



CITY OF LA VISTA

**CERTIFICATE OF APPRECIATION**

A CERTIFICATE OF APPRECIATION PRESENTED TO RITA RAMIREZ, the Assistant City Administrator, FOR 20 YEARS OF FAITHFUL AND EFFICIENT SERVICE TO THE CITY OF LA VISTA.

WHEREAS, Rita Ramirez, has served the City of La Vista since December 31, 1990, and

WHEREAS, Rita Ramirez's input and contributions to the City of La Vista have contributed to the success of the City.

NOW, THEREFORE BE IT RESOLVED, that this Certificate of Appreciation is hereby presented to Rita Ramirez on behalf of the City of La Vista for 20 years of service to the City.

DATED THIS 4TH DAY OF JANUARY, 2011.

\_\_\_\_\_  
Douglas Kindig, Mayor

\_\_\_\_\_  
Ronald Sheehan  
Councilmember, Ward I

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Brenda L. Carlisle  
Councilmember, Ward I

\_\_\_\_\_  
Mike Crawford  
Councilmember, Ward II

\_\_\_\_\_  
Terrilyn Quick  
Councilmember, Ward II

\_\_\_\_\_  
Mark D. Ellerbeck  
Councilmember, Ward III

\_\_\_\_\_  
Alan W. Ronan  
Councilmember, Ward III

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Kelly R. Sell  
Councilmember, Ward IV

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Anthony J. Gowan  
Councilmember, Ward IV

ATTEST:

\_\_\_\_\_  
Pamela A. Bueth, CMC  
City Clerk





*CITY OF LA VISTA*

*CERTIFICATE OF APPRECIATION*

A CERTIFICATE OF APPRECIATION PRESENTED TO BRENDA JACOBS, of the La Vista Police Department, FOR 20 YEARS OF FAITHFUL AND EFFICIENT SERVICE TO THE CITY OF LA VISTA.

WHEREAS, Brenda Jacobs, has served the City of La Vista since December 22, 1990, and

WHEREAS, Brenda Jacobs' input and contributions to the City of La Vista have contributed to the success of the City.

NOW, THEREFORE BE IT RESOLVED, that this Certificate of Appreciation is hereby presented to Brenda Jacobs on behalf of the City of La Vista for 20 years of service to the City.

DATED THIS 4TH DAY OF JANUARY, 2011.

\_\_\_\_\_  
Douglas Kindig, Mayor

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Ronald Sheehan  
Councilmember, Ward I

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Brenda L. Carlisle  
Councilmember, Ward I

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Mike Crawford  
Councilmember, Ward II

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Terrilyn Quick  
Councilmember, Ward II

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Mark D. Ellerbeck  
Councilmember, Ward III

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Alan W. Ronan  
Councilmember, Ward III

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Kelly R. Sell  
Councilmember, Ward IV

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Anthony J. Gowan  
Councilmember, Ward IV

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk



# MINUTE RECORD

No. 729—REDFIELD & COMPANY, INC., OMAHA

## LA VISTA CITY COUNCIL MEETING December 21, 2010

A meeting of the City Council of the City of La Vista, Nebraska was convened in open and public session at 7:00 p.m. on December 21, 2010. Present were Councilmembers: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Also in attendance were City Attorney McKeon, City Administrator Gunn, City Clerk Buethe, Library Director Barcal, Police Chief Lausten, Fire Chief Uhl, Finance Director Lindberg, Assistant Public Works Director/City Engineer Kottmann, and Assistant Recreation Director Karlson.

A notice of the meeting was given in advance thereof by publication in the Times on December 9, 2010. Notice was simultaneously given to the Mayor and all members of the City Council and a copy of the acknowledgment of the receipt of notice attached to the minutes. Availability of the agenda was communicated to the Mayor and City Council in the advance notice of the meeting. All proceedings shown were taken while the convened meeting was open to the attendance of the public. Further, all subjects included in said proceedings were contained in the agenda for said meeting which is kept continuously current and available for public inspection at City Hall during normal business hours.

Mayor Kindig called the meeting to order and led the audience in the pledge of allegiance.

Mayor Kindig made an announcement regarding the agenda policy statement providing for an expanded opportunity for public comment on the agenda items

### SERVICE AWARD – ROBERT LAUSTEN – 20 YEARS; MARY SHAW – 10 YEARS

Mayor Kindig recognized Bob Lausten for 20 years of service to the City and Mary Shaw for 10 years of service to the City.

### RECOGNITION – EMS COMPETITION WINNERS

Melanie Smith informed Council of the EMS personnel involved in the EMS competition and what was involved in the competition. The winners were unable to be present.

- A. CONSENT AGENDA
- B. APPROVAL OF THE AGENDA AS PRESENTED
- C. APPROVAL OF CITY COUNCIL MINUTES FROM DECEMBER 7, 2010
- D. APPROVAL OF CITY COUNCIL ORGANIZATIONAL MEETING MINUTES FROM DECEMBER 7, 2010
- E. MONTHLY FINANCIAL REPORT – NOVEMBER 2010
- F. APPROVAL OF LA VISTA/METROPOLITAN COMMUNITY COLLEGE CONDOMINIUM OWNERS ASSOCIATION, INC. MINUTES FROM DECEMBER 6, 2010
- G. REQUEST FOR PAYMENT – DOUGLAS COUNTY ENGINEER – HELL CREEK STREAM STABILIZATION PHASE I - \$3,852.04.
- H. REQUEST FOR PAYMENT – MIDWEST RIGHT OF WAY SERVICES, INC. – PROFESSIONAL SERVICES - \$9,554.00.
- I. APPROVAL OF CLAIMS

Councilmember Crawford made a motion to approve the consent agenda. Seconded by Councilmember Sheehan. Councilmember Sell reviewed the claims for this period and reported that he found everything to be in order. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: Carlisle. Motion carried.

A & D TECHNICAL SUPPLY COMPANY, printing	120.00
ABE'S PORTABLES INC, rentals	75.51
ACTION BATTERIES, supplies	142.27
ALAMAR UNIFORMS, wearing apparel	356.68
ARAMARK UNIFORM SERVICES, services	287.18
ASPEN EQUIP CO, maintenance	377.50
ASSOCIATED FIRE PROTECTION, services	71.50
BAKER & TAYLOR BOOKS, books	774.40

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December 21, 2010

BATTERIES PLUS, supplies	456.00
BENNINGTON EQUIP, maintenance	569.48
BENSON RECORDS MGMT, services	68.48
BKD LLP, services	7150.00
BLACK HILLS ENERGY, utilities	92.95
BRAKE, AUSTIN, auto allowance	100.00
BRAMBLE, EILEEN, expenses	1990.00
BRAMBLE, EILEEN, expenses	3260.00
BRAMBLE, EILEEN, expenses	1260.00
BRENTWOOD AUTO WASH, maintenance	70.00
BUILDERS SUPPLY, misc.	8.30
BURT, STACIA, training	477.00
ELAN, lodging, phone, dues	5138.66
CARL JARL LOCKSMITHS, supplies	3.70
CITY OF OMAHA, services	638.26
CJ'S HOME CENTER, supplies	1011.73
COG PROPERTIES, expenses	5250.00
COMPLETE MUSIC, services	200.00
COX COMMUNICATIONS, phone	213.67
CZARNICK, MICHAEL, training	360.00
D & D COMMUNICATIONS, repair	237.50
DEMCO INC, supplies	76.33
DIAMOND VOGEL PAINTS, bld & grnds	106.95
DOUGLAS COUNTY ENGINEER, services	8674.71
EASYWAY INTERNATIONAL, block grant	65970.00
ED M. FELD EQUIPMENT, supplies/wearing apparel	810.00
FBINAA, dues	180.00
FEDEX KINKO'S, printing	27.00
FERRELLGAS, utilities	458.19
FIREGUARD INC, services	94.55
FLEETPRIDE, maintenance	149.53
FORT DEARBORN LIFE INSURANCE	1306.00
FRED'S HEATING & AIR, refund	59.10
FROEHLICH, RORY, auto allowance	100.00
GALE, books	170.22
GENUINE PARTS CO, repair/maintenance	906.11
GRAYBAR ELECTRIC CO, services	44.51
GREAT PLAINS ONE-CALL, services	193.63
HANEY SHOE STORE, wearing apparel	240.00
HARTS AUTO SUPPLY, maintenance	771.00
HEARTLAND AWARDS, supplies	2.15
HEIMAN FIRE EQUIP, equipment	1909.90
HERITAGE CRYSTAL CLEAN, services	2000.00
HOBBY LOBBY, supplies/LV50	142.89
HOLSTEIN'S HARLEY DAVIDSON, maintenance	1496.34
HUNDEN STRATEGIC PARTNERS, services	4053.75
HUNTEL COMMUNICATIONS, services	123.50
ICSC, dues	200.00
INSIGHT PUBLIC SECTOR, services	521.01
J Q OFFICE EQUIP, services/rentals	1109.91
JNFS ENGINEERING CO, services	915.99
KAR SIM KENNEL, services	7.00
KOTTMANN, JOHN, auto allowance	192.50
KRIHA FLUID POWER, maintenance	185.00
LAUGHLIN, KATHLEEN A, TRUSTEE	437.00
LAUGHLIN, KATHLEEN A, TRUSTEE	211.00
LERNER PUBLISHING GROUP, books	916.67



