

**CITY OF LEXINGTON, NEBRASKA,
POLICE OFFICERS' PENSION PLAN**

Introduction and Parties

This Trust Agreement, made and entered into as of January 1, 1984, as amended and restated effective ~~June 12, 2001,~~January 1, 2008, and as subsequently amended, is hereby further amended and restated effective January 1, ~~2008~~2015 (except as otherwise provided herein), by and between the City of Lexington, Nebraska, and ~~First National~~Union Bank of Omaha& Trust Company (hereinafter referred to as the "Trustee").

W I T N E S S E T H :

WHEREAS, to maintain its qualification as a tax-exempt money purchase pension plan and trust under Sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended, as said Sections apply to government plans, it is necessary that the Plan and Trust be amended to incorporate the applicable changes in tax laws and regulations ~~required for the Plan under the Economic Growth and Tax Relief Reconciliation Act of 2001, the Pension Funding Act of 2004, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, certain changes under~~that have been enacted or promulgated since the Plan and Trust was last restated, including the requirements enacted by the Pension Protection Act of 2006, ~~and all other changes required by the applicable~~the Heroes Earnings Assistance and Relief Tax Act of 2008, the Worker, Retiree, and Employer Recovery Act of 2008, the Small Business Jobs Act of 2010, the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, the Moving Ahead for Progress in the 21st Century Act, the American Taxpayer Relief Act of 2012, the Highway and Transportation Funding Act of 2014, the Cooperative and Small Employer Charity Pension Flexibility Act, and to adopt such additional amendments as required by law or as otherwise determined to be necessary and appropriate by the City of Lexington, Nebraska.

NOW, THEREFORE, pursuant to its power and authority to amend the Plan and Trust, the Plan and Trust is hereby amended and restated by the City of Lexington, Nebraska, as follows:

ARTICLE I

Creation and Purpose of Trust

1.1 Prior Plan. The City of Lexington, Nebraska (hereinafter referred to as the "City"), has maintained a pension system since January 1, ~~1984~~1984, as required by Nebraska Statutes to provide retirement benefits for its salaried Police Officers. This Plan and Trust has been established by the City of Lexington, Nebraska, to provide for the retirement system required by Nebraska statutes. The pension system for the City's Police Officers is established under a Plan and Trust which is hereby amended and restated to incorporate the applicable tax and statutory requirements for such retirement systems that have been enacted since the Plan and Trust was last restated, and to provide for the directed investment of Participant accounts. Except as otherwise stated, this amendment and restatement of the Plan is effective as of January 1, ~~2008~~2015. The rights and benefits of former Police Officers who retired or became eligible for other benefits under the prior pension system before January 1, 1984, shall be determined in accordance with the provisions of the prior pension system at the time such benefits were granted. The rights and benefits of Police Officers who retired or became eligible for other benefits after December 31, 1983 and before January 1, ~~2008~~2015, shall be determined in accordance with the provisions of this Plan and Trust which were in effect prior to January 1, ~~2008~~2015.

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

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

ARTICLE II

Definitions and Construction

The following words and phrases when used in this Plan, unless the context clearly indicates otherwise, shall have the following meanings:

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

2.2 "City." City means the City of Lexington, Nebraska.

2.3 "Compensation." Compensation means the portion of the total amount of taxable salary or wages ~~paid by the City to a Participant for personal services,~~ as reported on the Participant's federal income tax withholding statement, that is paid by the City to a Participant for personal services as a Police Officer of the City, and in addition thereto, employee contributions picked-up by the City, as provided in Article V, to the extent not included in the Participant's gross income as salary or wages. Any amounts which are not currently includible in the Participant's gross income by reason of the application of Sections 125 or 457 of the Internal Revenue Code shall nevertheless be treated as Compensation for purposes of this Plan. Beginning with the Plan Year which commences on January 1, 2001, only the first \$200,000 of Compensation paid in a Plan Year, as adjusted after December 31, 2001, for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code, shall be taken into account for all purposes of the Plan. The Compensation limit in effect for a Plan Year is the Compensation limit in effect at the beginning of that Plan Year and applies to any period, not exceeding 12 months, over which Compensation is determined ("determination period"). If a determination period consists of fewer than 12 months, the annual Compensation limit will be multiplied by a fraction, the nominator of which is the number of months in the determination period, and the denominator of which is 12.

2.4 "Final Average Compensation." Final Average Compensation means the average Compensation received by the Participant ~~during the final sixty (60) months of his or her employment, divided by sixty (60); provided, however, for any Police Officer who retires, dies or becomes disabled after July 14, 1992, Final Average Compensation shall be determined on the basis of the Compensation paid in any~~ for the period of five (5) consecutive year period years preceding the ~~Police Officer's~~ Participant's elective retirement (the Retirement Date), death, or date of disability (as determined in Section 6.2) which produces the highest average.

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

2.6 "Pension Fund." Pension Fund means the trust fund established hereunder to provide for the payment of the benefits specified in the Plan, as described in Section 12.1.

2.7 "Plan." Plan means the City of Lexington, Nebraska Police Officers' Pension Plan and Trust, the terms of which are herein set forth, and as may be amended by the City from time to time.

2.8 "Plan Year." Plan Year means a 12-month period beginning on January 1 and ending on December 31.

2.9 "Police Officer." Police Officer means a person who is employed by the City as a full time police officer as determined by the City under its normal practices. A "leased employee" shall not be considered a Police Officer. For these purposes, a "leased employee" means any person, other than an employee of the City, who pursuant to an agreement between the City and any other person ("leasing organization") has performed services for the City on a substantially full-time basis for a period of at least one (1) year provided such services are performed under primary direction or control by the City.

2.10 "Regular Interest." Regular Interest means the rate of net earnings realized for any Plan Year or other valuation period beginning with the Plan Year which commenced January 1, 1984, as determined by the Retirement Committee in conformance with actual earnings or losses realized by the Pension Fund for any such year.

2.11 "Retirement Benefit." Retirement Benefit means the retirement income benefit payable to a Participant at his or her Normal or Early Retirement Date, or at his or her Deferred Retirement Date (as defined in Article VII). The normal form of the Retirement Benefit shall be a straight life annuity paying monthly benefits. The amount of retirement income benefit for any Participant shall be the amount of pension benefit that can be purchased or otherwise provided by the Participant's Retirement Value.

2.12 "Retirement Committee." Retirement Committee means the Retirement Committee as provided under Article XI of this Plan.

2.13 "Retirement Date." Retirement Date means the first day of the month immediately following the last day of employment with the City with respect to normal or early retirements, or the date benefit payments are to commence with respect to deferred retirement dates.

2.14 "Retirement Value." Retirement Value means the accumulated value, at any particular point in time, of the Participant's employee and employer contribution accounts as provided in Article V.

2.15 "Valuation Date." Valuation Date means each day the New York Stock Exchange is open.

ARTICLE III

Participation in Plan

3.1 Eligibility. All Police Officers employed by the City as of the date of this amendment and restatement of the Plan will continue to participate under the terms of this amended and restated Plan. All Police Officers first employed after such date, or any former Police Officers rehired by the City, will become eligible for participation in the Plan immediately as of the date hired or rehired by the City.

3.2 Entry Into Plan. All Police Officers employed by the City will automatically become Plan Participants upon meeting the eligibility requirements of this Article III.

3.3 Classes of Benefits Provided:

(a) This Plan provides for payment of a Retirement Benefit to each Participant who retires in accordance with the provisions of Article VII.

(b) This Plan further provides death benefits to beneficiaries, as provided in Article IX.

(c) This Plan further provides for disability pension benefits as provided in Article VI.

(d) This Plan further provides for the payment of benefits to Participants on termination of service for reasons other than death, disability, or retirement, as provided in Article X.

Unless otherwise specifically provided, any form of pension or annuity benefit under this Plan shall be the actuarial equivalent of the normal form of benefit specified in Section 8.4. For this purpose, "actuarial equivalent" shall mean equality in value of the aggregate amount of benefit expected to be received under different forms or at different times based on the mortality assumptions of the 1983 Group Annuity Table--Male (mortality will be determined by using the table's male mortality for Police Officers and the table's female mortality for spouses) and seven percent (7%) interest per annum; provided, however, for lump sum distributions, the male rate factors in effect for the Pension Benefit Guaranty Corporation for plan terminations at the time of distribution shall be used. Notwithstanding the foregoing, in the event that benefits provided for a Participant or beneficiary are obtained through the purchase of an annuity contract, the actuarial equivalency of any such form of benefit shall be the amount of pension benefit that can be purchased or otherwise provided by the Participant's Retirement Value.

3.4 Contributions Required. All Participants in this Plan, as a condition to participation in the Plan, are required to make individual employee contributions in accordance with Article V. The City will make employer contributions in accordance with Article V. In

addition thereto, the cost of all benefits provided by this Plan in excess of benefits provided by the Participant's Retirement Value shall be provided by contributions by the City.

