of 1974, if applicable to this Plan).

10.2 Fees and Expenses from Fund. Except as provided in Section 10.3, the Trustee may pay all expenses, fees, costs and other charges reasonably incurred in the establishment, maintenance, continued qualification, reporting and disclosure, trusteeship, investment, administration and termination (including, but not limited to, legal, actuarial, accounting, and other professional fees) of the Plan from the Fund unless the Employer pays the same. In the event such items shall be paid from and out of the Fund, the Trustee, in a fair and equitable manner of its selection and depending upon the particular kind or type of service for which the expense has been incurred, shall allocate said charge to and pay it out of:

- (a) the annual Employer contribution to the Trust, or
- (b) the income of the Fund, or
- (c) the principal of the fund, including any accumulations of income that have been added thereto, or
- (d) to or out of any combination of the foregoing sources in the event the service in question has been for the benefit, protection or administration of more than one such source of payment.

The Trustee's determination in such respect made in good faith of the amount so to be allocated and charged to each such source of payment shall be binding and conclusive upon all persons interested or becoming interested in the Plan or the Fund. Each such charge of the Trustee shall be a lien upon the Fund, and, ratably, in accordance with the method of allocation used as aforesaid, shall be a lien upon the interest of Participants in the source of payment to which the same is charged until the same is paid and discharged in full.

10.3 Fire Plans. The City and the Retirement Committee shall develop a schedule of investment costs relating the investment of funds in each of the accounts in the Fund, which costs shall be paid out of the funds in such accounts or assessed to the Participants as provided in such schedule. The schedule of investment costs shall provide for the allocation of the administrative or record-keeping costs of the various investment options available to the Participants of the Plan and shall assess such costs so that each Participant pays a pro rata share of the costs based upon his or her choice of options and number of transfers among options. The costs of the actuarial

evaluation of the plan, as well as all other costs related to the general operation of the Plan and not allocated pursuant to the schedule of investment costs shall be considered administrative costs and shall be paid by the City from the Unallocated Employer Account.

#### 10.4 Resignation and Removal of Trustee.

(a) The Trustee may resign by giving the Employer thirty (30) days (or such shorter period as the Employer may approve in writing) written notice of its resignation by registered mail, such notice period to commence upon mailing thereof. The Employer shall thereupon appoint a successor trustee, successor trustees or other successor funding medium to assume the rights, powers and duties of the Trustee and shall promptly give the Trustee written notice by registered mail of the appointment of such successor funding medium, provided that such notice, to be effective, must be received by the Trustee not later than a date which is sixty (60) days from and after the date on which its notice of resignation was mailed to the Employer. The Trustee shall forthwith deliver to the successor funding medium and as soon as possible thereafter account to the successor funding medium for each and every Fund asset and any and all records of the Fund that are in its possession or control. Notwithstanding any of the foregoing, however, if the Trustee shall not have received written notice of the appointment of a successor funding medium within sixty (60) days after the mailing of its notice of resignation, all as hereinbefore provided, the Employer's plan set forth herein and in the Adoption Agreement upon written approval of the Employer shall terminate in its entirety, effective immediately upon the expiration of such sixty (60) day period, and the Trustee shall thereupon proceed to make distribution of the Fund assets to the Participants entitled thereto.

(b) The Employer may remove the Trustee by giving the Trustee thirty (30) days (or such shorter period as the Trustee may approve in writing) written notice of his resignation by registered mail, such notice period to commence upon the receipt thereof by the Trustee, and which written notice shall identify the successor trustee, successor trustees or other successor funding medium appointed by the Employer to assume the rights, powers and duties of the Trustee. The Trustee shall forthwith deliver to the successor funding medium and as soon as possible thereafter account to the successor funding medium for each and every Fund asset and all records of the Fund that are in its possession or control.

#### 10.5 Accountings by Trustee.

(a) The Trustee shall render to the Employer an annual account and report as soon as practicable after the Annual Valuation Date in each year showing all transactions affecting the administration of the Plan and the Fund, including, but not necessarily limited to, such information concerning the Plan and the Fund and the administration thereof by the Trustee as shall be requested in writing by the Employer.

(b) The Trustee shall also render such further reports from time to time as may be requested by the Employer and shall submit its final report and account to the Employer when it shall cease to be Trustee hereunder, whether by resignation or other cause.

(c) After giving Participants and other persons interested therein a reasonable opportunity to examine the annual account of the Trustee to the Employer as provided in (a) above, provided that no exceptions are asserted thereto by any person (including the Employer) interested therein, the Employer may settle and allow such accounts by agreement with the Trustee. Except as may be otherwise required by the Employee Retirement Income Security Act of 1974, if applicable, the Trustee shall upon such settlement and allowance be released and relieved of all liability for all matters set forth herein.

10.6 Trustee's Power to Protect Itself on Account of Taxes. The Trustee, as a condition to the making of distribution of a Participant's Matured Account during his lifetime, may require the Participant, or, in the event of his death, may require the person or persons entitled to receive his Matured Account in such event to furnish the Trustee with proof of payment of all income, inheritance, estate, transfer, legacy, and/or succession taxes, and all other taxes of any different type or kind that may be imposed under or by virtue of any state or federal statute or law upon the payment, transfer, descent or distribution of such Matured Account and for the payment of which the

Trustee may, in its judgment, be directly or indirectly liable. In lieu of the foregoing, the Trustee may deduct, withhold and transmit to the proper taxing authorities any such tax which it may be permitted or required to deduct and withhold and the Matured Account to be distributed in such case shall be correspondingly reduced.

10.7 Fiduciary Duties. The Trustee and each fiduciary hereunder, in the exercise of each and every power or discretion vested in them by the provisions of this Agreement, shall be governed by the principle that no discrimination in favor of highly compensated Employees who are Participants from time to time hereunder shall result and shall (subject to the provisions of the Employee Retirement Income Security Act of 1974 to the extent applicable to this Plan) discharge their duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and

(a) for the exclusive purposes of:

- (i) providing benefits to Participants and their Beneficiaries; and,
- (ii) defraying reasonable expenses of administering the Plan;

(b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(c) by diversifying the investments of the Plan (according to the policies established by the Nebraska Investment Council for Police and Fire Plans) so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and,

(d) in accordance with the Plan, insofar as the Plan is consistent with the provisions of the Employee Retirement Income Security Act of 1974, to the extent the same are applicable to this Plan.

Notwithstanding anything in this Agreement to the contrary, any provision hereof which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation or duty under Part 4 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, to the extent Title I is applicable to this Plan, shall, to the extent the same is inconsistent with said Part 4, be deemed void.

10.8 Prohibited Transactions. Except as may be expressly permitted by law, neither the Trustee nor any other fiduciary hereunder shall permit the Plan to engage, directly and indirectly, in any of the following transactions with a disqualified person (as defined in Section 4975 of the Internal Revenue Code of 1986):

- (a) sale or exchange, or leasing, of any property between the Plan and a disqualified person;
- (b) lending of money or other extension of credit between the Plan and a disqualified person;
- (c) furnishing of goods, services or facilities between the Plan and a disqualified person;
- (d) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of the Plan;
- (e) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of the Plan in his own interest or for his own account; or
- (f) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the Plan in connection with a transaction involving the income or assets of the Plan.

10.9 Indemnity. The Trustee shall be indemnified and held harmless by the Employer from any and all liabilities, costs and expenses (including legal expenses) arising out of any action taken by the Trustee as Trustee,

fiduciary or in any other capacity with respect to this Plan, whether imposed under the Employee Retirement Income Security Act of 1974, or otherwise, except for the Trustee's negligent acts or omissions.

10.10 Investment in Insurance. If the Employer shall so designate in the Adoption Agreement, a Participant may, with the consent of the Employer and subject to such conditions as the Employer may impose, elect to have a portion of his Vested Total Account, excluding the Participant's Deductible Voluntary Account, invested in life insurance contracts (any said insurance contract being referred to as a "contract") issued by any insurance company licensed to do business in any state subject to the following rules and conditions:

(a) Ordinary Life - For purposes of these incidental insurance provisions, ordinary life insurance contracts are contracts with both nondecreasing death benefits and non-increasing premiums. If such contracts are purchased, less than one-half of the aggregate Employer Contributions allocated to any Participant will be used to pay the premiums attributable.

(b) Term and Universal Life - No more than one-fourth of the aggregate Employer Contributions allocated to any Participant will be used to pay the premium on term life insurance contracts, universal life insurance contracts, and all other life insurance contracts which are not ordinary life.

(c) Combination - The sum of one-half of the ordinary life insurance premiums and all other life insurance premiums will not exceed one-fourth of the aggregate Employer Contributions allocated to any Participant.

(d) The Participant shall take such physical examinations and furnish such information as may be necessary to procure a contract.

(e) All contracts shall have a uniform premium due date.

(f) The Trustee shall be the owner of all contracts with full power to execute all insurance applications and to exercise all available options, and shall be the death beneficiary thereunder.

(g) All amounts used to purchase term life insurance, to fund "P.S. 58" costs or to acquire any other non-cash value benefits under this Section 10.10 shall be deemed to come from Employer Accounts subject to the limits specified in paragraph (a) above. If the Participant's Employer Account is insufficient within the limitations herein contained to pay any premium on a contract when the same becomes due, the Trustee shall, unless the Participant pays to the Trustee a sum sufficient to pay such premium (any such payment being deemed a voluntary contribution hereunder), cause such contract to be rewritten for its then paid-up value, if any, and retain the same for the Participant, in which event no further premium payments shall thereafter be made thereon.

(h) All dividends on a contract shall be used to reduce premiums. Any dividends earned on insurance contracts in excess of the amount of the current premium will be allocated to the Participant's Account for whose benefit the contract is held.

(i) Any charge or expense of the Trustee in handling a contract shall be paid by the Employer but, if not so paid, shall be a charge against the Fund; provided that the Employer may, in its discretion, direct that any such charge or expense be deducted from the Participant's Total Account.

(j) Any insurance company issuing contracts may deal with the Trustee alone and without the consent of any Participant or beneficiary and shall not be required to examine the provisions of the Plan, nor shall it be responsible for the failure of the Trustee to perform its duties, nor shall it be obligated to see to the application or disposition of any money paid by it to the Trustee and any such payment shall fully discharge such insurance company for the amount so paid.

(k) For the purpose of determining the value of a contract hereunder, such contract shall be valued at the greater of the premiums theretofore paid thereon or its then cash value, but such contract shall

not be considered a part of the Fund for the purpose of allocating income, market gains and losses of the Fund in accordance with Section 4 hereof.

(l) On maturity of the Participant's Account by reason of the death of the Participant, the proceeds of any contract shall be deemed a death benefit under the Plan and shall be distributed to his Beneficiary or Beneficiaries in the manner prescribed in Section 7 hereof.

(m) On maturity of the Participant's Accounts for any reason other than death of the Participant, the Trustee shall surrender the contract for cash or an annuity and distribute the proceeds in the manner described in Section 7 hereof, distribute the contract to the Participant, or any combination of the foregoing.

(n) For the purpose of the valuation and adjustment of accounts by the Trustee and the allocation of the net income of the Fund thereto as provided in Section 4 hereof, no part of the cash value of a contract purchased hereunder shall be considered in determining the value of a Participant's Total Account.

(o) The Trustee shall apply for and will be the owner of any insurance contract purchased under the terms of this Plan. The insurance contract(s) must provide that proceeds will be payable to the Trustee, however, the Trustee shall be required to pay over all proceeds of the contract(s) to the Participant's designated beneficiary in accordance with the distribution provisions of this Plan. Under no circumstances shall the Trust retain any part of the proceeds. In the event of any conflict between the terms of this Plan and the terms of any insurance contract purchased hereunder, the Plan provisions shall control.

#### 10.11 Directed Investments.

10.11.1 Employer Direction. If so indicated in the Adoption Agreement, the Trustee shall be subject in the management and control of the Fund to the directions (to the extent not inconsistent with law) of the person or committee identified in the Adoption Agreement or certified to the Trustee by an official of the Employer. Such direction shall be subject to such restrictions as the Trustee may impose. The Trustee in acting pursuant to and in reliance on such directions shall be fully and completely indemnified and held harmless by the Employer from any liability, loss or expense (including legal fees) arising out of its actions so directed notwithstanding that such directions, and the Trustee's conduct pursuant thereto, may constitute a breach of fiduciary obligations to the Plan, the Participants and Beneficiaries.

10.11.2 Participant Direction of Investments. If the Employer shall so indicate in the Adoption Agreement, each Participant may individually direct the Trustee to segregate his Account and instruct the Trustee regarding the investment of his Account and the Trustee shall be bound by such direction and relieved of all liability for loss resulting from the exercise of such individual direction. Such direction shall be subject to such restrictions as the Plan or the Trustee may impose. Any additional fee agreed upon from time to time by the Employer and the Trustee as compensation for the right of individual direction herein granted shall be charged against the Accounts of Participants exercising such right unless paid by the Employer. The Employer may make this right of individual direction subject to such other restrictions as are deemed appropriate according to rules of uniform nondiscriminatory application. Accounts under individual direction shall not share in the allocation of income and market gains and losses as provided for the general fund in Section 4 hereof. At no time shall a Participant direct the Trustee to invest in a work of art, rug, antique, metal, gem, stamp, coin, alcoholic beverage or any other item or class of items defined as a collectible by the Secretary of Treasury.

#### 10.12 Investment Managers.

(a) Police Plan. The City or Retirement Committee may select and contract with investment managers registered under the Investment Advisers Act of 1940 to invest, reinvest, and otherwise manage such portion of the assets of the Plan as may be assigned by the City or Committee.

(b) Fire Plan. The Retirement Committee, subject to the approval of the City, may select an investment manager. The City, subject to approval of the Retirement Committee, may contract with investment managers registered under the Investment Advisers Act of 1940 to invest, reinvest, and otherwise manage such portion of the assets of the Plan as may be assigned by the City or Retirement Committee.

(c) All Other Plans. The Employer reserves the power to appoint from time to time one or more Investment Managers, who may be a person, firm, association or corporation, to direct the Trustee or to assume the duties of the Trustee in the investment of all or any portion of the Fund. An Investment Manager shall be any person or firm which is either (1) registered as investment adviser under the Investment Advisers Act of 1940, (2) a bank, or (3) an insurance company which is qualified to perform the services of an Investment Manager under the laws of more than one state. An Investment Manager shall have such rights and responsibilities only with regard to that portion of the Fund designated by the Employer.

(d) All Plans. The Employer or Retirement Committee, as the case may be, may remove any such Investment Manager and shall have power to appoint a successor or successors from time to time in succession to any Investment Manager who shall be removed, die, resign or otherwise cease to serve hereunder. The Trustee shall follow and comply with all investment directions given to the Trustee by such Investment Manager with respect to the designated portion of the Fund, and the Trustee shall be released, indemnified and held harmless for all actions taken, or things done or omitted to be done by such Investment Manager or by the Trustee in the investment or reinvestment of the Fund pursuant to and in accordance with the directions of the Investment Manager. The reasonable fees and expenses of the Investment Manager, as agreed upon in writing by the Employer and the Investment Manager, shall be an expense chargeable to the Fund and the income derived therefrom, and shall be paid therefrom by the Trustee in such shares as between income and principal as the Trustee deems reasonable and proper, or the Employer, in its discretion, may pay the amount of such fees and expenses directly to the Investment Manager. The appointment of an Investment Manager, original or successor, by the Employer shall be made by resolution adopted by the City or Retirement Committee, as the case may be. Each such appointment shall become effective upon delivery to the Trustee of a certified copy of such resolution and a written acceptance of such appointment signed by the Investment Manager, acknowledging that it is a "fiduciary" with respect to the Plan, as defined in the Employee Retirement Income Security Act of 1974; even though ERISA is not applicable to this Plan if it is a governmental plan within the meaning of Code section 414(d), the ERISA definition of "fiduciary" shall be used. Such resolution shall state what portion of the Fund shall be the investment responsibility of the Investment Manager. The removal of an Investment Manager shall be and become effective upon receipt by the Trustee of a certified copy of the resolution of the City or Retirement Committee, as the case may be, removing such adviser, accompanied by a written statement signed by an official of the City or Retirement Committee that notice of such removal has been given to such Investment Manager. The resignation of an Investment Manager shall be effective (if not, by its terms, made effective at a later date) upon receipt by the Trustee of such resignation in writing signed by the Investment Manager, and unless such resignation states on its face that notice thereof has been given to the Employer, the Trustee shall notify the Employer in writing forthwith of such resignation. Whenever and for as long as there shall be no Investment Manager appointed or acting hereunder, the powers of the Investment Manager shall be exercised by the Trustee. The powers of the Investment Manager shall be exercised by the Trustee with respect to any portion of the Fund over which the Investment Manager has not been given investment authority. No Investment Manager at any time serving hereunder shall be or become liable for the acts or defaults of any prior Investment Manager, for the acts or defaults of another Investment Manager who has investment responsibility for a separate portion of the Fund, or for the acts or defaults of the Trustee. Neither the Employer, Retirement Committee, nor any member of their governing boards shall be or become liable for the acts or omissions of any Investment Manager appointed pursuant to this Section (except to the extent that liability is imposed under the Employee Retirement Income Security Act of 1974, if such Act is applicable to this Plan).

10.13 Participant Loans. If the Employer so indicates in the Adoption Agreement that Participant loans will be allowed, effective for Participant loans made or renewed on and after the last day of the 1989 Plan Year, the Employer shall establish a Participant loan policy, separate from this Plan which shall comply with the requirements



of ERISA and the Code and the Regulations issued thereunder, as amended from time to time, to the extent such requirements and Regulations are applicable to this Plan. Such loan policy shall be subject to the following:

- (a) Loans shall be made available to all Participants and beneficiaries on a reasonably equivalent basis.
- (b) Loans shall not be made available to Highly Compensated Employees (as defined in Section 414(g) of the Code) in an amount greater than the amount made available to other Employees.
- (c) Loans must be adequately secured and bear a reasonable interest rate.
- (d) No Participant loan shall exceed the present value of the Participant's vested accrued benefit.
- (e) In the event of a default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the Plan.

(f) Loan repayments will be suspended under this Plan as permitted under Code section 414(u)(4).

Notwithstanding any other provision of this Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than 100% of the Participant's vested Account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the Account balance shall be adjusted by first reducing the vested Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.

~~The Plan Administrator should advise any Participant or Beneficiary that a~~ loan, which when added to the outstanding balance of all other loans to the Participant or beneficiary, would exceed the lesser of (a) \$50,000.00, reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the Plan on the date the loan is made, or (b) one-half of the present value of the Participant's vested accrued benefit, or if greater, his total accrued benefit up to \$10,000.00 will constitute a taxable distribution to the Participant to the extent such loan exceeds these limits pursuant to Section 72(p) of the Internal Revenue Code. For the purpose of the preceding sentence, all loans from all plans of the Employer are aggregated. ~~The Plan Administrator should also advise any Participant or beneficiary that, u~~Unless the express terms of the loan require repayment (principal and interest) ~~is~~ amortized in level payments, not less frequently than quarterly, over a period not extending beyond five years from the date of the loan (unless such loan is used to acquire dwelling unit which within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the Participant,) such loan shall constitute a taxable distribution to the Participant or beneficiary, unless otherwise provided by applicable law. In addition, ~~the Plan Administrator should advise any Participant or beneficiary that~~ the loan must be evidenced by a legally enforceable agreement and the terms of the agreement must demonstrate compliance with the requirements of Section 72(p)(2) and Regulation 1.72(p)-1.

An assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan under this Section 10.13.

Any loan which was in existence on August 13, 1982, shall be subject to the conditions and terms contained in said loan then in effect until the date of maturity. Any extension, renewal, renegotiation or revision of a loan after August 13, 1982, shall be considered a new loan.