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December 21, 2010

LOU'S SPORTING GOODS, supplies	123.96
MARKOWSKY, T J, auto allowance	100.00
MARSHALL CAVENDISH CORP, books	1279.59
MENARDS, maintenance	16.48
METRO AREA TRANSIT, services	528.00
MUD, utilities	88.11
MIDLANDS LIGHTING & ELECTRIC, bld & grnds	22.39
MID-STATES UTILITY TRAILER, maintenance	529.62
MIDWEST SERVICE AND SALES, supplies	327.82
MIRACLE RECREATION EQUIP, maintenance	806.85
NEBRASKA NOTARY ASSOC, services	154.23
NEBRASKA STATE FIRE MARSHALL, services	360.00
NEBRASKA TITLE COMPANY, acquisition	92070.26
NEBRASKA TITLE COMPANY, acquisition	86964.45
NEBRASKA TITLE COMPANY, acquisition	85899.85
NEBRASKA TITLE COMPANY, acquisition	79978.38
NEXTEL COMMUNICATIONS, phone	533.72
NEXTEL COMMUNICATIONS, phone	204.19
NMC EXCHANGE, maintenance	324.51
NUTS AND BOLTS INC, misc.	4.20
OFFICE DEPOT, supplies	91.73
OPPD, utilities	41667.11
OMAHA WORLD HERALD, advertising	4021.46
O'REILLY AUTOMOTIVE, maintenance	992.43
PALMER, CHANCE, services	120.00
PAPILLION SANITATION, services	304.11
PARAMOUNT LINEN & UNIFORM, services	179.13
PARK, JANEEN, expenses	790.00
PARK, JANEEN, expenses	700.00
PERFORMANCE CHRYSLER JEEP, maintenance	171.36
PPE INC, training	2550.00
QWEST, phone	1083.61
RALSTON COSTUME, community event	56.00
RECORDED BOOKS, media	16.87
ROSE EQUIPMENT INC, training	110.00
ROURKE PUBLISHING CO, books	652.20
RUNZA RESTAURANT, expense	415.00
RUSTY ECK FORD, maintenance	264.48
SAM'S CLUB, supplies	651.62
SCCC, dues	155.00
SARPY COUNTY TREASURER, services	9187.50
STATE STEEL OF OMAHA, maintenance	64.00
SUCCESS FACTORS INC, services	4500.00
TED'S MOWER SALES & SERVICE, equip repair	42.03
TEUSCHER, CHRIS, services	250.00
THERMO KING CHRISTENSEN, maintenance	201.45
THOMAS E STEVENS & ASSOCS, services	900.00
THOMPSON DREESSEN & DORNER, services	1933.00
UPS, postage	6.33
VAIL, ADAM, auto allowance	100.00
WASTE MANAGEMENT NEBRASKA, services	797.54
WEIGL PUBLISHERS INC, books	784.43
WINKLER, BRYCE, services	110.00
WOODHAVEN COUNSELING ASSOCS, services	225.00

# MINUTE RECORD

## SPECIAL REPORT – SEDC – TOBY CHURCHILL – THIRD QUARTER REPORT

Toby Churchill reported to the Mayor and City Council on net taxable sales, single-family housing, labor force statistics, and projects over \$35,000.00 and prospects of possible upcoming development.

## REPORTS FROM CITY ADMINISTRATOR AND DEPARTMENT HEADS

Assistant City Administrator Ramirez informed Council that the 50<sup>th</sup> Anniversary Cookbooks are in and available for purchase.

Community Development Director Birch informed Council that the old house at the sod farm has been demolished and the house at Lillian Ave and Park View Blvd. These were demolished by the owners at no expense to the city.

Police Chief Lausten reported that the police department will monitor the vacant housed purchased by the City along Thompson Creek. Caleb Clark will begin with the police department January 3, 2011. He will attend academy and be sworn in after he returns.

Fire Chief Uhl reported that there had been apartment fires at Alpine Village on December 7, 2010 and at Shadow Ridge apartments on three different occasions. The Shadow Ridge fires are under investigation. Smoke detectors have been installed in the Shadow Ridge apartments.

Library Director Barcal reported that 76 people were in attendance to make gingerbread houses at the library.

## **B. APPLICATION FOR CDBG FUNDING – EPOWER ENGINE SYSTEMS, LLC** **1. PUBLIC HEARING**

At 7:20 p.m. Mayor Kindig opened the public hearing and stated the floor was now open for discussion on the application for CDBG Funding for ePower Engine Systems, LLC.

Jake Hanson with MAPA stated the company is looking at a location in Brook Valley Business Park. The company makes a hybrid engine drive for class a trucks.

At 7:21 Councilmember Carlisle arrived to take you place on the Council.

Hanson stated that the request for action of the Council would be at a later date.

At 7:23 p.m. Councilmember Ellerbeck made a motion to close the public hearing. Seconded by Councilmember Sheehan. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

## **C. RESOLUTION - APPLICATION FOR REPLAT – LOTS 1 & 2, BROOK VALLEY BUSINESS PARK REPLAT 4 (TABLED FROM SEPTEMBER 21, 2010 MEETING)**

Councilmember Carlisle introduced and moved for the adoption of Resolution No. 10-150: A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, DETERMINING CONDITIONS FOR APPROVAL OF A REPLAT OF PART OF LOT 33C, BROOK VALLEY BUSINESS PARK, A SUBDIVISION LOCATED IN THE NE ¼ AND IN THE SE ¼ OF SECTION 17, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6<sup>TH</sup> P.M., AND ALSO LOT 55A, BROOK VALLEY BUSINESS PARK, A SUBDIVISION LOCATED IN THE NE ¼, SECTION 17, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6<sup>TH</sup> P.M., SARPY COUNTY, NEBRASKA.

WHEREAS, the owners of the above described piece of property have made application for approval of a Replat for Part of Lot 33C, Brook Valley Business Park, a subdivision located in the NE ¼ and in the SE ¼ of Section 17, Township 14 North, Range 12 East of the 6<sup>th</sup> P.M., and also Lot 55A, Brook Valley Business Park, a subdivision located in the NE ¼, Section 17, Township 14 North, Range 12 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, to be replatted as Lots 1 and 2, Brook Valley Business Park Replat Four; and

WHEREAS, the City Administrator and the City Engineer have reviewed the replat plat; and

WHEREAS, on August 19, 2010, the La Vista Planning Commission held a public hearing and reviewed the replat and recommended approval subject to resolution of items identified by the city engineer and staff.

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NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of La Vista, Nebraska, that the plat for Part of Lot 33C, Brook Valley Business Park, a subdivision located in the NE ¼ and in the SE ¼ of Section 17, Township 14 North, Range 12 East of the 6<sup>th</sup> P.M., and also Lot 55A, Brook Valley Business Park, a subdivision located in the NE ¼, Section 17, Township 14 North, Range 12 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, being replatted as Lots 1 and 2, Brook Valley Business Park Replat Four, generally located southwest of 109<sup>th</sup> Avenue and Olive Street, be, and hereby is, approved subject to the resolution of the following item identified by the City Engineer:

1. The granting of an ingress/egress easement across proposed Lot 2, in a location approved by the City, for the City to have vehicular access for maintenance of an existing public sanitary sewer.

Seconded by Councilmember Quick. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

## **D. RESOLUTION – NOTICE OF INTENT UNDER IRS CODE – THOMPSON CREEK PROJECT**

Councilmember Quick introduced and moved for the adoption of Resolution No. 10-151; A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA DECLARING THE CITY'S OFFICIAL INTENT TO REIMBURSE ORIGINAL EXPENDITURES FOR THE ACQUISITION, DEMOLITION, AND STABILIZATION OF THOMPSON CREEK FOR FLOOD CONTROL PURPOSES WITH PROCEEDS OF A TAX EXEMPT BOND ISSUE.

NOW THEREFORE, BE IT RESOLVED, and enacted by the Mayor and City Council of the City of La Vista, Nebraska (the "City"), as follows:

Section 1. The Mayor and City Council of the City hereby find and determine that it is necessary and appropriate to declare their official intent to issue bonds on behalf of the City and in addition, the City's reasonable expectations to reimburse certain expenditures with the proceeds of such bonds as proposed to be issued by the City in connection with the proposed project as described below. The maximum principal amount of obligations contemplated to be issued for such project is currently \$350,000.00

Section 2. This resolution shall stand as a statement of the City's official intent under Regulation Section 1.150-2 of the regulations of the United States Treasury and for such purpose the following information is hereby given:

1. A general functional description of the project for which expenditures may be made and reimbursement from bond proceeds provided is as follows:

Stabilization of Thompson Creek for flood control purposes, including without limitation the acquisition of real property, demolition of existing structures adjacent to or near the creek, construction or installation of flood control devices, and any and all other necessary improvements necessary in connection with such flood control project.

Section 3. That the City Clerk shall make a copy of this resolution available for public inspection at the main office of the City at all times during normal business hours within ten days after the adoption hereof. Such copies shall remain available for public inspection at all times until the bonds or such other tax-exempt obligations contemplated herein are issued.

