

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
SEPTEMBER 5, 2017**

| <b>Subject:</b>                    | <b>Type:</b>                              | <b>Submitted By:</b>                                    |
|------------------------------------|---|---|
| AMEND MUNICIPAL<br>RETIREMENT PLAN | ◆ RESOLUTION<br>ORDINANCE<br>RECEIVE/FILE | KEVIN POKORNY<br>DIRECTOR OF ADMINISTRATIVE<br>SERVICES |

**SYNOPSIS**

A resolution to amend and adopt the City Administrator's retirement plan have been prepared.

**FISCAL IMPACT**

N/A

**RECOMMENDATION**

Approval.

**BACKGROUND**

In order to be consistent with other non-union employees, the City and the City Administrator have agreed to eliminate longevity pay for the City Administrator. As a result, the City will increase their contribution into the City Administrator's retirement plan. The City Administrator will also increase her contribution. A resolution and compensation ordinance have been amended accordingly.

## **RESOLUTION NO. 17-108**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA TO AMEND THE CITY OF LA VISTA CITY ADMINISTRATORS' DEFINED CONTRIBUTION PENSION PLAN AND TRUST, AND TO AUTHORIZE FURTHER ACTIONS.

BE IT RESOLVED:

SECTION 1. Pursuant to Nebraska Statutes, Section 19-3501, the Mayor and Council of the City of La Vista maintain the City of La Vista City Administrators' Defined Contribution Pension Plan and Trust, embodied in plan documents including an adoption agreement and basic plan document constituting an integral part thereof, as well as various prior amendments ("Plan").

SECTION 2. The City desires to amend the Plan, including the adoption agreement and basic plan document, as provided in the Plan Amendment presented at this meeting ("Plan Amendment").

SECTION 3. The City does hereby approve and adopt said Plan Amendment, effective as of the date(s) specified therein. Except for the changes made in the Plan Amendment, the Plan shall remain in effect as previously adopted.

SECTION 4. That the Mayor or his designee is authorized to execute said Plan Amendment on behalf of the City, and the City Administrator or her designee is authorized and directed to provide the same to the Trustee (for its written acceptance, if determined necessary or appropriate), and if directed in this resolution or the City Administrator or her designee otherwise determines necessary or advisable, to cause said Plan Amendment to be submitted, together with such supporting documents and data as may be necessary or advisable and applicable application fee, to the Internal Revenue Service for ruling as to whether the same complies with the pertinent provisions of the Internal Revenue Code of the United States and, in particular, Sections 401(a) and 501(a) thereof, with authority to make any changes in or to the designations, elections or provisions under or of said Plan Amendment or any other plan documents and take such further actions as the City Administrator or her designee determines necessary or appropriate to obtain a favorable ruling or as otherwise required for the qualified status of the Plan. The Mayor or his designee further is authorized to take all actions on behalf of the City as the Mayor or his designee determines necessary or appropriate to implement or carry out the Plan Amendment or Resolution, including without limitation entering and executing any contracts or contract amendments or other agreements, amendments, documents, or instruments to implement, carry out, or conform with the Plan Amendment or this Resolution.

PASSED AND APPROVED THIS 5TH DAY OF SEPTEMBER, 2017.

CITY OF LA VISTA, NEBRASKA

---

Douglas Kindig, Mayor

ATTEST:

---

Pamela A. Buethe, CMC  
City Clerk

K:\APPS\City Hall\17 FINAL RESOLUTIONS\17.108  
La Vista- City Administrator Retirement Plan - 09.05.17.Docx

**CITY OF LA VISTA**

**CITY ADMINISTRATORS' DEFINED CONTRIBUTION PENSION PLAN AND TRUST**

**Plan Amendment**

The City of La Vista City Administrators' Defined Contribution Pension Plan and Trust, embodied in plan documents including an adoption agreement and basic plan document constituting an integral part thereof, as well as various prior amendments ("Plan") is hereby amended as follows:

I. Section 9.3 of the Basic Municipal Employees Plan and Trust Agreement ("Basic Plan") is hereby deleted and replaced in its entirety as follows effective January 1, 2017:

"9.3 Limitations. No power of amendment or of termination may be exercised so as to permit any part of the Fund to be used for or diverted to purposes other than for the exclusive benefit of Participants or their Beneficiaries prior to the satisfaction of all liabilities with respect to such Participants and their Beneficiaries under this Plan."

II. The initial part of Section 10.7 of the Basic Plan is hereby deleted and replaced in its entirety as follows effective January 1, 2017:

10.7 Fiduciary Duties. The Trustee and each fiduciary hereunder, in the exercise of each and every power or discretion vested in them by the provisions of this Agreement, shall be governed by the principle that no discrimination prohibited by provisions of the Internal Revenue Code or Employee Retirement Income Security Act of 1974 among Employees who are Participants from time to time hereunder shall occur, to the extent such provisions of the Code or ERISA are applicable to this Plan, which is a governmental plan, and such fiduciaries will discharge their duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and"

III. The revised Adoption Agreement presented with this Plan Amendment is hereby adopted and approved effective October 1, 2017.

IV. Except as expressly provided in this Plan Amendment, the Plan documents as previously adopted or amended shall continue in full force and effect.

DATED THIS 5TH DAY OF SEPTEMBER, 2017.