10.14 Other Powers. In extension, but not in limitation, of the rights, powers and discretions conferred upon the Trustee herein, the Trustee shall have and may exercise from time to time in the management and custody of the assets of the Fund and, for the purpose of distribution after the termination thereof, and, for the purpose of



distribution of Matured Accounts, without order or license of any court, any one or more or all of the following rights, powers and discretions:

(a) To invest and reinvest the assets of the Fund with the care, skill prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims (and to the extent possible consistently with the most recent funding policy and method adopted ~~by the Employer~~ and communicated to the Trustee) without limitation of any statute, rule of law, or regulation of any governmental body prescribing or limiting the investment of trust assets by corporate or individual trustees, in or to certain kinds, types, or classes of investments or prescribing the portion of the Fund which may be invested in any one property or kind, type, or class of investment; limited, however, to the extent that assets of the Fund are required to be invested pursuant to policies established by the Nebraska Investment Council. Specifically and without limiting the generality of the foregoing, the Trustee may invest and reinvest principal and accumulated income of the Fund in preferred and common stocks of any kind or class of any corporation, including but not limited to investment and small business investment companies of all types; voting trust certificates; interests in investment trusts; shares of mutual funds; interests in a common trust, variable demand note or other type of pooled or collective fund operated by the Trustee; bonds, notes and debentures, secured or unsecured; mortgages on real or personal property; covered call options; deposits in a commercial or savings bank or a savings and loan association; insurance contracts on the life of any "keyman" or shareholder of the Employer; conditional sales contracts; real estate and leases, unless the Plan restricts investments according to policies established by the Nebraska Investment Council. Unless otherwise provided by policies established by the Nebraska Investment Council applicable to this particular Plan, investment of the entire Fund in common stocks shall be deemed appropriate at any phase of the economic business cycle, but it is not, however, the purpose hereof to direct that the Fund shall be invested either entirely or to any extent whatsoever in such common stocks.

(b) To sell, exchange or otherwise dispose of any asset of whatsoever character at any time held by the Trustee in trust hereunder.

(c) To segregate any part or portion of the Fund for the purpose of administration or distribution thereof and, in its sole discretion, to hold the Fund uninvested whenever and for so long as, in the Trustee's discretion, the same is likely to be required for the payment in cash of Matured Accounts or of Total Accounts normally expected to mature in the near future, or whenever, and for as long as, market conditions are uncertain, or for any other reason which, in the Trustee's discretion, requires such action or makes such action advisable.

(d) To retain and employ such attorneys, agents and servants as may be necessary or desirable, in the opinion of the Trustee, in the administration of the Fund, and to pay them such reasonable compensation for their services as may be agreed upon as an expense of administration of the Fund (which may be paid from the principal of the Fund, current income or current forfeitures prior to reallocation or reduction of the Employer's contribution), including power to employ and retain counsel upon any matter of doubt as to the meaning of or interpretation to be placed upon this Agreement or any provisions thereof with reference to any question arising in the administration of the Fund or pertaining to the distribution thereof or pertaining to the rights and liabilities of the Trustee hereunder or to the rights and claims of Participants and Beneficiaries, and the Trustee, in any such event, may act in reliance upon the advice, opinions, records, statements and computations of any attorneys and agents and on the records, statements, and computations of any servants so selected by it in good faith and shall be released and exonerated of and from all liability to anyone in so doing (except to the extent that liability is imposed under the Employee Retirement Income Security Act of 1974 and relevant provisions of such Act are applicable to this Plan).

(e) To institute, prosecute, and maintain, or to defend, any proceeding at law or in equity concerning the Plan or Fund or the assets thereof or any claims thereto, or the interests of Participants and Beneficiaries hereunder at the sole cost and expense of the Fund and/or at the sole cost and expense of the Total Account of the Participant that may be concerned therein or that may be affected thereby as, in the Trustee's opinion, shall be fair and equitable in each case, and to compromise, settle and adjust all claims and liabilities asserted by or against the Plan or Fund or asserted by or against the Trustee, on such terms as the Trustee, in each such case, shall deem reasonable and proper, but the Trustee shall be under no duty or

obligation to institute, prosecute, maintain, or defend any suit, action, or other legal proceedings unless it shall be indemnified to its satisfaction against all expenses and liabilities which it may sustain or anticipate by reason thereof.

(f) To institute, participate in and join in any plan of reorganization, readjustment, merger, or consolidation with respect to the issuer of any securities held by the Trustee hereunder, and to use any other means of protecting and dealing with any of the assets of the Fund which it believes reasonably necessary or proper and, in general, to exercise each and every other power or right with respect to each asset or investment held by it hereunder as individuals generally have and enjoy with respect to their own assets and investments, including power to vote upon any securities or other assets having voting power which it may hold from time to time, and to give proxies with respect thereto, with or without power of substitution or revocation, and to deposit assets or investments with any protective committee, or with trustees or depositories designated by any such committee or by any such trustees or any court.

(g) In any matter of doubt affecting the meaning, purpose or intent of any provision of this Agreement, to determine such meaning, purpose or intent; and the determination of the Trustee in any such respect shall be binding and conclusive upon all persons interested or who may become interested in the Plan or the Fund.

(h) To require, as a condition to distribution of any Matured Account, proof of identity or of authority of the person entitled to receive the same, including power to require reasonable indemnification on that account as a condition precedent to its obligation to make distribution hereunder.

(i) To collect, receive, receipt and give acquittance for all payments that may be or become due and payable on account of any asset in trust hereunder which has not, by act of the Trustee taken pursuant thereto, been made payable to others, and payment thereof by the company issuing the same, or by the party obligated thereon, as the case may be, when made to the Trustee hereunder or to any person or persons designated by the Trustee, shall acquit, release and discharge such company or obligated party from any and all liability on account thereof.

(j) To determine from time to time, as required for the purpose of distribution or for the purpose of allocating Fund income or for any other purpose of the Plan, the then value of the Fund and of the Accounts in the Fund, the Trustee, in each such case, using and employing for that purpose the fair market value of each of the assets constituting the Fund. Each such determination so made by the Trustee in good faith shall be binding and conclusive upon all persons interested or becoming interested in the Plan or the Fund.

(k) To receive and retain Employer contributions in a form other than cash in the form in which the same are received until such time as the Trustee, in its sole discretion, deems it advisable to sell or otherwise dispose of such assets; to carry all investments of the Fund or any part thereof in its own name or in the name of any nominee selected by it, without designation of the trust capacity in which the same is held, but with the same liability for any act or default of any such nominee as for its own act or default.

(l) Except to the extent otherwise provided in Section 4.4 or herein, to co-mingle, for investment purposes, the assets of the Fund with the assets of any other qualified retirement plan fund of the Employer, provided that the records of the Trustee shall reflect the relative interests of the separate trusts in such commingled fund.

(m) To grant an option or options for the sale or other disposition of a Fund asset, including the issuance of options for the purchase of common stock held by the Fund in return for the receipt of a premium from the optionee (it being expressly intended that said options may be in form in terms to permit their being freely traded on an option exchange) and including the repurchase of any such option granted, or in lieu thereof, the repurchase of an option identical in terms to the one issued.

(n) To have and to exercise such other and additional powers as may be advisable or proper in its opinion for the effective, economical and equitable administration of the Fund.

(o) If so provided in the Adoption Agreement, one (1) or more declarations of trust executed by the Trustee (or by banks or trust companies affiliated in ownership with the Trustee) shall be incorporated by reference into this Agreement and notwithstanding any other provision of the Agreement to the contrary, the Trustee may cause all or any part of the Fund, without limitation as to amount, to be commingled with the money of trusts created by others by causing such money to be invested as a part of any or all of the funds created by said declarations of trust and the Fund so added to any of said funds shall be subject to all of the provisions of said declarations of trust as the same may be amended from time to time.

(p) If the Employer has so indicated in the Adoption Agreement, the Trustee is specifically authorized and empowered to invest Plan assets in deposit accounts or securities offered by the Trustee, its affiliates or other designated financial or securities institutions, unless the Plan is subject to the policies of the Nebraska Investment Council and such investments are contrary to such policies.

## SECTION 11

### Certifications - Rules and Regulations

11.1 Certificates of Fact by Employer. The Employer shall determine and certify ~~to the Trustee~~ from time to time as required ~~by the provisions of this Agreement~~ or as requested ~~by the Trustee~~ all pertinent information required for the administration of the Plan of which the Employer has knowledge, including, without limiting the generality and effect of the foregoing:

- (a) The names of employees eligible from time to time to become Participants in the Plan;
- (b) The Recognized Compensation of each Participant;
- (c) The date of birth, date of hire, retirement date, Eligibility Service, and Vesting Service of each Participant;
- (d) The occurrence of any Event of Maturity or any One-Year Break in Service;
- (e) The adoption of any rules or regulations with respect to the Plan and the administration, maintenance, maturity, or distribution of benefits thereunder;
- (f) The occurrence with respect to Participants of temporary layoffs, leaves-of-absence, service with the Armed Forces of the United States, or transfers to other employment;
- (g) The most recent written statement of a funding policy and method adopted by the Employer which shall be adopted and reviewed from time to time by the Employer and communicated to the Trustee. The Trustee shall not be required to compel the Employer to adopt, review or communicate said funding policy.
- (h) Any other information useful or necessary ~~to the Trustee~~ in the administration of the Plan.

11.2 Rules and Regulations. Any rule not in conflict or at variance with the provisions hereof may be adopted by the Employer and, upon furnishing a certified copy thereof to the Trustee, the same shall thereupon become effective, unless a later effective date shall be specified therein, in which case it shall become effective on the date so specified.

### 11.3 Method of Executing Instruments.

(a) Certifications of fact or written notices to be made or consents to be given by the Employer, or the Retirement Committee if delegated such authority, pursuant to any provision of this Plan may be signed in the name of the Employer or Retirement Committee, as may be the case, by any officer

thereof who has been authorized to make such certification or to give such notices or consents and may be relied and acted upon by the Trustee as authorized, valid and complete in form and in substance and as made with the authority of the Employer until written notice of termination of such authority with respect to any such signing officer shall be given by the Employer to the Trustee.

(b) Any instrument, certification of fact, or written notice required, necessary or advisable to be made or given by the Trustee may be signed by any authorized officer or employee of the Trustee, and each and every such instrument, when so signed and delivered, shall be valid and binding.

11.4 Claims Procedure. Except as otherwise provided herein, the Employer shall establish a procedure for the resolution of disputes and disposition of claims arising under this Plan. Until modified by the Employer, this procedure is as follows:

(a) Original Claim. Any Employee, former Employee or Beneficiary of such Employee or former Employee may, if he so desires, file with the Employer a written claim for benefits under this Plan. Within ninety (90) days after the filing of such a claim, the Employer shall notify the claimant, in writing, whether his claim is upheld or denied in whole or in part, or notify the claimant in writing of the specific special circumstances requiring a specified amount of additional time (but not more than one hundred eighty (180) days from the date the claim was filed) to reach a decision on the claim. If the claim is denied in whole or in part, the Employer shall state in writing:

(i) The specific reasons for the denial;

(ii) Specific references to the pertinent provisions of the Agreement on which the denial is based;

(iii) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and,

(iv) An explanation of the claim review procedure set forth in this Section.

(b) Claim Review Procedure. Within sixty (60) days after receipt of notice that his claim has been denied in whole or in part, the claimant may file with the Employer a written request for a review and may, in conjunction therewith, submit written issues and comments. Within sixty (60) days after the filing of such a request for review, the Employer shall notify the claimant, in writing, whether upon review the claim was upheld or denied in whole or in part or furnish claimant a written notice describing specific special circumstances requiring a specified amount of additional time (but not more than one hundred twenty (120) days from the date the request for review was filed) to reach a decision on the request for review. The Employer's decision on the request for review shall be served on the claimant in writing.

(c) General Rules.

(i) No inquiry or question shall be deemed to be a claim for a request for a review of a denied claim unless made in accordance with the claim procedure.

(ii) All decisions on claims and on requests for reviews of denied claims are made by the Employer. The Employer may require that any claim for benefits and any request for a review hereunder must be filed on forms to be furnished by the Employer upon request.

(iii) The Employer may, in its discretion, hold one or more hearings on a claim or a request for a review of a denied claim.

(iv) Claims may be represented by a lawyer or other representative, but the Employer reserves the right to require the claimant to furnish written authorization.

(v) If a decision or notice is not received by a claimant within the time specified, the claim or request for review of a denied claim shall be deemed to have been denied.

(vi) Prior to filing a claim, or a request for a review of a denied claim, the claimant or his representative shall have a reasonable opportunity to review a copy of the Plan and all other pertinent documents in the possession of the Employer.

11.5 Information Furnished by Participants. Neither the Employer, nor the Retirement Committee, nor the Trustee shall be liable or responsible for any error in the computation of the Total Account or Matured Account of a Participant resulting from any misstatement of fact made by the Participant, directly or indirectly, to the Employer, the Retirement Committee, or the Trustee and used by them in determining his Total Account, or Matured Account, and neither the Employer, nor the Retirement Committee, nor the Trustee shall be obligated or required to increase the Total Account or Matured Account of such Participant which, on discovery of the misstatement, is found to be understated as a result of such misstatement by the Participant, but the Total Account or Matured Account of any Participant which is overstated by reason of any such misstatement shall be reduced to the amount appropriate for him in view of the truth. Any refund received on reduction of a Total Account or Matured Account so made shall be treated in the same manner as Forfeitures in the Adoption Agreement.

## SECTION 12

### Plan Administration

12.1 Trustee. Except to the extent provided herein or in Section 4 or 10, the Trustee shall have the exclusive authority to manage and control the assets of the Fund and their custody.

12.2 Delegation of Duties. Functions generally assigned to the Employer shall be discharged by its officers or may be delegated and allocated as provided herein. Except as provided in Section 12.5, the Employer may delegate or redelegate and allocate and reallocate to one or more persons or to a committee of persons jointly or severally, and whether or not such persons are officers or employees, such functions assigned to the Employer hereunder as it may from time to time deem advisable.

Without limiting the generality of the foregoing, functions which may be delegated or redelegated include:

- (a) To act for the Employer to employ and supervise the doctor of medicine or any other person or employee for the purposes of this Plan;
- (b) To act for the Employer to make the determinations and certifications contemplated in this Agreement;
- (c) To act for the Employer to prepare, distribute, receive and maintain the forms and records required by the Plan;
- (d) To act for the Employer to prepare and file the necessary reports and documents with governmental agencies or make required disclosures to Participants, Beneficiaries or other employees;
- (e) To act for the Employer to adopt and establish the rules and procedures authorized under this Agreement and to interpret them;
- (f) To act for the Employer in consultation with the Trustee or other qualified person to establish and review a funding policy and method and to communicate the same to the Trustee; and,
- (g) To contract with or appoint others in writing (on behalf of the Plan) to assume functions expressly delegated or allocated or redelegated or reallocated to them and to specify in writing the scope of and any limitations of their authority.

12.3 Retirement Committee. The Employer reserves the power to create and establish at any time a Retirement Committee, which shall serve as the Plan Administrator, of such size and composition as the Employer may from time to time determine to carry out fiduciary and administrative responsibilities under the Plan in accordance with the following rules:

(a) If a Retirement Committee is created, the Employer may delegate to it any delegable fiduciary and administrative responsibilities (other than responsibility to manage or control the assets of the Plan) to the Retirement Committee. Without limiting the generality of the foregoing, the Employer may delegate to the Committee any or all of the fiduciary and administrative responsibilities permitted to be delegated or allocated pursuant to Section 12.2. In addition, the Retirement Committee (or Employer if no Retirement Committee has been established) shall have the power described in Sections 10.14(g) and 10.14(n).

(b) The exercise of any such power by the Committee and the certification thereof by a member of that Committee shall have the same force and effect as if such action were taken by the Employer.

(c) With respect to each action which the Retirement Committee may take pursuant to the provisions hereof, the Trustee shall be relieved of all liability and be fully protected in acting in reliance on any advice of the Retirement Committee so given by it or in conformity to any rule or regulation so adopted by it or on the basis of any certification made by it.

(d) Until authorization and creation of a Retirement Committee and thereafter, to the extent that rule making and other powers as aforesaid shall not be granted to such Committee, or in the event the Employer, after creating a Retirement Committee, shall discontinue the same or reduce its power and authority (the right so to do being hereby reserved to the Employer), such power shall be vested or become revested, as the case may be, in the Employer.

(e) Any Retirement Committee created as aforesaid shall have power to organize and to delegate to such of its members as it shall select authority to make certifications of fact hereunder and otherwise execute or authenticate rules, advisory opinions or instructions, and other instruments adopted or authorized by the Committee.

(f) The Retirement Committee may adopt such bylaws or regulations as it deems desirable for the conduct of its affairs and may appoint a secretary, who need not be a member of the Committee, to keep its records and otherwise assist the Committee in the performance of its duties. The Committee shall keep a record of all its proceedings and acts and shall keep all books of account, records and other data as may be necessary for the proper administration of the Plan. The Committee shall notify the Trustee and Employer of any action taken by the Committee, and when required, shall notify any other interested person or persons.

(g) Members of the Retirement Committee shall serve without compensation, but their reasonable expenses shall be an expense of the administration of the Fund and shall be paid by the Employer or, if not, paid by the Trustee from and out of the Fund.

(h) Neither the Employer, any member of its Board of Directors, nor the Trustee shall be or become liable for any acts or omissions of the Retirement Committee or any member thereof appointed pursuant to this Section (except to the extent that the Employer, the Board of Directors or the Trustee, as the case may be, may be liable pursuant to the Employee Retirement Income Security Act of 1974, if applicable).

(i) Police and Fire Plans: Notwithstanding any provision of this Section 12.3 to the contrary, a Retirement Committee shall be established to supervise the general operation of the Plan. The number and members of the Retirement Committee shall be in accordance with the relevant statutes of Nebraska, as amended from time to time. The City shall continue to be responsible for the general administration of the Plan unless specific functions or all functions with regard to the administration of the Plan are delegated, by ordinance, to the Retirement Committee. Whenever duties or powers are vested in the City or the

Retirement Committee under the Plan or applicable state law, or whenever the Plan or such law fails to specifically allocate the duties or powers of administration of the Plan, such powers or duties shall be vested in the City unless such powers or duties have been delegated by ordinance to the Retirement Committee.

In addition to those duties delegated to the Retirement Committee in the Agreement, by law or by ordinance, the Retirement Committee shall perform the following duties:

- (1) Provide each employee a summary of plan eligibility requirements and benefits provisions;
- (2) Provide, within 30 days after a request is made by a Participant, a statement describing the amount of benefits such Participant is eligible to receive;
- (3) Make available for review an annual report of the Plan's operations describing both the amount of contributions to the Plan from Employee and Employer sources, and an identification of the total assets of the Plan;

~~(4) Beginning December 31, 1998, file such reports with the State of Nebraska or its instrumentalities as required from time to time by applicable law. Commencing in 1999, the annual report required to be filed with the Public Employees Retirement Board and the members of the Nebraska Retirement Systems Committee of the Legislature shall include:~~

- ~~(i) The number of persons participating in the retirement Plan;~~
- ~~(ii) The contribution rates of Participants in the Plan;~~
- ~~(iii) Plan assets and liabilities;~~
- ~~(iv) The names and positions of persons administering the Plan;~~
- ~~(v) The names and positions of persons investing Plan assets;~~
- ~~(vi) The form and nature of investments;~~
- ~~(vii) A full description of investment policies and options available to Plan participants;~~
- ~~(viii) For the defined benefit component of the Plan, if any, the levels of benefits of Participants, the number of Participants eligible for benefits and the total present value of such Participants' benefits, as well as the funding source to pay for such benefits.~~

~~(5) Beginning December 31, 1998, and every four years thereafter, the Retirement Committee shall have a quadrennial report prepared with respect to the defined benefit component of the Plan, if any, and file the same with the Public Employees Retirement Board, with a copy submitted to the members of the Nebraska Retirement Systems Committee of the Legislature. Such report shall consist of a full actuarial analysis of the Plan. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the Plan.~~

The Retirement Committee of Fire Plans shall also have the following additional duties:

- (1) Elect a chairperson, a vice-chairperson, and such other officers as the Committee deems appropriate;

- (2) Hold regular quarterly meetings and special meetings upon the call of the chairperson;
- (3) Conduct meetings pursuant to Open Meetings Act of the Nebraska Revised Statutes; and
- (4) Provide each Employee a summary of plan eligibility requirements, benefit provisions, and investment options available to such Employee.

Members of the Retirement Committee of a Fire Plan shall, subject to the approval of the City Council, be reimbursed for their actual and necessary expenses incurred in carrying out their duties. Such reimbursement shall be paid from the Unallocated Employer Account to the extent not allocated or assessed pursuant to the schedule of investment costs. Retirement Committee members of a Police Plan shall not be reimbursed for their expenses incurred in carrying out their duties.