Seconded by Councilmember Gowan. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

# MINUTE RECORD

## **E. RESOLUTION – NOTICE OF INTENT UNDER IRS CODE – HELL CREEK/HARRISON STREET BRIDGE PROJECT**

Councilmember Sell introduced and moved for adoption of Resolution No. 10-152; A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA DECLARING THE CITY'S OFFICIAL INTENT TO REIMBURSE ORIGINAL EXPENDITURES FOR THE REPAIR OF DAMAGED STREAM BANK, STORM SEWER SYSTEM, AND CHANNEL RIP-RAP FOR STABILIZATION OF HELL CREEK FOR FLOOD CONTROL PURPOSES WITH PROCEEDS OF A TAX EXEMPT BOND ISSUE.

NOW THEREFORE, BE IT RESOLVED, and enacted by the Mayor and City Council of the City of La Vista, Nebraska (the "City"), as follows:

Section 1. The Mayor and City Council of the City hereby find and determine that it is necessary and appropriate to declare their official intent to issue bonds on behalf of the City and in addition, the City's reasonable expectations to reimburse certain expenditures with the proceeds of such bonds as proposed to be issued by the City in connection with the proposed project as described below. The maximum principal amount of obligations contemplated to be issued for such project is currently \$850,000.00

Section 2. This resolution shall stand as a statement of the City's official intent under Regulation Section 1.150-2 of the regulations of the United States Treasury and for such purpose the following information is hereby given:

1. A general functional description of the project for which expenditures may be made and reimbursement from bond proceeds provided is as follows:

Stabilization of Hell Creek for flood control purposes, including without limitation the repair of damaged stream bank and degradation, storm sewer system and channel rip-rap around the bridge structures and along Hell Creek, and any and all other necessary improvements necessary in connection with such flood control project.

Section 3. That the City Clerk shall make a copy of this resolution available for public inspection at the main office of the City at all times during normal business hours within ten days after the adoption hereof. Such copies shall remain available for public inspection at all times until the bonds or such other tax-exempt obligations contemplated herein are issued.

Seconded by Councilmember Carlisle. Councilmember Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

## **F. RESOLUTION – ADVERTISEMENT OF BIDS – THOMPSON CREEK ACQUISITIONS PHASE I DEMOLITION**

Councilmember Crawford introduced and moved for the adoption of Resolution No. 10-153; A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE ADVERTISEMENT FOR BIDS FOR PHASE I OF THE DEMOLITION OF HOUSES IN THE THOMPSON CREEK VOLUNTARY PROPERTY ACQUISITION PROJECT.

WHEREAS, the City Council has determined that the demolition of houses in the Thompson Creek voluntary property acquisition project is necessary, and

WHEREAS, the FY 2010/11 Capital Improvement Program provides funding for the demolition of these houses, and

WHEREAS, 75% of the project will be reimbursed by FEMA and 12.5% will be reimbursed by Papio-Missouri River NRD, and

WHEREAS, the City Engineer, has prepared plans and specifications for said demolitions.

NOW, THEREFORE BE IT RESOLVED, that the City Administrator is hereby authorized to advertise for bids for the demolition of houses in the Thompson Creek voluntary

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December 21, 2010

property acquisition project in accordance with plans and specifications prepared by the City Engineer and said bids are to be opened and publicly read aloud at 10 a.m. at the office of the City Clerk, 8116 Park View Boulevard, La Vista, Nebraska on January 10, 2011.

Publish Notice to Contractors	December 30, 2010 and January 6, 2011
Pre-Bid Site Inspection	January 5, 2011, 1:30 p.m. to 3:00 p.m.
Open Bids	January 10, 2011
Award Bid	January 18, 2011

Seconded by Councilmember Quick. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

## **G. RESOLUTION – AUTHORIZATION TO ADVERTISE – REQUEST FOR PROPOSALS – INFORMATION TECHNOLOGY STRATEGIC PLAN**

Councilmember Quick introduced and moved for the adoption of Resolution No. 10-154; A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE ADVERTISEMENT OF REQUEST FOR PROPOSALS FOR AN INFORMATION TECHNOLOGY STRATEGIC PLAN.

WHEREAS, the Mayor and Council have determined that it is desirable to take proposals for an information technology strategic plan; and

WHEREAS, the Finance Director has prepared specifications for the request for proposals; and

WHEREAS, the FY 2010/11 Capital Improvement Program budget provides funding for such professional services.

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council hereby authorize the advertisement for request for proposals and the City Clerk is hereby authorized to advertise for the proposals in accordance with the specifications prepared by the Finance Director, and said sealed proposals are to be opened publicly at 10:00 a.m. February 4, 2011, at City Hall, 8116 Park View Blvd., La Vista, Nebraska 68128.

Publish Notice	January 6, 2011
Open Proposals	February 4, 2011, 10:00 a.m.
Tentative Award Date	April 19, 2011

Seconded by Councilmember Ellerbeck. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

## **H. RESOLUTION – AUTHORIZATION TO PURCHASE COMPUTER EQUIPMENT – WESTERN STATES CONTRACTING ALLIANCE & DELL (TABLED FROM DECEMBER 7, 2010 MEETING)**

Councilmember Ellerbeck introduced and moved for the adoption of Resolution No. 10-155; A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING THE PURCHASE OF TECHNOLOGY RELATED ITEMS FROM WESTERN STATES CONTRACTING ALLIANCE (WSCA), DELL, AND VARIOUS VENDORS IN AN AMOUNT NOT TO EXCEED \$31,000.

WHEREAS, the City Council of the City of La Vista has determined that the purchase of technology related items is necessary; and

WHEREAS, the FY 2010/11 IT budget provides funding for the purchase of said technology items; and

WHEREAS, Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the city administrator secure Council approval prior to authorizing any purchase over \$5,000.00.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, do hereby authorize the purchase of technology related items,

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from Western States Contracting Alliance (WSCA), in an amount not to exceed \$31,000.

Seconded by Councilmember Gowan. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

## **I. RESOLUTION – PURCHASE DIESEL EXHAUST RETROFIT EQUIPMENT**

Councilmember Sell introduced and moved for the adoption of Resolution No. 10-156; A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING THE PURCHASE OF FOUR (4) DIESEL EXHAUST RETROFIT KITS AND SUPPLEMENTAL PARTS FROM INTERSTATE POWER SYSTEMS, OMAHA, NEBRASKA IN AN AMOUNT NOT TO EXCEED \$7,900.00

WHEREAS, the City Council of the City of La Vista has determined that the purchase of four diesel exhaust retrofit kits and supplemental parts is necessary, and

WHEREAS, the City was awarded a grant for reimbursement of 100% of this purchase, and

WHEREAS, the Fiscal Year 2010/11 General Fund Budget provides funding for said purchase, and

WHEREAS, Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secure council approval prior to authorizing any purchase over \$5,000.

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, do hereby authorize the purchase of four (4) diesel exhaust retrofit kits and supplemental parts from Interstate Power Systems, Omaha, Nebraska in an amount not to exceed \$7,900.00

Seconded by Councilmember Quick. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

## **J. POSITION DESCRIPTION UPDATE – OFFICE MANAGER**

Councilmember Carlisle made a motion to receive and file the updated Office Manager job description. Seconded by Councilmember Sell. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

Councilmember Gowan made a motion to move "Comments from the Floor" up on the agenda ahead of Item K. "Executive Session". Seconded by Councilmember Crawford. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

## **COMMENTS FROM THE FLOOR**

Marvin Zuroski, 7924 S 74<sup>th</sup> Ave. Cir. addressed the Council regarding the timeline of annexation of Giles Corner into the City. City Administrator stated it is planned for annexation in the near future.

## **J. EXECUTIVE SESSION – CONTRACT NEGOTIATIONS**

At 7:36 p.m. Councilmember Carlisle made a motion to go into executive session for the protection of the public interest for contract negotiations. Seconded by Councilmember Crawford. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried. Mayor Kindig stated the executive session would be limited to the subject matter contained in the motion.

At 8:09 p.m. the Council came out of executive session. Councilmember Carlisle made a motion to reconvene in open and public session. Seconded by Councilmember Crawford. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.



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## COMMENTS FROM MAYOR AND COUNCIL

The Mayor reported that \$369.00 was raised from the employee lunch and chili supper to support a family for Christmas in La Vista.