CITY OF LA VISTA, NEBRASKA, Employer

By:

\_\_\_\_\_

—

\_\_\_\_\_,  
(Printed Name)

\_\_\_\_\_  
(Title)

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

MATRIX TRUST COMPANY (as successor to  
WILMINGTON TRUST RETIREMENT AND  
INSTITUTIONAL SERVICES COMPANY), Trustee

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

\_\_\_\_\_, \_\_\_\_\_  
(Printed Name) (Title)

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

**CITY OF LA VISTA**

**CITY ADMINISTRATORS' DEFINED CONTRIBUTION PENSION PLAN AND TRUST**

**Plan Amendment**

The City of La Vista City Administrators' Defined Contribution Pension Plan and Trust, embodied in plan documents including an adoption agreement and basic plan document constituting an integral part thereof, as well as various prior amendments ("Plan") is hereby amended as follows:

I. Section 9.3 of the Basic Municipal Employees Plan and Trust Agreement ("Basic Plan") is hereby deleted and replaced in its entirety as follows effective January 1, 2017:

"9.3 Limitations. No power of amendment or of termination may be exercised so as to permit any part of the Fund to be used for or diverted to purposes other than for the exclusive benefit of Participants or their Beneficiaries prior to the satisfaction of all liabilities with respect to such Participants and their Beneficiaries under this Plan."

II. The initial part of Section 10.7 of the Basic Plan is hereby deleted and replaced in its entirety as follows effective January 1, 2017:

10.7 Fiduciary Duties. The Trustee and each fiduciary hereunder, in the exercise of each and every power or discretion vested in them by the provisions of this Agreement, shall be governed by the principle that no discrimination prohibited by provisions of the Internal Revenue Code or Employee Retirement Income Security Act of 1974 among Employees who are Participants from time to time hereunder shall occur, to the extent such provisions of the Code or ERISA are applicable to this Plan, which is a governmental plan, and such fiduciaries will discharge their duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and"

III. The revised Adoption Agreement presented with this Plan Amendment is hereby adopted and approved effective October 1, 2017.

IV. Except as expressly provided in this Plan Amendment, the Plan documents as previously adopted or amended shall continue in full force and effect.

DATED THIS 5TH DAY OF SEPTEMBER, 2017.

CITY OF LA VISTA, NEBRASKA, Employer

By:

\_\_\_\_\_

—

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

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

MATRIX TRUST COMPANY (as successor to  
WILMINGTON TRUST RETIREMENT AND  
INSTITUTIONAL SERVICES COMPANY), Trustee

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

\_\_\_\_\_, \_\_\_\_\_  
(Printed Name) (Title)

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

**ADOPTION AGREEMENT**  
**CITY OF LA VISTA**  
**CITY ADMINISTRATORS' DEFINED CONTRIBUTION**  
**PENSION PLAN AND TRUST**  
**TO BE USED WITH**  
**BASIC MUNICIPAL EMPLOYEES PLAN AND TRUST AGREEMENT**

THIS IS TO CERTIFY THAT:

The following actions were adopted by resolution of the City of La Vista, Nebraska, by its City Council, at a meeting thereof duly called and held on \_\_\_\_\_, 20\_\_:

BE IT RESOLVED:

SECTION 1. Pursuant to Nebraska Statutes, Section 19-3501, the Mayor and Council of the City of La Vista maintain the City of La Vista City Administrators' Defined Contribution Pension Plan and Trust, embodied in plan documents including an adoption agreement and basic plan document constituting an integral part thereof, as well as various prior amendments ("Plan").

SECTION 2. The City desires to amend the Plan, including the adoption agreement and basic plan document, as provided in the Plan Amendment presented at this meeting ("Plan Amendment").

SECTION 3. The City does hereby approve and adopt said Plan Amendment, effective as of the date(s) specified therein. Except for the changes made in the Plan Amendment, the Plan shall remain in effect as previously adopted.

SECTION 4. That the Mayor or his designee is authorized to execute said Plan Amendment on behalf of the City, and the City Administrator or her designee is authorized and directed to provide the same to the Trustee (for its written acceptance, if determined necessary or appropriate), and if directed in this resolution or the City Administrator or her designee otherwise determines necessary or advisable, to cause said Plan Amendment to be submitted, together with such supporting documents and data as may be necessary or advisable and applicable application fee, to the Internal Revenue Service for ruling as to whether the same complies with the pertinent provisions of the Internal Revenue Code of the United States and, in particular, Sections 401(a) and 501(a) thereof, with authority to make any changes in or to the designations, elections or provisions under or of said Plan Amendment or any other plan documents and take such further actions as the City Administrator or her designee determines necessary or appropriate to obtain a favorable ruling or as otherwise required for the qualified status of the Plan. The Mayor or his designee further is authorized to take all actions on behalf of the City as the Mayor or his designee determines necessary or appropriate to implement or carry out the Plan Amendment or Resolution, including without limitation entering and executing any contracts or contract amendments or other agreements, amendments, documents, or instruments to implement, carry out, or conform with the Plan Amendment or this



Resolution.

Formatted: Font: 11 pt

~~SECTION 1. Pursuant to Nebraska Statutes, Section 19-3501, the Mayor and Council of the City of La Vista maintain the City of La Vista City Administrators' Defined Contribution Pension Plan and Trust, embodied in plan documents including an adoption agreement and basic plan document constituting an integral part thereof, as well as various amendments required by applicable law ("Plan").~~

~~SECTION 2. The Plan is required by applicable tax law to be amended and restated into a restated plan document incorporating prior amendments and changes to tax laws, regulations and other guidance, including without limitation the Pension Protection Act of 2006, Heroes, Earnings Assistance and Relief Tax Act of 2008, and Worker, Retiree, and Employer Recovery Act of 2008 and subsequent legislation. For this purpose, there has been presented to the City a proposed retirement plan and trust embodied in instruments entitled "Adoption Agreement" together with a "Basic Municipal Employees Plan and Trust Agreement" ("Basic Plan Document") as an integral part thereof (together the Adoption Agreement and Basic Plan Document sometimes are referred to herein together as "Agreements"), which Agreements have been reviewed by legal counsel for the City.~~

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

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

This Adoption Agreement is the aAdoption aAgreement referred to in the foregoing actions, and the designations and elections hereinafter set forth are those made by the City in accordance with said actions, to-wit:

**A. ESTABLISHMENT, EFFECTIVE DATE, AND CITY DATA:**

(1) \_\_\_\_\_ establishes on \_\_\_\_\_, \_\_\_\_\_, a Retirement Plan and Trust to be known as \_\_\_\_\_

\_\_\_\_\_ Plan and Trust ("Plan") effective \_\_\_\_\_, \_\_\_\_\_ (Effective Date).