12.4. Benefits Errors. If the Retirement Committee determines that the Plan has overpaid or underpaid a benefit to a Participant or Beneficiary, it shall have authority to correct the error in accordance with EPCRS or other applicable guidance. In the event of an overpayment, the Committee shall be authorized to, in addition to any other remedy, offset future benefits payments by the amount of the overpayment with Regular Interest. A Participant whose benefit under the Plan is adjusted by the Retirement Committee may request a review by the City Council of such adjustment.

12.5. Employer Action. The City Council of the Employer or its designee shall have the exclusive authority, which authority may not be delegated to:

- (a) Amend this Agreement.
- (b) Terminate the Plan.
- (c) Except as otherwise provided elsewhere herein, appoint or remove a Trustee or an Investment Manager.

12.6. Limitation on Authority. The Trustee shall not be liable for or on account of any payment made by it pursuant to order of the Employer; or for any investment, retention or sale made by it in accordance with the provisions of this Agreement; or for any loss to or diminution in the Fund resulting therefrom, unless such liability for loss or diminution arises under the provisions of the Employee Retirement Income Security Act of 1974, ~~or~~ if applicable to this Plan by the terms of the Act. No action taken by any person, board or committee, if authority to take such action has been delegated or redelegated to it hereunder, shall be the responsibility of any person except as may be required by the provisions of the Employee Retirement Income Security Act of 1974, if applicable to this Plan by the terms of the Act, relating to the responsibility of fiduciaries for the acts of other fiduciaries.

The responsibility and obligations of the Trustee shall be strictly limited to those set forth in this Agreement. The Trustee shall have no authority or duty to determine the existence, nature or extent of any individual's rights in the Fund or under the Plan or question any determination made by the Employer regarding the same. Except to the extent imposed by provisions of the Employee Retirement Income Security Act of 1974, if applicable to this Plan, no fiduciary shall have the duty to question whether any other fiduciary is fulfilling all of the responsibility imposed upon such other fiduciary by the Act, as the same may be amended from time to time, or by any regulations or rulings issued thereunder and applicable to the Plan. The Trustee shall not be responsible in any way for the manner in which the Employer carries out its responsibilities under this Agreement.

12.7. Dual Capacity. Individuals, firms, corporations or partnerships identified herein or delegated or allocated authority or responsibility hereunder may serve in more than one fiduciary capacity.

12.8. Administrator. If no other Plan Administrator is named in the Adoption Agreement, then the Employer shall be the Plan Administrator for purposes of Section 3(16)(A) of the Employee Retirement Income Security Act of 1974, to the extent such Section of the Act is applicable to this Plan.



12.9 Named Fiduciaries. The Employer shall be the named fiduciary for the purposes of the Employee Retirement Income Security Act of 1974, to the extent the Act is applicable to this Plan.

12.10 Service of Process. In the absence of any designation to the contrary, in any legal proceeding, including arbitration, involving the Plan, the City Clerk of the Employer is designated as agent for the receipt of service of process directed to the Plan.

12.11 Conflict of Interest. If any member of the Committee or any officer or Employee of the Employer to whom authority has been delegated or redelegated hereunder shall also be a Participant in this Plan, he shall have no authority as such member, officer or employee with respect to any matter specially affecting his individual interest hereunder, all such authority being reserved exclusively to the other members, officers, or Employees, as the case may be, to the exclusion of such Participant, and such Participant shall act only in his individual capacity in connection with any such matter.

12.12 Residual Authority. In the event the Employer, Committee, or other person designated as having the authority to act or a duty to act on any matter hereunder, is prevented by death, dissolution, incapacity or other similar cause from acting hereunder and there is no other person then empowered to act on such matter, the Trustee shall be empowered to act in its place.

12.13 State Reporting.

(a) General. Beginning December 31, 1998, such reports shall be filed with the State of Nebraska or its instrumentalities as required from time to time by applicable law.

(b) Police, Fire and Neb. Rev. Stat. Section 19-3501 Municipal Plans.

(1) Annual Report. In addition to immediately preceding provisions of this Section 12.13, commencing in 1999, an annual report shall be filed as required for each Police Plan, Fire Plan or other municipal Plan established pursuant to Neb. Rev. Stat. Section 19-3501. The report shall be filed with the Public Employees Retirement Board and the Auditor of Public Accounts and include:

(i) The number of persons participating in the retirement Plan;

(ii) The contribution rates of Participants in the Plan;

(iii) Plan assets and liabilities;

(iv) The names and positions of persons administering the Plan;

(v) The names and positions of persons investing Plan assets;

(vi) The form and nature of investments;

(vii) A full description of investment policies and options available to Plan participants;

(viii) For the defined benefit component of the Plan, if any, the levels of benefits of Participants, the number of Participants eligible for benefits and the total present value of such Participants' benefits, as well as the funding source to pay for such benefits.

(2) Quadrennial Report. In addition to immediately preceding provisions of this Section 12.13, beginning December 31, 1998, and every four years thereafter any required quadrennial report shall be prepared with respect to the defined benefit component of the Plan, if any, and filed with the Public Employees Retirement Board, with a copy submitted to the Auditor

of Public Accounts. Such report shall consist of a full actuarial analysis of the Plan. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the Plan.

~~4.7~~ (3) The Auditor of Public Accounts may, but is not required to, prepare a review of the reports described in this Section 12.13 in accordance with Nebraska Statutes.

## SECTION 13

### In General

#### 13.1 Disclaimers.

(a) Neither the terms of this Plan, nor the benefits hereunder, nor the continuance thereof shall be a term of the employment of any Employee, and the Employer shall not be obliged to continue this Plan.

(b) The terms of this Plan shall not give any Employee the right to be retained in the employment of the Employer.

(c) Neither the Trustee, nor the Retirement Committee, nor the Employer, nor its officers in any way guarantee the Fund against loss or depreciation, nor do they guarantee the payment of any benefit or amount which may become due and payable hereunder to any Participant or to any Beneficiary or to any creditor of a Participant, a Beneficiary or the Trustee. Each Participant, Beneficiary or other person entitled at any time to payments hereunder shall look solely to the assets of the Fund for such payments or to the Matured Account distributed to any Participant or Beneficiary, as the case may be, for such payments. In each case where a Matured Account shall have been distributed to a former Participant or a Beneficiary or to the person or any one of a group of persons entitled jointly to the receipt thereof and which purports to cover in full the benefits hereunder, such former Participant, or Beneficiary, or such person or persons, as the case may be, shall have no further right or interest in the other assets of the Fund.

(d) Neither the Retirement Committee, nor the Employer nor any of its officers shall in any manner be liable to any Participant, Beneficiary, or other person for any act or omission of the Trustee (except to the extent that liability is imposed under the Employee Retirement Income Security Act of 1974 and the operative provisions of such Act which impose liability are applicable to this Plan).

(e) Neither the Trustee, nor the Retirement Committee, nor the Employer or its officers shall be under any liability or responsibility (except to the extent that liability is imposed under the Employee Retirement Income Security Act of 1974 and the operative provisions of such Act which impose liability are applicable to this Plan), for failure to effect any of the objectives or purposes of this Plan by reason of loss or fluctuation in the value of Fund or for the form, genuineness, validity, sufficiency or effect of any Fund asset at any time held hereunder, or for the failure of any person, firm or corporation indebted to the Fund to pay such indebtedness as and when the same shall become due or for any delay occasioned by reason of any applicable law, order, or regulation or by reason of any restriction or provision contained in any security or other asset held by the Fund.

(f) Except as is otherwise provided in the Employee Retirement Income Security Act of 1974, to the extent such Act is applicable to this Plan, the Employer, its officers, the Trustee, the members of the Committee and other fiduciaries shall not be liable for an act or omission of another person with regard to a fiduciary responsibility that has been allocated to or delegated to such other person pursuant to the terms of this Plan or pursuant to procedures set forth in this Plan.

13.2 Duration of Fund. This Plan and the Fund shall continue, if not terminated prior thereto, for the period necessary to develop the benefits intended to be developed hereunder for all original Participants and for all

Employees who shall hereafter become Participants hereunder. The Fund from time to time hereunder shall at all times be separate and apart from the assets of the Employer, and no part thereof shall be or become available to the Employer or to creditors of the Employer under any circumstances.

13.3 Continuity. If this Agreement is adopted as an amendment of a Prior Plan Statement, the tenure and membership of any committee previously appointed, the rules of administration adopted and the Beneficiary designations in effect under the Prior Plan Statement immediately before the Supplemental Effective Date shall, to the extent not inconsistent with this Agreement, continue in full force and effect until altered as provided herein.

13.4 State Law. This Agreement has been executed and delivered in the state of organization of the Employer and has been drawn in conformity to the laws of Nebraska and shall be construed and enforced in accordance with the laws of the state of incorporation of the Employer to the extent not preempted by federal law.

13.5 Execution in Counterparts. The Adoption Agreement to this Agreement may be executed in any number of counterparts, each of which, without production of the others, shall be deemed to be an original.

## SECTION 14

### Accelerated Distributions

14.1 Accelerated Distributions. A Qualified Participant, provided this Plan is not a pension plan, may elect to receive distribution under the then Vested amount of his Total Account as necessary to satisfy an immediate and heavy financial need, ~~and~~ subject to the following provisions as are so indicated in the Adoption Agreement.

(a) The following financial needs are considered immediate and heavy: expenses incurred or necessary for medical care, described in Code § 213(d), of the Qualified Participant, the Qualified Participant's spouse or dependents; the purchase (excluding mortgage payments) of a principal residence for the Qualified Participant; payment of tuition and related educational fees for up to the next 12 months of post-secondary education for the Qualified Participant, the Qualified Participant's spouse, children or dependents; payments necessary to prevent the eviction of the Qualified Participant from, or a foreclosure on the mortgage of, the Qualified Participant's principal residence; payments for funeral or burial expenses for the Qualified Participant's deceased parent, spouse, child or dependent; and expenses to repair damage to the Qualified Participant's principal residence that would qualify for a casualty loss deduction under Code § 165 (determined without regard to whether the loss exceeds 10 percent of adjusted gross income). The last two needs (funeral expenses and home repair) only apply to Plan Years beginning after 2005.

(b) A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the employee only if:

(i) The distribution is not in excess of the amount of the immediate and heavy financial need (including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution);

(ii) The Qualified Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans under all plans maintained by the Employer; and

(iii) All plans maintained by the Employer provide that the Qualified Participant's elective deferrals (and employee contributions), if any, will be suspended for 6 months (12 months, for hardship distributions before 2002) after the receipt of the hardship distribution.

~~(a) To reimburse the Participant for the expenses of medical and hospital care attributable to the sickness, accident or other disabling cause affecting him or a member of his family who is dependent upon him for care and support;~~

~~(b) To alleviate a financial hardship or emergency affecting the Participant or his dependent family; or,~~

~~(c) To defray the cost of the education of any member of the Participant's family who is dependent upon him for care and support; or,~~

~~(d) To pay, in whole or in part, for the construction, purchase or improvement of a home or homesite for the Participant and his family or to discharge, in whole or in part, a mortgage or other security interest therein.~~

Each and every such accelerated distribution shall first be made from and charged to the Participant's Voluntary Account, if any, pursuant to Section 7.9 hereof, then against his Rollover Account, if any, and lastly, against his Employer Account.

14.2 Qualified Participant. For the purpose of this Section 14, the term Qualified Participant means a Participant who has completed two (2) years of participation under this Plan.

14.3 Amount of Accelerated Distribution. For the purposes of this Section 14, the maximum amount which may be distributed as an Accelerated Distribution shall not exceed the value of the then Vested Retirement Valuepercentage of the Participant's Employer Accounts reduced by any prior distributions and the aggregate amount of Employer Contributions credited to the Participant's Employer Account during the two-year period preceding such Accelerated Distribution.

14.4 Distributions After Normal Retirement Date. In the case of a Money Purchase Pension Plan or a Profit Sharing Plan, if elected by the Employer in the Adoption Agreement, a Participant may, with the consent of his spouse, if required, elect to receive some or all of his Vested Total Account after such Participant's Normal Retirement Date, notwithstanding that an Event of Maturity has not occurred with respect to such Participant. The amount available for distribution, at any time, shall be determined under Section 14.3.

14.5 No Forfeitures. No Forfeitures will occur solely because a Participant receives an Accelerated Distribution.

## SECTION 15

### Uniformed Services Employment and Reemployment Rights Act ("USERRA")

Notwithstanding any provisions of this Agreement to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code section 414(u).

#### 15.1 Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act") Provisions.

15.1.1 Death benefits. In the case of a death of a Participant occurring on or after January 1, 2007, if the Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than contributions or benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment on the day preceding the Participant's death and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

15.1.2 Benefit accrual. If, pursuant to a written Plan amendment adopted and executed by the City, the City elects to apply this Section 15.1.2, then effective on or after the effective date specified in said Plan amendment, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated said employment on the actual date of death or disability; provided, however, that all such individuals performing qualified military service for the employer (as determined under Code sections 414(b), (c), (m), and (o)) who die or become disabled as a result of performing qualified military service prior to reemployment by the employer shall be credited with service and benefits on reasonably equivalent terms.

(a) Determination of benefits. The Plan will determine the amount of employee contributions, if any, of an individual treated as reemployed under this Section 15.1.2 for purposes of applying Code Section 414(u)(8)(C) on the basis of the individual's average actual employee contributions for the lesser of: (i) the 12-month period of service with the employer immediately prior to qualified military service; or (ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.

15.1.3 Differential wage payments. For years beginning after December 31, 2008:

(a) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), shall be treated as an employee of the employer making the payment,

(b) the differential wage payment shall be treated as compensation for purposes of Code Section 415(c)(3) and Regulations Section 1.415(c)-2 (e.g. for purposes of Code Section 415, top heavy provisions of Code Section 416 and determination of highly compensated employees under Code Section 414(q), to the extent said provisions are applicable to the Plan), and

(c) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) (or any corresponding Plan provisions, including, but not limited to, Plan provisions related to the average deferral percentage or average contribution percentage, to the extent applicable) by reason of any contribution or benefit which is based on the differential wage payment. Differential wage payments (as described herein) shall constitute compensation for all Plan purposes.

(i) Nondiscrimination Requirements. Provided,  
however, for purposes of subparagraph (c), all employees of the employer (as determined under Code Section 414(b), (c), (m) and (o)) performing service in the uniformed services described in Code Section 3401(h)(2)(A) shall be entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions or accrue other benefits, if contributions or other benefit accruals are permitted or provided, based on the payments on reasonably equivalent terms (taking into account the provisions of Code Section 410(b)(3), (4) and (5) to the extent applicable).

15.1.4 Deemed Severance. The Plan does not permit distribution upon deemed severance of employment.

CITY OF GRAND ISLAND, NEBRASKA, Employer

By: \_\_\_\_\_

(Printed Name)

(Title)

Date: \_\_\_\_\_

WELLS FARGO BANK, Trustee

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
(Printed Name) (Title)

Date: \_\_\_\_\_

## **APPENDIX A**

### **Trustee Fees**

As determined under a service agreement adopted between the City and the Trustee from time to time, which is incorporated herein by this reference.

## APPENDIX B

### Actuarial Equivalencies and Actuarial and Mortality Assumptions

Unless otherwise specified below, in any group annuity contract, custodial account or other permissible arrangement used to fund the retirement system, or in an addendum to this Plan, (any and all of which are incorporated herein by this reference), the Actuarial Equivalent of a pension or benefit payable under this plan shall be determined with the applicable mortality table and applicable interest rate defined in Code Section 417(e)(3); provided, however, that if benefits are obtained through the purchase of an Annuity Contract, the Actuarial Equivalent shall be determined by the amount of benefit that can be purchased or provided by the Participant's Retirement Value, together with any additional amounts which the Employer may be required to contribute as provided under the Plan. Annuity conversion rates provided in an Annuity Contract and all other actuarial and mortality assumptions shall be on a sex-neutral basis. If the benefit is not paid through the purchase of an Annuity Contract, it shall be paid from the Participant's Account(s).

A. Notwithstanding anything in this Plan to the contrary and, except as provided in regulations or other guidance of the Pension Benefit Guaranty Corporation (PBGC) and IRS, to the extent applicable to the Plan, the following provisions shall apply in determining the amount payable to a Participant having an annuity starting date in a Plan Year beginning on or after January 1, 2008; provided, however, for purposes of Code Section 415 and related provisions of this Plan, changes to the "applicable mortality table" described in subsection "2" below shall be effective for years beginning after December 31, 2008.

1. **Applicable interest rate.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate" used for purposes of Code Section 417(e), the definition of "applicable interest rate" under Code Section 417(e) shall apply, and any provision of the Plan prescribing the use of the annual rate of interest on 30-year U.S. Treasury securities shall be deemed amended and implemented by instead using the rate of interest determined by applicable interest rate described by Code Section 417(e) after its amendment by the Pension Protection Act of 2006. Specifically, the applicable interest rate shall be the adjusted first, second, and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C) for the calendar month (lookback month) before the first day of the Plan Year in which the annuity starting date occurs (stability period), or such other lookback month and stability period as elected by the Employer in a written addendum to this Plan. For this purpose, the first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code Section 430(h)(2)(C) if:

- (a) Code Section 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section, and
- (b) Code Section 430(h)(2)(G)(i)(II) were applied by substituting "Section 417(e)(3)(A)(ii)(II) for "Section 412(b)(5)(B)(ii)(II)," and
- (c) The applicable percentage under Code Section 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.

2. **Applicable mortality assumption.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable mortality table," the definition of "applicable mortality table" under Code Section 417(e)(3)(B) for the calendar year in which the stability period begins shall apply, and any provision of this Plan directly or indirectly prescribing the use of the mortality table described in Revenue Ruling 2001-62 shall be deemed amended to prescribe the use of the applicable annual mortality table within the meaning of Code Section 417(e)(3)(B), as initially described in Revenue Ruling 2007-67.

B. Before the applicable effective dates specified in subsection "A" above, the following provisions



applied:

1. “Applicable interest rate” means the interest rate on 30 year Treasury securities as specified by the Commissioner) for the lookback month for the stability period described below. Unless otherwise elected by the Employer in a written addendum to this Plan, (i) the stability period is the successive period of one calendar month which contains the annuity starting date for the distribution and for which the applicable interest rate remains constant, and (ii) the lookback month is the first calendar month preceding the first day of the stability period. Notwithstanding anything in this paragraph or election of the Employer regarding stability period or lookback month, a plan amendment that changes the date for determining the applicable interest rate (including an indirect change as a result of a change in plan year), shall not be given effect with respect to any distribution during the period ending one year after the later of the amendment’s effective date or adoption date, if, during such period and as a result of such amendment, the participant’s distribution would be reduced.

2. “Applicable mortality table” means the applicable mortality table under Code Section 417 as set forth in Rev. Rul. 2001-62

Interest Rate: \_\_\_\_\_

Mortality Table: \_\_\_\_\_

## APPENDIX C

### Investment Choices

Investment options permitted under the Plan shall be as specified below or from time to time specified by the Plan Administrator or in other governing documents or instruments, which shall be incorporated herein by this reference

**ADOPTION AGREEMENT**  
**CITY OF GRAND ISLAND, NEBRASKA**  
**FIREFIGHTERS' RETIREMENT SYSTEM**  
**PLAN AND TRUST**  
**TO BE USED WITH**  
**BASIC MUNICIPAL EMPLOYEES PLAN AND TRUST AGREEMENT**

THIS IS TO CERTIFY THAT:

The following was adopted by Ordinance by the City of Grand Island, Nebraska, by its City Council, at a meeting thereof duly called and held on \_\_\_\_\_, 20\_\_:

SECTION 1. Pursuant to Nebraska Statutes, Sections 16-1020 through and including 16-1042, the City maintains the City of Grand Island, [Nebraska](#) Firefighters' Retirement System Plan and Trust embodied in plan documents including an adoption agreement and basic plan document constituting an integral part thereof, as well as various amendments required by applicable law ("Plan").