At 8:14 p.m. Councilmember Sell made a motion to adjourn the meeting. Seconded by Councilmember Gowan. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

PASSED AND APPROVED THIS 4TH DAY OF JANUARY, 2011

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

TD<sup>2</sup> File No. 171-382.12  
December 20, 2010

FINAL PAYMENT RECOMMENDATION ON CONTRACT FOR BRIDGE JOINT REPAIRS - STRUCTURE NO.  
C002803005 HARRISON STREET BRIDGE OVER EASTPORT PARKWAY

Owner: CITY OF LA VISTA  
8116 Park View Blvd.  
La Vista, Nebraska 68128

Contractor: CHAS. VRANA & SON CONSTRUCTION CO.  
4816 "F" Street  
Omaha, NE 68117

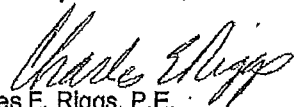
ORIGINAL CONTRACT AMOUNT: \$87,002.00

AMOUNT OF PREVIOUS PAYMENT RECOMMENDATION: None

Item	Description	Approx. Quantities	Unit Price	Amount
1	Mobilization	1 L.S.	\$3,000.00 / L.S.	\$ 3,000.00
2	Barricade, Type III	50 BDAY	\$ 5.00 / BDAY	\$ 250.00
3	Temporary Sign Day	197 EA.	\$ 2.00 / EA.	\$ 394.00
4	Changeable Message Sign	110 DAY	\$ 84.00 / DAY	\$ 9,240.00
5	Traffic Control Management	30 DAY	\$ 82.00 / DAY	\$ 2,460.00
6	Remove Bridge Expansion Joint	136 L.F.	\$ 100.00 / L.F.	\$13,600.00
7	Remove Existing Abutment P.C.C.	2.34 C.Y.	\$9,000.00 / C.Y.	\$21,060.00
8	Concrete Pavement, Class PR-3500	2.34 C.Y.	\$4,000.00 / C.Y.	\$ 9,360.00
9	Install Wabo® Elastoflex Bridge Series Expansion Joint	136 L.F.	\$ 210.00 / L.F.	\$28,560.00
10	Precompressed Polyurethane Foam Joint	50 L.F.	\$ 125.00 / L.F.	\$ 6,250.00
11	Flashing Arrow Panel	49 DAY	\$ 30.00 / DAY	\$ 1,470.00
12	Barricade, Type II	1,421 BDAY	\$ 1.00 / BDAY	\$ 1,421.00
13	Sign Day	0 EA.	\$ 2.00 / EA.	\$ -0-
TOTAL AMOUNT DUE CONTRACTOR				\$97,065.00

We recommend that payment in the amount of \$97,065.00 be made to Chas. Vrana & Son Construction Co.

Respectfully submitted,

  
Charles E. Riggs, P.E.  
THOMPSON, DREESSEN & DORNER, INC.

CER/bam

cc: Chas. Vrana & Son Construction Co.

December 20, 2010

Mayor and City Council Members  
City of La Vista  
c/o Ms. Brenda Gunn, City Administrator  
8116 Park View Blvd.  
La Vista, NE 68128

RE: Bridge Joint Repairs – Structure C002803005  
Harrison Street Bridge Over Eastport Parkway  
TD<sup>2</sup> File No. 171-382.13

**CERTIFICATE OF COMPLETION**

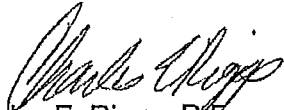
Mayor and Council Members:

We hereby certify that Chas. Vrana & Son Construction Co. has completed the construction of the above-referenced project in substantial compliance with the plans and specifications.

The work was satisfactorily performed and final payment is recommended.

Please contact me if you have any questions.

Respectfully submitted,



Charles E. Riggs, P.E.  
THOMPSON, DREESSEN & DORNER, INC.

CER/bam

cc: Mr. John Kottmann, City Engineer

--- This Pay Estimate Period has not been finalized ---

Charles Vrana & Sons

### Pay Estimate Summary Report

Invoice #

Invoice Date: 12/10/2010

Dates Submitted: 11/08/2010 - 12/10/2010

Contract # 884300

Harrison Street Expansion Joint Repair

Job: 8843

Owner

City of LaVista

9900 Portal Road

La Vista, NE 68128

Contractor

Chas. Vrana & Son Construction Co.

4816 F Street

Omaha, NE 68117

Owner Code	Description	Contract Quantities	Unit	Unit Price	Contract Amount	Previous Quantities	Current Quantities	Quantities to Date	Current Amount	Amount to Date
1	Mobilization	2.00	L.S.	3,000.00	6,000.00	0.000	1.000	1.000	3,000.00	3,000.00
2	Barricade, Type III	36.00	BDAY	5.00	180.00	0.000	50.000	50.000	250.00	250.00
3	Temporary Sign Day	24.00	EA	2.00	48.00	0.000	197.000	197.000	394.00	394.00
4	Changeable Message Sign	13.00	DAY	84.00	1,092.00	0.000	110.000	110.000	9,240.00	9,240.00
5	Traffic Control Management	6.00	DAY	82.00	492.00	0.000	30.000	30.000	2,460.00	2,460.00
6	Remove Bridge Expansion Joint	136.00	L.F.	100.00	13,600.00	0.000	136.000	136.000	13,600.00	13,600.00
7	Remove Existing Abutment P.C.C.	2.34	C.Y.	9,000.00	21,060.00	0.000	2.340	2.340	21,060.00	21,060.00
8	Concrete Pavement Class PR-3500	2.34	C.Y.	4,000.00	9,360.00	0.000	2.340	2.340	9,360.00	9,360.00
9	Install Wabo Elastoflex Bridge Series Expansion Jo	109.00	L.F.	210.00	22,890.00	0.000	136.000	136.000	28,560.00	28,560.00
10	Precompressed Polyurethane Foam Joint	50.00	L.F.	125.00	6,250.00	0.000	50.000	50.000	6,250.00	6,250.00
11	Flashing Arrow Panel	6.00	DAY	30.00	180.00	0.000	49.000	49.000	1,470.00	1,470.00
12	Barricade, Type II	120.00	BDAY	1.00	120.00	0.000	1,421.000	1,421.000	1,421.00	1,421.00
13	Sign Day	30.00	EA	2.00	60.00	0.000	0.000	0.000	0.00	0.00
14	Remove Pavement	169.00	S.Y.	0.00	0.00	0.000	0.000	0.000	0.00	0.00
15	Sawing Pavement	136.00	L.F.	0.00	0.00	0.000	0.000	0.000	0.00	0.00
16	6" Concrete Class 47B-3000 Median Surfacing	17.00	S.Y.	0.00	0.00	0.000	0.000	0.000	0.00	0.00
17	9" Concrete Pavement, Class 47B-HE-3500	152.00	S.Y.	0.00	0.00	0.000	0.000	0.000	0.00	0.00
18	Remove and Salvage Guardrail	200.00	L.F.	0.00	0.00	0.000	0.000	0.000	0.00	0.00
19	Reset Guardrail	200.00	L.F.	0.00	0.00	0.000	0.000	0.000	0.00	0.00
20	Subgrade Preparation	169.00	S.Y.	0.00	0.00	0.000	0.000	0.000	0.00	0.00
21	Expansion Joint	236.00	L.F.	0.00	0.00	0.000	0.000	0.000	0.00	0.00
<b>Totals:</b>					<b>87,002.00</b>				<b>97,065.00</b>	<b>97,065.00</b>

O.K. to pay  
05.71.0847.03

gmk  
12/21/2010

BANK NO	BANK NAME	CHECK NO	DATE	VENDOR NO	VENDOR NAME	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
-----									
1 Bank of Nebraska (600-873)									
46113					Payroll Check				
46114					Gap in Checks				
Thru	102324								
102325	12/22/2010			3702	LAUGHLIN, KATHLEEN A, TRUSTEE	648.00			**MANUAL**
102326	12/22/2010			4326	MIDWEST RIGHT OF WAY SVCS INC	9,554.00			**MANUAL**
102327	12/22/2010			355	DOUGLAS COUNTY ENGINEER	3,852.04			**MANUAL**
102328	1/04/2011			762	ACTION BATTERIES UNLTD INC	448.40			
102329	1/04/2011			4061	AED ZONE	398.00			
102330	1/04/2011			4314	AFTERNOONER'S	1,200.12			
102331	1/04/2011			571	ALAMAR UNIFORMS	.00	**CLEARED**	**VOIDED**	
102332	1/04/2011			571	ALAMAR UNIFORMS	.00	**CLEARED**	**VOIDED**	
102333	1/04/2011			571	ALAMAR UNIFORMS	1,436.71			
102334	1/04/2011			536	ARAMARK UNIFORM SERVICES INC	566.31			
102335	1/04/2011			188	ASPHALT & CONCRETE MATERIALS	106.14			
102336	1/04/2011			706	ASSOCIATED FIRE PROTECTION	2,107.96			
102337	1/04/2011			4395	BABER, BRAD	330.00			
102338	1/04/2011			201	BAKER & TAYLOR BOOKS	2,062.59			
102339	1/04/2011			929	BEACON BUILDING SERVICES	6,712.00			
102340	1/04/2011			1784	BENNINGTON EQUIPMENT INC	615.41			
102341	1/04/2011			196	BLACK HILLS ENERGY	19.73			
102342	1/04/2011			4380	TJF CORP	36.96			
102343	1/04/2011			56	BOB'S RADIATOR REPAIR CO INC	195.00			
102344	1/04/2011			4454	BRAKE, AUSTIN	100.00			
102345	1/04/2011			830	BROWN TRAFFIC PRODUCTS INC	60.00			
102346	1/04/2011			3760	BUETHE, PAM	20.00			
102347	1/04/2011			4024	CALENTINE, JEFFREY	30.00			
102348	1/04/2011			2285	CENTER POINT PUBLISHING	289.98			
102349	1/04/2011			1195	CHEMSEARCH	133.73			
102350	1/04/2011			468	CONTROL MASTERS INCORPORATED	386.00			
102351	1/04/2011			836	CORNHUSKER INTL TRUCKS INC	155.45			
102352	1/04/2011			2158	COX COMMUNICATIONS	50.02			
102353	1/04/2011			23	CUMMINS CENTRAL POWER LLC #410	1,005.04			
102354	1/04/2011			3136	D & D COMMUNICATIONS	393.00			
102355	1/04/2011			3486	DANKO EMERGENCY EQUIPMENT CO	102.95			
102356	1/04/2011			4117	DATASPAN INC	633.22			
102357	1/04/2011			2908	DIVERSE MEDIA INC	24.32			
102358	1/04/2011			4153	DUNKLE, AUBRIANA	80.00			
102359	1/04/2011			3084	EBS CO SUBSCRIPTION SERVICES	4,261.63			
102360	1/04/2011			3193	ED ROEHR SAFETY PRODUCTS CO	340.38			
102361	1/04/2011			676	ENVIRO TECH SERVICES INC	1,820.30			
102362	1/04/2011			1245	FILTER CARE	25.85			
102363	1/04/2011			439	FIREGUARD INC	475.00			
102364	1/04/2011			4050	FROEHLICH, RORY	100.00			
102365	1/04/2011			3984	G I CLEANER & TAILORS	206.50			
102366	1/04/2011			1344	GALE	531.16			
102367	1/04/2011			53	GCR OMAHA TRUCK TIRE CENTER	77.00			
102368	1/04/2011			35	GOLDMAN, JOHN G	85.00			