3.5 Transfers of Plan Contributions. In the event that after four or more years of employment as a Police Officer by another first-class city in Nebraska, a Police Officer terminates his or her employment with such other city for the purposes of becoming a Police Officer of the City, and such new employment commences within one hundred twenty days of the termination of employment, the full accumulated value of his or her employee contribution account and the vested portion of his or her employer contribution account at the time of termination may be directly transferred to this Plan. The transferred funds shall be administered by the Retirement Committee under a segregated account under the Plan established for this purpose. For the purposes of applying the vesting schedule of Article X to employer contributions made following the commencement of new employment, such Police Officer shall be deemed a new employee. The Trustee shall also make such direct transfers to the retirement system of any other first-class city in Nebraska for a Participant who terminates employment with the City and becomes a Police Officer of such other first-class city. Upon the transfer of the Participant's employee account and the vested interest of his or her employer account, all obligations of this Plan and the City to such Participant and his or her beneficiary shall terminate.

3.6 Eligible Rollover Distributions. 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 Retirement Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this Section 3.6, the following definitions shall apply:

(a) Eligible ~~rollover—distribution~~Rollover Distribution: An eligible rollover distribution is any distribution of all or any portion of the balance ~~to the credit of of the Participant's nonforfeitable accrued benefit that is credited to~~ 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 portion of a distribution to the extent such distribution is a required minimum distribution under Section 401(a)(9) of the Internal Revenue Code; ~~effective for distributions after December 31, 1998,~~ any hardship distribution (if permitted by ~~this Plan~~the Plan); and any portion of a distribution that is not includible in gross income.

For purposes of this Section ~~3.6(a)~~3.6, a portion of the distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions or other amounts which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in ~~Section~~Sections 408(a) or 408(b) of the Internal Revenue Code, or to a qualified ~~defined-contribution~~ plan described in ~~Section~~Sections 401(a) or 403(~~a~~b) of the Internal Revenue Code that ~~agrees to separately~~provides for a

separate account for amounts so transferred (and 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. An eligible rollover distribution to a non-spouse designated beneficiary must be made by a direct trustee-to-trustee transfer.

(b) Eligible ~~retirement plan~~ Retirement Plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, an annuity contract described in Section 403(b) of the Internal Revenue Code, an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state ~~and which agrees to separately account for amounts transferred into such plan from this Plan,~~ or a qualified ~~plan trust~~ described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover ~~distribution. This distributions and which agrees to separately account for amounts transferred into such plan from this Plan.~~ The definition of "Eligible Retirement Plan" shall also apply in the case of a distribution to a surviving spouse of the Participant or to a spouse or former spouse who is the alternate payee under a ~~Qualified Domestic Relations Order~~ qualified domestic relations order as defined in Section 414(p) of the Internal Revenue Code, ~~that accepts the distributee's eligible rollover distribution.~~ For purposes of a distribution on behalf of a designated beneficiary who is not a spouse or former spouse of the Participant, "Eligible Retirement Plan" shall mean an individual retirement account described in Section 408(a) of the Internal Revenue Code or an individual retirement annuity described in Section 408(b) of the Internal Revenue Code established for the purpose of receiving a distribution on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Section 402(c)(11) of the Internal Revenue Code. For distributions made after December 31, 2007, an "Eligible Retirement Plan" shall include a Roth IRA described in Section 408A of the Internal Revenue Code.

(c) Distributee: A distributee includes a Participant or former Participant. ~~In addition, and the Participant's or former Participant's surviving spouse and the Participant's or former Participant's spouse or former spouse who is the an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, are distributees with regard to the interest of the spouse or former spouse.~~ Effective, January 1, 2007, "distributee" shall also include a Participant's designated beneficiary who is not the Participant's surviving spouse or former spouse, including a trust that qualifies as a designated beneficiary under Section 401(a)(9)(E) of the Internal Revenue Code.

(d) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

Distributions which are subject to the foregoing ~~rules~~requirements may commence less than thirty (30) days after notice to the distributee is given, provided that (i) the Retirement Committee clearly informs the distributee that the distributee has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular ~~distribution~~option), and (ii) the distributee, after receiving the notice, affirmatively elects a distribution.

ARTICLE IV

Service

4.1 Service. The period of service ("Service") of a Participant will be his or her period of employment by the City as a paid Police Officer from his or her most recent date of hire by the City up to the date of his or her Termination of Employment. For purposes of vesting in the amounts credited to a Participant's employer contribution account, years of Service performed prior to January 1, 1966, shall be disregarded. Service performed as a police officer of any other city or governmental entity shall be disregarded for all purposes under the Plan.

4.2 Termination of Employment. A Participant's Termination of Employment will occur on the date of severance of employment as a Police Officer before the Participant's Normal or Early Retirement Date (as defined in Article VII) as determined under the City's normal employment policies, other than a severance on account of death or permanent disability in the line of duty (as defined in Section 6.1), subject to the following:

(a) Termination of active service with the City on account of a leave of absence granted by the City, whether required by law or under established leave policies of the City, shall not be considered a Termination of Employment for the purposes of this Plan unless the Participant fails to return to active service with the City within one week after the date such leave was to have ended, in which event a Termination of Employment will be considered to have occurred at the time the leave of absence was to have ended;

(b) Termination of active service with the City on account of entrance into the Armed Forces of the United States during any period of qualified military service as defined in Section 414(u) of the Internal Revenue Code shall not be considered a Termination of Employment (and such Participant's Service shall not be interrupted) for the purposes of this Plan unless the Participant fails to return to active service with the City within the applicable period required under the Uniformed Services Employment and Reemployment Rights Act of 1994 after the date the Participant first became eligible for release from active duty with such Armed Forces, in which event a Termination of Employment will be considered to have occurred as of the end of such 90-day period; and

(c) Termination of active service with the City on account of sick leave shall not be considered a Termination of Employment for the purpose of this Plan, unless the Participant fails to return to work when pronounced fit for duty.

4.3 Benefits for Period of Active Military Service. A Police Officer who is reemployed on or after December 12, ~~1994~~1994, pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, may pay to the Plan and Trust after the date of his or her return from active military service and within the period required by law, not to exceed five years, an amount equal to the sum of the employee contributions which would have been made by the Participant pursuant to Section 5.3 during the period of military service for which credited Service is desired. For this purpose, the Police Officer's Compensation during the period of military service shall be assumed to have been the same rate of Compensation the Police Officer would have received from the City or, if such Compensation is not reasonably determinable, the Police Officer's average rate of Compensation during the 12-month period immediately preceding the period of military service. Payment for such service shall be made through direct payment, installment payments, or an irrevocable payroll deduction authorization between the Police Officer and the City. To the extent such make-up contributions are made, the Police Officer's period of military service shall be deemed as Service under the Plan; and the City shall make on behalf of the Police Officer the Matching Contributions described in Section 5.4 with respect to the make-up contributions.

Notwithstanding any provision of this Plan to the contrary, effective December 12, 1994, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

ARTICLE V

Contributions

5.1 Establishment of Accounts. The Trustee shall create and maintain separate accounts in the name of each Participant for the crediting of each Participant's contributions and matching City contributions. The account established for a Participant's contributions shall be designated as the "employee contribution account" and the account established for the City's contribution shall be designated as the "employer contribution account." As of the last day of each Plan Year, all accounts (including any segregated account established to hold transferred pension funds pursuant to Section 3.5) will be credited with a proportionate share of the Pension Fund's Regular Interest for such Plan Year and currently valued. At the direction of the Retirement Committee, more frequent valuations and interim adjustments of the Plan accounts may be made by the Trustee. Except as may otherwise be provided in Article XII, the Trustee shall not be required to maintain separate investments for any account.

5.2 Prior Employee Contributions and Matching Contributions by City. All retirement contributions made by a Participant to the predecessor pension system before January 1, 1984, and held by the City were transferred to such Participant's employee contribution account as of January 1, 1984. Interest will not be credited on such contributions for periods prior to January 1, 1984. At the time a Participant retires or terminates his or her employment with the City, the Participant's employer contribution account shall be credited, at such time, with an amount equal to the Participant's contributions that were made by such Participant prior to January 1, 1984 (the "Drop-in Amount"). No interest credit shall be added to the Drop-in Amount unless the City shall determine, at its sole discretion, to credit interest on the Drop-in Amount. At the sole option of the City, the Drop-in Amount may be made on a uniform basis for all Police Officers before their respective retirement or Termination of Employment. Amounts credited to the employer contribution account pursuant to this Section 5.2 shall be subject to the vesting schedule of Section 10.3.

5.3 Employee Contributions. ~~Beginning January~~Prior to October 1, 1984, 2013, each Participant will have employee contributions deducted from his or her periodic salary payments in an amount equal to six percent (6%) of the Participant's Compensation for such period. Effective with periodic salary payments made on or after October 1, 2013 and through September 30, 2015, each Participant will have employee contributions deducted from his or her periodic salary payments in an amount equal to six and one-half (6.5%) of the Participant's Compensation for such period. Effective with periodic salary payments made on or after October 1, 2015, each participant will have employee contributions deducted from his or her periodic salary payments in an amount equal to seven percent (7%) of the Participant's Compensation for such period. Such employee contributions shall be ~~paid into the Pension Fund and be~~ credited to the Participant's employee contribution account on a monthly basis, and shall be paid to the Pension Fund no later than the fifteenth (15th) day of the month following the month in which the ~~Employee Contributions~~employee contributions were deducted by the City from the Participant's salary.