OR



- (2) X amends, ~~restates~~ and continues the City of La Vista City Administrators' Defined Contribution Pension Plan and Trust, ("Plan"), originally established on January 1, 2006. This amendment ~~and restatement~~ is effective January-October 1, 2017~~06~~, unless otherwise specified herein or in the Basic Plan Document or required under applicable law or regulations or guidance thereunder. (Supplemental Effective Date). This revised adoption agreement shall supersede the adoption agreement in effect immediately before this adoption agreement. Except for changes made in the Plan Amendment, the Plan shall remain in full force and effect in accordance with the Plan documents as previously adopted or amended.
- (3) City's Address:  
Street: 8116 Park View Blvd  
City, State, Zip Code: La Vista, Nebraska 68128  
Attention: Pam Buethe, City Clerk  
Telephone: (402) 331-4343
- (4) Retirement Committee: As may be designated from time to time pursuant to Section 12.3 of the Basic Plan Document.
- (5) Plan Administrator: the City of La Vista, with the exception of any administrative functions expressly delegated from time to time to the Retirement Committee herein or in or under the Basic Plan Document or otherwise by direction of the Mayor and City Council.
- (6) City's Taxpayer Identification No.: 47-6050031
- (7) City's Fiscal Year: October 1 – September 30
- (8) The Plan serial number ("PN") assigned to this Plan by the City for reporting and disclosure purposes is: 005
- (9) The last day of the Plan Year shall be December 31 and the Annual Valuation Date shall be December 31 [Sections 1.1.26 and 1.1.4]
- (10) The last day of the Plan's Limitation Year shall be December 31 [Section 1.1.20] (All qualified retirement plans maintained by the City shall have the same Limitation Year.)

Formatted: Font: 11 pt

Formatted: Font: 11 pt

Formatted: Font: 11 pt

Formatted: Font: 11 pt

Formatted: Font: 11 pt

## B. ELIGIBILITY REQUIREMENTS

- (1) **Age Requirement.** The minimum age which each Employee must attain before becoming a Participant in the Plan is age N/A.
- (2) **Service Requirement.** To become a Participant in the Plan, each Employee must complete at least N/A year(s) of Eligibility Service. (Not Applicable for Police and Fire Plans. Not more than five (5) years for other Plans.) If year(s) of service selected is or includes a fractional year, an Employee will not be required to complete any specified number of Hours of Service to receive credit for such fractional year.

- (3) The computation period for Eligibility Service will be *(Not Applicable for Fire and Police Plans)* Check One: N/A

\_\_\_ as set forth in Section 1.1.9(a)(i), the year beginning with the date the Employee first performs an Hour of Service and then Plan Years.

\_\_\_ as set forth in Section 1.1.9(a)(ii), based upon years commencing on the date the Employee first performs an Hour of Service and anniversaries thereof.

Upon reemployment, former Participants shall again participate in the Plan under the immediate reentry rule of Section 2.2.

- (4) Plan Entry Date shall be *(check one)*:

X  (a) the first day of service in Recognized Employment with the City *(Police and Fire Plans)*.

\_\_\_ (b) the first day \_\_\_\_\_ (specify period e.g., the week, month, etc., but not more than six months) following the Employee's satisfaction of the Eligibility Requirements *[Section 2.1(d)]*

\_\_\_ (c) the first day of the Plan Year in which the Employee first satisfies the Eligibility Requirements. *[Section 2.1(c)]*

\_\_\_ (d) the first day of the first month or the first day of the seventh month of the Plan Year, whichever occurs first, following the Employee's satisfaction of the Eligibility Requirements. *[Section 2.1(b)]*

\_\_\_ (e) Other \_\_\_\_\_  
\_\_\_\_\_

- (5) **Recognized Employment.** Recognized Employment is service in the employment of the City in those job classifications indicated below *(place "X" on blank(s) indicating selection): [Section 1.1.30]*

\_\_\_ (a) All Employees of the City employed as police officers.

\_\_\_ (b) All Employees of the City employed as fire fighters.

\_\_\_ (c) All Employees of the City as that term is defined in Section 1.1.10.

\_\_\_ (d) All common law Employees of the City.

\_\_\_ (e) Salaried Employees of the City.

\_\_\_ (f) Hourly Employees of the City.

\_\_\_ (g) Employees who are not covered by any retirement plan established by the City.

X   (h) Other *specify*: the City Administrator and Assistant City Administrator.

(6) **Participation Election:** *(check one)*

Employees and Participants

       have

  X   do not have *(Police and Fire)*

a participation election provided in Section 3.3(b).