## ACCOUNTS PAYABLE CHECK REGISTER

BANK NO CHECK NO	BANK NAME DATE	VENDOR NO VENDOR NAME	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
102369	1/04/2011	164 GRAINGER	535.63			
102370	1/04/2011	2877 GRAPHIC SCREEN PRINTING	32.00			
102371	1/04/2011	285 GRAYBAR ELECTRIC COMPANY INC	186.48			
102372	1/04/2011	71 GREENKEEPER COMPANY INC	490.00			
102373	1/04/2011	1624 GUNN, BRENDA	45.00			
102374	1/04/2011	1744 HEARTLAND AWARDS	1,630.50			
102375	1/04/2011	3681 HEARTLAND TIRES AND TREADS	1,723.00			
102376	1/04/2011	1403 HELGET GAS PRODUCTS INC	163.00			
102377	1/04/2011	2781 HENKE MANUFACTURING CORP	704.80			
102378	1/04/2011	4178 HERITAGE CRYSTAL CLEAN LLC	303.30			
102379	1/04/2011	1612 HY-VEE INC	56.00			
102380	1/04/2011	1347 HYDRONIC ENERGY INC	245.00			
102381	1/04/2011	162 INLAND TRUCK PARTS	2,673.26			
102382	1/04/2011	1896 J Q OFFICE EQUIPMENT INC	101.20			
102383	1/04/2011	788 KINDIG, DOUGLAS	80.00			
102384	1/04/2011	1054 KLINKER, MARK A	200.00			
102385	1/04/2011	4328 KOTTMANN, JOHN	65.00			
102386	1/04/2011	2394 KRIHA FLUID POWER CO INC	337.87			
102387	1/04/2011	2057 LA VISTA COMMUNITY FOUNDATION	50.00			
102388	1/04/2011	1975 LA VISTA PHARMACY	22.36			
102389	1/04/2011	3198 LEAGUE OF NEBR MUNICIPALITIES	278.00			
102390	1/04/2011	2380 LEXIS NEXIS MATTHEW BENDER	299.94			
102391	1/04/2011	1288 LIFE ASSIST	300.75			
102392	1/04/2011	877 LINWELD	191.46			
102393	1/04/2011	1573 LOGAN CONTRACTORS SUPPLY	3,185.85			
102394	1/04/2011	2124 LUKASIEWICZ, BRIAN	65.00			
102395	1/04/2011	4456 MARKOWSKY, T J	100.00			
102396	1/04/2011	4361 MASTER MECHANICAL SERVICE INC	126.00			
102397	1/04/2011	3624 MC DONALD AND ASSOCIATES	204.90			
102398	1/04/2011	153 METRO AREA TRANSIT	550.00			
102399	1/04/2011	553 METROPOLITAN UTILITIES DIST.	.00	**CLEARED**	**VOIDED**	
102400	1/04/2011	553 METROPOLITAN UTILITIES DIST.	905.36			
102401	1/04/2011	98 MICHAEL TODD AND COMPANY INC	1,392.82			
102402	1/04/2011	2497 MID AMERICA PAY PHONES	50.00			
102403	1/04/2011	1526 MIDLANDS LIGHTING & ELECTRIC	635.80			
102404	1/04/2011	1050 MILLER PRESS	75.00			
102405	1/04/2011	1830 NE DEPT OF LABOR-WORKFORCE DEV	.62			
102406	1/04/2011	4452 NEBRASKA GREEN EXPO	1,390.00			
102407	1/04/2011	370 NEBRASKA LAW ENFORCEMENT	80.00			
102408	1/04/2011	3284 NEBRASKA TURFGRASS ASSOCIATION	250.00			
102409	1/04/2011	440 NMC EXCHANGE LLC	16.93			
102410	1/04/2011	179 NUTS AND BOLTS INCORPORATED	2.86			
102411	1/04/2011	3778 ODEY'S INCORPORATED	801.71			
102412	1/04/2011	1014 OFFICE DEPOT INC-CINCINNATI	154.78			
102413	1/04/2011	976 PAPIILLION TIRE INCORPORATED	164.06			
102414	1/04/2011	2686 PARAMOUNT LINEN & UNIFORM	.00	**CLEARED**	**VOIDED**	
102415	1/04/2011	2686 PARAMOUNT LINEN & UNIFORM	553.14			
102416	1/04/2011	1769 PAYLESS OFFICE PRODUCTS INC	29.95			
102417	1/04/2011	3058 PERFORMANCE CHRYSLER JEEP	35.89			
102418	1/04/2011	74 PITNEY BOWES INC-PA	.00	**CLEARED**	**VOIDED**	
102419	1/04/2011	74 PITNEY BOWES INC-PA	221.00			
102420	1/04/2011	159 PRECISION INDUSTRIES	28.35			
102421	1/04/2011	1921 PRINCIPAL LIFE-FLEX SPENDING	229.50			



## ACCOUNTS PAYABLE CHECK REGISTER

BANK NO	BANK NAME	CHECK NO	DATE	VENDOR NO	VENDOR NAME	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
102422	1/04/2011	2387	PROFESSIONAL GROUNDS MGMT SOC		175.00				
102423	1/04/2011	219	QWEST		18.53				
102424	1/04/2011	427	RAMIREZ, RITA M		43.00				
102425	1/04/2011	281	RAY ALLEN MANUFACTURING CO INC		6.50				
102426	1/04/2011	4037	RUSTY ECK FORD		20.83				
102427	1/04/2011	487	SAPP BROS PETROLEUM INC		.00		**CLEARED**	**VOIDED**	
102428	1/04/2011	487	SAPP BROS PETROLEUM INC		12,477.34				
102429	1/04/2011	2240	SARPY COUNTY COURTHOUSE		3,588.49				
102430	1/04/2011	1652	SCHOLASTIC BOOK FAIRS		170.21				
102431	1/04/2011	4040	SHERRY, PAUL		120.00				
102432	1/04/2011	2272	SMALL, BRADY		104.99				
102433	1/04/2011	533	SOUCIE, JOSEPH H JR		60.00				
102434	1/04/2011	3838	SPRINT		119.62				
102435	1/04/2011	3069	STATE STEEL OF OMAHA		308.02				
102436	1/04/2011	871	STOPAK, SCOTT		50.00				
102437	1/04/2011	47	SUBURBAN NEWSPAPERS INC		79.00				COUNCIL MEMBER
102438	1/04/2011	4090	SUCCESS FACTORS INCORPORATED		2,500.00				
102439	1/04/2011	4231	TORNADO WASH LLC		105.00				
102440	1/04/2011	1122	TURF CARS LTD		79.50				
102441	1/04/2011	559	UNIVERSITY OF NEBRASKA LINCOLN		280.00				
102442	1/04/2011	2737	UNIVERSAL STEERING HYDRAULIC		228.29				
102443	1/04/2011	4223	VAIL, ADAM		100.00				
102444	1/04/2011	809	VERIZON WIRELESS		206.96				COUNCIL MEMBER
102445	1/04/2011	1174	WAL-MART COMMUNITY BRC		553.60				
102446	1/04/2011	78	WASTE MANAGEMENT NEBRASKA		2,595.46				
102447	1/04/2011	968	WICK'S STERLING TRUCKS INC		1,093.27				
102448	1/04/2011	3497	WITMER PUBLIC SAFETY GROUP INC		219.99				
BANK TOTAL						88,943.57			
OUTSTANDING						88,943.57			COUNCIL MEMBER
CLEARED						.00			
VOIDED						.00			

FUND	TOTAL	OUTSTANDING	CLEARED	VOIDED
01 GENERAL FUND	69,043.06	69,043.06	.00	.00
02 SEWER FUND	4,933.33	4,933.33	.00	.00
05 CONSTRUCTION	13,406.04	13,406.04	.00	.00
08 LOTTERY FUND	19.44	19.44	.00	.00
09 GOLF COURSE FUND	1,261.25	1,261.25	.00	.00
15 OFF-STREET PARKING	280.45	280.45	.00	.00
REPORT TOTAL		88,943.57		
OUTSTANDING		88,943.57		
CLEARED		.00		
VOIDED		.00		
+ Gross Payroll 12-24-10		222,597.41		
GRAND TOTAL		311,540.98		

COUNCIL MEMBER

COUNCIL MEMBER

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
JANUARY 4, 2011 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
APPLICATION FOR REZONING — LOTS 1 & 2, GARY & DEBBIE PINK No. 2 (SW GILES RD. & W. GILES RD.)	RESOLUTION ◆ ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

**SYNOPSIS**

A public hearing has been scheduled and an ordinance has been prepared to approve the rezoning of approximately 6.32 acres of land from C-3, Highway Commercial / Office Park District, to C-2, General Commercial District for Lots 1 and 2, Gary & Debbie Pink No. 2, located west of Giles Road, on the south side of West Giles Road.

