

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION ADOPTING THE AMENDED AND RESTATED PENSION PLANS FOR THE MONEY ACCUMULATION PLAN FOR EMPLOYEES OF THE CITY OF LEXINGTON AND THE CITY OF LEXINGTON, NEBRASKA POLICE OFFICERS' PENSION PLAN WHICH INCLUDE, APPLICABLE CHANGES IN THE TAX QUALIFICATION LAWS THROUGH DECEMBER 31, 2007.**

1. Adoption of Amendment and Restatement of the Money Accumulation Pension Plan for Employees of the City of Lexington: NOW, BE IT RESOLVED, that the City shall amend and restate and it hereby does adopt, the amended and restated Money Accumulation Pension Plan for Employees of the City of Lexington (the "Money Accumulation Plan"), in the form of the Plan document attached hereto and by this reference fully incorporated herein. The purpose of said amendment is to adopt the amendments for tax-qualified government retirement plans 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 the Pension Protection Act of 2006, and such other changes required by applicable law or as otherwise determined to be necessary and appropriate by the City.
  
2. Adoption of Amendment and Restatement of the City of Lexington, Nebraska Police Officers' Pension Plan: NOW, BE IT RESOLVED, that in order to adopt the amendments required for tax-qualified retirement plans 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 the Pension Protection Act of 2006, and all other tax laws enacted since the City of Lexington, Nebraska Police Officers' Pension Plan ("the Plan") was last amended, as such laws apply to government plans, and to make certain other amendments to the Plan as required by applicable tax laws and regulations, the Plan shall be, and it hereby is, amended and restated effective January 1, 2008 in the form of the Plan document submitted at this meeting and by this reference made a part of this resolution.
  
3. Authorizations: NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Mayor and other appropriate elected officials and officers of the City of Lexington shall be, and they hereby are, authorized to do all things necessary to carry out and accomplish the foregoing Resolution, including the execution of any document or amendment which may be necessary or appropriate to amend and administer the amended and restated pension plans, including such actions as may be necessary or appropriate to achieve and maintain qualification of the aforesaid Plans under Section 401(a) of the Internal Revenue Code of 1986, as amended, as said sections apply to government plans.

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

CITY OF LEXINGTON, NEBRASKA

By: \_\_\_\_\_  
John Fagot, Mayor

ATTEST:

\_\_\_\_\_  
Pamela Berke, Deputy City Clerk

**BAIRDHOLM**<sup>LLP</sup>  
ATTORNEYS AT LAW

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City Plan

August 14, 2008

Ms. Barbara A. Mills  
Finance Director  
City of Lexington  
P.O. Box 70  
Lexington, NE 68850-0070

Re: The Money Accumulation Pension Plan for Employees of the City of  
Lexington

Dear Barbara:

Enclosed for your review is an amended and restated Plan document for the Money Accumulation Plan for Employees of the City of Lexington (the "Plan"). This restated Plan document includes all interim Amendments which have been adopted since the Plan was last restated as of February 1, 1997, and those Amendments that must be adopted to conform the Plan to comply with all changes in the tax laws through December 31, 2007. This restatement also incorporates certain changes in the provisions of the Plan that were addressed in our previous correspondence. A red-lined draft of the document which shows the changes and additions that have been made to the current Plan document is enclosed to facilitate your review.

We have enclosed proposed resolutions relating to the adoption of the amended and restated Plan by the City Council.

With this background, the following is a summary of the key changes and Amendments that have been incorporated in the restated Plan document.

- The Plan's "Break in Service" definition at Section 1.5 of the Plan has been modified to recognize qualified military service as required under the Uniformed Services Employment and Reemployment Rights Act of 1994.

- The definition of "Compensation" at Section 1.6 incorporates the new dollar limit on the amount of compensation that can be taken into account in determining Plan benefits (\$230,000 for 2008).
- Section 3.2 of the Plan provides a deadline for the payment of employee contributions that are withheld from compensation consistent with the positions taken by the Internal Revenue Service for satisfying the qualification requirements applicable to government plans. ~~This deadline is the 15<sup>th</sup> day of the month in which the Basic Participant Contributions are withheld from the employees' compensation.~~ The City's matching contribution does not, however, have to be made within this deadline as reflected at Section 3.3 of the Plan.
- Sections 3.4, 3.5 and 3.6 of the Plan have been amended to reflect the new Code Section 415 limitations on the amount of contributions that can be allocated to the accounts of a participant for any plan year. These provisions also reflect the requirements of the final Section 415 regulations that became effective on January 1, 2008. Please note that the new definitions include certain post-severance compensation as Section 415 compensation. This would require such post-severance compensation to continue to be subject to withholding as a Basic Participant Contribution with a corresponding matching contribution by the City on such post-severance compensation.
- Section 7.5 of the Plan updates the amount requiring the participant's consent to a distribution of Plan benefits before the normal retirement age to a balance of \$5,000 at the time of his severance from employment. As a reminder, the tax laws' automatic rollover rules for cash-out distributions require involuntary cash-out distributions from qualified retirement plans that exceed \$1,000 to be transferred to an individual retirement plan selected by the Administrative Committee unless the participant elects to receive a taxable distribution in lieu of the automatic rollover.
- Section 7.8 of the Plan incorporates the minimum distribution rules under the final Regulations of Section 401(a)(9) of the Internal Revenue Code and which were adopted under a previous Amendment to the Plan.
- Section 7.9 of the Plan reflects the changes in the tax laws which expand the eligible plans which can receive a direct rollover