**C. MANDATORY EMPLOYEE CONTRIBUTIONS**

*[Section 3.1]*

(1) **Amount of Contribution.** The Employee contribution to the Trustee for each Plan Year shall be:

- (a) (i) Through September 30, 2013, a sum equal to six percent (6%) of his or her Salary,  
(ii) Beginning October 1, 2013 through September 30, 2015, a sum equal to six and one-half percent (6 ½ %) of his or her Salary, and  
(iii) Beginning October 1, 2015, a sum equal to seven percent (7%) of his or her Salary. *(Police)*

       (b) Six and one-half percent (6 1/2%) of his or her Salary. *(Fire)*

  X   (c) Other: 6% of each Participant's Recognized Compensation; Provided however, the following shall apply with respect to any Participant employed as City Administrator: The Employee contribution to the Trustee (i) with respect any Plan Year or portion of a Plan Year on or after October 1, 2017 shall be 6.27% of such Participant's Recognized Compensation in connection with such Participant's employment during such period; and (ii) with respect to any Plan Year or portion of a Plan Years before October 1, 2017 shall be 6% of such Participant's Recognized Compensation in connection with such Participant's employment during such period.

(2) **Employee Contributions:**

  X   shall *(Police and Fire)*

       shall not

be picked up by the City and treated as Employer contributions as permitted under Section 414(h) of the Code.

**D. VOLUNTARY EMPLOYEE CONTRIBUTIONS**

  X   shall (*Police and Fire*)

       shall not

be permitted to the maximum amount allowed under the Internal Revenue Code.

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

*[Sections 3.2 and 6.4]*

- (1) **Amount of Contribution.** Subject to the limitations of Section 3, the City's contribution to the Trustee for each Plan Year shall be: (*Select one option only. Complete blanks as applicable.*)

       (a) To the Employer Account of each Participant, a sum equal to 100% of the amounts deducted from the Participant's periodic Salary as Mandatory Employee Contributions above (effective April 16, 2012). (*Police*)

       (b) Thirteen percent (13%) of each Participant's Salary. (*Fire*)

  X   (c) Other:   6% of each Participant's Recognized Compensation:  
Provided however, the following shall apply with respect to a  
Participant employed as City Administrator: The City's  
contribution to the Trustee (i) with respect any Plan Year or portion  
of a Plan Year on or after October 1, 2017 shall be 10.8% of such  
Participant's Recognized Compensation in connection with such  
Participant's employment during such period; and (ii) with respect  
to any Plan Year or portion of a Plan Years before October 1, 2017  
shall be 6% of such Participant's Recognized Compensation in  
connection with such Participant's employment during such period.

**Treatment of Forfeitures:** (*Select one unless Item I(2)(a) is elected in which case this provision does not apply.*) *[Sections 6.4.1 and 6.4.2]* **NA**

       (a) Forfeitures shall first be used to pay administration costs of the Plan and then used to reduce City contributions. (*Police*)

       (b) Forfeitures shall be allocated to the Unallocated Employer Account, and if the Unallocated Employer Account is sufficient to meet Plan liabilities, then forfeitures shall first be used to pay expenses of administration and then to reduce City contributions. (*Fire*)

       (c) Forfeitures will be added to the City contribution for allocation.

       (d) Forfeitures will reduce City contributions.

- (2) Is the Plan integrated with Social Security?

\_\_\_\_ Yes  X  No (Police and Fire)

**(If yes, complete items E, 3-6 and 11; if no, complete items E, 7-11).**

*NOTE: Items E, 3-6 and 11 relate to an integrated plan. Contributions are allocated pursuant to Section 3 of the Plan.*

- (3) "Recognized Compensation" shall be defined to mean all of each Participant's: (place "X" to indicate selection)

- \_\_\_\_ (a) W-2 earnings; or
- \_\_\_\_ (b) Wages as defined in Code Section 3401(a); or
- \_\_\_\_ (c) Compensation as that term is defined in Section 3.6.9(b)(i) of the Plan;
- \_\_\_\_ (d) Provided, that Recognized Compensation defined in (a) through (c) shall include amounts described in Sections 3.6.9(b)(vi) and 3.6.9(b)-2 as "default provisions" unless otherwise elected below (select all that apply):

- \_\_\_\_ (1) Exclude leave cashouts and deferred compensation (Section 3.6.9(b)-3(b))
- \_\_\_\_ (2) Include military continuation payments (Section 3.6.9(b)-3(c))
- \_\_\_\_ (3) Include disability continuation payments (Section 3.6.9(b)-3(d)):
- \_\_\_\_ (a) For nonhighly compensated Employees only; or
- \_\_\_\_ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.
- \_\_\_\_ (4) Apply the administrative delay ("first few weeks") rule (Section 3.6.9(b)-4); and/or
- \_\_\_\_ (5) Include "deemed" section 125 compensation pursuant to 3.6.9(b)-vi.

- \_\_\_\_ (e) Other \_\_\_\_\_
- \_\_\_\_\_

which is actually paid to the Participant during

\_\_\_\_ the Plan Year

\_\_\_\_ the taxable year ending with or within the Plan Year

\_\_\_ the Limitation Year ending with or within the Plan Year.

\_\_\_ a consecutive 12-month period ending with or within the Plan Year beginning with the \_\_\_ day of \_\_\_\_\_(enter month).

Recognized Compensation

\_\_\_ shall include

\_\_\_ shall not include

Employee contributions picked up by the City under Section 414(h), and City contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Employee under Sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b) or 457 of the Code.

- (4) If an Employee participates in the Plan for only a portion of the year, his Recognized Compensation for the year *[check one]*:

\_\_\_ shall

\_\_\_ shall not

include otherwise Recognized Compensation during the portion of the year during which he was not a Participant in the Plan.

- (5) "Integration Level" is defined as (*place "X" next to definition selected and complete appropriate blanks*)

\_\_\_ (a) For any Plan Year, an amount equal to \$\_\_\_\_\_(*insert stated dollar amount not to exceed the Taxable Wage Base in effect at the beginning of the Plan Year*).

\_\_\_ (b) For any Plan Year, an amount equal to \_\_\_% (*not more than 100%*) of the Taxable Wage Base in effect at the beginning of the Plan Year.