**FISCAL IMPACT**

None.

**RECOMMENDATION**

Approval.

**BACKGROUND**

A public hearing has been scheduled and an ordinance has been prepared to approve the rezoning of approximately 6.32 acres of land from C-3. (Highway Commercial / Office Park District) to C-2 (General Commercial District) for Lots 1 and 2, Gary & Debbie Pink No. 2. The subject area is located west of Giles Road, on the south side of West Giles Road. The application has been submitted by Jeremy Fritz on behalf of the property owner, Gary L. and Deborah A. Pink.

The application was submitted for the purpose of developing an indoor farmer's market. The current zoning, C-3, is intended for large scale commercial and office park development, and does not allow for the proposed use which would be defined as "food sales (general)" in the Zoning Ordinance. A rezoning to C-2 would allow for the proposed use, and would continue to be consistent with the Future Land Use Map of the Comprehensive Plan which identifies this property for commercial uses. A detail staff report is attached.

The Planning Commission held a public hearing on November 18, 2010, and recommended approval of the rezoning as it is consistent with the Comprehensive Plan.

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

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

Section 1. Approval of Rezoning. On November 18, 2010, the La Vista Planning Commission conducted a public hearing on the matter of rezoning the tract of land set forth in Section 2 of this ordinance and reported to the City Council that it recommended approval of the zoning of said tract be changed from "C-3" Highway Commercial / Office Park District to "C-2" General Commercial District. On December 21, 2010, the City Council held a public hearing on said proposed change in zoning and found and determined that said proposed changes in zoning are advisable and in the best interests of the City. The City Council further found and determined that public hearings were duly held and notices, including published notice, written notice to adjacent property owners and notice posted at the property, were duly given pursuant to Section 9.01 of the Zoning Ordinance. The City Council hereby approves said proposed change in zoning as set forth in Sections 2 of this ordinance.

Section 2. Amendment of the Official Zoning Map. Pursuant to Article 3 of the Zoning Ordinance, the following described tract of land is hereby rezoned from "C-3" Highway Commercial / Office Park District to "C-2" General Commercial District, and the Official Zoning Map of the City of La Vista is hereby amended to reflect the changes in zoning of the following described tracts of land from "C-3" Highway Commercial / Office Park District to "C-2" General Commercial District:

"C-3" Highway Commercial / Office Park District to "C-2" General Commercial District

GARY & DEBBIE PINK NO. 2, LOTS 1 AND 2, BEING A PLATTING OF TAX LOT 6B AND TAX LOT 13 LYING WITHIN THE NORTH ½ OF THE NE ¼ OF SECTION 19, T14N, R12E OF THE 6<sup>TH</sup> P.M., SARPY COUNTY, NEBRASKA, ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS, COMMENCING AT THE NW CORNER OF SAID NORTH ½;

THENCE S02°13'20"E (ASSUMED BEARING) 65.00 FEET ON THE WEST LINE OF SAID NORTH ½ TO THE NW CORNER OF SAID TAX LOT 6B AND THE POINT OF BEGINNING, SAID POINT BEING ON THE SOUTH LINE OF WEST GILES ROAD;

THENCE S85°45'13"E 57.77 FEET ON THE NORTH LINE OF SAID TAX LOT 6B AND ON THE SOUTH LINE OF WEST GILES ROAD TO THE WEST CORNER OF SAID TAX LOT 13;

THENCE N87°17'05"E 404.30 FEET ON THE NORTH LINE OF TAX LOT 13 AND ON THE SOUTH LINE OF WEST GILES ROAD TO THE EAST CORNER OF SAID TAX LOT 13 SAID CORNER BEING ON THE NORTH LINE OF SAID TAX LOT 6B AND ON THE SOUTH LINE OF WEST GILES ROAD;

THENCE N78°11'40"E 75.96 FEET ON THE NORTH LINE OF SAID TAX LOT 6B AND ON THE SOUTH LINE OF WEST GILES ROAD;

THENCE 87°17'05"E 769.51 FEET ON THE NORTH LINE OF TAX LOT 6B AND ON THE SOUTH LINE OF WEST GILES ROAD;

THENCE N70°27'48"E 93.30 FEET ON THE NORTH LINE OF SAID TAX LOT 6B AND ON THE SOUTH LINE OF WEST GILES ROAD TO THE SW CORNER OF TAX LOT 14 LYING WITHIN SAID NORTH ½;

THENCE N87°17'05"E 287.56 FEET ON THE SOUTH LINE OF SAID TAX LOT 14 TO THE SE CORNER THEREOF SAID CORNER BEING ON THE NORTH LINE OF THE BURLINGTON NORTHERN RAILROAD COMPANY RIGHT-OF-WAY;

THENCE SOUTHWESTERLY ON THE NORTH LINE OF THE BURLINGTON NORTHERN RAILROAD COMPANY RIGHT-OF-WAY ON A 4659.46 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING S78°08'52"W, CHORD DISTANCE 1706.74 FEET, AN ARC DISTANCE OF 1716.43 FEET TO THE WEST LINE OF SAID NORTH ½ AND THE WEST LINE OF SAID TAX LOT 6B;

THENCE N02°13'20"W 239.03 FEET ON THE WEST LINE OF SAID NORTH ½ AND THE WEST LINE OF SAID TAX LOT 6B TO THE POINT OF BEGINNING, AN AREA CONTAINING 6.33 ACRES MORE OR LESS.

The amended version of the Official Zoning Map of the City of La Vista is hereby adopted and shall be signed by the Mayor, attested to by the City Clerk and shall bear the seal of the City under the following words:

"This is to certify that this is the official zoning map referred to in Article 3 Section 3.02 of Ordinance No. 848 of the City of La Vista, Nebraska"

and shall show the date of the adoption of that ordinance and this amendment.

Section 3. Effective Date. This ordinance shall be in full force and effect upon the date passage, approval and publication as provided by law.

PASSED AND APPROVED THIS 4TH DAY OF JANUARY 2011.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

K:\APPS\City Hall\ORDINANCES\Amend Zoning Map Garden Fresh Veg Rezone.doc



**CITY OF LA VISTA  
PLANNING DIVISION  
RECOMMENDATION REPORT**

CASE NUMBER:

FOR HEARING OF: January 4, 2011  
Report Prepared on: December 28, 2010

**I. GENERAL INFORMATION**

**A. APPLICANT:**

Jeremy Fritz, Garden Fresh Vegetables

**B. PROPERTY OWNER:**

Gary L. and Deborah A. Pink

**C. LOCATION:**

South side of West Giles Road, west of Giles Road

**D. LEGAL DESCRIPTION:**

Lots 1 and 2, Gary & Debbie Pink No. 2, Sarpy County, Nebraska.

**E. REQUESTED ACTION(S):**

Rezone property to C-2, General Commercial District

**F. EXISTING ZONING AND LAND USE:**

C-3, Highway Commercial / Office Park District, Vacant

**G. PURPOSE OF REQUEST:**

Development of an indoor farmer's market.

**H. SIZE OF SITE:**

6.32 acres

**II. BACKGROUND INFORMATION**

**A. EXISTING CONDITION OF SITE:**

Generally flat although gradually slopes up to the crest of a hill on the west end of the property; grass covered. Equipment and other items associated with Ping Grading are stored on the site.

**B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**

1. **North:** Vacant – C-3
2. **East:** Vacant – C-3
3. **South:** Agricultural/Industrial – I-1/I-2
4. **West:** Vacant – I-1

**C. RELEVANT CASE HISTORY:** This property was rezoned from I-1 to C-3 on January 17, 2006.

**D. APPLICABLE REGULATIONS:**

1. Section 5.11 – C-2, General Commercial District

**III. ANALYSIS**

**A. COMPREHENSIVE PLAN:**

The Future Land Use Map designates this property as commercial.