SECTION 2. The Plan is required by applicable tax law to be amended and restated into a restated plan document incorporating prior amendments and changes to tax laws, regulations and other guidance, including ~~without limitation~~ the Pension Protection Act of 2006, Heroes, Earnings Assistance and Relief Tax Act of 2008, and Worker, Retiree, and Employer Recovery Act of 2008. For this purpose, there has been presented to the City a proposed retirement plan and trust embodied in instruments entitled "Adoption Agreement" together with a "Basic Municipal Employees Plan and Trust Agreement" ("Basic Plan Document") as an integral part thereof (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.

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 in this Ordinance 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 the City Administrator determines necessary or appropriate to obtain a favorable ruling or as otherwise required for the qualified status of the Plan.

This Adoption Agreement is the Adoption Agreement referred to in the foregoing Ordinance, and the designations and elections hereinafter set forth are those made by the City in accordance with said Ordinance, to-wit:

**A. ESTABLISHMENT, EFFECTIVE DATE, AND CITY DATA:**

(1) \_\_\_\_\_ establishes on \_\_\_\_\_, \_\_\_\_\_, a Retirement Plan and Trust to be known as \_\_\_\_\_  
\_\_\_\_\_  
Plan and Trust ("Plan") effective \_\_\_\_\_, \_\_\_\_\_ (Effective Date).

OR

(2) X amends, restates and continues the City of Grand Island, Nebraska Firefighters' Retirement System Plan and Trust, ("Plan"), originally established on January 1, 1984. This amendment and restatement is effective January 1, 2004, unless otherwise specified herein or in the Basic Plan Document or required under applicable law or regulations or guidance thereunder. (Supplemental Effective Date).

(3) City's Address:  
Street: 100 E. 1<sup>st</sup> Street, P.O. Box 1968  
City, State, Zip Code: Grand Island, Nebraska 68801  
Attention: Ms. Tami Herald  
Telephone: (308) 385-5444

(4) Retirement Committee: ~~John Mayer~~, Scott Kuehl, Tom Cox, Todd Morgan, David Springer and Dick Rabe, Phil Thomas and Jaye Monter subject to such changes from time to time pursuant to Section 12.3(i) of the Basic Plan Document.

(5) Plan Administrator: the City of Grand Island, Nebraska, with the exception of any administrative functions expressly delegated from time to time to the Retirement Committee herein or in or under the Basic Plan Document or otherwise by direction of the Mayor and City Council.

(6) City's Taxpayer Identification No.: 47-6006205

- (7) City's Fiscal Year: October 1 – September 30
- (8) The Plan serial number ("PN") assigned to this Plan by the City for reporting and disclosure purposes is: 001
- (9) The last day of the Plan Year shall be December 31 and the Annual Valuation Date shall be December 31 [Sections 1.1.26 and 1.1.4]
- (10) The last day of the Plan's Limitation Year shall be December 31 [Section 1.1.20] *(All qualified retirement plans maintained by the City shall have the same Limitation Year.)*

## B. ELIGIBILITY REQUIREMENTS

- (1) **Age Requirement.** The minimum age which each Employee must attain before becoming a Participant in the Plan is age N/A.
- (2) **Service Requirement.** To become a Participant in the Plan, each Employee must complete at least N/A year(s) of Eligibility Service. *(Not Applicable for Police and Fire Plans. Not more than five (5) years for other Plans.)* If year(s) of service selected is or includes a fractional year, an Employee will not be required to complete any specified number of Hours of Service to receive credit for such fractional year.
- (3) The computation period for Eligibility Service will be *(Not Applicable for Fire and Police Plans)* Check One: **N/A**

\_\_\_ as set forth in Section 1.1.9(a)(i), the year beginning with the date the Employee first performs an Hour of Service and then Plan Years.

\_\_\_ as set forth in Section 1.1.9(a)(ii), based upon years commencing on the date the Employee first performs an Hour of Service\* and anniversaries thereof.

Upon reemployment, former Participants shall again participate in the Plan under the immediate reentry rule of Section 2.2.

- (4) Plan Entry Date shall be *(check one)*:
  - X (a) the first day of service in Recognized Employment with the City *(Police and Fire Plans)*.
  - \_\_\_ (b) the first day of the month *(specify period e.g., the week, Plan Year, the month, etc., but not more than six months)* following the

Employee's satisfaction of the Eligibility Requirements [Section 2.1(d)]

- \_\_\_ (c) the first day of the Plan Year in which the Employee first satisfies the Eligibility Requirements. [Section 2.1(c)]
- \_\_\_ (d) the first day of the first month or the first day of the seventh month of the Plan Year, whichever occurs first, following the Employee's satisfaction of the Eligibility Requirements. [Section 2.1(b)]
- \_\_\_ (e) Other \_\_\_\_\_

(5) **Recognized Employment.** Recognized Employment is service in the employment of the City in those job classifications indicated below (*place "X" on blank(s) indicating selection*): [Section 1.1.30]

- \_\_\_ (a) All Employees of the City employed as police officers.
- X (b) All Employees of the City employed as fire fighters.
- \_\_\_ (c) All Employees of the City as that term is defined in Section 1.1.10.
- \_\_\_ (d) All common law Employees of the City.
- \_\_\_ (e) Salaried Employees of the City.
- \_\_\_ (f) Hourly Employees of the City.
- \_\_\_ (g) Employees who are not covered by any retirement plan established by the City.
- \_\_\_ (h) Other (*specify*): \_\_\_\_\_.

(6) **Participation Election:** (*check one*)

Employees and Participants

- \_\_\_ have
- X do not have (*Police and Fire*)

a participation election provided in Section 3.3(b).

## C. MANDATORY EMPLOYEE CONTRIBUTIONS

[Section 3.1]

- (1) **Amount of Contribution.** The Employee contribution to the Trustee for each Plan Year shall be:

- (a) (i) Through September 30, 2013, a sum equal to six percent (6%) of his or her Salary.  
(ii) Beginning October 1, 2013 through September 30, 2015, a sum equal to six and one-half percent (6 ½ %) of his or her Salary, and  
(iii) Beginning October 1, 2015, a sum equal to seven percent (7%) of his or her Salary. (Police)
- X (b) Six and one-half percent (6 1/2%) of his or her Salary. (Fire)
- (c) Other: \_\_\_\_\_

- (2) **Employee Contributions:**

- X shall (Police and Fire)
- shall not

be picked up by the City and treated as Employer contributions as permitted under Section 414(h) of the Code.

**D. VOLUNTARY EMPLOYEE CONTRIBUTIONS**

- X shall (Police and Fire)
- shall not

be permitted to the maximum amount allowed under the Internal Revenue Code.

**E. ALLOCATION OF CITY CONTRIBUTIONS AND FORFEITURES**

[Sections 3.2 and 6.4]

- (1) **Amount of Contribution.** Subject to the limitations of Section 3, the City's contribution to the Trustee for each Plan Year shall be: (Select one option only. Complete blanks as applicable.)

- ☐ (a) To the Employer Account of each Participant, a sum equal to 100% of the amounts deducted from the Participant's periodic Salary as Mandatory Employee Contributions above (effective April 16, 2012) Six percent (6%) of each Participant's Salary. (Police)
- ☒ (b) Thirteen percent (13%) of each Participant's Salary. (Fire)
- ☐ (c) Other: \_\_\_\_\_

**Treatment of Forfeitures:** *(Select one unless Item I(2)(a) is elected in which case this provision does not apply.) [Sections 6.4.1 and 6.4.2]*

- ☐ (a) Forfeitures shall first be used to pay administration costs of the Plan and then used to reduce City contributions. (Police)
- ☒ (b) Forfeitures shall be allocated to the Unallocated Employer Account, and if the Unallocated Employer Account is sufficient to meet Plan liabilities, then forfeitures shall first be used to pay expenses of administration and then to reduce City contributions. (Fire)
- ☐ (c) Forfeitures will be added to the City contribution for allocation.
- ☐ (d) Forfeitures will reduce City contributions.

(2) Is the Plan integrated with Social Security?

☐ Yes ☒ No (Police and Fire)

*(If yes, complete items E, 3-6 and 11; if no, complete items E, 7-11).*

*NOTE: Items E, 3-6 and 11 relate to an integrated plan. Contributions are allocated pursuant to Section 3-3 of the Plan.*

(3) "Recognized Compensation" shall be defined to mean all of each Participant's: *(place "X" to indicate selection)*

- ☐ (a) W-2 earnings; or,
- ☐ (b) Wages as defined in Code Section 3401(a); or
- ☐ (c) Compensation as that term is defined in Section 3.6.9(b)(i) of the Plan;



- \_\_\_\_ (d) Provided, that Recognized Compensation defined in (a) through (c) shall include amounts described in Sections 3.6.9(b)(vi) and 3.6.9(b)-2 as “default provisions” unless otherwise elected below (*select all that apply*):
- \_\_\_\_ (1) Exclude leave cashouts and deferred compensation (*Section 3.6.9(b)-3(b)*)
- \_\_\_\_ (2) Include military continuation payments (*Section 3.6.9(b)-3(c)*)
- \_\_\_\_ (3) Include disability continuation payments (*Section 3.6.9(b)-3(d)*):
- \_\_\_\_ (a) For nonhighly compensated Employees only; or
- \_\_\_\_ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_.
- \_\_\_\_ (4) Apply the administrative delay (“first few weeks”) rule (*Section 3.6.9(b)-4*); and/or
- \_\_\_\_ (5) Include “deemed” section 125 compensation pursuant to 3.6.9(b)-vi.
- \_\_\_\_ (e) Other \_\_\_\_\_

which is actually paid to the Participant during

- \_\_\_\_ the Plan Year
- \_\_\_\_ the taxable year ending with or within the Plan Year
- \_\_\_\_ the Limitation Year ending with or within the Plan Year.
- \_\_\_\_ a consecutive 12-month period ending with or within the Plan Year beginning with the \_\_\_\_ day of \_\_\_\_\_ (*enter month*).

#### Recognized Compensation

- \_\_\_\_ shall include
- \_\_\_\_ shall not include

Employee contributions picked up by the City under Section 414(h), and City contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Employee under Sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b) or 457 of the Code.

- (4) If an Employee participates in the Plan for only a portion of the year, his Recognized Compensation for the year *[check one]*:

\_\_\_ shall

\_\_\_ shall not

include otherwise Recognized Compensation during the portion of the year during which he was not a Participant in the Plan.

- (5) "Integration Level" is defined as *(place "X" next to definition selected and complete appropriate blanks)*

\_\_\_ (a) For any Plan Year, an amount equal to \$\_\_\_\_\_*(insert stated dollar amount not to exceed the Taxable Wage Base in effect at the beginning of the Plan Year)*.

\_\_\_ (b) For any Plan Year, an amount equal to \_\_\_\_% *(not more than 100%)* of the Taxable Wage Base in effect at the beginning of the Plan Year.

\_\_\_ (c) For any Plan Year, an amount equal to the lesser of: (i) \$\_\_\_\_\_*(insert stated dollar amount)*; or (ii) the Taxable Wage Base in effect beginning at the Plan Year.

- (6) Participants who have been credited with a Year of Service for a Plan Year but who terminate employment before the last day of the Plan Year (check one) :

\_\_\_ shall

\_\_\_ shall not

share in the City contribution and reallocation of the forfeitures for that Plan Year. If shall not is elected, designate any exceptions that apply:

\_\_\_ death

\_\_\_ retirement at or after Normal Retirement Date

\_\_\_ disability.

*NOTE: Items E, 7-11 relate to a nonintegrated plan. Contributions are allocated directly on Recognized Compensation. (Section 3.3(b)).*

- (7) Subject to ~~an exclusion in~~ limitations in Item (7) or (8) or as otherwise provided in Section 1 of the Basic Plan Document, "Recognized Compensation" shall be

defined to mean all of each Participant's (place "X" to indicate selection, check only one)

- ☐ (a) W-2 earnings;
- ☐ (b) Wages as defined in Code Section 3401(a); or
- ☐ (c) Compensation as that term is defined in Section 3.6.9(b)(i) of the Plan;
- ☐ (d) Provided, that Recognized Compensation defined in (a) through (c) shall include amounts described in Sections 3.6.9(b)(vi) and 3.6.9(b)-2 as "default provisions" unless otherwise elected below (select all that apply):
  - ☐ (1) Exclude leave cashouts and deferred compensation (Section 3.6.9(b)-3(b))
  - ☐ (2) Include military continuation payments (Section 3.6.9(b)-3(c))
  - ☐ (3) Include disability continuation payments (Section 3.6.9(b)-3(d)):
    - ☐ (a) For nonhighly compensated Employees only; or
    - ☐ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.
  - ☐ (4) Apply the administrative delay ("first few weeks") rule (Section 3.6.9(b)-4); and/or
  - ☐ (5) Include "deemed" section 125 compensation pursuant to 3.6.9(b)-vi.
- ☐ (e) Salary as that term is defined in Section 1.1.36(a) of the Plan (Police);
- ☒ (f) Salary as that term is defined in Section 1.1.36(b) of the Plan (Fire); or
- ☐ (g) Other  
\_\_\_\_\_  
\_\_\_\_\_

which is actually paid to the Participant during

☒ the Plan Year.

\_\_\_ the taxable year ending with or within the Plan year.

\_\_\_ the Limitation Year ending with or within the Plan year.

Recognized compensation (*Police and Fire Plans see definition of "Salary" in Section 1.1.36 of the Basic Plan Document*)

\_\_\_ shall include

\_\_\_ shall not include

Employee contributions picked up by the City pursuant to Section 414(h), and City contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Employee under Sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b) or 457 of the Code.

- (8) "Recognized Compensation" shall not include: (*place "X" to indicate exclusion(s) and complete blank, if applicable*)

\_\_\_ (a) overtime, shift, holiday and vacation pay

\_\_\_ (b) bonuses

\_\_\_ (c) commissions, but not more than the first \$\_\_\_\_\_ thereof (*insert dollar limitation desired, if any*)

X (d) overtime, callback pay, clothing allowances and other such benefits reported on Employee federal withholding statement (*Fire*).

- (9) If an Employee participates in the Plan for only a portion of the year, his Recognized Compensation for the year [*check one*]:

\_\_\_ shall

X shall not

include otherwise Recognized Compensation during the portion of the year during which he was not a Participant in the Plan.

- (10) Participants who have been credited with a Year of Service for a Plan Year but who terminate employment before the last day of the Plan Year. (*Check one*):

X shall (*Police and Fire*)

\_\_\_ shall not

share in the City contribution and reallocation of forfeitures for that Plan Year. If shall not is elected, designate any exceptions that apply:

\_\_\_ death

\_\_\_ retirement at or after their Normal Retirement Date

\_\_\_ disability

(11) Forfeitures will be reallocated *[Sections 6.4.2 and 6.4.3]*

X as of the following Valuation Date

\_\_\_ after a Participant incurs 5 consecutive One Year Breaks in Service or his Account is no longer subject to restoration.

#### **F. INTEREST**

\_\_\_ shall

X shall not

be paid on Employer Contributions pursuant to Section 3.2(a)(ii) of the Plan.

#### **G. WITHDRAWAL OF PRIOR VOLUNTARY CONTRIBUTIONS**

If this Plan or a predecessor plan previously permitted Voluntary Contributions, Participants:

\_\_\_ are

X are not

permitted to withdraw their voluntary contributions before an Event of Maturity. *[Section 7.9]*

#### **H. ROLLOVERS**

(1) Rollover contributions by Participants *[Section 3.5]*

X are permitted as specified in Section 3.5. In addition to the plans specified in Section 3.5, rollover contributions and direct rollovers may be made from the

following types of plans as of the specified effective date(s) (*specify all that apply*):

  X   (a) annuity contract described in Code section 403(b), effective for distributions after \_\_\_\_\_ (December 31, 2001 if no date specified)

  X   (b) eligible plan under Code section 457(b) which is maintained by a state or political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state, effective for distributions after \_\_\_\_\_ (December 31, 2001 if no date specified)

       [Including after-tax employee contributions from the plans or contracts checked above, with separate accounting required for amounts includible and not includible in gross income \(select if applicable\).](#)

       are not permitted

(2) Eligible rollover distribution [Section 7.12]

  X   must

       need not

be distributions that are reasonably expected to total \$200 or more during a year.

## I. VESTING OF REGULAR ACCOUNTS

[Section 5]

(1) **Employee Accounts:** Each Employee is fully vested in his or her Employee Account at all times.

(2) **Employer Accounts:** Each Participant's Employer Account shall become Vested in him as follows (*place "X" next to formula selected and complete appropriate blanks*):

       (a) **Full and Immediate Vesting.** Each Employer Account shall be fully Vested in him at all times.

  X   (b) **Graded Vesting.** Each Participant's Employer Account shall be vested in him in accordance with the following schedule (*Choose One*):

When the Participant Has Completed  
the Following Vesting Service:

The Vested Portion of  
His Regular Account  
Will Be:\*

— (i) Five Year Vesting:

Less than 1 year	___ %
1 year but less than 2 years	___ %
2 years but less than 3 years	___ %
3 years but less than 4 years	___ %
4 years but less than 5 years	___ %
5 years or more	100 %

— (ii) Seven Year Vesting\*:

Less than 1 year	0 %
1 year but less than 2 years	0 %
2 years but less than 3 years	0 %
3 years but less than 4 years	0 %
4 years but less than 5 years	40 %
5 years but less than 6 years	60 %
6 years but less than 7 years	80 %
7 years or more	100 %

X (iii) Seven Year Special Vesting (Fire):

Less than 4 years	___ %
4 years but less than 5 years	___ %
5 years but less than 6 years	___ %
6 years but less than 7 years	___ %
7 years or more	___ %

— (iv) Ten Year Vesting

Amended to Seven

<u>Year Vesting (Police):</u>	<u>Through</u>	<u>Beginning</u>
	<u>June 30, 2012</u>	<u>July 1, 2012</u>
	<u>(10 Yr. Graded)</u>	<u>(7 Yr. Graded)</u>

Less than <u>2 years</u>	<u>0%</u>	<u>0%</u>
<u>2 years but less than 3 years</u>	<u>0%</u>	<u>40%</u>
<u>3 years but less than 4 years</u>	<u>0 %</u>	<u>40%</u>
4 years but less than 5 years	40 %	60%
5 years but less than 6 years	50 %	80%
6 years but less than 7 years	60 %	80%
7 years but less than 8 years	70 %	100%

8 years but less than 9 years	80 %
9 years but less than 10 years	90 %
10 years or more	100 %

- (3) In determining a Participant's Plan Years of Service, the following periods shall be disregarded: *[Section 1.1.44] (Not Applicable for Police and Fire Plans)*. N/A

☐ Yes ☐ No Plan Years prior to the Effective Date of this Plan or a predecessor Plan. *[Yes, 1.1.44(c); No, Section 1.1.44(c)]*

☐ Yes ☐ No Plan Years completed prior to the date upon which the Participant attained age \_\_\_\_ years. *(Insert age, but not greater than age 18.) [Section 1.1.44(e)]*

- (4) Notwithstanding any of the foregoing, each Participant's Employer Account shall be 100% Vested in him upon his attainment of:

☐ (a) 60 (Police)

☒ (b) 55 (Fire)

☐ (c) Other \_\_\_\_\_

years of age while in the employment of the City (as a police officer, if this is a Police Plan). *(If no age is entered, it will be assumed Normal Retirement Date was intended.)*

*[Section 5.1.2]*

- (5) Normal Retirement Date is: *(place "X" next to choice selected)*

*[Section 1.1.22]*

☐ (a) The Participant's 65th birthday.

☐ (b) The Participant's 65th birthday or, if later, the 5th anniversary of the date the Participant first becomes a Participant.

☒ (c) Age 55 years *(60 for Police; 55 for Fire; Otherwise not greater than the Participant's 65th birthday and not less than age 55.)*

- (6) Early Retirement Date is age N/A years. *(Specify age. In-service distribution upon attaining early retirement date is not allowed for a pension plan. Also, this provision is not applicable for Police/Fire Plans – see Section 1.1.34 of Basic Plan for definition of Early Retirement Date for Police or Fire Plan.)*



- (7) An Employee who returns to employment of the City in Covered Employment after terminating service

  X   shall

\_\_\_\_\_ shall not

be permitted to restore his or her Employer Account to the amount on the date of distribution. (*Section 5.1.3 or 6.4.4*)

## **J. INVESTMENT DIRECTIONS**

- (1) Participants:

\_\_\_\_\_ are

  X   are not

permitted to direct the investment of a portion of their accounts into life insurance.