\_\_\_ (c) For any Plan Year, an amount equal to the lesser of: (i) \$\_\_\_\_\_(*insert stated dollar amount*); or (ii) the Taxable Wage Base in effect beginning at the Plan Year.

- (6) Participants who have been credited with a Year of Service for a Plan Year but who terminate employment before the last day of the Plan Year (check one) :

\_\_\_ shall

\_\_\_ shall not

share in the City contribution and reallocation of the forfeitures for that Plan Year. If shall not is elected, designate any exceptions that apply:

- ☐ death
- ☐ retirement at or after Normal Retirement Date
- ☐ disability.

*NOTE: Items E, 7-11 relate to a nonintegrated plan. Contributions are allocated directly on Recognized Compensation. (Section 3.3(b)).*

- (7) Subject to limitations in Item (7) or (8) or as otherwise provided in Section 1 of the Basic Plan Document, "Recognized Compensation" shall be defined to mean all of each Participant's *(place "X" to indicate selection, check only one)*

- ☐ (a) W-2 earnings;
- ☐ (b) Wages as defined in Code Section 3401(a); or
- ☒ (c) Compensation as that term is defined in Section 3.6.9(b)(i) of the Plan;
- ☐ (d) Provided, that Recognized Compensation defined in (a) through (c) shall include amounts described in Sections 3.6.9(b)(vi) and 3.6.9(b)-2 as "default provisions" unless otherwise elected below *(select all that apply)*:
  - ☐ (1) Exclude leave cashouts and deferred compensation *(Section 3.6.9(b)-3(b))*
  - ☐ (2) Include military continuation payments *(Section 3.6.9(b)-3(c))*
  - ☐ (3) Include disability continuation payments *(Section 3.6.9(b)-3(d))*:
    - ☐ (a) For nonhighly compensated Employees only; or
    - ☐ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.
  - ☐ (4) Apply the administrative delay ("first few weeks") rule *(Section 3.6.9(b)-4)*; and/or
  - ☐ (5) Include "deemed" section 125 compensation pursuant to 3.6.9(b)-vi.
- ☐ (e) Salary as that term is defined in Section 1.1.36(a) of the Plan *(Police)*;
- ☐ (f) Salary as that term is defined in Section 1.1.36(b) of the Plan *(Fire)*; or
- ☐ (f) Other \_\_\_\_\_



\_\_\_\_\_

\_\_\_\_\_

which is actually paid to the Participant during

  X   the Plan Year.

\_\_\_\_\_ the taxable year ending with or within the Plan year.

\_\_\_\_\_ the Limitation Year ending with or within the Plan year.

Recognized compensation (***Police and Fire Plans see definition of "Salary" in Section 1.1.36 of the Basic Plan Document***)

  X   shall include

\_\_\_\_\_ shall not include

Employee contributions picked up by the City pursuant to Section 414(h), and City contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Employee under Sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b) or 457 of the Code. (***Police and Fire Plans see definition of "Salary" in Section 1.1.36 of the Basic Plan Document***)

- (8) "Recognized Compensation" shall not include: (*place "X" to indicate exclusion(s) and complete blank, if applicable*) **N/A**

\_\_\_\_\_ (a) overtime, shift, holiday and vacation pay

\_\_\_\_\_ (b) fringe benefits

\_\_\_\_\_ (c) bonuses

\_\_\_\_\_ (d) commissions, but not more than the first \$\_\_\_\_\_ thereof  
(*insert dollar limitation desired, if any*)

\_\_\_\_\_ (e) overtime, callback pay, clothing allowances and other such benefits reported on Employee federal withholding statement (*Fire*).

- (9) If an Employee participates in the Plan for only a portion of the year, his Recognized Compensation for the year [*check one*]: **NA**

\_\_\_\_\_ shall

\_\_\_\_\_ shall not

include otherwise Recognized Compensation during the portion of the year during which he was not a Participant in the Plan.

- (10) Participants who have been credited with a Year of Service for a Plan Year but who terminate employment before the last day of the Plan Year. (*Check one*):

☒ shall (*Police and Fire*)

☐ shall not

share in the City contribution and reallocation of forfeitures for that Plan Year.  
If shall not is elected, designate any exceptions that apply:

☐ death

☐ retirement at or after their Normal Retirement Date

☐ disability

(11) Forfeitures will be reallocated [*Sections 6.4.2 and 6.4.3*] NA

☐ as of the following Valuation Date

☐ after a Participant incurs 5 consecutive One Year Breaks in Service or his Account is no longer subject to restoration.

**F. INTEREST NA**

☐ shall

☐ shall not

be paid on Employer Contributions pursuant to Section 3.2(a)(ii) of the Plan.

**G. WITHDRAWAL OF PRIOR VOLUNTARY CONTRIBUTIONS**

If this Plan or a predecessor plan previously permitted Voluntary Contributions, Participants: **NA**

☐ are

☐ are not

permitted to withdraw their voluntary contributions before an Event of Maturity. [*Section 7.9*]

**H. ROLLOVERS**

(1) Rollover contributions by Participants [*Section 3.5*]

☒ are permitted as specified in Section 3.5. In addition to the plans specified in Section 3.5, rollover contributions and direct rollovers may be made from the following types of plans as of the specified effective date(s) (*specify all that apply*):

X   (a) annuity contract described in Code section 403(b), effective for distributions after \_\_\_\_\_ (December 31, 2001 if no date specified)

  X   (b) eligible plan under Code section 457(b) which is maintained by a state or political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state, effective for distributions after \_\_\_\_\_ (December 31, 2001 if no date specified)

       Including after-tax employee contributions from the plans or contracts checked above, with separate accounting required for amounts includible and not includible in gross income (select if applicable).

       are not permitted

(2) Eligible rollover distribution [Section 7.12]

       must

  X   need not

be distributions that are reasonably expected to total \$200 or more during a year.

