

# **City of Scottsbluff, Nebraska**

**Monday, December 16, 2013**

**Regular Meeting**

## **Item Resolut.9**

**Council to consider adoption of the amended pension plan for fire employees and approve the Ordinance.**

**Staff Contact: Jana Bode, HR Director**

**ADOPTION AGREEMENT**  
**CITY OF SCOTTSBLUFF**  
**FIREFIGHTERS' RETIREMENT**  
**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 Scottsbluff, 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 Scottsbluff, Nebraska Firefighters' Retirement 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 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 Manager 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 Manager 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 Scottsbluff Firefighters' Retirement 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: 2525 Circle Drive  
City, State, Zip Code: Scottsbluff, Nebraska 69361  
Attention: Jana Bode  
Telephone: (308) 630-6216
- (4) Retirement Committee: the Mayor, the City Manager, Dana Miller, Anthony Murphy, Jamalee Wallace and D.J. Glen, 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 Scottsbluff, 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.: 47-6006350
- (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: 003
- (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, 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). (*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 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 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*);
- X (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

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*)

\_\_\_\_\_ (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]*

☐ 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]*

☒ 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]

\_\_\_\_\_ must

X 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  
Year Vesting (Police):

	Through June 30, 2012 <u>(10 Yr. Graded)</u>	Beginning July 1, 2012 <u>(7 Yr. Graded)</u>
Less than 2 years	0%	0%
2 years but less than 3 years	0%	40%
3 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:

☐ (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.)*

\* See Section "S" below for special rule applicable to this 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

☒ 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

☒ Retirement Committee (*Police and Fire*)

☒ may

☐ may not

direct the Trustee in the investment management of Plan assets.

(4) Participant Loans: *[Section 10.13]*

☐ are permitted

☒ 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)

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.)*

- ☒ (1) a single sum
- ☒ (2) straight life annuity
- ☒ (3) straight life annuity with a guarantee of at least 60 monthly payments
- ☒ (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): Single sum in-kind.

**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 (*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 (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. SUPPLEMENTAL ELECTIONS, INFORMATION AND PROVISIONS**

Pursuant to Section 1.6 of the Basic Plan Document, the following elections, information and provisions are hereby made, provided and specified and shall be incorporated into and become a part of this Plan notwithstanding any other provision of this Adoption Agreement or the Basic Plan Document to the contrary:

Adoption Agreement I(6) & Basic Plan Document Section 6.1 "Events of Maturity":

Add subsection (c) to Section 6.1 as follows:

“(c) The date the Participant attains age 60 (sixty) or earlier retirement date under the Plan.”

Basic Plan Document Section 7.6 “Optional Forms of Distribution”:

The last paragraph of Section 7.6 is revised to read as follows:

“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 (with the exception of the right to elect a lump-sum distribution in lieu of a deferred benefit pursuant to Section 5.1.3(c)).”

- T.** 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 SCOTTSBLUFF, 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 Wells Fargo Center, 4<sup>th</sup> Floor, P.O. Box 82408, Lincoln, Nebraska 68501-2408 or by calling (800)729-5882.

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 SCOTTSBLUFF, NEBRASKA, Employer

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

WELLS FARGO BANK, Trustee

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Date \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SCOTTSBLUFF, NEBRASKA TO AMEND AND RESTATE THE CITY OF SCOTTSBLUFF FIREFIGHTERS' RETIREMENT 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 CITY COUNCIL OF THE CITY OF SCOTTSBLUFF, SCOTTS BLUFF COUNTY, NEBRASKA:

SECTION 1. Pursuant to Nebraska Statutes, Sections 16-1020 through and including 16-1042, the City maintains the City of Scottsbluff, Nebraska Firefighters' Retirement 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 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 Manager 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 Manager 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.

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

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

CITY OF SCOTTSBLUFF, NEBRASKA

\_\_\_\_\_  
\_\_\_\_\_, Mayor

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_  
City Clerk