5.4 Matching Employer Contributions. ~~Effective as of January 1, 1984, the~~The City will make employer contributions for each Participant in an amount equal to ~~six~~one hundred percent ~~(6%) of the Participant's Compensation~~100%) of employee contributions made under Section 5.3 of the Plan. Such contributions will be paid into the Pension Fund and credited to the Participant's employer contribution account on a monthly basis.

5.5 Additional City Contributions. The City will contribute any amounts necessary to fund retirement or other Plan benefits not provided by employee contributions or matching employer contributions. Such additional contributions will be held as an unallocated portion of the Pension Fund and will be credited or charged with a proportionate share of the total investment earnings or losses and appreciation and depreciation of the Pension Fund.

5.6 Pick Up Provisions. Effective as of January 1, 1984, the City shall pick up employee contributions required under Section 5.3 and deducted from the Compensation of Plan Participants, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code of 1986, as the same may be amended. ~~However, the City shall continue to withhold Federal income taxes based on these employee contributions until the Internal Revenue Service or the federal courts rule that, pursuant to Section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the Participant until such time that they are distributed to the Participants from the Plan.~~The City shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the Participant or a combination of a reduction in salary and offset against a future salary increase. In no event shall a Police Officer be given an option to choose to receive the amount of the required employee contribution in lieu of having such amount paid directly to the Pension Fund.

5.7 Voluntary Contributions. A Participant may elect, from time to time, to make voluntary cash contributions to the Plan, subject to the limitations of Section 5.8. Voluntary Contributions will be paid into the Pension Fund and credited to the Participant's employee contribution account when made. Such Voluntary Contributions shall thereafter be held, administered, invested, and distributed in the same manner as any other amounts credited to the Participant's employee contribution account.

5.8 Limitations on Contributions. Notwithstanding any provisions of the Plan to the contrary, the Annual Addition with respect to any Participant hereunder shall be limited to the Maximum Annual Addition in accordance with the provisions of Section 415 of the Internal Revenue Code, and the limitations, adjustments, and other requirements prescribed in Sections 5.8 to 5.10 shall at all times comply with the provisions of Section 415 of the Internal Revenue Code and the Income Tax Regulations thereunder, the provisions of which are hereby incorporated herein by this reference. For the purposes of Sections 5.8, ~~5.9~~5.9, and 5.10, the following definitions shall be applicable beginning with the Plan Year commencing January 1, 2002:

(a) "Annual Addition" shall mean, with respect to any Limitation Year, the sum of the following which are actually credited to a Participant's accounts as of any date within such Plan Year:

- (1) All contributions by the City (including the employee contributions which are treated as employer contributions pursuant to Section 5.6) allocated to a Participant;
- (2) All forfeitures, if any, allocated to a Participant;
- (3) All of the Participant's Voluntary Contributions;
- (4) Amounts described in Sections 415(l)(2) and 419A of the Internal Revenue Code; and
- (5) Allocations under a simplified employee pension plan.

Contributions by the City are treated as credited to a Participant's accounts under the Plan for a particular Limitation Year only if the contributions are actually made to the Plan no later than the fifteenth (15th) day of the tenth (10th) calendar month following the end of the fiscal year with or within which such Limitation Year ends.

(b) The "Maximum Annual Addition" which shall be permitted during any Limitation Year with respect to any Participant hereunder shall be the lesser of:

- (1) \$40,000 (as such limit may be adjusted on and after January 1, 2002, for increases in costs of living in accordance with Section 415(d) of the Internal Revenue Code in effect for that Limitation Year), or
- (2) 100 percent of the Participant's compensation (as defined in subsection (e) below) paid to the Participant by the City for such Plan Year (subject to the Compensation limitation of Section 401(a)(17)(B) of the Internal Revenue Code).

The limit in subsection (b)(2) above shall not apply to any contribution for medical benefits after a separation from service (within the meaning of Sections 401(h) or 419(f)(2) of the Internal Revenue Code) which is otherwise treated as an Annual Addition.

(c) "Excess Amounts" shall mean the excess of the Participant's Annual Addition for the Limitation Year over the applicable Maximum Annual Addition as specified in this Section 5.8.

(d) "Limitation Year" shall mean the Plan Year for this Plan. In lieu thereof, the City may adopt any other 12 consecutive month period by amending the Plan. If the City is a member of a controlled group of corporations, trades or businesses

under common control or an affiliated service group (as defined in Sections 414(b), (c) or (m) of the Internal Revenue Code) the election to use a consecutive 12 month period other than the Plan Year must be made by all members of the group that maintains the Plan.

(e) "Compensation" shall mean wages within the meaning of Section 3401(a) of the Internal Revenue Code (for purposes of income tax withholding at the source) plus amounts that would be included in wages but for an election under Sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code.

Except as provided herein, Compensation for a specified period is the Compensation actually paid or made available (or if earlier, includible in gross income) during such period.

Compensation for a Limitation Year shall also include Compensation paid by the later of 2 ~~4~~² $\frac{1}{2}$ months after a Participant's severance from employment with the City Plan or the end of the Plan Year that includes the date of the severance from employment with the City, if 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 absent a severance from employment, the payments would have been paid to the Participant while the Participant continued in employment with the City.

Any payments not described above shall not be considered Compensation if paid after severance from employment, even if they are paid by the later of 2 ~~4~~² $\frac{1}{2}$ months after the date of severance from employment or the end of the Plan Year that includes the date of severance from employment, except, payments to an individual who does not currently perform services for the City by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the City rather than entering qualified military service.

Back pay, within the meaning of Section 1.415(c)-2(g)(8) of the Income Tax Regulations, 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 in this definition.

If Compensation for any prior determination period is taken into account in determining a Participant's contributions 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 determination period.

5.9 Limitations for Multiple Plans. In the event that any Participant is a Participant in any other qualified defined contribution plans maintained by the City or any

trade or business under common control with the City during any Limitation Year, the sum of such Participant's Annual Additions under all such qualified defined contribution plans shall be subject to the limitation set forth in Section 5.8. Any Excess Amounts which result during a Limitation Year shall be deemed to have occurred under the City's other qualified defined contribution plans before being deemed to have resulted from contributions allocated to a Participant's accounts under this Plan.

5.10 Adjustments to Annual Additions. If in any Limitation Year an Excess Amount should result for any Participant, then such Excess Amount may be corrected in accordance with the Employee Plans Compliance Resolution System ("EPCRS") as set forth in IRS Revenue Procedure ~~2006~~[2013-2712](#) or any superseding guidance, including but not limited to the Income Tax Regulations under Section 415 of the Internal Revenue Code.

5.11 Adjustments to Section 415 Limitations. The provisions of Section 5.8, ~~5.9~~[5.9](#), and 5.10 are intended to meet the requirements of Section 415 of the Internal Revenue Code, as amended, and such provisions shall by this reference, incorporate any changes made to such Code section and the Income Tax Regulations thereunder as the same may apply to this Plan.

ARTICLE VI

Disability

6.1 Disability Benefit. Upon establishing the incurrence of a disability (as defined below) while in the line of duty, the disabled Participant shall be eligible to receive an immediate disability pension in the form of an annuity paying monthly benefits equal to fifty percent (50%) of Final Average Compensation for the period of disability. Such disability pension will commence as of the first day of the month following the establishment of the permanent disability; provided, however, in the case of permanent disability, the pension commencement date will be further delayed until all credit for unused annual or sick leave and other similar credits have been fully paid to the disabled Police Officer, provided there is no impairment to the Police Officer's regular compensation during such period of time. A Participant who receives disability benefits will not be entitled to any other benefits provided by this Plan, and his or her beneficiaries will not be eligible for death benefits under this Plan unless such disability should end prior to death and the Participant's Retirement Value had not been fully paid out as a disability pension before such death.

6.2 Definition of and Establishing Disability. A Participant shall be considered as having incurred a disability only if it is established upon written proof and certification provided to the City by a disinterested and duly licensed physician, that the Participant is completely unable, for reasons of accident or other cause while in the line of duty, to perform the duties of a Police Officer for the City. The physician conducting any required medical examination shall be selected or otherwise approved of by the City, and a Participant's failure to submit to any medical examination ordered by the City for this purpose shall cause the Participant to become ineligible for a disability pension.

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

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

6.3 Temporary Disability. In the event of temporary disability incurred while in the line of duty, the Participant will receive his or her salary during the continuance of such disability for a period not to exceed twelve (12) months; provided, however, if it shall be determined by the City Council or other appropriate municipal authorities of the City within the said twelve (12) month period that such disability has become a full disability as defined in

Section 6.2, then the Participant's salary will cease and the Participant will be entitled to the disability pension benefit provided by this Article VI.

6.4 Workers' Compensation Benefit. All payments of disability pension benefits under this Article VI shall be subject to deduction of Workers' Compensation Benefits paid under Nebraska Workers' Compensation Act, as provided in Section 13.7. If a Participant accepts a lump sum settlement in lieu of all or part of the periodic benefit payable as Workers' Compensation Benefits, such periodic payments will, for purposes of determining the monthly disability pension hereunder, be considered to continue for the applicable number of months by dividing the lump sum received by the monthly equivalent of such periodic payments, and such equivalent payment will reduce the monthly disability pension otherwise payable under this Article VI.