#### I. VESTING OF REGULAR ACCOUNTS

[Section 5]

(1) **Employee Accounts:** Each Employee is fully vested in his or her Employee Account at all times.

(2) **Employer Accounts:** Each Participant's Employer Account shall become Vested in him as follows (*place "X" next to formula selected and complete appropriate blanks*):

  X   (a) **Full and Immediate Vesting.** Each Employer Account shall be fully Vested in him at all times.

       (b) **Graded Vesting.** Each Participant's Employer Account shall be vested in him in accordance with the following schedule (*Choose One*):

When the Participant Has Completed  
the Following Vesting Service:

The Vested Portion of  
His Regular Account  
Will Be:\*

       (i) **Five Year Vesting:**

|                               |       |
|-------------------------------|-------|
| Less than 1 year              | ____% |
| 1 year but less than 2 years  | ____% |
| 2 years but less than 3 years | ____% |
| 3 years but less than 4 years | ____% |
| 4 years but less than 5 years | ____% |
| 5 years or more               | 100 % |

\_\_\_\_ (ii) Seven Year Vesting:

|                               |       |
|-------------------------------|-------|
| Less than 1 year              | 0 %   |
| 1 year but less than 2 years  | 0 %   |
| 2 years but less than 3 years | 0 %   |
| 3 years but less than 4 years | 0 %   |
| 4 years but less than 5 years | 40 %  |
| 5 years but less than 6 years | 60 %  |
| 6 years but less than 7 years | 80 %  |
| 7 years or more               | 100 % |

\_\_\_\_ (iii) Seven Year Special Vesting (Fire):

|                               |      |
|-------------------------------|------|
| Less than 4 years             | 0 %  |
| 4 years but less than 5 years | 40 % |
| 5 years but less than 6 years | 60 % |
| 6 years but less than 7 years | 80 % |
| 7 years or more               | 100% |

\_\_\_\_ (iv) Ten Year Vesting  
Amended to Seven  
Year Vesting (Police):

|                                | Through<br>June 30, 2012<br><u>(10 Yr. Graded)</u> | Beginning<br>July 1, 2012<br><u>(7 Yr. Graded)</u> |
|--------------------------------|--|--|
| Less than 2 years              | 0%   | 0%   |
| 2 years but less than 3 years  | 0%   | 40%  |
| 3 years but less than 4 years  | 0 %  | 40%  |
| 4 years but less than 5 years  | 40 %   | 60%  |
| 5 years but less than 6 years  | 50 %   | 80%  |
| 6 years but less than 7 years  | 60 %   | 80%  |
| 7 years but less than 8 years  | 70 %   | 100%   |
| 8 years but less than 9 years  | 80 %   |  |
| 9 years but less than 10 years |  | 90 %   |
| 10 years or more               | 100 %  |  |

- (3) In determining a Participant's Plan Years of Service, the following periods shall be disregarded: [Section 1.1.44] (Not Applicable for Police and Fire Plans).

\_\_\_ Yes    X No    Plan Years prior to the Effective Date of this Plan or a predecessor Plan. [Yes, 1.1.44(c); No, Section 1.1.44(c)]

☐ Yes ☒ No Plan Years completed prior to the date upon which the Participant attained age \_\_\_\_\_ years. *(Insert age, but not greater than age 18.) [Section 1.1.44(e)]*

- (4) Notwithstanding any of the foregoing, each Participant's Employer Account shall be 100% Vested in him upon his attainment of: **NA**

☐ (a) 60 (Police)

☐ (b) 55 (Fire)

☐ (c) Other \_\_\_\_\_

years of age while in the employment of the City (as a police officer, if this is a Police Plan). *(If no age is entered, it will be assumed Normal Retirement Date was intended.)*

*[Section 5.1.2]*

- (5) Normal Retirement Date is: *(place "X" next to choice selected)*

*[Section 1.1.22]*

☒ (a) The Participant's 65th birthday.

☐ (b) The Participant's 65th birthday or, if later, the 5th anniversary of the date the Participant first becomes a Participant.

☐ (c) Age \_\_\_\_\_ years *(60 for Police; 55 for Fire; Otherwise not greater than the Participant's 65th birthday and not less than age 55.)*

- (6) Early Retirement Date is age NA years. *(Specify age. In-service distribution upon attaining early retirement date is not allowed for a pension plan. Also, this provision is not applicable for Police/Fire Plans – see Section 1.1.34 of Basic Plan for definition of Early Retirement Date for Police or Fire Plan.)*

- (7) An Employee who returns to employment of the City in Covered Employment after terminating service

☒ shall

☐ shall not

be permitted to restore his or her Employer Account to the amount on the date of distribution. *(Section 5.1.3 or 6.4.4)*

#### J. INVESTMENT DIRECTIONS

- (1) Participants:

☐ are

X   are not  
permitted to direct the investment of a portion of their accounts into life insurance.

[Section 10.10]

(2) Participant Account Investment Direction [Section 10.11.2]

(a) Participants:

  X   are  
\_\_\_\_ are not

permitted to direct the investment of their:

  X   Employee Accounts (*Required of Police and Fire Plans*)

  X   Employer Accounts (*Permitted for all types of plans, with the exception of pre-1984 contributions under Police and Fire Plans, and the Employer Account of pre-1984 hires under Fire Plans.*)

The City agrees to indemnify the Trustee and hold it harmless for the Trustee's actions taken pursuant to such direction. (*Sections 1.1.35, 4.3 and 10.11*)

(b) Separate Investment Accounts (*Police*)

The City

  X   may  
\_\_\_\_ may not

direct the establishment of separate investment accounts for each Participant to allow each Participant to direct the investment of all or a portion of his or her Employee or Employer Account

If in the affirmative, enter name or title of person (or committee) authorized to communicate such directions to the Trustee:   City Clerk  . Such directions shall be in writing and the City agrees to indemnify the Trustee and hold it harmless for the Trustee's actions taken pursuant to such directions.