*[Section 10.10]*

- (2) Participant Account Investment Direction *[Section 10.11.2]*

- (a) Participants:

  X   are

\_\_\_\_\_ are not

permitted to direct the investment of their:

  X   Employee Accounts (*Required of Police and Fire Plans*)

  X   Employer Accounts (*Permitted for all types of plans, with the exception of pre-1984 contributions under Police and Fire Plans, and the Employer Account of pre-1984 hires under Fire Plans.*)

The City agrees to indemnify the Trustee and hold it harmless for the Trustee's actions taken pursuant to such direction. (*Sections 1.1.35, 4.3 and 10.11*)

- (b) Separate Investment Accounts (*Police*)

The City

X   may

       may not

direct the establishment of separate investment accounts for each Participant to allow each Participant to direct the investment of all or a portion of his or her Employee or Employer Account

If in the affirmative, enter name or title of person (or committee) authorized to communicate such directions to the Trustee: Retirement Committee. Such directions shall be in writing and the City agrees to indemnify the Trustee and hold it harmless for the Trustee's actions taken pursuant to such directions.

(3) Investment Direction *[Sections 4.3, 10 and 12]*

(a) The

       City

       may

       may not

  X   Retirement Committee (*Police and Fire*)

  X   may

       may not

direct the Trustee in the investment management of Plan assets.

(4) Participant Loans: *[Section 10.13]*

       are permitted

  X   are not permitted

**K. INTERNAL REVENUE CODE SECTION 415 LIMITATIONS**

*[Section 3.6]*

If the City maintains or ever has maintained another qualified plan in which any Participant in this Plan is (or was) a Participant or could possibly become a Participant, the City must complete this Section. City must also complete this Section if it maintains a welfare benefit fund, as defined in Code section 419(e), an individual medical account,

as defined in Code section 415(1)(2), or simplified employer pension, as defined in Code section 408(k) under which amounts are treated as annual additions with respect to any Participant in this Plan. (*Designate whether (1) or (2) applies, and complete as appropriate.*)

If a Participant is covered by another qualified plan maintained by the City:

☒ (1) the provisions of Sections 3.6.4 through 3.6.9 will apply;

OR

☐ (2) set forth the method under which the Plans will limit total annual additions or distributions to the maximum permissible amount or benefit, as applicable, and will properly reduce any excess amounts or benefits, in a manner that precludes City discretion.

---

(Use additional continuation pages if alternative limitation rules are to be specified.)

**415 Compensation.** The definition of Compensation for Code section 415 purposes shall be 415 Safe Harbor Compensation defined in section 3.6.9(b)i of the Plan, unless an alternative definition of compensation is elected below pursuant to section 3.6.9(b)ii of the Plan (*select desired alternative definition*):

☐ (1) W-2 Wages; or

☒ (2) Section 3401(a) Wages

Modifications to 415 Compensation – Compensation for 415 purposes shall include amounts described in Sections 3.6.9(b)-2 and 3.6.9(b)(vi) as “default provisions” unless otherwise elected below (*select all that apply*).

☐ (1) Exclude leave cashouts and deferred compensation (*Section 3.6.9(b)-3(b)*)

☐ (2) Include military continuation payments (*Section 3.6.9(b)-3(c)*)

☐ (3) Include disability continuation payments (*Section 3.6.9(b)-3(d)*)

☐ (a) For nonhighly compensated Employees only

☐ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.

☐ (4) Apply the administrative delay (“first few weeks”) rule (*Section 3.6.9(b)-4*)

☐ (5) Include “deemed” section 125 compensation pursuant to 3.6.9(b)-vi, effective for limitation years beginning on or after January 1, 1998.

**L. CREDITING SERVICE** (*Complete (1) and (2), as appropriate.*)

X   (1) **Hours of Service Method.** [Section 1.1.18] Except as provided in (2) below, for the purpose of determining an Employee's One-Year Breaks in Service [Section 1.1.23], Vesting Service [Section 1.1.44], Eligibility Service [Section 1.1.9] and minimum annual service requirement to share in the City contribution made for a Plan Year [Section 3.3], service will be determined by reference to Hours of Service according to the following: *(check one)*

- X   (a) On the basis of the actual recorded hours for which an Employee is paid or entitled to payment.
- \_\_\_ (b) On the basis that, without regard to his actual recorded hours, an Employee shall be credited with 10 Hours of Service for a day if under Section 1.1.18 such Employee would be certified with at least one hour of service during that day.
- \_\_\_ (c) On the basis that, without regard to his actual recorded hours, an Employee shall be credited under 45 Hours of Service for a calendar week if under Section 1.1.18 such Employee would be credited with at least One Hour of Service during that calendar week.
- \_\_\_ (d) On the basis of semimonthly payroll periods, an Employee shall be credited with 95 Hours of Service for a semi-monthly payroll period if under Section 1.1.18 such Employee would be credited with at least one Hour of Service during that semimonthly payroll period.
- \_\_\_ (e) On the basis that, without regard to his actual recorded hours, an Employee shall be credited with 190 Hours of Service for a calendar month if under Section 1.1.18 such Employee would be credited with at least one Hour of Service during that calendar month.

  X   (2) **Elapsed Time Method.** [Section 1.2] Notwithstanding (1) above, service will be credited based upon elapsed time for the following purposes: *(check as appropriate)*

- \_\_\_ (a) None
- \_\_\_ (b) All
- \_\_\_ (c) Eligibility (and Eligibility Breaks in Service)

- ☒ (d) Vesting (and Vesting Breaks in Service)(*Police and Fire*)
- ☐ (e) Minimum Service for benefit accrual for a Plan Year

## M. INVESTMENTS

[Section 10.14(p)]

- (1) All funds of a Plan for police officers or fire fighters must be invested pursuant to the policies established by the Nebraska Investment Council.
- (2) The Trustee's collective investment fund or funds are incorporated by reference into this Agreement, as indicated in Appendix "C" of the Basic Municipal Employees Plan and Trust, or otherwise agreed by the parties in writing from time to time.
- (3) The Trustee is hereby specifically authorized and empowered to invest Plan assets in deposit accounts of Wells Fargo Bank N.A. which bear a reasonable rate of interest and securities offered by Wells Fargo Bank N.A. (*name of Trustee or financial institution*). Such specification shall be permitted in any other applicable document related to funding the Plan, which document shall be incorporated herein by this reference.

[Section 4.2]

- (4) **Intermediate Valuation of Accounts.** Participant accounts will be valued for investment purposes as follows: (*select one*)
  - ☐ (a) Annually
  - ☐ (b) Semi-annually
  - ☐ (c) Quarterly
  - ☐ (d) Monthly
  - ☒ (e) Daily

## N. ACCELERATED DISTRIBUTIONS

The following optional provisions for accelerated distributions may be made available to Plan Participants: (*Select as many as shall apply. Not applicable for Police and Fire Plans; and (1) through (4) not applicable if the Plan is a pension plan.*) [Section 14] |  
N/A

- \_\_\_ (1) Medical emergency
- \_\_\_ (2) Financial hardships
- \_\_\_ (3) Education expenses
- \_\_\_ (4) Purchase of home
- \_\_\_ (5) After Normal Retirement Date

**O. OPTIONAL FORMS OF DISTRIBUTION**

The optional forms of benefit payment provided by this Plan are: *(Select as many as apply. If the requirements of Code section 411(d)(6) are applicable (which is not the case if this Plan is a government plan within the meaning of Code section 414(d)), the City may not eliminate optional forms of payment for benefits which have accrued prior to the date of Plan amendment unless said requirements are satisfied.)*

- X (1) a single sum
- X (2) straight life annuity
- X (3) straight life annuity with a guarantee of at least 60 monthly payments
- X (4) annuity payable for life of Participant and annuity to surviving beneficiary of 100%, 75% or 50% as elected by the City.
- \_\_\_ (5) a combination of (1) through (4)
- \_\_\_ (6) if this Plan is a transferee plan, an optional form of distribution provided under the transferor plan which is required to be preserved under Code section 411(d)(6) (and the regulations issued thereunder – which is not the case if this is a government plan under Code section 414(d)) with respect to accrued benefits of any Participant as of the date of transfer. *(Indicate name of transferor plan and date on which prior accrued benefit distribution options are protected)* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- \_\_\_ (7) Other *(Describe)*: \_\_\_\_\_.

**P. MANDATORY DISTRIBUTION ALTERNATIVES** *(Section 5.1.3(a)(ii))*

The following election is made in lieu of the provisions of Section 5.1.3(a)(ii) reducing the mandatory cash out amount to an amount equal to or less than \$1,000 ~~(Option for plans other than Fire Plans—Participant consent to distribution is always required for Fire Plans.)~~(select one):

\_\_\_\_ (1) No Mandatory Cash-Outs. An Employee's Vested Retirement Value will not be distributed upon the Employee's termination of service without the Employee's prior written consent, regardless of amount.

X (2) Increased Mandatory Cash Out Amount. Upon termination of service, the Employee's Vested Retirement Value will be automatically distributed without the Employee's consent if the Vested Retirement Value is less than \$3,500 ~~if a Police Plan~~ (or not in excess of \$5,000 for plans other than Police or Fire Plans). Said distribution, if greater than \$1,000, will be paid in a direct rollover to an "individual retirement plan" designated by the Plan Administrator if the Employee does not elect to have the distribution paid in a direct rollover directly to an "eligible retirement plan" specified by the Employee in accordance with direct rollover provisions of the Plan, or to receive the distribution directly.

**Q.** The City shall periodically pay to the Trustee a fee for services rendered according to the Trustee Fee Schedule attached to the Basic Municipal Employees Plan and Trust Agreement as Appendix A or otherwise agreed to by the parties, as incorporated herein by this reference as amended from time to time. The terms of any agreement adopted and executed by the City and Trustee separate and apart from this document and defining rights and duties of the parties to said agreement shall be supplemental and additional to, and incorporated by reference into, this document to the extent not contrary to terms contained herein; and the same, if entered before the date of this Adoption Agreement, shall continue and remain in effect. If any terms of any such separate trust document conflict with the terms of this document, the terms of this document shall control.

**R. INITIAL DEPOSIT**

In the case of establishment of a new Plan, the City hereby delivers to the Trustee the sum of \$ N/A as its initial deposit to establish the Trust, and receipt of the stated sum is hereby acknowledged by the Trustee.

**S.** The completion of this Adoption Agreement creates certain legal relationships and responsibilities. Accordingly, your legal counsel should review the Plan and Trust prior to the execution of this document so as to insure the suitability of the Plan and Trust for your City.

The City acknowledges that it has consulted with and has been advised by its attorney(s) with respect to the effect of entering this Plan and executing this Adoption Agreement.

Terms used in this Adoption Agreement which are defined in the Plan shall have the meaning given them in the Plan.

The City hereby agrees to the provisions of this Plan and Trust, and, in witness whereof, the City and the Trustee have caused this Agreement to be executed on the date(s) set forth below.

THE CITY OF GRAND ISLAND, NEBRASKA

By: \_\_\_\_\_



## NOTICE TO ADOPTING CITY

Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

You may contact a Wells Fargo Bank representative at 304 West 3<sup>rd</sup> Street, Grand Island, Nebraska or by calling (308)389-4225.

In order to obtain reliance with respect to Plan qualification, the City, upon adopting and executing this Plan, must apply to the Employee Plans Determinations of the Internal Revenue Service for a determination letter.

This Adoption Agreement may only be used with the Basic Municipal Employees Plan and Trust Agreement.

CITY OF GRAND ISLAND, NEBRASKA, Employer

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

WELLS FARGO BANK, Trustee

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Date \_\_\_\_\_

ORDINANCE NO. 9464

An ordinance of the Mayor and City Council of the City of Grand Island, Nebraska to amend and restate the City of Grand Island, Nebraska Firefighters' Retirement System Plan and Trust; to authorize further actions; and to provide for repeal of conflicting Ordinances, severability and the 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 16-1020 through and including 16-1042, the City maintains the City of Grand Island, Nebraska Firefighters' Retirement System Plan and Trust embodied in plan documents including an adoption agreement and basic plan document constituting an integral part thereof, as well as various amendments required by applicable law ("Plan").

SECTION 2. The Plan is required by applicable tax law to be amended and restated into a restated plan document incorporating prior amendments and changes to tax laws, regulations and other guidance, including the Pension Protection Act of 2006, Heroes, Earnings Assistance and Relief Tax Act of 2008, and Worker, Retiree, and Employer Recovery Act of 2008. For this purpose, there has been presented to the City a proposed retirement plan and trust embodied in instruments entitled "Adoption Agreement" together with a "Basic Municipal Employees Plan and Trust Agreement" ("Basic Plan Document") as an integral part thereof (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

Approved as to Form	▣ _____
December 24, 2013	▣ City Attorney

ORDINANCE NO. 9464 (Cont.)

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.

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 in this Ordinance 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 the City Administrator determines necessary or appropriate to obtain a favorable ruling or as otherwise required for the qualified status of the Plan.

SECTION 5. 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. 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.

ORDINANCE NO. 9464 (Cont.)

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

Enacted: December 30, 2013.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk



# **City of Grand Island**

**Monday, December 30, 2013**

**Special Meeting**

## **Item G-1**

### **Approving Minutes of December 17, 2013 City Council Regular Meeting**

**Staff Contact: RaNae Edwards**

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL REGULAR MEETING  
December 17, 2013

Pursuant to due call and notice thereof, a Regular Meeting of the City Council of the City of Grand Island, Nebraska was conducted in the Council Chambers of City Hall, 100 East First Street, on December 17, 2013. Notice of the meeting was given in *The Grand Island Independent* on December 11, 2013.

Mayor Jay Vavricek called the meeting to order at 7:00 p.m. The following City Council members were present: Bob Niemann, Linna Dee Donaldson, Chuck Haase, Julie Hehnke, Mitch Nickerson, Peg Gilbert, John Gericke, Mike Paulick and Vaughn Minton. The following City Officials were present: City Administrator Mary Lou Brown, City Clerk RaNae Edwards, Treasurer and Finance Director Jaye Monter, City Attorney Robert Sivick, and City Engineer and Public Works Director John Collins.

INVOCATION was given by Pastor Stan Davis, New Life Community Church, 301 West 2<sup>nd</sup> Street followed by the PLEDGE OF ALLEGIANCE.

Mayor Vavricek introduced Community Youth Council member John Albers and board member Danna Burchess.

PUBLIC HEARINGS:

Public Hearing on Request from Carnivores Meat Supply LLC dba Carnivores Meat Supply, 3721 W. Old Potash Highway for a Class "C" Liquor License. City Clerk RaNae Edwards reported that an application for a Class "C" Liquor License had been received from Carnivores Meat Supply LLC dba Carnivores Meat Supply, 3721 W. Old Potash Highway. Ms. Edwards presented the following exhibits for the record: application submitted to the Liquor Control Commission and received by the City on November 20, 2013; notice to the general public of date, time, and place of hearing published on December 7, 2013; notice to the applicant of date, time, and place of hearing mailed on November 20, 2013; along with Chapter 4 of the City Code. Staff recommended approval. No public testimony was heard.

Public Hearing on Request from The Chocolate Bar, Inc. dba The Chocolate Bar, 116 West 3<sup>rd</sup> Street for a Catering Designation to Class "I-86925" Liquor License. City Clerk RaNae Edwards reported that an application for a catering designation to Class "I-86925" Liquor License had been received from The Chocolate Bar, Inc. dba The Chocolate Bar, 116 West 3<sup>rd</sup> Street. Ms. Edwards presented the following exhibits for the record: application submitted to the Liquor Control Commission and received by the City on December 3, 2013; notice to the general public of date, time, and place of hearing published on December 7, 2013; notice to the applicant of date, time, and place of hearing mailed on December 4, 2013; along with Chapter 4 of the City Code. Staff recommended approval. No public testimony was heard.

Public Hearing on Request from Hazel L. Struble for a Conditional Use Permit for Off Street Parking for Grand Island Public Schools Located at 421 West 9<sup>th</sup> Street. Building Department Director Craig Lewis reported that an application for a Conditional Use Permit was received from Hazel L. Struble for property located at 421 West 9<sup>th</sup> Street, south of Howard School. The

request was for Grand Island Public Schools to construct a parking lot for elementary school parking. Staff recommended approval. No public testimony was heard.

Public Hearing on Request from Dawn Dreikosen for a Conditional Use Permit for Off Street Parking for Grand Island Public Schools Located at 1323 West 7<sup>th</sup> Street. Building Department Director Craig Lewis reported that an application for a Conditional Use Permit was received from Dawn Dreikosen for property located at 1323 West 7<sup>th</sup> Street, south of Jefferson School. This request was for Grand Island Public Schools to construct a parking lot for elementary school parking. Staff recommended approval. No public testimony was heard.

Public Hearing on Acquisition of Utility Easement Located North of US Hwy. 30 and East of Engleman Road (West Park Plaza Mobile Home Park). Utilities Director Tim Luchsinger reported that acquisition of a utility easement located north of US Hwy. 30 and east of Engleman Road was needed in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers. This easement would place new cable and transformers to improve the service to the West Park Plaza. Staff recommended approval. No public testimony was heard.

Public Hearing on Acquisition of Utility Easement Located North of U.S. Hwy. 30, South of Westgate Road and East of North Road (Chief Industries). Utilities Director Tim Luchsinger reported that acquisition of a utility easement located north of US Hwy. 30, south of Westgate Road and east of North Road was needed in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers. This easement would provide for the location of electrical conduit, cable, and a pad-mounted transformer to provide power to Lot Three (3), and possible Lot Four (4) in the future. Staff recommended approval. No public testimony was heard.

Public Hearing on Acquisition of Utility Easement Located North of Brome Grass Drive and West of Yarrow Drive (The Guarantee Group, L.L.C.). Utilities Director Tim Luchsinger reported that acquisition of a utility easement located north of Brome Grass Drive and west of Yarrow Drive was needed in order to have access to install, upgrade, maintain, and repair water lines. This easement would be included as part of the public right-of-way in a future phase of the Copper Creek Estates development, but was needed now to provide the loop for both water flow and fire protection. Staff recommended approval. No public testimony was heard.

Public Hearing on Acquisition of Utility Easement Located West of U.S. Hwy. 281 and North of Stolley Park Road (Timothy & Merlene Roe). Utilities Director Tim Luchsinger reported that acquisition of a utility easement located west of U.S. Hwy. 281 and north of Stolley Park Road was needed in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers. Roe Buick's secondary electric service was fed from the south side of Stolley Park Road and recently failed. Primary electric conduit, cable and a pad-mounted transformer were placed closer to the building to more efficiently provide service. This easement to be acquired was the location of the new electric feed for the business. Staff recommended approval. No public testimony was heard.

Public Hearing on Acquisition of Utility Easement Located between Clark Street and Greenwich Avenue at the South Street Intersection (Carmalor NE, L.P.). Utilities Director Tim Luchsinger reported that acquisition of a utility easement located between Clark Street and Greenwich

Avenue at the South Street Intersection was needed in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers. This easement would provide for the required access for maintenance with no planned changes to the infrastructure. Staff recommended approval. No public testimony was heard.

Public Hearing on Acquisition of Right-of-Way Located at 922 N. Lambert Street (Grand Island Area Habitat for Humanity). Regional Planning Director Chad Nabity reported that the Grand Island Area Habitat for Humanity had purchased property at 922 N. Lambert Street and requested the City to vacate right-of-way for Lambert Street and 12<sup>th</sup> Street in exchange for right-of-way for Evans Street. Staff recommended approval. No public testimony was heard.

ORDINANCE:

Councilmember Gilbert moved “that the statutory rules requiring ordinances to be read by title on three different days are suspended and that ordinances numbered:

- #9463 – Consideration to Amend and Restate the City of Grand Island, Nebraska Police Officers’ Retirement System Plan and Trust
- #9464 – Consideration to Amend and Restate the City of Grand Island, Nebraska Firefighters’ Retirement System Plan and Trust
- #9465 – Consideration of Acquisition of Real Estate Located at 922 N. Lambert Street – tract 2 from Habitat for Humanity
- #9466 – Consideration of Sale of Real Estate Located at 922 N. Lambert Street – Tract 1 and 3 to Habitat for Humanity
- #9467 – Consideration of Amending Salary Ordinance

be considered for passage on the same day upon reading by number only and that the City Clerk be permitted to call out the number of these ordinances on second reading and then upon final passage and call for a roll call vote on each reading and then upon final passage.” Councilmember Nickerson seconded the motion. Upon roll call vote, Councilmembers Minton, Paulick, Gilbert, Nickerson, Hehnke, Haase, Donaldson and Niemann voted aye. Councilmember Gericke voted no. Motion adopted.