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

ARTICLE VII

Retirement Benefit

7.1 Election to Retire. Each Participant who elects to retire in accordance with this Article VII at his or her Normal or Early Retirement Date shall thereupon become entitled to receive a Retirement Benefit in accordance with Article VIII. In the event a retirement date is not specified by the Participant, Retirement Benefit payments will commence not later than sixty (60) days after the close of the Plan Year in which the later of the following occurs: (a) the Participant's Normal Retirement Date; or (b) the date the Participant terminates employment with the City.

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

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

7.4 Deferred Retirement Date. A Participant may continue employment past his or her Normal Retirement Date on a month to month basis. Any such Participant shall continue to contribute to his or her employee contribution account, and will be entitled to receive a normal retirement benefit on the first day of the month following the date employment ceases, computed in the manner set forth in Article VIII.

7.5 Annuity Commencement Date. Unless elected otherwise by the Participant, benefits under this Plan will commence as of the Participant's Retirement Date. At any time before the Retirement Date, a Participant may elect to defer his or her annuity commencement date to the first day of any specified month prior to attainment of age seventy (70).

ARTICLE VIII

Retirement Income Benefits

8.1 Normal Retirement Benefit. The normal Retirement Benefit payable to a Participant who retires in accordance with the provisions of Article VII on or after his or her Normal Retirement Date shall be in the form of a straight life annuity paying monthly benefits, such annuity to be equal to the amount of retirement income that can be purchased or otherwise provided by the Participant's Retirement Value as of the annuity commencement date elected by the Participant.

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

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

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

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

Any Participant entitled to a minimum pension benefit under this Section 8.3 may elect to receive such benefit in a form other than a straight life annuity as permitted under Section 8.5. Any optional form of benefit payment shall be the actuarial equivalent of the straight-life annuity that would otherwise be paid under this Section 8.3. Effective for Participants who retire on or after January 1, 1997, and pursuant to such rules and regulations established by the Retirement Committee, if the optional benefit selected is a lump sum cash payment, the actuarial equivalent of such form of benefit shall, at the request of the Participant, be determined by using the average cost for providing the normal form of the minimum pension benefit under three different paid-up annuity contracts ~~offered~~available for purchase in Nebraska by life insurance companies eligible to sell such contracts in Nebraska; one of the referenced annuity contracts shall be selected by the Participant, one shall be selected by the Retirement Committee, and one shall be selected by the City. Each of the annuity contracts selected shall all use a blended

non-gender-specific rate for the actuarial assumptions, morality assumptions, and annuity conversion rates of the annuity contract, except that if a blended, non-gender-specific rate is not available for purchase in Nebraska, the average cost of the annuity contracts selected for comparison shall be the arithmetic mean of the male-specific actuarial assumptions, mortality assumptions, or annuity conversion rates, as applicable to the Participant, and the female-specific actuarial assumptions, mortality assumptions, or annuity conversion rates, as applicable to the Participant, with said arithmetic mean determined by adding said male and female assumptions or conversion rates and dividing the sum by two.

8.4 Normal Form of Retirement Income. Unless the Participant has elected an optional form of annuity under Section 8.5 of this Article VIII, monthly payments will be made to the Participant commencing on his annuity commencement date, if he or she is then living, and terminating with the payment due prior to his or her death.

8.5 Optional Forms of Retirement Income. In lieu of the normal form of retirement income provided under Sections 8.3 or 8.4 of this Article VIII, one of the following optional benefit forms may be selected by the Participant, each of which shall be the actuarial equivalent of the normal form of benefit:

- (a) An annuity for the life of the Participant with a survivor annuity for the life of the beneficiary selected by the Participant equal to fifty percent (50%), seventy-five percent (75%) or one hundred percent (100%) of the annuity payable during the joint lives of the Participant and his or her designated beneficiary;
- (b) An annuity for the life of the Participant with monthly payments continuing to the Participant's designated beneficiary or beneficiaries if the Participant dies before he or she has received sixty (60), or one hundred twenty (120), or one hundred eighty (180) monthly payments (whichever option is selected), until the total number of monthly payments to the Participant and the designated beneficiary equals the guaranteed period selected by the Participant;
- (c) A single lump sum cash payment; provided, however, this benefit form shall be available to a Participant who is entitled to a minimum retirement benefit under Section 8.3 only if such Participant's Retirement from the City is on or after January 1, 1997, or
- (d) Installment or fixed period annuity, which provides for payments over a specific number of years, with no payments after the completion of such years.

Any optional annuity form of distribution shall be provided through the purchase by the Plan of an annuity contract from a legal reserve life insurance company with the Participant's Retirement Value. Any annuity contract purchased by the Plan shall be nontransferable and shall comply with all applicable requirements of the Plan, including the requirements of Section 401(a)(9) of the Internal Revenue Code and the Income Tax Regulations thereunder. Upon the purchase of an annuity contract for the benefit of a Participant and his or her designated beneficiary and the distribution of such policy to the Participant, all

obligations of the Plan to pay benefits to the Participant and his or her beneficiaries shall terminate, without exception.

The optional benefit form, if desired, must be specified in writing prior to the Participant's annuity commencement date. The monthly pension payable under any optional annuity form will be equal to the amount purchased or otherwise provided by the Participant's Retirement Value.

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

8.7 Distributions to Comply with Tax Laws. In all events, the time and method of distribution of benefits under this Article VIII shall be in accordance with the minimum distribution rules of Section 13.2 of the Plan as required by Section 401(a)(9) of the Internal Revenue Code and the Income Tax Regulations promulgated thereunder, and the provisions of Section 13.2 of the Plan and the requirements of Section 401(a)(9) of the Internal Revenue Code and such Income Tax Regulations shall supersede any distribution provisions of the Plan which are inconsistent therewith.

ARTICLE IX

Death Benefit

9.1 Death Benefit Prior to Annuity Commencement. If a Participant dies prior to his or her annuity commencement date (as defined at Section 7.5), and subject to the survivors' income benefits payable pursuant to Section 9.3, the Participant's beneficiary or beneficiaries, as provided in Section 9.4, will be entitled to the Participant's entire Retirement Value at the time of death of the Participant. Except as provided in Section 9.3, the Retirement Value may be received by the beneficiary in the form of a single lump-sum payment, straight life annuity or any other optional form of benefit provided under the Plan; provided, however, if the Participant's beneficiary is not a surviving spouse or a designated beneficiary (as defined at Section 13.2 of the Plan), and the Income Tax Regulations promulgated thereunder, the entire Retirement Value of the Participant shall be distributed to such beneficiary by the December 31 of the calendar year which contains the fifth anniversary of the Participant's death. The death benefit provided under this Section 9.1 shall be reduced by any payments to a surviving spouse or minor children pursuant to Section 9.3, if applicable. For a designated beneficiary, the Retirement Value may be paid over any period not to exceed such designated beneficiary's life expectancy. If the designated beneficiary is not the Participant's spouse, death benefits will commence no later than the December 31 of the calendar year following the calendar year of the Participant's death. If the designated beneficiary is the Participant's spouse, death benefit payments shall commence no later than the December 31 of the calendar year in which the Participant would have attained age 70-1/2 had he lived.

[For purposes of the death benefit provided under the Plan, in the case of a death of a Participant occurring on or after January 1, 2007, while performing qualified military services \(as defined in Section 414\(u\) of the Internal Revenue Code\), the Participant's beneficiary\(ies\) shall be entitled to any additional death benefit \(other than accrued benefits relating to the period of qualified military service\) provided under the Plan as if the Participant has returned to employment and then incurred a Termination of Employment on account of the Participant's death.](#)

9.2 Death Benefit After Annuity Commencement. In the event the Participant dies after his or her annuity commencement date, the death benefit, if any, will depend on the form of annuity benefit elected by the Participant. If the annuity benefit was in the form of a straight life annuity, or an annuity having no remaining guaranteed payments at death, the obligation of the Plan to pay benefits shall terminate on payment of the amount due prior to such Participant's death. Any excess Retirement Value not paid to the Participant prior to his or her death shall be retained by the Plan.

9.3 Survivor's Income Benefits.

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

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

(ii) the Participant had attained age fifty-five (55) and had completed twenty-one (21) years of Service with the City as a Police Officer,

then a monthly straight life pension benefit equal to twenty-five percent (25%) of the Participant's Final Average Compensation at the time of death shall be paid to the Participant's surviving spouse, if any, during his or her lifetime, or, following the death of the surviving spouse, to the minor child or children, if any, of such Participant during their minority, subject to deduction of the amounts paid as Workers' Compensation Benefits on account of death in the same manner as provided in Section 13.7. If there is more than one minor child eligible to receive benefits hereunder, each such child shall share equally in the total pension benefit to the age of his or her majority, and the portion of the pension benefit paid to any such child will cease upon his or her attainment of the age of majority.

(b) In the event of the death of any Participant prior to retirement while in the line of duty, or in case death is caused by or is the result of injuries received while in the line of duty, and if the deceased Participant is survived by a spouse or minor children, a monthly pension equal to fifty percent (50%) of the Participant's Final Average Compensation at the time of death shall be paid to the surviving spouse, or upon his or her remarriage or death, to the minor child or children during such child's or children's minority, subject to deduction of the amounts paid as Workers' Compensation Benefits on account of death in the same manner as provided in Section 13.7. If there is more than one minor child eligible to receive benefits hereunder, each such child shall share equally in the total pension benefit to the age of his or her majority, and the portion of the pension benefit paid to any such child will cease upon his or her attainment of the age of majority.