(3) Investment Direction [Sections 4.3, 10 and 12]

(a) The

  X   City  
  X   may

\_\_\_\_ may not  
\_\_\_\_ Retirement Committee (*Police and Fire*)

\_\_\_\_ may  
\_\_\_\_ may not

direct the Trustee in the investment management of Plan assets.

(4) Participant Loans: [Section 10.13]

X are permitted  
\_\_\_\_ are not permitted

**K. INTERNAL REVENUE CODE SECTION 415 LIMITATIONS**

[Section 3.6]

If the City maintains or ever has maintained another qualified plan in which any Participant in this Plan is (or was) a Participant or could possibly become a Participant, the City must complete this Section. City must also complete this Section if it maintains a welfare benefit fund, as defined in Code section 419(e), an individual medical account, as defined in Code section 415(1)(2), or simplified employer pension, as defined in Code section 408(k) under which amounts are treated as annual additions with respect to any Participant in this Plan. (*Designate whether (1) or (2) applies, and complete as appropriate.*)

If a Participant is covered by another qualified plan maintained by the City:

X (1) the provisions of Sections 3.6.4 through 3.6.9 will apply;

OR

\_\_\_\_ (2) set forth the method under which the Plans will limit total annual additions or distributions to the maximum permissible amount or benefit, as applicable, and will properly reduce any excess amounts or benefits, in a manner that precludes City discretion.

\_\_\_\_ (Use additional continuation pages if alternative limitation rules are to be specified.)

415 Compensation. The definition of Compensation for Code section 415 purposes shall be 415 Safe Harbor Compensation defined in section 3.6.9(b)i of the Plan, unless an alternative definition of compensation is elected below pursuant to section 3.6.9(b)ii of the Plan (*select desired alternative definition*):

\_\_\_\_ (1) W-2 Wages; or  
\_\_\_\_ (2) Section 3401(a) Wages



Modifications to 415 Compensation – Compensation for 415 purposes shall include amounts described in Sections 3.6.9(b)-2 and 3.6.9(b)(vi) as “default provisions” unless otherwise elected below (*select all that apply*). **NA**

- ☐ (1) Exclude leave cashouts and deferred compensation (*Section 3.6.9(b)-3(b)*)
- ☐ (2) Include military continuation payments (*Section 3.6.9(b)-3(c)*)
- ☐ (3) Include disability continuation payments (*Section 3.6.9(b)-3(d)*)
  - ☐ (a) For nonhighly compensated Employees only
  - ☐ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.
- ☐ (4) Apply the administrative delay (“first few weeks”) rule (*Section 3.6.9(b)-4*)
- ☐ (5) Include “deemed” section 125 compensation pursuant to 3.6.9(b)-vi, effective for limitation years beginning on or after January 1, 1998.

**L. CREDITING SERVICE** (*Complete (1) and (2), as appropriate.*)

  X   (1) **Hours of Service Method.** [*Section 1.1.18*] Except as provided in (2) below, for the purpose of determining an Employee's One-Year Breaks in Service [*Section 1.1.23*], Vesting Service [*Section 1.1.44*], Eligibility Service [*Section 1.1.9*] and minimum annual service requirement to share in the City contribution made for a Plan Year [*Section 3.3*], service will be determined by reference to Hours of Service according to the following: (*check one*)

- X   (a) On the basis of the actual recorded hours for which an Employee is paid or entitled to payment.
- ☐ (b) On the basis that, without regard to his actual recorded hours, an Employee shall be credited with 10 Hours of Service for a day if under Section 1.1.18 such Employee would be certified with at least one hour of service during that day.
- ☐ (c) On the basis that, without regard to his actual recorded hours, an Employee shall be credited under 45 Hours of Service for a calendar week if under Section 1.1.18 such Employee would be credited with at least One Hour of Service during that calendar week.
- ☐ (d) On the basis of semimonthly payroll periods, an Employee shall be credited with 95 Hours of Service for a semi-monthly payroll period if under Section 1.1.18 such Employee would be credited with at least one Hour of Service during that semimonthly payroll period.
- ☐ (e) On the basis that, without regard to his actual recorded hours, an Employee shall be credited with 190 Hours of

Service for a calendar month if under Section 1.1.18 such Employee would be credited with at least one Hour of Service during that calendar month.

- X   (2) **Elapsed Time Method.** [Section 1.2] Notwithstanding (1) above, service will be credited based upon elapsed time for the following purposes: *(check as appropriate)*

- X   (a) None
- (b) All
- (c) Eligibility (and Eligibility Breaks in Service)
- (d) Vesting (and Vesting Breaks in Service) *(Police and Fire)*
- (e) Minimum Service for benefit accrual for a Plan Year

#### M. INVESTMENTS

[Section 10.14(p)]

- (1) All funds of a Plan for police officers or fire fighters must be invested pursuant to the policies established by the Nebraska Investment Council.
- (2) The Trustee's collective investment fund or funds are incorporated by reference into this Agreement, as indicated in Appendix "C" of the Basic Municipal Employees Plan and Trust, or otherwise agreed by the parties in writing from time to time.
- (3) The Trustee is hereby specifically authorized and empowered to invest Plan assets in deposit accounts of \_\_\_\_\_ which bear a reasonable rate of interest and securities offered by \_\_\_\_\_ *(name of Trustee or financial institution)*. Such specification shall be permitted in any other applicable document related to funding the Plan, which document shall be incorporated herein by this reference.