- #9463 – Consideration to Amend and Restate the City of Grand Island, Nebraska Police Officers’ Retirement System Plan and Trust
- #9464 – Consideration to Amend and Restate the City of Grand Island, Nebraska Firefighters’ Retirement System Plan and Trust

Finance Director Jaye Monter reported that in order to stay in compliance with all federal and state retirement plan laws the City of Grand Island’s Police Officers’ and Firefighters’ Retirement System Plan and Trust plans needed to be restated.

Mike Nelson, representative on the Police Pension Committee requested Ordinance #9463 be postponed to the next council meeting because the Police Pension Committee did not receive the updates until Saturday before the meeting and did not have a chance to meet and review the changes to the plan.



City Attorney Bob Sivick stated the changes were a housekeeping measure and that the Council was the administrator of the plans.

Motion by Haase, second by Paulick to postpone Ordinances #9463 and #9464 to the December 30, 2013 Council meeting.

William Bradshaw, attorney, explained the amendments to the plans. He recommended these ordinances be decided by the end of the calendar year.

Motion by Gilbert, second by Hehnke to adjourn to executive session for the purpose to discuss litigation at 7:34 p.m.

Tracy Overstreet with the Independent objected to the closed session. Discussion was held by council regarding the need to go into executive session.

Upon roll call vote to adjourn to executive session, Councilmembers Gilbert, Hehnke, and Haase voted aye. Councilmembers Minton, Paulick, Gericke, Nickerson, Donaldson, and Niemann voted no. Motion failed.

Upon roll call vote of the main motion to postpone, Councilmembers Minton, Paulick, Gilbert, Nickerson, Hehnke, Haase, Donaldson, and Niemann voted aye. Councilmember Gericke voted no. Motion adopted.

#9465 – Consideration of Acquisition of Real Estate Located at 922 N. Lambert Street – tract 2 from Habitat for Humanity

This ordinance related to the aforementioned Public Hearings.

Motion by Paulick, second by Gericke to approve Ordinance #9465.

City Clerk: Ordinance #9465 on first reading. All those in favor of the passage of this ordinance on first reading, answer roll call vote. Upon roll call vote, all voted aye. Motion adopted.

City Clerk: Ordinance #9465 on second and final reading. All those in favor of the passage of this ordinance on second and final reading, answer roll call vote. Upon roll call vote, all voted aye. Motion adopted.

Mayor Vavricek: By reason of the roll call votes on first reading and then upon final passage, Ordinance #9465 is declared to be lawfully adopted upon publication as required by law.

#9466 – Consideration of Sale of Real Estate Located at 922 N. Lambert Street – Tract 1 and 3 to Habitat for Humanity

Motion by Donaldson, second by Gericke to approve Ordinance #9466.

City Clerk: Ordinance #9466 on first reading. All those in favor of the passage of this ordinance on first reading, answer roll call vote. Upon roll call vote, all voted aye. Motion adopted.

City Clerk: Ordinance #9466 on second and final reading. All those in favor of the passage of this ordinance on second and final reading, answer roll call vote. Upon roll call vote, all voted aye. Motion adopted.

Mayor Vavricek: By reason of the roll call votes on first reading and then upon final passage, Ordinance #9466 is declared to be lawfully adopted upon publication as required by law.

RESOLUTION:

#2013-411 – Consideration of Amendment to IAFF Contract. Human Resources Director Brenda Sutherland reported that this amendment would add the positions of Life Safety Inspector and Shift Commander to the IAFF Local 647 Labor Agreement. Discussion was held regarding the benefits for the Life Safety Inspector position.

Motion by Haase, second by Minton to approve Resolution #2013-411. Upon roll call vote, Councilmembers Minton, Paulick, Gericke, Gilbert, Nickerson, Haase, Donaldson, and Niemann voted aye. Councilmember Hehnke voted no. Motion adopted.

ORDINANCE:

#9467 – Consideration of Amending Salary Ordinance

Human Resources Director Brenda Sutherland reported that this ordinance supported the amendment to the IAFF Local 647 Labor agreement for Life Safety Inspector and Shift Commander. Other housekeeping measures were mentioned. Discussion was held regarding the job description and pay range of the Assistant Public Works Director position.

Motion by Donaldson, second by Hehnke to approve Ordinance #9467.

City Clerk: Ordinance #9467 on first reading. All those in favor of the passage of these ordinances on first reading, answer roll call vote. Upon roll call vote, all voted aye. Motion adopted.

City Clerk: Ordinance #9467 on second and final reading. All those in favor of the passage of these ordinances on second and final reading, answer roll call vote. Upon roll call vote, Councilmembers Minton, Gericke, Gilbert, Nickerson, Hehnke, Haase, Donaldson, and Niemann voted aye. Councilmember Paulick voted no. Motion adopted.

Mayor Vavricek: By reason of the roll call votes on first reading and then upon final passage, Ordinance #9467 is declared to be lawfully adopted upon publication as required by law.

Councilmember Minton was absent at 8:25 p.m.

CONSENT AGENDA: Consent Agenda item G-9 was removed for further discussion. Motion by Donaldson, second by Paulick to approve the Consent Agenda excluding item G-9. Upon roll call vote, all voted aye. Motion adopted.

Approving Minutes of November 26, 2013 City Council Regular Meeting.

Approving Minutes of December 3, 2013 City Council Regular Meeting.

Approving Appointment of Wanda Stelk to the Animal Advisory Board.

Approving Appointment of Jeff Vinson to the Citizens Advisory Review Committee.

Approving Re-Appointment of Steve Kunzman to the Central District Health Board.

Approving Re-Appointment of Bob Loewenstein and Appointments of Dennis Garcia, Anita Lewandowski-Brown, and Jacinto Corona to the Community Development Advisory Board.

Approving Appointment of Francisco Garcia to the Downtown Business Improvement District 2013 Board.

Approving Re-Appointment of Densel Rasmussen and Appointment of Jason Hornady to the Grand Island Facilities Corporation Board.

Approving Appointment of John Hoggatt to the Police Pension Committee and Firefighters Pension Committee. Council commented on the importance of Council representation on these committees.

Motion by Gilbert, second by Paulick to deny the appointment of John Hoggatt to the Police and Firefighters Pension Committees. Upon roll call vote, Councilmembers Paulick, Gilbert, Hehnke, Haase, Donaldson, and Niemann voted aye. Councilmembers Gericke and Nickerson voted no. Motion to deny adopted.

Approving Appointment of Craig Vincent to the Regional Planning Commission.

Approving Re-Appointments to the Electrical Board.

Approving Re-Appointments to the Mechanical Examining Board.

Approving Re-Appointments to the Plumbers Examining Board.

#2013-389 – Approving Acquisition of Utility Easement Located North of U.S. Hwy. 30 and East of Engleman Road (West Park Plaza Mobile Home Park).

#2013-390 – Approving Acquisition of Utility Easement Located North of U.S. Hwy. 30, South of Westgate Road and East of North Road (Chief Industries).

#2013-391 – Approving Acquisition of Utility Easement Located North of Brome Grass Drive and West of Yarrow Drive (The Guarantee Group, L.L.C.).

#2013-392 – Approving Acquisition of Utility Easement Located West of U.S. Hwy. 281 and North of Stolley Park Road (Timothy & Merlene Roe).

#2013-393 – Approving Acquisition of Utility Easement Located Between Clark Street and Greenwich Avenue at the South Street Intersection (Carmalor NE, L.P.).

#2013-394 – Approving Bid Award for Tree Trimming Contracts 2014-TT-1 with Leetch Tree Service of Grand Island, NE in an Amount of \$67,615.00 and Tom’s Tree Service of Grand Island, NE in an Amount of \$16,300.00.

#2013-395 – Approving Certificate of Final Completion for Water Main Project 2013-W-2 – Sycamore Street with The Diamond Engineering Company of Grand Island, NE.

#2013-396 – Approving Certificates of Final Completion for Water Main Districts 464 & 465 – Antelope, Wildwood, Elk and Cougar Drive with The Diamond Engineering Company of Grand Island, NE and Setting Board of Equalization Hearing for January 28, 2014.

#2013-397 – Approving Change Order No. 1 for Irrigation Installation at Jackrabbit Run Golf Course with Duininck, Inc. of Prinsburg, MN for an increase of \$7,021.39 and a Revised Contract Amount of \$499,559.39.

#2013-398 – Approving Request from Doug Emery, 545 Linden Avenue for Building Permit to Construct a Detached Accessory Building.

#2013-399 – Approving Award of Proposal for Office/Utility Building Construction at the Solid Waste Landfill with Mehring Construction Company, LLC of Grand Island, NE in an Amount of \$65,488.60.

#2013-400 – Approving Amendment No. 8 to the Agreement for Professional Engineering Services Entitled “Wastewater Treatment Plan and Collection System Rehabilitation” with Black & Veatch of Kansas City, MO in an Amount of \$904,524.00 and a Revised Contract Amount of \$7,334,476.00.

#2013-401 – Approving Continuation of Drainage Improvement District No. 2013-D-4; Westgate Subdivision.

#2013-402 – Approving Authorization for Emergency Sanitary Sewer Repairs on Sycamore Street and Adjoining Alley (Between 21<sup>st</sup> Street and 22<sup>nd</sup> Street) with Van Kirk Bros. Contraction of Sutton, NE in an Amount of \$87,764.73.

#2013-403 – Approving Addendum #3 Scope of Services for Website Development with Vision Internet in an Amount of \$18,500.00.

#2013-404 – Approving Subscription Services Agreement with Vision Internet for Four Years in an Amount of \$6,600 annually with a 5% Increase each Additional Year of the Contract.

#2013-405 – Approving Acquisition of Right-of-Way Located at 922 N. Lambert Street (Grand Island Area Habitat for Humanity).

REQUESTS AND REFERRALS:

Consideration of Request from Hazel L. Struble for a Conditional Use Permit for Off Street Parking for Grand Island Public Schools Located at 421 West 9<sup>th</sup> Street. This item related to the aforementioned Public Hearing. Councilmember Nickerson recused himself from this issue due to a conflict of interest.

Motion by Paulick, second by Hehnke to approve the request.

Building Department Director Craig Lewis answered questions concerning lighting on this property. Virgil Harden representing the Grand Island Public Schools stated they had no reservations with the “no lighting” on the lot.

Motion by Gilbert, second by Haase to amend the motion that no lighting be added to the lot. Upon roll call vote, all voted aye. Motion adopted.

Upon roll call vote of the main motion to approve, Councilmembers Paulick, Gilbert, Hehnke, Haase, Donaldson, and Niemann voted aye. Councilmember Gericke voted no. Motion adopted.

Consideration of Request from Dawn Dreikosen for a Conditional Use Permit for Off Street Parking for Grand Island Public Schools Located at 1323 West 7<sup>th</sup> Street. This item related to the aforementioned Public Hearing.

Motion by Gilbert, second by Paulick to approve the request with the condition of no lighting on the lot. Upon roll call vote, Councilmembers Paulick, Gilbert, Nickerson, Hehnke, Haase, Donaldson, and Niemann voted aye. Councilmember Gericke voted no. Motion adopted.

#### RESOLUTIONS:

#2013-406 – Consideration of Request from Carnivores Meat Supply LLC dba Carnivores Meat Supply, 3721 W. Old Potash Highway for a Class “C” Liquor License and Liquor Manager Designation for Eric Muth, 3527 South Blaine Street. This item related to the aforementioned Public Hearing.

Motion by Gilbert, second by Donaldson to approve Resolution #2013-406 contingent upon final inspections and completion of a state approved alcohol server/seller training program. Upon roll call vote, all voted aye. Motion adopted.

#2013-407 – Consideration of Request from The Chocolate Bar, Inc. dba The Chocolate Bar, 116 West 3<sup>rd</sup> Street for a Catering Designation to Class “I-86925” Liquor License. This item related to the aforementioned Public Hearing.

Motion by Paulick, second by Donaldson to approve Resolution #2013-407. Upon roll call vote, all voted aye. Motion adopted.

#2013-408 – Consideration of Approving Contract to Provide the City of Grand Island Water System Master Plan. Utilities Director Tim Luchsinger reported that request for proposals for engineering services were received to evaluate and plan for the water system future demands for the next twenty years and to develop a strategy for replacement of aging infrastructure. Staff recommended approving HDR of Omaha, NE in an Amount not-to-exceed \$66,415.00.

Discussion was held regarding the scope of the contract. Mr. Luchsinger stated it would be directed more on the capital side instead of the operational/labor side.

Motion by Haase, second by Gilbert to approve Resolution #2013-408. Upon roll call vote, all voted aye. Motion adopted.

#2013-409 – Consideration of Approving Contract to Provide the City of Grand Island Electric System Master Plan. Utilities Director Tim Luchsinger reported that request for proposals for engineering services were received to evaluate current system conditions and upgrade plans. Staff recommended approving Black & Veatch of Overland Park, KS in an Amount not-to-exceed \$252,812.00.

Motion by Haase, second by Gilbert to approve Resolution #2013-409. Upon roll call vote, all voted aye. Motion adopted.

#2013-410 – Consideration of Approving Deferral of Grand Island as U.S. Dept. of Housing and Urban Development (HUD) Entitlement Grantee. Finance Director Jaye Monter reported that as an entitlement community, the City of Grand Island would receive funds directly from HUD on an annual formula basis from the Federal Government. The City needed to develop and submit a Consolidated Plan for fiscal years 2015, 2016, and 2017 and were requesting deferral of this plan to accommodate a detailed citizen participation plan and filling the vacancy of the Community Development Administrator.

A lengthy discussion was held regarding the entitlement grantee status. Comments were made by Council regarding the importance of this issue and the possibility of hiring out-side help.

Motion by Donaldson, second by Hehnke to approve Resolution #2013-410. Upon roll call vote, Councilmembers Gericke, Nickerson, Hehnke, Haase, Donaldson, and Niemann voted aye. Councilmembers Paulick and Gilbert voted no. Motion adopted.

#### PAYMENT OF CLAIMS:

Motion by Donaldson, second by Hehnke to approve the Claims for the period of November 27, 2013 through December 17, 2013, for a total amount of \$9,175,214.59. Unanimously approved.

ADJOURNMENT: The meeting was adjourned at 9:40 p.m.

RaNae Edwards  
City Clerk



# City of Grand Island

Monday, December 30, 2013

Special Meeting

## Item G-2

### **Approving Appointment of Brent Lindner to the Downtown Business Improvement District 2013 Board**

*Mayor Vavricek has submitted the appointment of Brent Lindner to the Downtown Business Improvement District 2013 Board to replace Eric Edwards who resigned his appointment. The appointment would become effective immediately upon approval by the City Council and would expire on September 30, 2018.*

Staff Contact: Mayor Jay Vavricek



# **City of Grand Island**

**Monday, December 30, 2013**

**Special Meeting**

## **Item G-3**

**#2013-412 - Approving Safety Glass Contract for the Utilities,  
Public Works and Parks Divisions for 2014 & 2015**

**Staff Contact: Tim Luchsinger, Utilities Director**



# **Council Agenda Memo**

**From:** Timothy Luchsinger, Utilities Director  
John Collins, Public Works Director  
Todd McCoy, Parks Director  
Stacy Nonhoff, Asst. City Attorney

**Meeting:** December 30, 2013

**Subject:** Award of Safety Glass Contract for the Parks & Recreation, Public Works and Utilities Departments for 2014 - 2015

**Item #'s:** G-3

**Presenter(s):** Timothy Luchsinger, Utilities Director

## **Background**

As part of personal protective equipment furnished by the City to its employees, the City periodically enters into an agreement with a local provider for safety glasses for those employees needing corrective lenses. Costs for eyewear prescriptions and options other than the base selection are at the expense of the employee. Requests for quotes were solicited in accordance with city procurement policies for safety glass services for the Utilities, Public Works, and Parks & Recreation Departments for 2014 and 2015.

## **Discussion**

Documents were mailed to ten vendors, and advertised in the Grand Island Independent. The following quotations were received.

Shopko Eyecare Center, Grand Island, Nebraska  
Eyecare Professionals/Grand Island Optical, Grand Island, Nebraska  
Heartland Optical of Lincoln, Nebraska, the supplier for Pearle Vision Center of Grand Island, Nebraska

The responses were reviewed by the Parks, Public Works, and Utilities Departments, and based on variety of selection and competitive pricing, it was determined that Pearle Vision Center of Grand Island offered the best overall proposal. Heartland Optical of Lincoln, Nebraska dispenses safety glasses through Pearle Vision Center at 1437 N.

Webb Road in Grand Island. The specifications required an on-site location in the City of Grand Island to allow easy access for employees.

Pearle Vision Center has furnished safety glasses for City employees in the past, and their performance and product met expectations.

### **Alternatives**

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

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

### **Recommendation**

City Administration recommends that the Council approve the two year contract for Safety Glasses for the Utilities, Public Works, and Parks and Recreation Departments, to Heartland Optical of Lincoln, Nebraska, dispensing from Pearle Vision Center, of Grand Island, Nebraska.

### **Sample Motion**

Move to approve the two year contract (2014 & 2015) for Safety Glasses to Heartland Optical of Lincoln Nebraska, dispensing from Pearle Vision Center of Grand Island, Nebraska.



Stacy Nonhof, Purchasing Agent

*Working Together for a  
Better Tomorrow, Today*

**REQUEST FOR QUOTES  
FOR  
SAFETY GLASSES & SERVICE**

**RFP DUE DATE:** December 13, 2013 at 5:00 p.m.

**DEPARTMENT:** Utilities

**PUBLICATION DATE:** November 25, 2013

**NO. POTENTIAL BIDDERS:** 10

**SUMMARY OF PROPOSALS RECEIVED**

**Grand Island Optical**  
Grand Island, NE

**Shopko**  
Grand Island, NE

**Heartland Optical**  
Lincoln, NE

cc: Tim Luchsinger, Utilities Director  
Mary Lou Brown, City Administrator  
Stacy Nonhof, Purchasing Agent  
John Collins, Public Works Director  
Todd McCoy, Parks & Rec. Director

Bob Smith, Assist. Utilities Director  
Jaye Monter, Finance Director  
Pat Gericke, Utilities Admin. Assist.  
Catrina DeLosh, PW Admin. Assist.  
Patti Buettner, Parks & Rec. Secretary

**P1695**

## Contract Agreement

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This AGREEMENT made and entered into by and between Heartland Optical, of 1012 N. 27<sup>th</sup> Street, Lincoln, Nebraska, dispensing from Pearle Vision Center, 1437 N. Webb Road, Grand Island, Nebraska, hereinafter called "Supplier", and the CITY OF GRAND ISLAND, NEBRASKA, hereinafter called the City.

WITNESSETH:

THAT, WHEREAS, in accordance with law, the City has caused contract documents to be prepared and an advertisement calling for quotes to be published for furnishing SAFETY GLASSES; and

WHEREAS, the City, in the manner prescribed by law, has reviewed, examined, and canvassed the quotes submitted, and has determined the aforesaid Heartland Optical, to be the lowest responsive and responsible Safety Glass vendor, and has duly awarded them a contract therefore, for the sum or sums named in their quote, a copy thereof being attached to and made a part of this contract;

NOW, THEREFORE, in consideration of the compensation to be paid to Heartland Optical, and of the mutual agreements herein contained, the parties have agreed and hereby agree, the City for itself and its successors, and Heartland Optical for itself, and its successor, as follows:

ARTICLE I. That the following documents shall comprise the Contract, and shall together be referred to as the "Agreement" or the Contract Documents";

1. This Contract Agreement.
2. The City of Grand Island's Specification for Safety Glasses.
3. Heartland Optical's quote signed and dated December 11, 2013.

In the event of any conflict between the terms of the Contract Documents, the provisions of the document first listed shall prevail.