(c) To the extent that the Retirement Value at the date of death exceeds the amount required to purchase or otherwise provide the pension benefit specified under subsection (a) and (b) above, as reduced by any amounts paid as Workers' Compensation Benefits, the excess shall be paid to the Participant's beneficiary or beneficiaries in the manner provided in Section 9.1.

(d) If the deceased Police Officer is not survived by a spouse or minor children, the death benefits provided by this Section 9.3 shall not be applicable and the death benefits provided by the Plan shall be limited to those benefits described in Section 9.1.

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

9.4 Designation of Beneficiary.

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

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

9.5 Purchase of Annuity Contracts. Any annuity form of distribution under this Article IX may be provided through the purchase by the Plan of an annuity contract from a legal reserve life insurance company with the Participant's Retirement Value. Any annuity contract purchased by the Plan shall be nontransferable and comply with all applicable requirements of the Plan, including the requirements of Section 401(a)(9) of the Internal Revenue Code. Upon the purchase of an annuity contract and the distribution thereof to the beneficiary or beneficiaries entitled to the benefit provided thereunder, all obligations of the Plan to pay benefits to such beneficiary or beneficiaries shall terminate, without exception.

9.6 Distributions to Comply With Tax Laws. In all events, the time and method of distribution of benefits under this Article IX shall be in accordance with the minimum distribution rules of Section 13.2 of the Plan as required by Section 401(a)(9) of the Internal Revenue Code and the Income Tax Regulations promulgated thereunder, and the provisions of Section 13.2 of the Plan and the requirements of Section 401(a)(9) of the Internal Revenue Code and such Income Tax Regulations shall supersede any distribution provisions of the Plan which are inconsistent therewith.

ARTICLE X

Distribution of Benefits Upon Termination of Employment

10.1 Termination Benefit. A Participant who terminates employment with the City prior to becoming eligible for retirement or death or disability benefits under this Plan will be entitled to a termination benefit in accordance with this Article X and will not be entitled to any other benefits provided by this Plan.

10.2 Termination Benefit Payment Option. By providing written notification to the Retirement Committee, the Participant may: (a) elect to receive the accumulated value of his or her employee contribution account in the form of an immediate lump sum distribution with the vested portion of such Participant's employer contribution account, if any, to remain in the Pension Fund to provide a deferred retirement annuity; or (b) elect to leave all or a portion of the accumulated value of his or her employee contribution account, together with the vested portion of his or her employer contribution account, if any, in the Pension Fund to provide a deferred retirement annuity; or (c) elect to receive the accumulated value of his or her employee contribution account and the vested portion of his or her employer account in a single lump sum distribution. In the event a lump sum distribution of all or a portion of the employee account is made upon Termination of Employment, the Participant's Retirement Value shall be reduced by the amount of the lump sum distribution. In the event a lump sum distribution of the entire vested Retirement Value is made pursuant to (c) above, all obligations of the Plan and the City to provide benefits to the terminated Police Officer and his or her beneficiaries shall terminate, without exception.

10.3 Vesting Percentage. The vesting percentage applicable to the Participant's employer contribution account ~~upon~~for any Police Officer who incurs a Termination of Employment before July 1, 2012, shall be forty percent (40%) after the completion of four complete years of Service (as defined in Section 4.1), increasing by ten percent (10%) for each additional completed year of Service, up to one hundred percent (100%) after the completion of ten (10) complete years of Service. The vesting percentage applicable to the Participant's employer contribution account for any Police Officer who incurs a Termination of Employment after June 30, 2012, shall be forty percent (40%) after the completion of two complete years of Service, sixty percent (60%) after the completion of four years of Service, eighty percent (80%) after five years of Service, and one hundred percent (100%) after seven years of Service. Notwithstanding the foregoing, a Police Officer who attains age sixty (60) while in the employ of the City shall be one hundred percent (100%) vested in the amounts credited to his employer contribution account. The nonvested portion of a Participant's employer contribution account shall be forfeited upon Termination of Employment and accordingly reduce the Participant's Retirement Value under the Plan by the amount so forfeited.

10.4 Payment of Deferred Retirement Annuity. If the terminated Participant has not elected a lump sum payment of the entire vested Retirement Value upon his or her Termination of Employment, the Retirement Value held under the Plan for the terminated

Participant (as reduced by any forfeitures and lump sum distributions made from the employee contribution account) shall be applied to purchase or otherwise provide a Retirement Benefit as of the first day of the month following the terminated Participant's sixtieth (60th) birthday. By providing prior written notification to the Retirement Committee, the terminated Participant may elect an earlier commencement of his or her Retirement Benefit beginning as of the first day of any month following the terminated Participant's fifty-fifth birthday. The form of payment shall be any optional benefit form permitted by this Plan and selected by the Participant.

10.5 Involuntary Cash-Outs of Small Accounts. Notwithstanding the foregoing provisions, if a Participant's vested Retirement Value at the time of his Termination of Employment is less than \$3,500, the Trustee shall distribute such vested Retirement Value to the terminated Participant, and such distribution shall satisfy all obligations of the Plan and the City to the Participant and his or her beneficiaries, without exception.

In no event shall an involuntary distribution greater than \$1,000 be made in accordance with the provisions of this Plan if the Participant has not elected to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly, unless the Trustee pays the distribution in the form of a direct rollover to an individual retirement plan designated by the Retirement Committee.

10.6 Forfeitures. Forfeitures of the non-vested portion of a terminating Participant's employer contribution account shall be applied to first meet the expenses incurred in connection with the administration of the Plan, with the excess, if any, applied to reduce the City contributions which would otherwise be required to fund Plan benefits.

10.7 Distributions to Comply with the Tax Laws. In all events, the time and method of distribution of benefits under this Article X shall be in accordance with the minimum distribution rules of Section 13.2 of the Plan as required by Section 401(a)(9) of the Internal Revenue Code and the Income Tax Regulations promulgated thereunder, and the provisions of Section 13.2 of the Plan and the requirements of Section 401(a)(9) of the Internal Revenue Code and such Income Tax Regulations shall supersede any distribution provisions of the Plan which are inconsistent therewith.

ARTICLE XI

Administration

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

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

11.3 Specific Duties of the Retirement Committee. It shall be the duty of the Retirement Committee to:

- (a) Provide each Participant a summary of Plan eligibility requirements and benefit provisions.
- (b) Provide, within thirty days after a request is made by a Participant, a statement describing the amount of benefits such Participant is eligible to receive;
- (c) Make available for review an annual report of the Plan's operations describing both:
 - (i) the amount of contributions to the Plan from both employee and employer sources, and
 - (ii) an identification of the total assets of the Plan and pension system; and
- (d) ~~Beginning~~ As of each December 31, ~~1998, and as of each December 31 thereafter,~~ file an annual report with the Nebraska Public Employees Retirement Board and copies thereof with the ~~Nebraska Retirement Systems Committee of the Nebraska Legislature~~ Auditor of Public Accounts in such form and disclosing such information as prescribed by the Nebraska Public Employees Retirement Board; and

(e) As of January 1, 1998, and at least once every four years thereafter, to the extent the Plan constitutes a defined benefit plan, have a quadrennial report prepared with respect to the defined benefit component of the Plan and file the same with the Nebraska Public Employers Retirement Board, with a copy thereof submitted to the Auditor of Public Accounts for the State of Nebraska. 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.

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

- (a) To determine eligibility;
- (b) To determine all questions of fact as to age, years of Service, Compensation, Termination of Employment, Normal and Early Retirement Dates, contribution amounts, and similar items based upon Plan records;
- (c) To adopt rules of procedure and regulations necessary for the proper and efficient administration of the Plan;
- (d) To determine all questions arising in the interpretation of the Plan, including the amount and timing of benefit payments from the Plan and all such determinations shall be conclusive and binding on all persons to the extent provided by law; ~~and~~
- (e) To correct any underpaid or overpaid benefit from the Plan, including the power to order an offset or adjustment of future benefit payments to recover any such overpayment; and
- (f) To do all things necessary or proper pursuant to the duty of administering the Plan and supervising its operations.

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

11.5 Power to Make Adjustments and Corrections. The City and Retirement Committee shall have the power and authority to make such equitable adjustments to the accounts and benefits of any Participant to correct any mathematical or accounting errors or any mistakes that may arise by reason of factual errors in information supplied to the City, Retirement Committee or Trustee. The City and Retirement Committee may also take

appropriate action to correct errors in the administration or operation of the Plan as deemed necessary or appropriate to preserve the tax qualification of the Plan under Section 401(a) of the Internal Revenue Code, including the power and authority to correct operational errors and defects pursuant to any correction action as may be authorized under the Internal Revenue Service Employee Plans Compliance Resolution System ("EPCRS"), or any successor program to EPCRS. Such corrective actions may include causing appropriate distributions to be made to a Participant from the Plan, to the extent such distribution is made to correct a qualification defect or as may otherwise be required or authorized under the EPCRS.

11.6 Use of Alternative Media. The City, Retirement Committee, and Trustee may use telephonic or electronic media to satisfy any administrative duty or notice requirements by this Plan, to the extent permissible under the Code or Income Tax Regulations (or other generally applicable guidance). The City, Retirement Committee, and Trustee may also use telephonic or electronic media to conduct Plan transactions, such as enrolling Participants, electing, and changing investment allocations, and other Plan transactions to the extent permissible under the Internal Revenue Code or the Income Tax Regulations.