**B. OTHER PLANS: N/A**

**C. TRAFFIC AND ACCESS:**

1. The property has access to West Giles Road through two access points along the northern edge of the property.
2. Additional traffic improvements may be required upon development of the lots.

**D. UTILITIES:**

All utilities are available to the site.

**IV. REVIEW COMMENTS:**

1. The property under consideration was previously known as Tax Lots 6B and 13 in the NE ¼ of Section 19, Township 14N, Range 12E, Sarpy County, Nebraska. An administrative plat has been approved by staff which has re-platted the property into two lots, Lots 1 and 2, Gary & Debbie Pink No. 2.
2. There will be no significant change in impact on existing infrastructure, such as utilities and roads, as a result of this rezoning.

**V. STAFF RECOMMENDATION:**

Staff recommends approval of the rezoning as it is consistent with the Comprehensive Plan.

**VI. RECOMMENDATION OF PLANNING COMMISSION:**

At their meeting on November 18, 2010, the Planning Commission unanimously recommended to approve the rezoning of Tax Lots 6B and 13 in the NE ¼ of Section 19, Township 14N, Range 12E from C-3, Highway Commercial and Office Park to C-2, General Commercial as it is consistent with the Comprehensive Plan.

**VII. ATTACHMENTS TO REPORT:**

1. Vicinity Map
2. Rezoning Drawing – TD2
3. City Engineer's Report



**VII. COPIES OF REPORT SENT TO:**

1. Jeremy Fritz, Garden Fresh Vegetables
2. Gary and Deborah Pink
3. Dennis Hoth, CB Richard Ellis/MEGA
4. Public Upon Request

  
Prepared by: \_\_\_\_\_

 12-28-10  
Community Development Director Date



November 19, 2010

Mr. Christopher Solberg  
City Planner  
City of La Vista  
8116 Park View Blvd.  
La Vista, NE 68128

RE: Application for Administrative Plat-Initial Review  
Gary & Debbie Pink No. 2

Chris:

I have reviewed the copy of the plat you provided from application you provided from Gary Pink, etal proposing to replat Tax Lots 6B and 13 in the NE ¼ of Section 19, T14N, R12E. The plat qualifies for an administrative subdivision per Section 3.09 of the Subdivision Regulations. I offer the following comments:

1. The signature block for City Approval should show the "Chief Building Official" not the "City Planner".
2. The location of existing controlled access breaks onto West Giles Road needs to be shown on the final plat.
3. Add Note No. 3 to the final plat stating: "There shall be no direct vehicular access onto West Giles Road except at the shown breaks in controlled access."
4. The street name Giles Road needs to be changed to West Giles Road.
5. In the "Anchor and Down Guy" easement description change "Omah" to "Omaha".

Subject to these comments being addressed, I recommend approval of the administrative plat.

John M. Kottmann, P.E.  
City Engineer

City Hall  
8116 Park View Blvd.  
La Vista, NE 68128-2198  
p: 402-331-4343  
f: 402-331-4375

Community Development  
8116 Park View Blvd.  
p: 402-331-4343  
f: 402-331-4375

Fire  
8110 Park View Blvd.  
p: 402-331-4748  
f: 402-331-0410

Golf Course  
8305 Park View Blvd.  
p: 402-339-9147

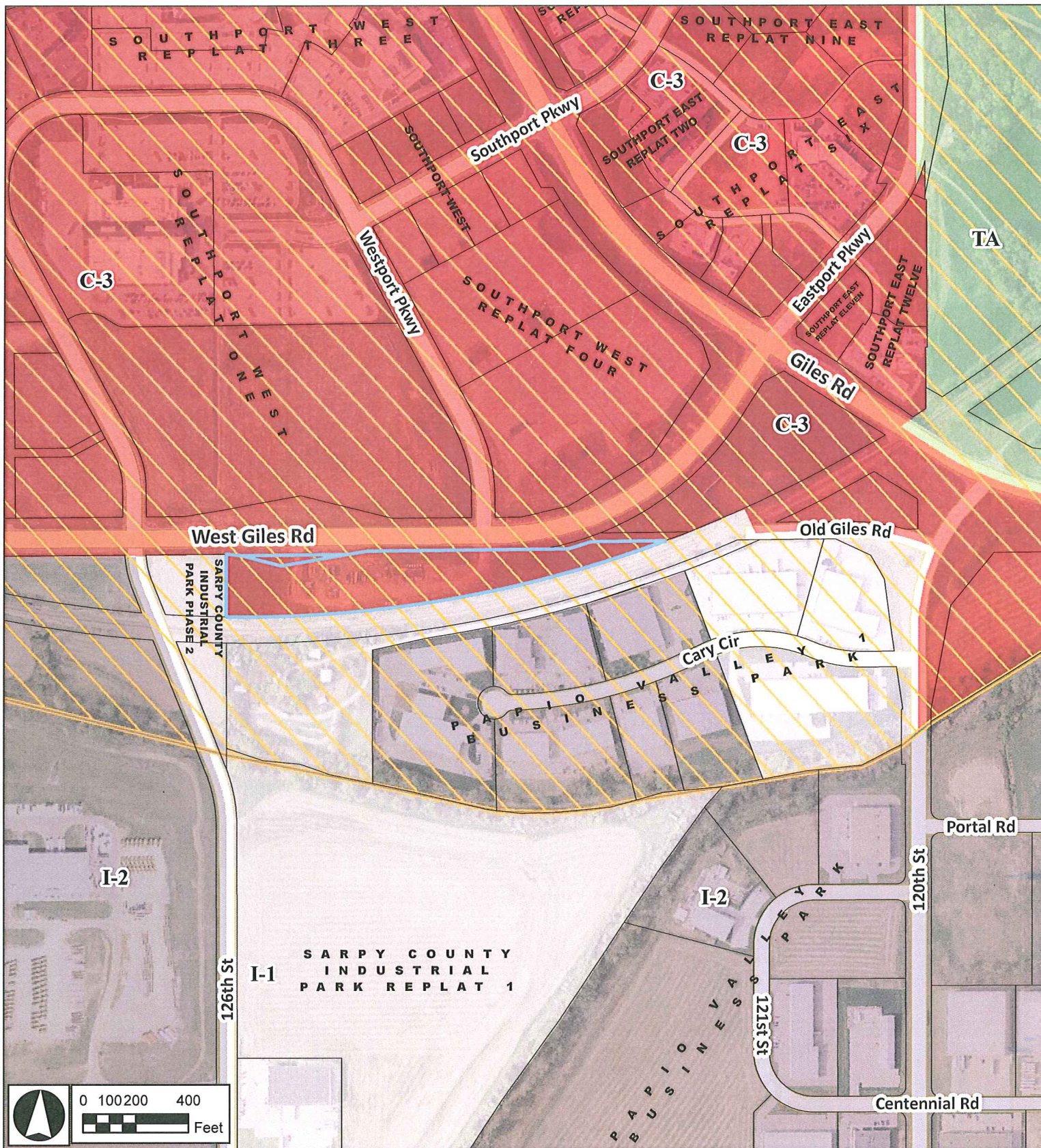
Library  
9110 Giles Rd.  
p: 402-537-3900  
f: 402-537-3902

Police  
7701 South 96th St.  
p: 402-331-1582  
f: 402-331-7210












Public Works  
9900 Portal Rd.  
p: 402-331-8927  
f: 402-331-1051

Recreation  
8116 Park View Blvd.  
p: 402-331-3455  
f: 402-331-0299





## Vicinity Map

	TA		I-2		Gateway Corridor
	C-1		R-1		
	C-2		R-2		
	C-3		R-3		
	I-1		R-4		

**Rezoning: Tax Lot 6B and 13**  
**NE ¼ of Section 19, T14N R12E**

November 11, 2010  
 CAS





LEGAL DESCRIPTION

TAX LOTS 6B AND 13 IN THE NE 1/4 OF SECTION 19, T14N  
R12E OF THE 6th PM, SARPY COUNTY, NEBRASKA.