ARTICLE II. That Heartland Optical, dispensing through Pearle Vision Center, shall: (a) furnish all materials (frames and lenses); (b) provide and perform all necessary labor; and (c) in a good and substantial and workmanlike manner and in accordance with the requirements, stipulations, provisions, and conditions of the contract documents as listed in the attached General Specifications, said document forming the contract and being as fully a part thereof as if repeated verbatim herein, perform, execute, and complete all work included in and covered by the City's official award of this contract to Heartland Optical, such award being based on the acceptance by the City of Grand Island's quote;

ARTICLE III. That the City shall pay Heartland Optical for the performance of the work embraced in this contract and Heartland Optical will accept as full compensation therefore the amount(s) as stated in the Specification Document for all services, materials, and work covered by and included in the contract award and designated in the foregoing Article II; payments thereof to be made in cash or its equivalent in a timely manner.

ARTICLE IV. Heartland Optical, hereby agrees to act as agent for the City in purchasing materials and supplies for the City for Safety Glasses. The City shall be obligated to the vendor of the materials and supplies for the purchase price, but Heartland Optical, shall handle all payments hereunder on behalf of the City. The vendor shall make demand or claim for payment of the purchase price from the City by submitting an invoice to:

The City of Grand Island  
Utilities Administration  
PO Box 1968  
Grand Island, NE 68802-1968

All invoices shall bear Heartland Optical's name as agent for the City. This paragraph will apply only to these materials and supplies actually incorporated into and become a part of the finished product, SAFETY GLASSES.

ARTICLE V. The contract shall go into effect **January 1, 2014**, and remain into effect until **December 31, 2015**.

ARTICLE VI. Heartland Optical/Pearle Vision Center, agrees to comply with all applicable State fair labor standards in the execution of this contract as required by Section 73-102, R.R.S. 1943. They further agree to comply with the provisions of Section 48-657, R.R.S., 1943, pertaining to contributions to the Unemployment Compensation Fund of the State of Nebraska. During the performance of this contract, Heartland Optical/Pearle Vision Center agrees not to discriminate in hiring or any other employment practice on the basis of race, color, religion, sex, national origin, age or disability. Heartland Optical/Pearle Vision Center agrees to comply with all applicable Local, State and Federal rules and regulations, and agrees to maintain a drug-free workplace policy and will provide a copy of the policy to the City upon request.

#### GRATUITIES and KICKBACKS

City Code states that it is unethical for any person to offer, give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or

application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement of the award of a subcontract or order.

**HEARTLAND OPTICAL**

By \_\_\_\_\_ Date\_\_\_\_\_

Title:\_\_\_\_\_

**CITY OF GRAND ISLAND, NEBRASKA**

By\_\_\_\_\_ Date\_\_\_\_\_

Mayor

Attest:\_\_\_\_\_

RaNae Edwards, City Clerk

The contract is due form according to law and hereby approved.

\_\_\_\_\_ Date\_\_\_\_\_

Attorney for the City

RESOLUTION 2013-412

WHEREAS, the City of Grand Island invited quotes for Safety Glasses and Service for the Utilities, Public Works and Parks and Recreation Departments, according to the City's Request for Quotes on file with the Utilities Administration Office; and

WHEREAS, quotes were due on December 13, 2013; and

WHEREAS, Heartland Optical of Lincoln, Nebraska, dispensing safety glasses for Pearle Vision Center of Grand Island, Nebraska, submitted a quote in accordance with the terms of the advertisement for quotes and all other statutory requirements contained therein.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the quote of Heartland Optical of Lincoln, Nebraska, dispensing for Pearle Vision Center of Grand Island, Nebraska, for safety glasses and service for the Utilities, Public Works and Parks and Recreation Departments for the years 2014 and 2015 for the amounts set out in its quote is hereby approved as the most responsive quote received.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 30, 2013.

---

Jaye Vavricek, Mayor

Attest:

---

RaNae Edwards, City Clerk

Approved as to Form	by _____
December 24, 2013	City Attorney



# **City of Grand Island**

**Monday, December 30, 2013**

**Special Meeting**

## **Item G-4**

**#2013-413 - Approving the Certificate of Compliance with the  
Nebraska Department of Roads for Maintenance Agreement No.  
12; Calendar Year 2013**

**Staff Contact: John Collins, P.E. - Public Works Director**



# **Council Agenda Memo**

**From:** Shannon Callahan, Street Superintendent

**Meeting:** December 30, 2013

**Subject:** Approving the Certificate of Compliance with the Nebraska Department of Roads for Maintenance Agreement No. 12; Calendar Year 2013

**Item #'s:** G-4

**Presenter(s):** John Collins PE, Public Works Director

## **Background**

The City of Grand Island and the Nebraska Department of Roads have had an agreement for the maintenance of state highways within the City limits dating back to 1970. Maintenance responsibilities for State highways within the corporate City limits are defined by state statute.

The Nebraska Department of Roads (NDOR) is responsible for the cost of the maintenance of the highway lanes through a community and the City is responsible for the cost of the maintenance of any highway widening including parking, additional thru lanes or left turn lanes. The statutes provide that the NDOR is to reimburse the City for work the City performs on NDOR's highway lanes.

## **Discussion**

The agreement requires the City to certify that it has completed the maintenance work required by the agreement for the 2013 calendar year.

The NDOR performs snow removal on NE Highway 2, US Highway 281, US Highway 34, and a portion of US Highway 30 from the west City limits to Johnstown Road. The City performs snow removal on US Highway 30 from Johnstown Road through town to the east City limits at Shady Bend Road. The City performs the surface maintenance on all state highways within the City limits. The net result of this exchange of services is a payment by the Nebraska Department of Roads to the City of Grand Island in the amount of \$40,814.50.

## **Alternatives**

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

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends that the Council pass a resolution authorizing the Mayor to sign the Certificate of Compliance.

## **Sample Motion**

Move to approve the Certificate of Compliance for Maintenance Agreement No. 12.

RESOLUTION 2013-413

WHEREAS, each year the City of Grand Island enters into a maintenance agreement with the State of Nebraska Department of Roads with respect to the maintenance of state highways within the corporate limits of Grand Island; and

WHEREAS, the City has complied with all surface maintenance work for the calendar year 2013 in accordance with the agreement; and

WHEREAS, upon receiving the City's Certificate of Compliance, the State will reimburse the City for maintenance work performed.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island has complied with the terms of Maintenance Agreement No. 12 for calendar year 2013; and the Mayor is hereby authorized and directed to execute the Certificate of Compliance for such agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 30, 2013.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☐ _____
December 24, 2013	☐ City Attorney



# City of Grand Island

Monday, December 30, 2013

Special Meeting

## Item G-5

### **#2013-414 - Approving Acquisition of Drainage Easements in Pleasant View 14th Subdivision (Bosselman)**

*This item relates to the aforementioned Public Hearing item E-1.*

Staff Contact: John Collins, P.E. - Public Works Director

RESOLUTION 2013-414

WHEREAS, drainage easements are required by the City of Grand Island, from Jan Bosselman, in the Pleasant View 14<sup>th</sup> Subdivision, Hall County, Nebraska and more particularly described as follows:

Easement No. 1

A ten (10) foot wide tract of land comprising the southerly five (5) feet of Lot One (1) and the northerly five (5) feet of Lot Two (2), Pleasant View Fourteenth Subdivision, all in the City of Grand Island, Nebraska, said tract containing 0.029 acres (1,267 square feet) more or less.

AND

Easement No. 2

A ten (10) foot wide tract of land comprising the westerly ten (10) feet of Lot Seven (7), Pleasant View Fourteenth Subdivision, all in the City of Grand Island, Nebraska, said tract containing 0.029 acres (1,249 square feet) more or less.

WHEREAS, an Agreement for the drainage easements has been reviewed and approved by the City Legal Department.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island be, and hereby is, authorized to enter into the Agreement for the drainage easements on the above described tracts of land.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

- - -

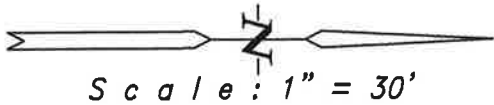
Adopted by the City Council of the City of Grand Island, Nebraska, December 30, 2013.

\_\_\_\_\_  
Jay Vavricek, Mayor

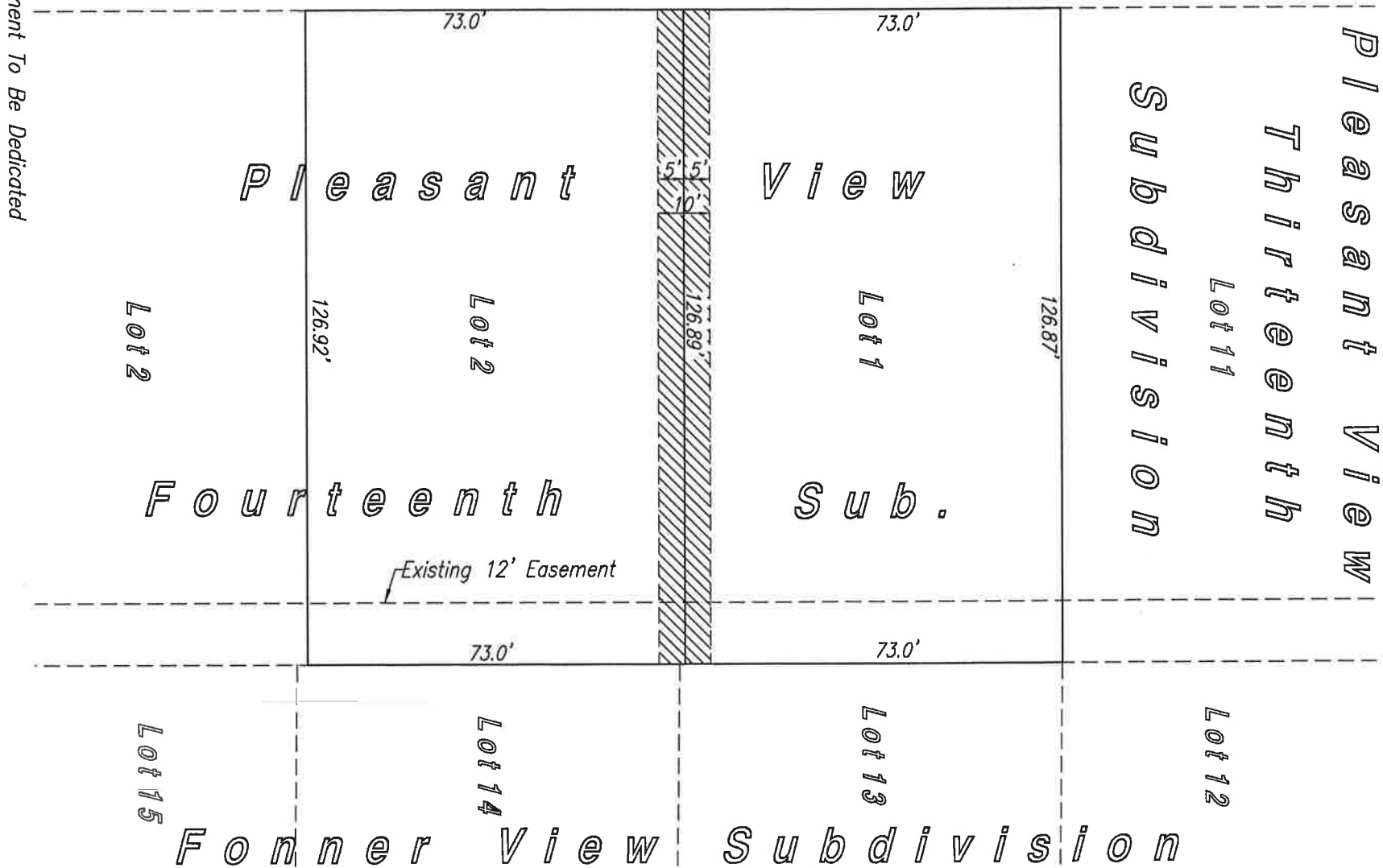
Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☐ _____
December 24, 2013	☐ City Attorney



Sun Valley Drive



—Indicates Easement To Be Dedicated

**Description (10' Wide Drainage Easement)**

A Ten (10.00) foot wide tract of land comprising the southerly Five (5.00) feet of Lot One (1) and the Northerly Five (5.00) feet of Lot Two (2), Pleasant View Fourteenth Subdivision, all in the City of Grand Island, Nebraska, said tract containing 0.029 acres (1267 Sq. Ft.) more or less.

**Exhibit 'A'**

Date : December 13, 2013

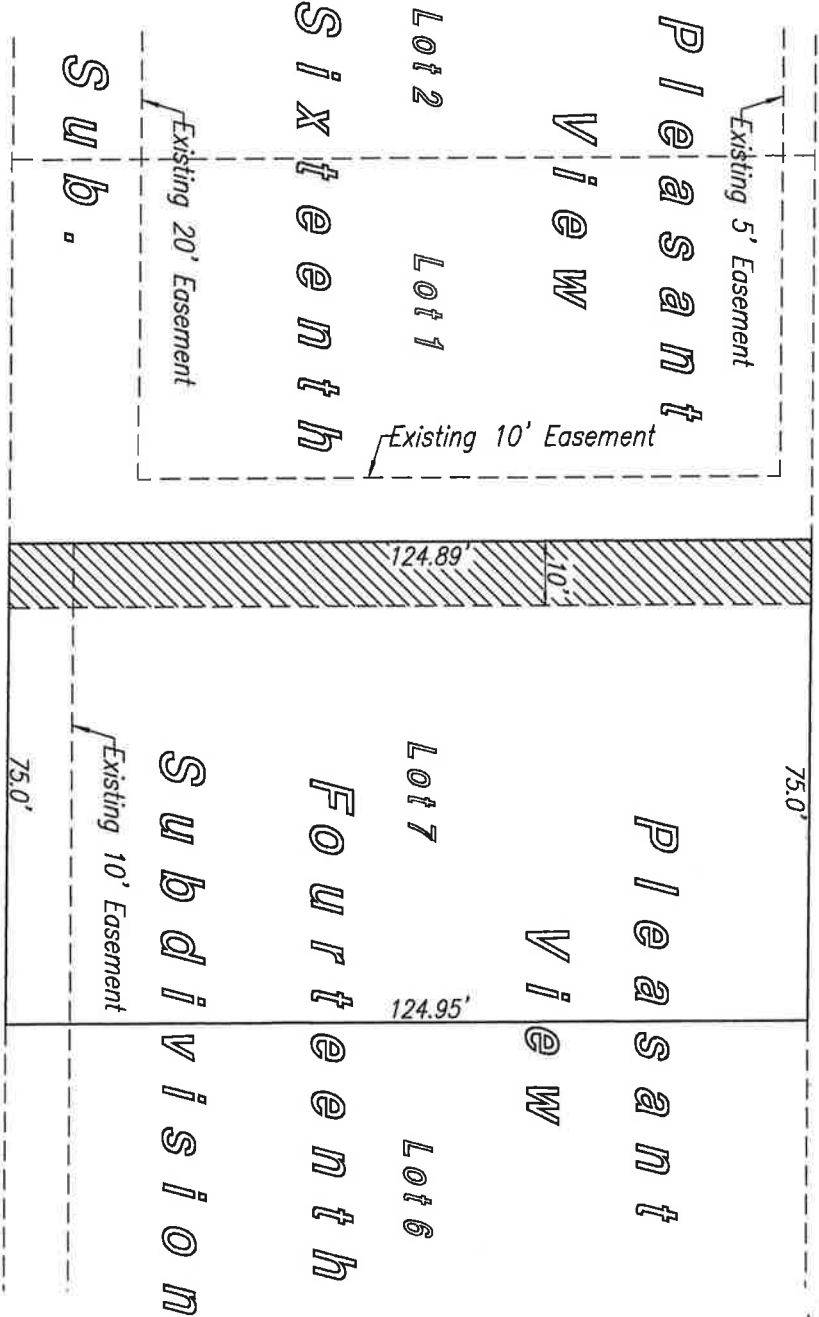
Sheet No. 1 of 1



R. Gockwell & Associates, Inc.  
ENGINEERING & SURVEYING

2510 NORTH WEBB ROAD, GRAND ISLAND, NEBRASKA 68802 P.O. BOX 549  
E-MAIL: [surveyor@ocusa.net](mailto:surveyor@ocusa.net) PHONE (308) 382-1472 FAX (308) 382-1423

Nebraska Avenue



---Indicates Easement To Be Dedicated

Description (10' Wide Easement)

A Ten (10.00) foot wide tract of land comprising the westerly Ten (10.00) feet of Lot Seven (7), Pleasant View Fourteenth Subdivision, all in the City of Grand Island, Nebraska, said tract containing 0.029 acres (1249 Sq. Ft.) more or less.

Exhibit 'A'

Date : December 13, 2013

Sheet No. 1 Of 1



2510 NORTH WEBB ROAD, GRAND ISLAND, NEBRASKA 68802 P.O. BOX 549  
E-MAIL: [surveyor@cccausa.net](mailto:surveyor@cccausa.net) PHONE (308) 382-1472 FAX (308) 382-1423



# **City of Grand Island**

**Monday, December 30, 2013**

**Special Meeting**

## **Item G-6**

**#2013-415 - Approving Public Highway At-Grade Crossing  
Maintenance & Use Agreement with Union Pacific Railroad  
Company for the North Road Crossing**

**Staff Contact: John Collins, P.E. - Public Works Director**



# **Council Agenda Memo**

**From:** Scott Griepenstroh, PW Project Manager

**Meeting:** December 30, 2013

**Subject:** Approving Public Highway At-Grade Crossing Maintenance and Use Agreement with Union Pacific Railroad Company for the North Road Crossing

**Item #'s:** G-6

**Presenter(s):** John Collins, Public Works Director

## **Background**

Annually the Streets and Engineering Divisions plan, design and contract an asphalt resurfacing project as part of the overall plan for maintaining and preserving the City's pavement network. These projects are funded by the Streets Division Resurfacing fund. This year, two of the locations planned for resurfacing are Stolley Park Road from west of US Highway 281 to the intersection of North Road, and North Road from the intersection of Stolley Park Road to US Highway 30. Resurfacing work will be required at the Union Pacific Railroad (UPRR) Crossing at the intersection of North Road and Stolley Park Road.

In accordance with the Nebraska Highway-Rail Regulations, Title 415 Chapter 6 of the Nebraska Administrative Code (Construction, Repair and Maintenance), the public entity with jurisdiction over the roadway at a railroad crossing is responsible for the maintenance of the pavement approaching the crossing and between multiple tracks.

## **Discussion**

UPRR will not allow resurfacing work to occur at the railroad crossing at the intersection of Stolley Park Road and North Road prior to execution of a Public Highway At-Grade Crossing Maintenance and Use Agreement. As per the agreement, the City will require its Contractor to execute a Contractor's Right of Entry Agreement and to comply with the terms and provisions relating to the work to be performed.

Upon execution and delivery of the agreement, the City shall pay UPRR an administrative handling charge of \$1,000.00.

Streets and Engineering Division staff are currently evaluating and prioritizing other locations to be resurfaced. Final plans and specifications are anticipated to be completed in February.