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

11.8 Liability Limited. In administering the Plan neither the Retirement Committee, nor the City Council, nor any member thereof, nor the City and its officers and employees, or any Police Officer thereof, or any financial institution with which the Retirement Committee contracts, shall be liable for any acts of omission or commission, except for his or its own individual, willful, and intentional malfeasance or misfeasance. In its administration of the Plan, the City, and its officers and directors, and the Retirement Committee, shall be entitled to rely conclusively on all tables, valuations, certificates, opinions, and reports which shall be furnished by any actuary, accountant, trustee, insurance company, counsel, or other expert who shall be employed or engaged by the City or the Retirement Committee.

ARTICLE XII

Pension Fund

12.1 Pension Fund. This Plan and Trust creates and establishes a Pension Fund which shall be the Police Officers' Retirement System Fund required to be kept and maintained by the City pursuant to Section 16-1004(2) of the Nebraska Revised Statutes. All contributions of the City and Participants hereunder shall be paid to the Trustee and held and administered by the Trustee (to the extent custody of Plan assets is not held by others pursuant to Section 12.2 of the Plan) as a single trust fund.

12.2 Plan Investments. Investment of the Pension Fund shall be under the general direction of the Retirement Committee. The City, on behalf of the Plan, may contract with an insurance company, trust company, or other investment manager registered under the Investment Advisers Act of 1940 to invest and reinvest such portion of the Pension Fund as may be assigned by the City. Investment of the Pension Fund may be made without distinction between principal and income. Such investment contracts may also extend to the establishment, maintenance and management of any segregated investment fund established pursuant to Section 12.3 of the Plan. Such financial institutions shall under no circumstances be deemed a party to this Plan for any purpose or have any responsibility for the validity or tax qualification of this Plan. The Pension Fund shall be invested pursuant to the policies established by the Nebraska Investment Council. The powers, duties, and responsibilities of any financial institution contracting to invest and reinvest the Pension Fund shall be limited to those powers, duties and responsibilities set forth in the contract with the City or Trustee, and the liability of such financial institution shall not exceed or extend to any matter not otherwise specified in such contract. Such financial institution may, to the extent necessary or proper under the contract, have custody of the assets of the Pension Fund. The City, the Retirement Committee, the Trustee, and the City Council, its members, and all officers and employees of the City shall have no liability or responsibility with regard to the investment performance of the portion of the Pension Fund under management by such financial institutions.

12.3 Directed Investment Funds. Upon direction of the City, the Trustee shall establish and maintain separate funds within the Trust for the investment of all or any portion of the employee and/or employer contribution accounts. The investment funds shall include amounts transferred from other investments of the Pension Fund which the City determines are to be invested at the direction of the Participants. If such funds are established, they shall include one or more of the following type of investment funds:

- (a) An income and equity growth fund, in which sums received for investment in such fund shall be invested primarily in a diversified portfolio or portfolios of common stocks of U.S. companies, or securities convertible into common stocks of U.S. Companies, with a view to both income from cash dividends and opportunity of growth in value;
- (b) An equity growth fund, in which sums received for investment in such fund shall be invested primarily in a diversified portfolio or portfolios of common stocks, or

securities convertible into common stocks of companies which have higher market growth potential, with better performance over longer periods of time, but having dividend income which may be incidental to the growth of capital. This fund will normally carry a higher risk profile than the equity fund described in (a) above;

(c) An international equity fund, in which sums received for investment in such fund shall be primarily invested in a diversified portfolio or portfolios of common stocks, or securities convertible into common stocks, of companies which are non-U.S. based or companies established in major world markets.

(d) A bond fund, in which sums received for investment in such fund shall be invested in a diversified portfolio or portfolios of marketable interest-bearing bonds, mortgage-related securities, U.S. government securities, commercial paper, bankers' acceptances, or other debt securities; and

(e) A money market fund in which sums received for investment in such fund shall be invested in a diversified portfolio or portfolios of high quality short-term interest bearing notes, commercial paper or deposits, including certificates of deposit, bankers' acceptances, repurchase agreements, and other similar money-market and interest-bearing investments pursuant to meeting the objectives of stability of principal and current income consistent with the stability of principal.

The foregoing funds (herein referred to as "Funds") shall be maintained and administered by the Trustee, and investments or reinvestments of each Fund shall be made by the Trustee without distinction between principal and income. The Trustee shall invest and administer such Funds in accordance with the investment guidelines for each Fund, but shall otherwise be authorized to invest in such particular investments as the Retirement Committee may deem advisable, provided such investments are authorized investments under the policies of the Nebraska Investment Council. The Funds may be invested wholly or partly through (i) the purchase of shares in a mutual fund or funds; or (ii) the medium of any common, collective, or commingled trust fund maintained by a bank or other financial institution and which is qualified under Section 401(a) and 501(a) of the Internal Revenue Code, to constitute a part of this Plan and Trust; or (iii) an Annuity Contract.

The Trustee may, in its discretion, hold in cash such portion of any Fund as shall be reasonable under the circumstances, pending investment or payment of expenses or distribution of benefits, without liability for interest; or, in the alternative, all of such temporary cash positions may be held in interest-bearing deposits of any bank or financial institution, including any bank or financial institution which manages or has custody of the Plan's assets.

Each Participant shall determine the manner in which contributions allocated to his accounts, including all earnings and gains thereon, are to be invested and reinvested among the Funds established hereunder, subject to the following:

(a) All investment directions shall be in form and manner as prescribed by the Trustee, City, and Retirement Committee. A Participant's directions may be filed on

a daily basis, subject to such rules and regulations as may be established by the Trustee, City, and Retirement Committee. Elections shall be filed with the Retirement Committee or with such agents as may be designated from time to time by the Retirement Committee for this purpose. Investment directions shall be implemented as soon as possible after they are filed, consistent with the orderly administration of such directions pursuant to procedures established by the Trustee, City, and Retirement Committee. An investment direction shall remain in effect until a new investment direction is filed by the Participant.

(b) Such investment direction shall specify the percentage of all contributions which are made on the Participant's behalf under the Plan and shall be invested in the Funds, or any single fund. Unless an effective investment is made by the Participant, all accounts for such Participant shall be invested in the money market fund.

In the event the City, Retirement Committee, and Trustee authorize the transmission of investment directions by voice, electronic or other paperless system, written confirmation of each investment direction shall be maintained as a Plan record and such record shall be conclusive and binding upon the Participant, terminated Participant or Beneficiary unless the person who made the investment direction files a written objection thereto with the Retirement Committee (or with such agent or agents as may be designated from time to time by the Retirement Committee for this purpose), within five (5) days of the mailing or other delivery of the written confirmation of the investment direction, or, if a written confirmation of the investment direction is not issued, within five (5) days of the receipt of the Plan's next report of the Participant's accounts.

(c) All investment directions by a Participant shall be complete as to the terms of the investment transaction. Directions for the investment of any contributions shall be stated in percentages (in multiples of five (5) percent) of the amount contributed. A Participant's investment directions may provide for both the investment of existing account balances and the investment of future contributions on behalf of the Participant. Participants may file individual investment directions that change the investment of all or only a portion of existing balances or future contributions.

(d) All dividends, gains, incomes, interest, and distributions of every nature received in respect of the assets held by a particular Fund shall be credited solely to such Fund and shall be reinvested in the investment assets of the Fund from which the earnings were derived. All losses attributable to a Fund shall be debited to such Fund alone, and shall accordingly be borne and payable proportionately from those Participant accounts which are invested in such Fund. Unless paid by the City, the expenses of a particular Fund, such as commissions, transferred taxes, management fees, and other related investment expenses, shall be charged and debited to such Fund.

(e) Following the death of the Participant, each of the Participant's Beneficiaries shall have the right to direct the investment of the portion of the Participant's

accounts held on behalf of the Beneficiary, subject to the same terms and conditions as applied to the Participant prior to death.

(f) All investment directions shall be in accordance with such uniform rules and regulations as the Trustee, City, and the Retirement Committee may establish from time to time for this purpose.

(g) Each account shall be valued at fair market value as of each Valuation Date and at such other times as may be necessary for the proper administration of the Plan. If fair market value of an asset is not available, it shall be deemed to be fair value as determined in good faith by the Retirement Committee or other fiduciary assigned such function, or if such asset is held in trust and the trust agreement so provides, as determined in good faith by the trustee.

The City or Retirement Committee shall have the power to appoint or remove one or more investment advisors and to delegate to such advisor authority and discretion to manage the assets of the trust fund or of any Fund established pursuant to this Section 12.3 of the Plan; provided that (1) such advisor is either a bank, an insurance company, or a registered investment adviser under the Investment Advisers Act of 1940; and (2) the City and the Retirement Committee shall periodically review the investment performance and methods of each such advisor.

No person who is a fiduciary to this Plan, including the Trustee, shall be liable hereunder for any loss, or by reason of any breach, which results from a Participant's direction that his accounts be invested in the Funds established hereunder.