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distribution from the Plan. This includes a recent change under the Pension Protection Act of 2006 which allows the Plan to permit the rollover of death benefits to an IRA for a nonspouse beneficiary.

- The powers and duties of the Administrative Committee have been expanded under Section 10.15 of the Plan to include the taking of all appropriate action, including making distributions, to correct errors in the administration and operation of the Plans as may be authorized under the IRS's Employee Plans Compliance Resolution System. The purpose of these changes is to clearly authorize the City to take any actions necessary to maintain the Plan's qualification in accordance with the corrective measures that are permitted under the Employee Plans Compliance Resolution System.
- New provisions have been added at Section 10.16 of the Plan to expressly authorize the use of telephonic or electronic media to satisfy any notice requirements regarding the Plan as may be necessary to conduct all Plan transactions, including enrolling participants, and making or changing investment directions.
- Section 11.3 of the Plan has been revised to permit the reasonable and direct expenses incurred by the Plan or the Administrative Committee in determining and administering a Qualified Domestic Relations Order to be paid from the accounts of the participant and the alternate payee who are subject to the domestic relations order.

The remaining changes to the restated Plan document should be generally self-explanatory or reflect provisions that were adopted under previous Amendments to the Plan. In this regard, our records show that First National Bank of Omaha continues to serve as the Trustee of the Plan, and accordingly, First National Bank of Omaha continues to be designated as such in the restated Plan document. However, do not hesitate to call me should you have any questions concerning the Amendments to the Plan document or if you have any additional or proposed changes for the Plan.

After you have completed your review, a final restated Plan document can be prepared for submission to the City Council for formal approval and adoption. Upon approval of the restated Plan, the Plan document is to be executed by the authorized officials of the City of Lexington and by the Trustee.

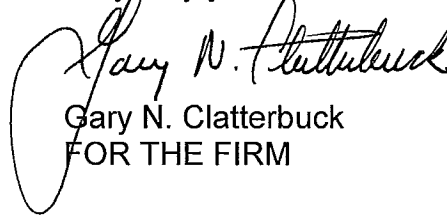
As we discussed, the amended and restated Plan document must be approved no later than January 31, 2009. Also, if a decision is made to submit the amended and restated Plan to the Internal Revenue Service for a determination of

Ms. Barbara A. Mills  
August 14, 2008  
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its tax-qualified status, such submission must also be made no later than January 31, 2009. The most recent favorable determination letter was issued by the IRS on June 13, 2002. We recommend that if the City determines an IRS determination letter should be requested for the Plan, that we proceed immediately in preparing the application for approval for this submission well before this deadline.

Again, please do not hesitate to call me should you have any additional requirements regarding the amended and restated Money Accumulation Plan.

Very truly yours,



Gary N. Clatterbuck  
FOR THE FIRM

GNC/alc  
Enclosures  
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Received Aug 19 2008

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Police Plan

August 15, 2008

Ms. Barbara A. Mills  
Finance Director  
City of Lexington  
P.O. Box 70  
Lexington, NE 68850-0070

Re: The City of Lexington, Nebraska Police Officers' Pension Plan

Dear Barbara:

Enclosed for your review is an amended and restated plan document for the City of Lexington, Nebraska Police Officers' Pension Plan (the "Plan"). This amended and restated Plan document includes all interim Amendments which have been adopted since the Plan was last restated effective as of June 12, 2001, and those Amendments that must be adopted to conform the Plan with all applicable changes in the tax qualification laws through December 31, 2007. A red-lined draft of the document which shows the changes and additions have been made to the current restated Plan document is enclosed to facilitate your review.

We have also enclosed proposed resolutions related to the adoption of the amended and restated Plan by the City Council.

With this background, the following is a summary of the key changes and amendments that have been incorporated in the restated Plan document:

- The definition of "Compensation" at Section 2.3 now incorporates the new dollar limit on the amount of compensation that can be taken into account in determining Plan benefits (\$230,000 for 2008).
- The definition of "Regular Interest" at Section 2.10 has been revised to reflect that the net earnings realized for any Plan Year or any other valuation period shall be determined by the Retirement Committee in accordance with the actual earnings or losses realized by the Pension Fund for the period in question.