### **Alternatives**

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

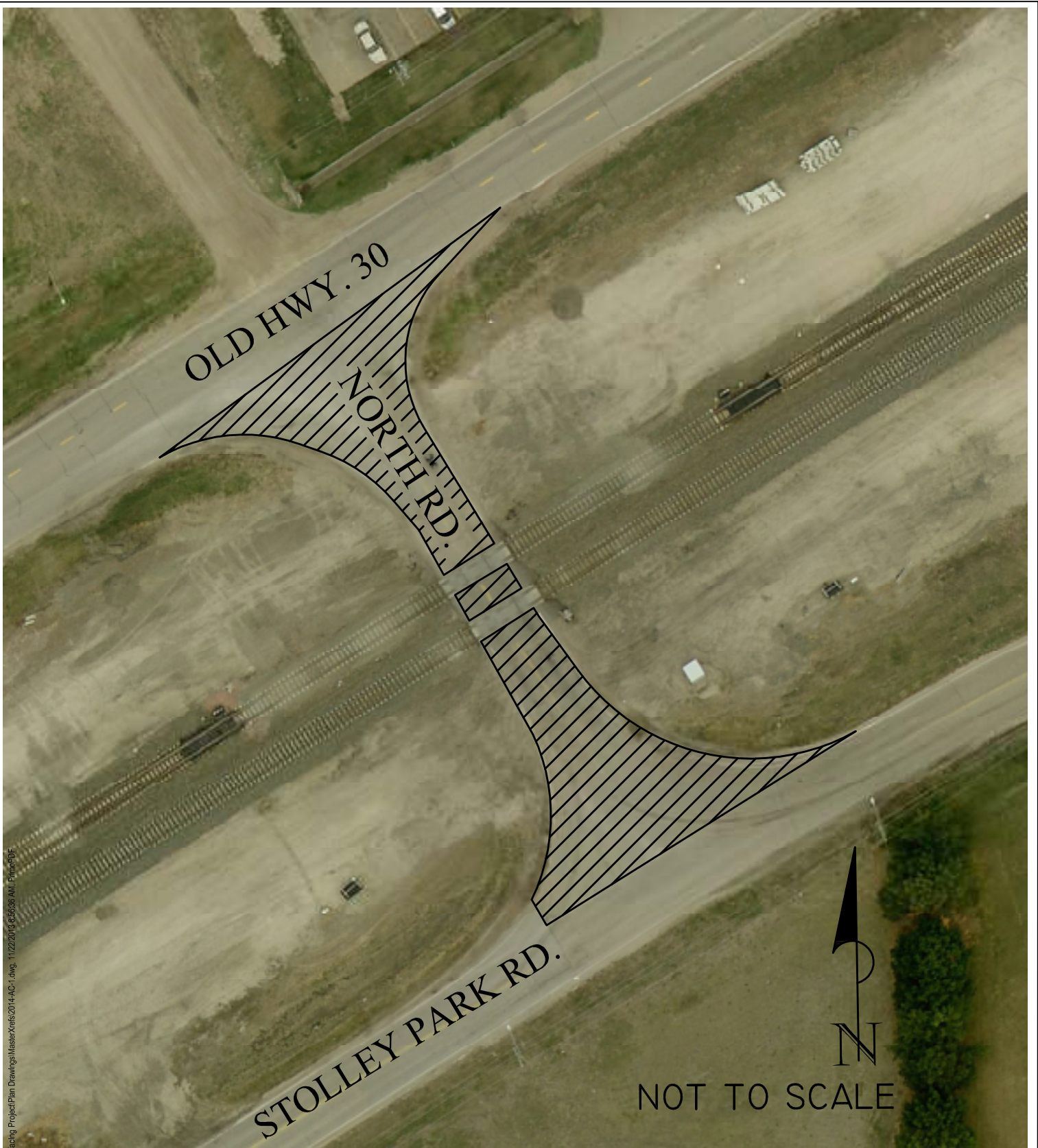
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

### **Recommendation**

City Administration recommends that the Council approve the resolution authorizing the Mayor to sign the Public Highway At-Grade Crossing Maintenance and Use Agreement between the Union Pacific Railroad Company and the City of Grand Island.

### **Sample Motion**

Move to approve the resolution.



J:\Drawings - Civil\Project\2014\2014-AC-1\Resurfacing Projects\2014 Resurfacing Projects\2014-AC-1.dwg, 11/22/2013 8:56:36 AM, P:\mwpd

**CITY OF**  
**GRAND ISLAND**  
**PUBLIC WORKS DEPARTMENT**

DATE: 11-22-2013  
 DRAWN BY: MWL  
 APPVD. BY: GS  
 SCALE: NONE

2014-AC-1  
 NORTH ROAD  
 RAIL ROAD CROSSING  
 EXHIBIT

PLAN  
 1/1

# PUBLIC HIGHWAY AT-GRADE CROSSING MAINTENANCE & USE AGREEMENT

---

BETWEEN

UNION PACIFIC RAILROAD COMPANY

AND THE

CITY OF GRAND ISLAND

COVERING

MAINTENANCE, USE & SURFACE REHABILITATION OF  
THE APPROACHES OF THE EXISTING NORTH ROAD AT-  
GRADE PUBLIC ROAD CROSSING  
(DOT NO. 817-631L)

AT

RAILROAD MILE POST 150.14 – KEARNEY SUBDIVISION

AT

GRAND ISLAND,  
HALL COUNTY,  
NEBRASKA

City Original



UPRR Folder No.: 2840-08

UPRR Audit No. \_\_\_\_\_

## PUBLIC HIGHWAY AT-GRADE CROSSING MAINTENANCE & USE AGREEMENT

**THIS AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, or its predecessor in interest, with a mailing address at 1400 Douglas Street, MS 1690, Omaha, Nebraska, 68179-1690 ("Railroad"), and (the) **CITY OF GRAND ISLAND**, a Nebraska municipal corporation with a mailing address at PO Box 1968, Grand Island, Nebraska 68802-1968 ("City").

### RECITALS:

Presently, the City utilizes the Railroad's property for the existing North Road at-grade public road crossing, (DOT No. 817-631L), at Railroad's Mile Post 150.14 on it's Kearney Subdivision, in Grand Island, Hall County, Nebraska (hereinafter the "Roadway").

The City now desires to undertake as its project (the "Project") the surface rehabilitation of the approaches of the existing Roadway. The existing aforementioned roadway, as improved is hereinafter the "Roadway" and where the Roadway crosses the Railroad's property is the "Crossing Area" in the location shown on the Railroad Location Print marked **Exhibit A**, attached hereto and hereby made a part hereof.

The Railroad and the City and entering into this agreement to cover the above.

### AGREEMENT:

NOW THEREFORE, in consideration of the premises and of the promises and conditions hereinafter set forth, the parties hereto agree as follows:

#### **SECTION 1.**

The exhibits below are attached hereto and hereby made a part hereof.

Exhibit A	Railroad Location Print
Exhibit B	Railroad's General Terms and Conditions
Exhibit C	Railroad's Form of Contractor's Right of Entry Agreement

#### **SECTION 2.**

The General Terms and Conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

#### **SECTION 3.**

A. The City, at its expense, shall prepare, or cause to be prepared by others, the detailed plans



and specifications and submit such plans and specifications to the Railroad's Assistant Vice President Engineering – Design, or his authorized representative, for review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.

- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering–Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. Notwithstanding the Railroad's approval of the Plans, the Railroad shall not be responsible for the permitting, design, details or construction of the Roadway.

#### SECTION 4.

The Railroad, at the City's expense, shall maintain the crossing between the track tie ends. If, in the future, the City elects to have the surfacing material between the track tie ends replaced with paving or some surfacing material other than timber planking, the Railroad, at City's expense, shall install such replacement surfacing.

#### SECTION 5.

- A. The City, at its sole cost and expense, shall provide traffic control, barricades, and all detour signing for the crossing work, provide all labor, material and equipment to install concrete or asphalt street approaches, and if required, will install advanced warning signs, and pavement markings in compliance and conformance with the Manual on Uniform Traffic Control Devices.
- B. The City, at its expense, shall maintain and repair all portions of the Roadway approaches that are not within the track tie ends.

#### SECTION 6.

If City's contractor(s) is/are performing any work described in Section 4 above, then the City shall require its contractor(s) to execute the Railroad's standard and current form of Contractor's Right of Entry Agreement attached hereto as **Exhibit C**. City acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor(s) of the need to execute the Agreement. Under no circumstances will the City's contractor(s) be allowed onto the Railroad's premises without first executing the Contractor's Right of Entry Agreement.

#### SECTION 7.

Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. City or its contractor(s) shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through





Friday, except holidays) at 1-800-336-9193 (also a 24-hour number, 7 day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the City or its contractor(s). If it is, City or its contractor(s) will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### SECTION 8.

The City, for itself and for its successors and assigns, hereby waives any right of assessment against the Railroad, as an adjacent property owner, for any and all improvements made under this agreement.

#### SECTION 9.

Covenants herein shall inure to or bind each party's successors and assigns; provided, no right of the City shall be transferred or assigned, either voluntarily or involuntarily, except by express prior written consent of the Railroad.

#### SECTION 10.

The City shall, when returning this agreement to the Railroad (signed), cause same to be accompanied by such Order, Resolution, or Ordinance of the governing body of the City, passed and approved as by law prescribed, and duly certified, evidencing the authority of the person executing this agreement on behalf of the City with the power so to do, and which also will certify that funds have been appropriated and are available for the payment of any sums herein agreed to be paid by City.

#### SECTION 11.

Upon execution and delivery of this Agreement, the City shall pay to the Railroad an administrative handling charge of **ONE THOUSAND HUNDRED DOLLARS (\$1,000.00)**.

#### SECTION 12. **SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.**

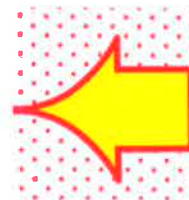
If the City will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the City agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The City confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directly from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the City and not of the Railroad and (ii) the City shall not delegate any ARRA reporting responsibilities to the Railroad. The City also confirms and acknowledges that (i) the Railroad shall provide to the City the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the City to perform and complete the ARRA reporting documents. The Railroad confirms that the City and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project.



IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be executed as of the day and year first hereinabove written.

**UNION PACIFIC RAILROAD COMPANY**  
(Federal Tax ID #94-6001323)

By: \_\_\_\_\_  
PAUL G. FARRELL  
Senior Manager Contracts



HERE

WITNESS:

**CITY OF GRAND ISLAND**

\_\_\_\_\_

By \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_



# EXHIBIT A

## To Public Highway At-Grade Crossing Maintenance & Use Agreement

### Cover Sheet for the Railroad Location Print



### 1. Flagging.

**UNION PACIFIC RAILROAD COMPANY**

KEARNEY SUBDIVISION  
RAILROAD MILE POST 150.14  
GPS: N 40.90240375°, W 98.39556592°  
GRAND ISLAND, HALL CO., NE.

To accompany an agreement with the  
**CITY OF GRAND ISLAND**  
 covering the maintenance, use & surface rehabilitation of  
 the approaches to an existing at-grade public road crossing.

Folder No. 2840-08

Date: December 4, 2013

**WARNING**

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE  
OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.  
PHONE: 1-(800) 336-9193

# EXHIBIT B

## To Public Highway At-Grade Crossing Maintenance & Use Agreement

### Cover Sheet for the General Terms & Conditions



## **EXHIBIT B**

### **TO PUBLIC HIGHWAY AT-GRADE CROSSING MAINTENANCE & USE AGREEMENT**

#### **GENERAL TERMS AND CONDITIONS**

#### **SECTION 1. CONDITIONS AND COVENANTS**

- A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The City shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the City shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the City for the purpose of conveying electric power or communications incidental to the City's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the City to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the City shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.
- C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The City shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the City at its own expense settles with and obtains releases from such nonparties.
- D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.
- E. So far as it lawfully may do so, the City will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the City will acquire all such other property and rights at its own expense and without expense to the Railroad.

#### **SECTION 2. CONSTRUCTION OF ROADWAY**

- A. The City, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- B. Except as may be otherwise specifically provided herein, the City, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the City shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.
- C. All construction work of the City upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.



- D. All construction work of the City shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the City. The City hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

### **SECTION 3. INJURY AND DAMAGE TO PROPERTY**

If the City, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the City is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the City at the City's own expense, or by the Railroad at the expense of the City, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

### **SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK**

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the City of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the City shall reimburse the Railroad for the amount of the contract.

### **SECTION 5. MAINTENANCE AND REPAIRS**

- A. The City shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.
- B. If, in the future, the City elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the City's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the City shall bear the expense of such repairs or replacement.

### **SECTION 6. CHANGES IN GRADE**

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the City shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

### **SECTION 7. REARRANGEMENT OF WARNING DEVICES**

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

### **SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS**

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the City that the work will be performed in a safe manner and in conformity with the following standards:

- A. **Definitions.** All references in this Agreement to the City shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work



of the City shall include work both within and outside of the Railroad's property.

- B. **Entry on to Railroad's Property by City.** If the City's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the City shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the City, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the City's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of City's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.
- C. **Flagging.**
- (i) If the City's employees need to enter Railroad's property as provided in Paragraph B above, the City agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by City in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform City whether a flagman need be present and whether City needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill City for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, City agrees that City is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
  - (ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, City shall pay on the basis of the new rates and charges.
  - (iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though City may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, City must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, City will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.
- D. **Compliance With Laws.** The City shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The City shall use only such methods as are consistent with safety, both as concerns the City, the City's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The City (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the City to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the City shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The City further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.



- E. **No Interference or Delays.** The City shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.
- F. **Supervision.** The City, at its own expense, shall adequately police and supervise all work to be performed by the City, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the City for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the City with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the City will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.
- G. **Suspension of Work.** If at any time the City's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the City is being or is about to be done or prosecuted without due regard and precaution for safety and security, the City shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
- H. **Removal of Debris.** The City shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the City at the City's own expense or by the Railroad at the expense of the City. The City shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.
- I. **Explosives.** The City shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.
- J. **Excavation.** The City shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The City shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The City, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the City in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
- K. **Drainage.** The City, at the City's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The City, at the City's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the City, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The City shall not obstruct or interfere with existing ditches or drainage facilities.
- L. **Notice.** Before commencing any work, the City shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.
- M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption



and loss of revenue and profits. City shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the City. If it is, City will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### **SECTION 9. INTERIM WARNING DEVICES**

If at anytime it is determined by a competent authority, by the City, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the City shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

#### **SECTION 10. OTHER RAILROADS**

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

#### **SECTION 11. BOOKS AND RECORDS**

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of City for a period of three (3) years following the date of Railroad's last billing sent to City.

#### **SECTION 12. REMEDIES FOR BREACH OR NONUSE**

- A. If the City shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the City will reimburse the Railroad for the expenses thereof.
- B. Nonuse by the City of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the City hereunder.
- C. The City will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

#### **SECTION 13. MODIFICATION - ENTIRE AGREEMENT**

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the City and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the City shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the City and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.



# EXHIBIT C

To Public Highway At-Grade Crossing  
Maintenance & Use Agreement

Cover Sheet for the  
Railroad's Form of  
Contractor's Right of Entry Agreement

UPRR Folder No. \_\_\_\_\_  
(Folder Number)

UPRR Audit No.: \_\_\_\_\_  
(Audit Number)

## CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

\_\_\_\_\_  
(NAME OF CONTRACTOR)  
a \_\_\_\_\_ corporation ("Contractor").  
(State of Incorporation)

### RECITALS:

Contractor has been hired by \_\_\_\_\_  
(Name of Public Agency)  
("Public Agency") to perform work relating to

\_\_\_\_\_  
(Work to be Performed)  
(the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad Mile Post \_\_\_\_\_ on Railroad's \_\_\_\_\_,  
(Mile Post) (Name of Subdivision)  
DOT No. \_\_\_\_\_, located at or near \_\_\_\_\_, in \_\_\_\_\_ County,  
(DOT Number) (City) (County)  
State of \_\_\_\_\_, as such location is in the general location shown on the Railroad Location  
(State)

Print marked **Exhibit A**, and as detailed on the Detailed Prints collectively marked **Exhibit A-1**, each attached hereto and hereby made a part hereof, which work is the subject of a contract dated

\_\_\_\_\_ between Railroad and the Public Agency.  
(Date of C&M Agreement)

The Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

### AGREEMENT:

**NOW, THEREFORE**, it is mutually agreed by and between Railroad and Contractor, as follows:

**ARTICLE 1 - DEFINITION OF CONTRACTOR.**

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

**ARTICLE 2 - RIGHT GRANTED; PURPOSE.**

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4B below.

**ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.**

The terms and conditions contained in **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this Agreement.

**ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.**

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative(s) or his or her duly authorized representative (the "Railroad Representative"):

*Name & Address of MTM*

*Name & Address of MSM*

- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

**ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.**

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

**ARTICLE 6 - TERM; TERMINATION.**

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until \_\_\_\_\_, unless sooner terminated as herein provided,  
(Expiration Date)  
or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.
- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

**ARTICLE 7 - CERTIFICATE OF INSURANCE.**

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.
- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company  
1400 Douglas Street, Mail Stop 1690  
Omaha, Nebraska 68179-1690  
UPRR Folder No. \_\_\_\_\_  
(Folder Number)

**ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.**

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

**ARTICLE 9- ADMINISTRATIVE FEE.**

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad **FIVE HUNDRED DOLLARS (\$500.00)** as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.**

- A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.
- B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable



Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

**ARTICLE 11 - EXPLOSIVES.**

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY**  
(Federal Tax ID No. 94-6001323)

By \_\_\_\_\_  
PAUL G. FARRELL  
Senior Manager - Contracts

\_\_\_\_\_  
(NAME OF CONTRACTOR)

By \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBITS A & A-1**

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Shall be the Railroad Location Print & Detailed Prints

SAMPLE



## **EXHIBIT B**

### **TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

#### **GENERAL TERMS AND CONDITIONS**

##### **Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

- A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

##### **Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED**

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

- B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

**Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.**

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.
- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

**Section 4. LIENS.**

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

**Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

- A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.
- B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

**Section 6. PERMITS - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

**Section 7. SAFETY.**

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations



and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

#### **Section 8. INDEMNITY.**

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.
- C. **Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.**
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

#### **Section 9. RESTORATION OF PROPERTY.**

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

**Section 10. WAIVER OF DEFAULT.**

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

**Section 11. MODIFICATION - ENTIRE AGREEMENT.**

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

## EXHIBIT C

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### INSURANCE PROVISIONS

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. Commercial General Liability Insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. Business Automobile Coverage Insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. Workers' Compensation and Employers' Liability insurance.** Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. Railroad Protective Liability Insurance.** Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

- E. Umbrella Or Excess Insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

- F. Pollution Liability Insurance.** Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

#### **Other Requirements**

- G.** All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

## **EXHIBIT D**

### **TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

#### **MINIMUM SAFETY REQUIREMENTS**

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

#### **I. CLOTHING**

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- i. Waist-length shirts with sleeves.
  - ii. Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
  - iii. Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

#### **II. PERSONAL PROTECTIVE EQUIPMENT**

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- i. Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- ii. Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- iii. Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools
  - 150 feet of jet blowers or pile drivers
  - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- iv. Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

#### **III. ON TRACK SAFETY**

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- i. Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.

- ii. Wear an orange, reflectorized workwear approved by the Railroad Representative.
- iii. Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

#### **IV. EQUIPMENT**

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
  - i. Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - ii. Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
  - iii. Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

#### **V. GENERAL SAFETY REQUIREMENTS**

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - i. Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - ii. Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - iii. In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - iv. Avoid walking or standing on a track unless so authorized by the employee in charge.
  - v. Before stepping over or crossing tracks, look in both directions first.
  - vi. Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

RESOLUTION 2013-415

WHEREAS, annually the City of Grand Island Engineering and Street Divisions plan, design and contract an asphalt resurfacing project as part of the overall plan for maintaining and preserving the City's pavement network; and

WHEREAS, one of the locations planned for resurfacing is at North Road from the intersection of Stolley Park Road to US Highway 30; and

WHEREAS, resurfacing work will be required at the Union Pacific Railroad (UPRR) Crossing at such intersection; and

WHEREAS, in accordance with the Nebraska Highway-Rail Regulations, Title 415 Chapter 6 of the Nebraska Administrative Code (Construction, Repair, and Maintenance), the public entity with jurisdiction over the roadway at the railroad crossing is responsible for the maintenance of the pavement approaching the crossing and between multiple tracks; and

WHEREAS, execution of a Public Highway At-Grade Crossing Maintenance & Use Agreement is required by the UPRR to allow resurfacing work to occur at the railroad crossing/intersection of Stolley Park Road and North Road; and

WHEREAS, an administrative handling charge of \$1,000.00 is due to the UPRR upon execution and delivery of the agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Public Highway At-Grade Crossing Maintenance & Use Agreement between Union Pacific Railroad Company and the City of Grand Island is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, December 30, 2013.

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Jay Vavricek, Mayor

Attest:

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RaNae Edwards, City Clerk

Approved as to Form	☐ _____
December 24, 2013	☐ City Attorney



# **City of Grand Island**

## **Monday, December 30, 2013**

### **Special Meeting**

## **Item J-1**

### **Approving Payment of Claims for the Period of December 18, 2013 through December 30, 2013**

*The Claims for the period of December 18, 2013 through December 30, 2013 for a total amount of \$3,474,668.16. A MOTION is in order.*

Staff Contact: Jaye Monter, Finance Director