12.4 Trustee Powers and Duties. The Trustee shall maintain accurate and detailed records and accounts of all transactions of the Plan, which shall be available at all reasonable times for inspection or audit by a person designated by the City and the Retirement Committee, and by any other person or entity to the extent required by law. As soon as practicable following the close of each Plan Year, the Trustee shall file with the City and the Retirement Committee a written report setting forth all transactions with respect to the Pension Fund during such Plan Year and listing the assets of the Pension Fund and the fair market value thereof as of the close of the period required by such report. The Trustee shall also provide the Retirement Committee with such other information in its possession as may be necessary for the Retirement Committee to conform with the requirements of the Internal Revenue Code that apply to government plans and the requirements of Nebraska law that apply to Police Officers Retirement Systems of Cities of the First Class. As soon as practicable after the last day of each Plan Year, the Trustee will deliver to the Retirement Committee a statement of each Participant's account as of that date, and the Retirement Committee shall forthwith deliver such statements to each respective Participant. The Trustee shall be responsible for maintaining the employer and employee contribution accounts pursuant to Section 5.1 of the Plan.

Each statement of account shall be deemed to have been approved by the City if no written objection thereto is filed with the Trustee within ninety (90) days after such

statement of account has been delivered to the Retirement Committee. If the Trustee and the City cannot agree with respect to any matter set forth in any such statement of account, the Trustee shall have the right to have such accounts settled by judicial proceedings, in which event only the Trustee, the City, and the Retirement Committee shall be necessary parties.

The Retirement Committee shall notify the Participants that they must file any objections to the statements furnished them within sixty (60) days of delivery thereof. Objections shall be in writing and submitted to the Retirement Committee and the Trustee. If no written objection is received within the said sixty (60) day period, a Participant shall be conclusively deemed to have approved the statement of his accounts on behalf of himself, his heirs, executors, administrators, assigns, and Beneficiaries.

12.5 Insurance Contracts. In no event shall the City, the Retirement Committee, the Plan, the Trustee, or the City Council, and their respective members, officers and employees, or any other person, be responsible for the validity of any insurance or annuity contract which may be held as part of the Pension Fund or which is purchased by the Plan and distributed to a Participant as beneficiary to provide benefits hereunder, or for the failure on the part of any insurer to make payments or provide benefits under any such contract, or for any inability to perform or for any delay in performing, any act occasioned by any restriction or provision of any insurance or annuity contract or by the insurer or any other person or entity.

12.6 Trustee. First National Bank of Omaha shall serve as Trustee of the Plan.

12.7 Expenses. All expenses of the Plan and Trustee, other than direct transaction expenses (such as brokerage costs or annuity contract fees or charges for the investment of Plan assets), shall be paid by the City; provided, however, funds from the forfeiture of employer contribution accounts in any Plan Year shall be applied to the payment of Plan expenses incurred by the City for such year before being credited against the City's contribution obligations pursuant to Section 10.6 of the Plan. Any Plan expenses not paid by the City shall be reimbursed out of the Pension Fund.

All reasonable costs, charges, and expenses incurred by the Trustee in connection with the administration of the Pension Fund, including fees for legal services rendered to the Trustee and such reasonable compensation to the Trustee as may be agreed upon from time to time between the City and the Trustee, shall be paid by the City, but if not paid by the City, shall be paid from the Pension Fund. Each Trustee who shall be an Employee of the City shall receive no compensation for his service under the Plan.

12.8 Trustee Powers. Subject to the requirements and limitations of Nebraska law governing Police Officers Retirement Systems of Cities of the First Class, the Trustee shall have the following powers, rights, and duties in addition to those vested in it elsewhere in the Plan or by law:

- (a) To purchase or subscribe for any securities or other property and to retain the same in trust.

(b) To sell, exchange, convey, transfer, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition.

(c) To vote any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; to oppose or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities; to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property held as part of the Pension Fund.

(d) To cause any securities or other property held as part of the Pension Fund, to be registered in the name of the Trustee or in the name of the Trustee's nominee.

(e) To borrow or raise money for the purpose of the Trust in such amount, and upon such terms and conditions as the Trustee shall deem advisable; for any sums so borrowed, to issue its promissory note as Trustee; to secure the repayment thereof by paying all, or any part, of the Pension Fund; and no person lending money to the Trustee shall be bound to see to the application of the money loaned or to inquire into the validity, expediency, or propriety of any such borrowing.

(f) To make, execute, acknowledge, and deliver any and all deeds, assignments, conveyances, and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

(g) To settle, compromise, abandon, or submit to arbitration, any claims, debts, or damages due or owing to, or from, the Pension Fund; to commence or defend suits or legal or administrative proceedings; and to represent the Pension Fund in all suits, legal and administrative proceedings.

(h) To employ suitable agents and counsel (who may be counsel to the Employer) and pay their reasonable expenses and compensation.

(i) To do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Pension Fund and to carry out the purposes of this Trust.

12.9 Taxes. All taxes of any kind whatsoever which may be levied or assessed against the Pension Fund or the income thereof under any existing or future laws shall constitute a charge upon such Pension Fund and shall be payable from the Trust.

12.10 Resignation and Removal of Trustee. The Trustee may resign or be removed pursuant to the following provisions:

(a) The Trustee may resign at any time by at least thirty (30) days' written notice to the City effective as of the date specified in such notice.

(b) The City may remove the Trustee at any time by at least thirty (30) days' written notice to the Trustee, effective as of the date specified in such notice.

(c) Prior to the effective date of such resignation or removal of the Trustee, the City shall appoint a successor Trustee eligible to act as Trustee under the laws of the State of Nebraska by written instrument delivered to the Trustee with the acceptance of the successor Trustee endorsed thereon.

(d) Upon the resignation of the Trustee as provided in Section 12.10(a) of the Plan or upon the removal of the Trustee as provided in Section 12.10(b) of the Plan, the Trustee shall, as of the effective date thereof, deliver to the City and to the successor Trustee a statement of account, and as soon as practicable thereafter shall transfer and deliver to the successor Trustee the full amount of each Participant's account either in cash or other assets thereof, in the discretion of the Trustee, together with such records as the Trustee shall deem reasonably necessary for administration of the Plan by a successor Trustee. Upon receiving written receipt from the successor Trustee, the resigning Trustee shall be discharged as Trustee hereunder without further liability to any person. The Trustee shall be under no duty whatsoever to make inquiry as to the power and authority of any successor Trustee so designated to act, or as to the validity or exempt status of the trust instrument under which any successor Trustee so designated shall act, and the Trustee shall not be subject to any liability whatsoever from any person for delivering the assets of each Participant's account to the successor Trustee so designated. Prior to transfer of assets held under this Plan and Trust to the successor Trustee, the Trustee may reserve such reasonable amount as the Trustee shall deem necessary to provide for expenses incurred in the settlement of the Trustee's accounts or theretofore incurred, and any sums chargeable against the Trustee for which the Trustee may be liable, but if the sums so reserved are not sufficient for such purposes, the Trustee shall be entitled to reimbursement for any deficiency from the successor Trustee. Should the funds reserved be in excess of those actually needed for the purpose for which reserved, such excess shall be subsequently delivered to the successor Trustee.

12.11. Trustee Liability. The Trustee shall not be liable for the acts or omissions of any investment manager pursuant to Section 12.2 of the Plan or for the acts or omissions of the City in selecting any investment medium for the Plan, nor shall the Trustee be under any obligation to inquire into, invest, advise, or otherwise make any recommendation concerning any asset of the Plan which is subject to the management of an investment manager or selected by the City as an investment medium for the Plan.

ARTICLE XIII

Miscellaneous Provisions

13.1 Non-Alienation of Benefits. None of the benefits payable under the Plan will be subject to execution, garnishment, attachment or assignment under the bankruptcy laws, or otherwise be subject to the claims of any creditor of any Participant, beneficiary, spouse or contingent annuitant, nor will any Participant, beneficiary, spouse, or contingent annuitant have any right to alienate, anticipate, commute, pledge, encumber, or assign such benefits. Notwithstanding the foregoing, the Plan may comply with any directions set forth in a qualified domestic relations order meeting the requirements of Section 414(p) of the Internal Revenue Code (to be applied as if Section 414(p) of the Internal Revenue Code is fully applicable to this Plan); provided, however, no benefits will be paid, assigned, or set aside for any person unless and until the Plan has received such releases and benefit waivers from the Participant or any other person as the City or Retirement Committee may deem necessary or appropriate to protect the Plan and the City from any claims which may arise as a result of the Plan complying with the provisions of any qualified domestic relations order. In no event shall the Plan recognize any domestic relations order which alters, changes, or provides for a form of benefit not otherwise provided for under the Plan, increases benefits not otherwise provided by the Plan, or accelerates or defers the time of payment of Plan benefits, except to the limited extent allowed under Section 414(p)(4) of the Internal Revenue Code.

The Retirement Committee shall establish procedures in accordance with Section 414(p) of the Internal Revenue Code for determining the qualified status of a domestic relations order served upon the Plan. The City and the Retirement Committee shall follow all applicable procedures set forth in Sections 414(p) of the Internal Revenue Code which apply when a domestic relations order is received, including issuing appropriate instructions to the Trustee or other funding agent with respect to segregating amounts in separate accounts pending the resolution of all matters relating to the domestic relations order and the distribution of Plan benefits with respect thereto.