[Section 4.2]

- (4) **Intermediate Valuation of Accounts.** Participant accounts will be valued for investment purposes as follows: *(select one)*
- (a) Annually
- (b) Semi-annually
- (c) Quarterly
- (d) Monthly

X   (e) Daily

**N. ACCELERATED DISTRIBUTIONS**

The following optional provisions for accelerated distributions may be made available to Plan Participants: *(Select as many as shall apply. Not applicable for Police and Fire Plans; and (1) through (4) not applicable to the extent of pension plan assets.) [Section 14] N/A*

- (1) Medical emergency
- (2) Financial hardships
- (3) Education expenses
- (4) Purchase of home
- (5) After Normal Retirement Date

**O. OPTIONAL FORMS OF DISTRIBUTION**

The optional forms of benefit payment provided by this Plan are: *(Select as many as apply. If the requirements of Code section 411(d)(6) are applicable (which is not the case if this Plan is a government plan within the meaning of Code section 414(d)), the City may not eliminate optional forms of payment for benefits which have accrued prior to the date of Plan amendment unless said requirements are satisfied.)*

- X   (1) a single sum
- X   (2) straight life annuity
- X   (3) straight life annuity with a guarantee of at least 60 monthly payments
- (4) annuity payable for life of Participant and annuity to surviving beneficiary of 100%, 75% or 50% as elected by the City.
- X   (5) a combination of forms of benefit elected in (1) through (4) and (7)
- (6) if this Plan is a transferee plan, an optional form of distribution provided under the transferor plan which is required to be preserved under Code section 411(d)(6) (and the regulations issued thereunder – which is not the case if this is a government plan under Code section 414(d)) with respect to accrued benefits of any Participant as of the date of transfer. *(Indicate name of transferor plan and date on which prior accrued benefit distribution options are protected)* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

- X (7) Other (Describe): installment (monthly, quarterly, semi-annually, or annually) with or without a period certain, Code Section 401(a)(9) minimum distributions, and any other payment option available under the funding medium.

**P. MANDATORY DISTRIBUTION ALTERNATIVES** (Section 5.1.3(a)(ii))

The following election is made in lieu of the provisions of Section 5.1.3(a)(ii) reducing the mandatory cash out amount to an amount equal to or less than \$1,000 (Option for plans other than Fire Plans -- Participant consent to distribution is always required for Fire Plans.) (select one):

- \_\_\_ (1) Elimination of Mandatory Cash-Outs. An Employee's Vested Retirement Value will not be distributed upon the Employee's termination of service without the Employee's prior written consent, regardless of amount.
- \_\_\_ (2) Increase Mandatory Cash Out Amount. Upon termination of service, the Employee's Vested Retirement Value will be automatically distributed without the Employee's consent if the Vested Retirement Value is less than \$3,500 if a Police Plan (or not in excess of \$5,000 for plans other than Police or Fire Plans). Said distribution, if greater than \$1,000, will be paid in a direct rollover to an "individual retirement plan" designated by the Plan Administrator if the Employee does not elect to have the distribution paid in a direct rollover directly to an "eligible retirement plan" specified by the Employee in accordance with direct rollover provisions of the Plan, or to receive the distribution directly.

- Q.** The City shall periodically pay to the Trustee a fee for services rendered according to the Trustee Fee Schedule attached to the Basic Municipal Employees Plan and Trust Agreement as Appendix A or otherwise agreed to by the parties, as incorporated herein by this reference as amended from time to time. The terms of any agreement adopted and executed by the City and Trustee separate and apart from this document and defining rights and duties of the parties to said agreement shall be supplemental and additional to, and incorporated by reference into, this document to the extent not contrary to terms contained herein; and the same, if entered before the date of this Adoption Agreement, shall continue and remain in effect. If any terms of any such separate trust document conflict with the terms of this document, the terms of this document shall control.

**R. INITIAL DEPOSIT**

In the case of establishment of a new Plan, the City hereby delivers to the Trustee the sum of \$ N/A as its initial deposit to establish the Trust, and receipt of the stated sum is hereby acknowledged by the Trustee.

- S.** The completion of this Adoption Agreement creates certain legal relationships and responsibilities. Accordingly, your legal counsel should review the Plan and Trust prior to the execution of this document so as to insure the suitability of the Plan and Trust for your City.

The City acknowledges that it has consulted with and has been advised by its attorney(s) with respect to the effect of entering this Plan and executing this Adoption Agreement.

Terms used in this Adoption Agreement which are defined in the Plan shall have the meaning given them in the Plan.

The City hereby agrees to the provisions of this Plan and Trust, and, in witness whereof, the City and the Trustee have caused this Agreement to be executed on the date(s) set forth below.

THE CITY OF LA VISTA, NEBRASKA

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

### NOTICE TO ADOPTING CITY

Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

In order to obtain reliance with respect to Plan qualification, the City, ~~upon adopting and executing this Plan,~~ must apply to the Employee Plans Determinations of the Internal Revenue Service for a determination letter.

This Adoption Agreement may only be used with the Basic Municipal Employees Plan and Trust Agreement, ~~as amended from time to time.~~

CITY OF LA VISTA, NEBRASKA, Employer

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

Printed Name

Title

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

~~MATRIX TRUST COMPANY (as successor to~~  
WILMINGTON TRUST RETIREMENT AND  
INSTITUTIONAL SERVICES COMPANY), and any  
successor thereof, Trustee

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

Printed Name

Title

Date \_\_\_\_\_