- The definition of "Valuation Date" at Section 2.15 incorporates the provisions of a previous Plan Amendment that sets the Valuation Date as each day the New York Stock Exchange is open.
- Section 3.6 of the Plan reflect the changes in the tax laws which expand the eligible plans which can receive a direct rollover distribution from the Plan. This includes the recent change under the Pension Protection Act of 2006 which allows the Plan to permit the rollover of death benefits to an IRA for a non-spouse beneficiary.
- The definition of "Termination of Employment" has been modified at Section 4.2(b) to require the recognition of qualified military service by a Police Officer as required under the Uniform Services Employment and Reemployment Rights Act of 1994.
- Section 5.3 of the Plan provides a deadline for the payment to the Trust of employee contributions that are withheld from compensation consistent with the positions taken by the Internal Revenue Service for satisfying the requirements applicable to government plans. This deadline is the 15<sup>th</sup> day of the month in which the mandatory contributions are withheld from the Police Officers' compensation.
- Sections 5.8, 5.9 and 5.10 of the Plan have been amended to reflect the new limitations under Section 415 of the Code on the amount of contributions that can be allocated to the accounts of a participant for any Plan year. These provisions also reflect the requirements of the final regulations under Section 415 of the Code that became effective on January 1, 2008.
- Section 10.5 of the Plan maintains the amount requiring the Participant's consent to a distribution of Plan benefits before the normal retirement age to a balance of \$3,500 at the time of his severance from employment. As a reminder, the tax laws' automatic rollover rules for cash-out distributions require involuntary cash-out distributions from qualified retirement plans that exceed \$1,000 to be transferred to an individual retirement plan selected by the Administrative Committee unless the Participant elects to receive a taxable distribution in lieu of the automatic rollover.
- The powers and duties of the Retirement Committee have been expanded under Section 11.5 to include taking all appropriate action, including making distributions, to correct errors in administration and the operation of the Plan as may be authorized under the IRS' Employee Plans Compliance Resolution System. The purpose of these changes is to clearly authorize the City and Retirement Committee to take any actions necessary to maintain the Plan's qualification in accordance with the corrective measures that are permitted under the Employee Plans Compliance Resolution System.
- New provisions have been added at Section 11.6 of the Plan to expressly authorize the use of telephonic or electronic media to satisfy any notice requirements or as

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may be necessary to conduct all Plan transactions, including enrolling participants and making or changing investment directions under the Plan.

- Section 12.3 of the Plan incorporates a previously adopted Plan Amendment to allow daily valuation of participant's accounts, and to permit participant's to change their investment directions on a daily basis pursuant to the rules and procedures established by the Trustee, City, and Retirement Committee.
- Section 13.2 incorporates the minimum distribution rules under the final regulations to Section 401(a)(9) of the Internal Revenue Code which were adopted under a previous amendment to the Plan.

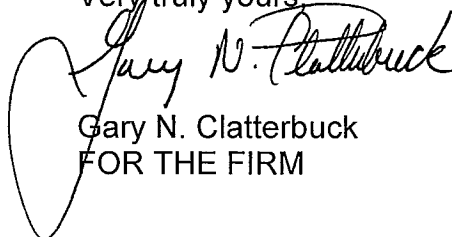
The remaining changes to the amended and restated Plan document should be generally self-explanatory or reflect provisions that were adopted under previous amendments to the Plan. However, do not hesitate to call me should you have any questions concerning the amendments that have been made to the Plan document or if you have any proposed changes for the Plan.

After you have completed your review, the amended and restated Plan document can be submitted to the City Council for formal approval and adoption.

As we discussed, the amended and restated Plan document must be approved no later than January 31, 2009. Also, if the City should desire to submit the amended and restated Plan to the Internal Revenue Service for determination of its tax qualified status, such submission must also be made no later than January 31, 2009. In this regard, we caution that the ability to respond to any qualification requirements that may be imposed by the IRS in the review process may be limited since the Plan must conform with the requirements of the Nebraska statutes governing Police Officer Retirement Systems for first class cities. However, the IRS did issue a favorable determination letter for the Plan on June 13, 2002, and therefore we expect that the IRS would not require changes that are inconsistent with the Nebraska statutes as a condition to issuing a determination letter for the changes reflected in this restated Plan document.

Again, please do not hesitate to call me should you have any additional questions or requirements regarding the amended and restated Police Retirement Plan and Trust.

Very truly yours



Gary N. Clatterback  
FOR THE FIRM

GNC/alc  
Enclosures