13.2 Minimum Distribution Requirements. All distributions of benefits under the Plan shall be subject to and made in accordance with the following minimum distribution rules under Section 401(a)(9) of the Internal Revenue Code and the Income Tax Regulations thereunder, and in accordance with the minimum incidental benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code.

(a) Time and Manner of Distribution.

(1) Required Distribution Date. The Participant's entire interest in the Plan will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Distribution Date.

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

(A) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.

(B) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(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 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 subparagraph (a)(2), other than subparagraph (a)(2)(A) above, will apply as if the surviving spouse were the Participant.

For purposes of this subparagraph (a)(2) and subsection (c), unless subparagraph (a)(2)(D) applies, distributions are considered to begin on the Participant's Required Distribution Date. If subparagraph (a)(2)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subparagraph (a)(2)(A) above. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Distribution Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subparagraph (a)(2)(A) above), the date distributions are considered to begin is the date distributions actually commence.

(3) Forms of Distribution. 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 Distribution Date, as of the first Distribution Calendar Year distributions will be made in accordance with subsections (b) and (c). 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 Section 401(a)(9) of the Internal Revenue Code and the Regulations thereunder.

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

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

(A) the quotient obtained by dividing the Participant's Accrued Benefit by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Income Tax Regulations, 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 Accrued Benefit by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Income Tax Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

(2) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this subsection (b) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

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

(1) Death On or After Date Distributions Begin.

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

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

(II) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using

the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(III) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent calendar 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 Accrued Benefit by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent calendar year.

(2) Death Before Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Accrued Benefit by the remaining life expectancy of the Participant's Designated Beneficiary, determined as provided in subsection (c)(1).

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

(C) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, and 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 subsection (c)(1), this subsection (c)(2) will apply as if the surviving spouse were the Participant.

(4) Definitions. For purposes of this Section 13.2 of the Plan, the following terms shall have the following meaning:

(A) Designated Beneficiary. The individual who is designated as the Beneficiary under Section 9.4 of the Plan other than the estate of the Participant and who also qualifies as a designated beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A 4 of the Income Tax Regulations.

(B) Distribution Calendar Year. A calendar year for which a minimum distribution is required. The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Distribution 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 Distribution Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

(C) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Income Tax Regulations.

(D) Participant's Accrued Benefit. The Participant's combined accounts under the Plan as of the last ~~valuation date~~ 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 combined accounts of the Participant as of dates in the valuation calendar year after the ~~valuation date~~ Valuation Date and decreased by distributions made in the valuation calendar year after the ~~valuation date~~ Valuation Date. The Accrued Benefit for the valuation calendar year includes any amounts 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.

(E) Required Distribution Date. The Required Distribution Date of a Participant is the April 1 following the later of (i) the calendar year in which the Participant attains age 70 1/2, or (ii) the calendar year in which the Participant retires.

13.3 Plan Not a Contract of Employment. The Plan shall not be deemed to constitute a contract between the City and any Police Officer, or to be a consideration for the employment of any Police Officer. Nothing in the Plan shall give any Police Officer the right to be retained in the employ of the City; all Police Officers shall remain subject to

discharge, discipline or lay-off to the same extent as if the Plan had not been put into effect.

13.4 Modification or Discontinuance of the Plan or Complete Discontinuance of Contribution.

(a) The City expects and intends to maintain the Plan in force indefinitely, but necessarily reserves the right to amend, suspend or terminate the Plan at any times as may be required or permitted under the applicable Nebraska Statutes.

(b) Prior to the satisfaction of all liabilities with respect to Participants, joint annuitants and beneficiaries under the Plan, no change shall be made which shall result in any portion of the Pension Fund being used for other than the exclusive benefit of such persons.

13.5 Vesting and Allocation of Pension Fund on Termination of Plan or Complete Discontinuance of Contributions. In the event that either the Plan shall be terminated, or there shall be a complete discontinuance of City contributions, the Retirement Value of each Plan Participant to the date of such termination or discontinuance shall be fully vested to the extent then funded. The assets then remaining in the Pension Fund shall be applied in the following order, all persons in each order of priority being entitled to their perspective proportionate share before proceeding in the order of priority next following:

(a) Provision to Participants whose retirement income has commenced and their joint annuitants and beneficiaries of any benefits to which they shall be entitled or contingently entitled under the Plan;

(b) Provision to retired Participants whose retirement income has not commenced and to their joint annuitants and beneficiaries and to disabled Participants of any benefits to which they shall be entitled or contingently entitled under the Plan.

(c) Provision to Participants who shall at that time be entitled to retire normally, and to their joint annuitants and beneficiaries, of the benefits to which they shall be entitled or contingently entitled under the Plan;

(d) Provision to Participants who would at that time with the consent of the Plan Administrator be entitled to retire early, and to their joint annuitants and beneficiaries, of the benefits to which they shall be entitled or contingently entitled under the Plan;

(e) Provisions to all other Participants and their joint annuitants and beneficiaries of the accrued benefits to which they shall be entitled or contingently entitled under the Plan. For purposes of this subdivision, accrued benefits shall be calculated at the date of termination of the Plan or complete discontinuance of contributions;

(f) Any surplus remaining in the Pension Fund, after the satisfaction of all benefit rights or contingent rights accrued under the Plan, shall, subject to the pertinent provisions of federal or state law, be returned to the City.

13.6 Qualification of Plan. The City reserves the right to make such amendments to this Plan, if any, as will be required to enable this Plan to qualify for tax purposes under Section 401(a) of the Internal Revenue Code as a tax-qualified plan.

13.7 Workers' Compensation Benefits. Notwithstanding any other provisions of the Plan, no Participant shall be entitled during any period of disability to receive, in full, both benefits under this Plan provided by the Participant's Retirement Value and additional benefits under the Nebraska Workers' Compensation Act. Similarly, beneficiaries shall not be entitled to receive, in full, both death benefits under this Plan and additional benefits under the Nebraska Workers' Compensation Act. All Nebraska Workers' Compensation Act benefits shall be payable in full to such Participant or his or her dependents as provided in such Act, but all amounts paid by the City or its insurer under said Act, to any disabled Participant entitled to receive a salary during such disability, or to the surviving spouse or children of any deceased Participant, shall be considered as payments on account of such salary and shall be credited against the benefits provided hereunder. The remaining balance of such benefits, if any, shall be payable as otherwise provided under this Plan. In the event a lump sum benefit or settlement is paid in lieu of a periodic benefit under the Nebraska Workers' Compensation Act, such payment will, for the purposes of determining the benefit paid from this Plan, be converted to a periodic benefit on an actuarially equivalent basis and such equivalent periodic payment will reduce the monthly benefit payment otherwise payable under this Plan in the event of disability or death.

13.8 Merger or Consolidation. No merger or consolidation of this Plan with (or transfer of assets or liabilities to) any other plan shall be effective unless the benefit to which each Participant subsequent to the merger, consolidation, or transfer would be entitled in the event of that successor plan immediate termination is at least equal to, or greater than, the benefit to which the Participant would have been entitled under this Plan had it terminated immediately before the merger, consolidation or transfer.

13.9 Tax Withholding. The Trustee shall withhold from the benefit payments to be made to any recipient under this Plan such taxes as may be required to be withheld by applicable state and federal tax laws, and such withheld taxes shall be promptly remitted to the proper governmental authority.

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

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

13.12 Compliance with Internal Revenue Code. Notwithstanding anything herein to the contrary, the Plan shall be administered in a manner necessary to comply with all tax-qualification requirements applicable to government retirement plans under Section 401(a) of the Internal Revenue Code, as the same may be amended, and all provisions of this Plan and Trust shall be construed in accordance with such qualification requirements and shall, by this reference, incorporate any subsequent changes made to such qualification requirements as the same may apply to this Plan.

13.13 Counterparts. This Plan and Trust may be executed in two or more counterparts, any one of which will be an original without reference to the other.

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

13.15 Consent to Distributions and Waiver of Certain Notice Periods for Distributions. Any distribution to a Participant under this Plan which requires such Participant's consent, shall not be made until the required consent is provided by the Participant. A Participant shall be informed of his or her right to defer receipt of the distribution and such other information and disclosures that may be required under the Income Tax Regulations to the Internal Revenue Code. If a Participant fails to consent, it shall be deemed an election to defer the commencement of payment of any benefits. However, any election to defer the receipt of benefits shall not apply with respect to distributions which are required under Section 13.2 of the Plan. A distribution may commence after any required notice is given provided that: (i) the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and (ii) the Participant, after receiving notice, affirmatively requests a distribution.

IN WITNESS WHEREOF, the City of Lexington, Nebraska, has caused this amendment and restatement of the Plan and Trust to be executed by its duly authorized city officer and the Trustee has executed this amendment and restatement of the Plan and Trust this ____ day of _____, ~~2008~~2015.

ATTEST: **CITY OF LEXINGTON, NEBRASKA,**
EMPLOYER

By: _____

By: _____

Official Title: _____

Official Title: _____

Executed this ____ day of _____, ~~2008~~2015, at ~~Omaha~~Lincoln, Nebraska.

~~FIRST NATIONAL BANK OF~~
~~OMAHA~~UNION BANK & TRUST COMPANY,

Trustee

By: _____

Its: _____

~~DOCS/229704.3-~~

**CITY OF LEXINGTON, NEBRASKA
POLICE RETIREMENT PLAN AND TRUST**

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