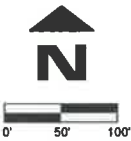


thompson, dressen & dörner, inc.  
10836 Old Mill Rd  
Omaha, NE 68154  
p 402 330 8860 f 402 330 5866  
td2co.com

Survey Type  
REZONING DRAWING

Client Name  
CITY OF LAVISTA

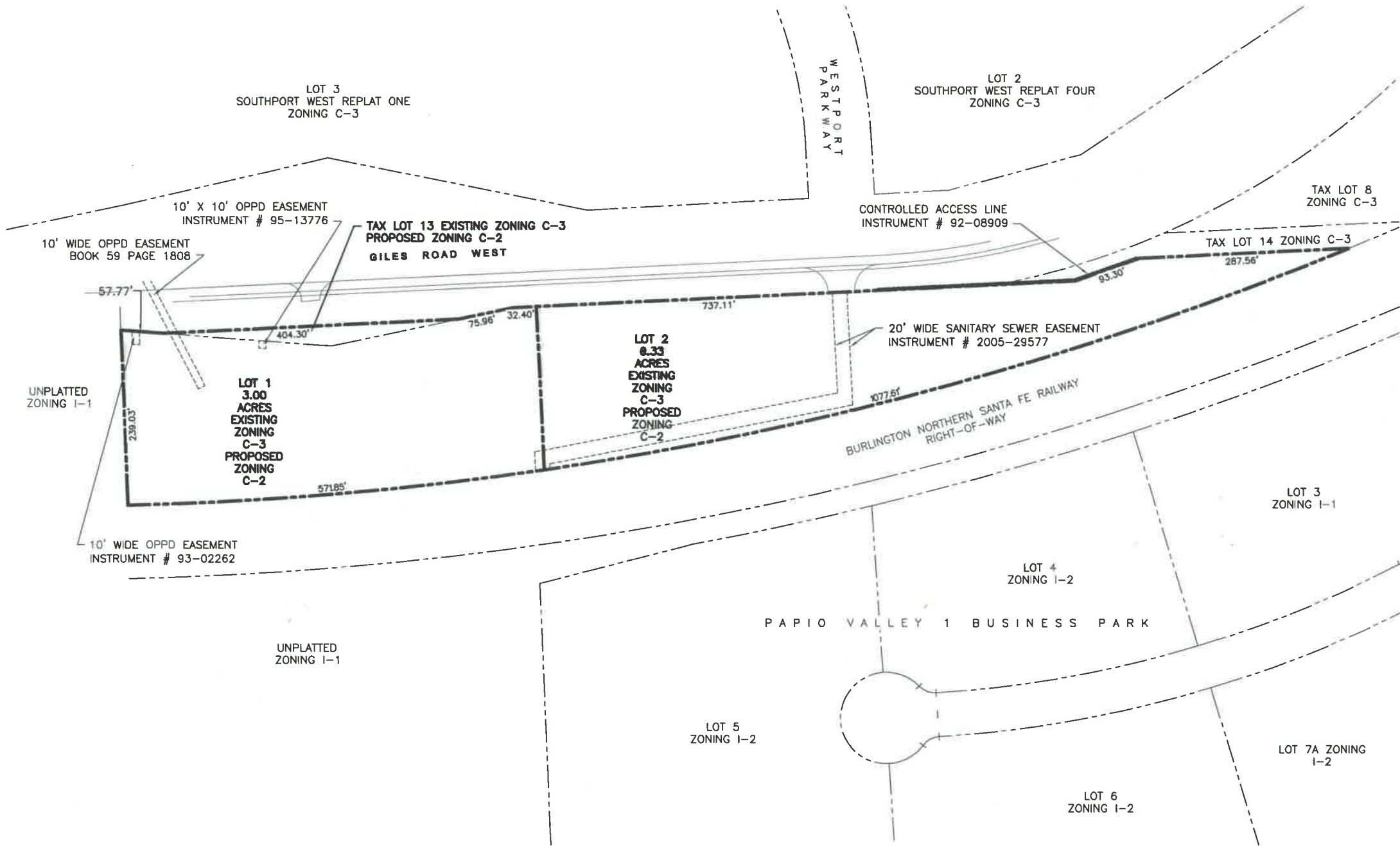
Description  
TAX LOTS 6B AND 13  
IN THE NE 1/4 OF  
SECTION 19-14-12,  
SARPY COUNTY



Revision Dates		
No.	Description	MM-DD-YY

Job No.: 1042-117  
Drawn By: MRS  
Reviewed By: CED  
Date: 11/8/2010  
Book:  
Page:

Sheet Number  
SHEET 1 OF 1



**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
JANUARY 4, 2011 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
AMENDMENT TO PENSION PLANS	◆ RESOLUTION ◆ ORDINANCE RECEIVE/FILE	RITA RAMIREZ ASSISTANT CITY ADMINISTRATOR

**SYNOPSIS**

An ordinance has been prepared to amend the retirement plans for public safety employees (police officers and firefighters) and a resolution has been prepared to amend the retirement plans for general employees and the city administrators.

**FISCAL IMPACT**

N/A

**RECOMMENDATION**

Approval

**BACKGROUND**

The proposed amendment to the City's retirement plans will incorporate recent changes to applicable laws, including the Pension Protection Act of 2006 and subsequent legislation.

Attached is a summary of the changes to the retirement plans.

**RETIREMENT PLANS  
AMENDMENT NO. 1**

*Summary of Changes*

**SUMMARY.** Amendment No. 1 to the City's retirement plan documents incorporates recent changes to pension laws and regulations for which plan documents need to be updated. Following is a brief summary of each article of the amendment. Generally, requirements must be included in plan documents. However, some provisions do not apply because this is a government plan or for other reasons, as noted. All provisions nevertheless are included in the amendment to provide a record of applicable authority for reference when the plan is required to be restated in a few years.

**ART    EXPLANATION**

- |             |  |
|-------------|--|
| <b>I</b>    | General provisions regarding amendment, effective date, etc.   |
| <b>II</b>   | Summary of provisions covered in the amendment.  |
| <b>III</b>  | Specifies actuarial factors – i.e. interest rate and mortality table – that must be used to determine compliance with limitations on benefits imposed by Internal Revenue Code §415.   |
| <b>IV</b>   | Any beneficiary under a qualified plan who is not a spouse and is entitled to a benefit eligible for a rollover can directly roll the distribution over to an IRA.   |
| <b>V</b>    | After-tax contributions received in a distribution, if any, can be rolled over, as well, to certain types of retirement plans.   |
| <b>VI</b>   | Extends period for giving participants notice of distributions from 90 to 180 days. Notice of distributions must include a statement of the affect of delaying distributions and explanation of relative values of optional forms of benefit. Requirements do not apply to governmental plans.                                     |
| <b>VII</b>  | Domestic relations order directing division of benefits upon a participant's divorce will not fail in certain cases due to the timing of issuance of the order.  |
| <b>VIII</b> | No in-service distributions are allowed upon reaching early retirement age.  |
| <b>IX</b>   | Participants are allowed to elect qualified optional survivor annuity permitted under the plan. Requirements do not apply to governmental plans.   |
| <b>X</b>    | Direct rollover of a lump sum distribution is permitted to a ROTH IRA.   |
| <b>XI</b>   | Substitute "severance from employment", a defined term in the Internal Revenue Code, for "separation from service" for required "top heavy" nondiscrimination testing of the plan. Governmental plans are exempt from top heavy testing.   |
| <b>XII</b>  | Changes to reflect new laws and regulations adopted in recent years regarding underfunded pension plans, specifically restricting optional payments and additional benefit accruals while a plan is in an underfunded state, and requiring annual reporting to plan participants. Requirements do not apply to governmental plans. |
| <b>XIII</b> | Incorporate required changes for plan participants in military service, some of which do not apply because of unique terms of the plan.  |



- XIV** Incorporate certain interest rate and mortality assumptions for lump sum payouts and other plan provisions, to the extent applicable.
- XV** Reflect suspension of 2009 required minimum distributions for participants who reach the later of 70 ½ and retirement.

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

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA TO AMEND THE PUBLIC SAFETY EMPLOYEES RETIREMENT PLANS, MEANING THE CITY OF LA VISTA POLICE OFFICERS RETIREMENT PLAN AND TRUST AND THE CITY OF LA VISTA FIREFIGHTERS RETIREMENT PLAN AND TRUST, FOR CHANGES IN APPLICABLE TAX LAWS; TO AUTHORIZE THE MAYOR TO EXECUTE DOCUMENTS AND FURTHER ACTIONS; AND TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY AND THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Pursuant to Nebraska Statutes, Sections 16-1001 through and including 16-1042, the City maintains the City of La Vista Police Officers Retirement Plan and Trust and the City of La Vista Firefighters Retirement Plan and Trust ("Plans"). The City Council is authorized to amend the Plans and an amendment to each of the Plans has been presented with this Ordinance to comply with the Pension Protection Act of 2006 and subsequent legislation enacted by the United States Congress ("Amendment No. 1").

SECTION 2. The City Council hereby adopts and approves Amendment No. 1 for each of the Plans in form and content presented with this Ordinance.

SECTION 3. The Mayor is hereby authorized to execute said Amendment No. 1 for each of the Plans and the City Administrator or her designee from time to time shall take any and all further actions as determined necessary or appropriate to implement said amendments and carry out the actions adopted and approved herein, obtain a determination from the Internal Revenue Service of the affect of said amendments and any other amendments on the qualified status of the Plans under the Internal Revenue Code, if the decision is made to obtain a determination, and otherwise maintain the qualified status of the Plans under the Internal Revenue Code, including, but not limited to, modifying amendments or adopting such further amendments to the Plans or either of them as the City Administrator determines necessary or advisable.

SECTION 4. All ordinances and parts of ordinances as previously enacted that are in conflict with this Ordinance or any part hereof are hereby repealed.

SECTION 5. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this Ordinance. The Mayor and City Council hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 6. This Ordinance shall be in force and take effect from and after passage, approval and publication as provided by law.

PASSED AND APPROVED THIS 4TH DAY OF JANUARY, 2011.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Bueth, CMC  
City Clerk

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

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA TO AMEND CITY RETIREMENT PLANS, SPECIFICALLY, THE CITY OF LA VISTA GENERAL EMPLOYEES DEFINED CONTRIBUTION PENSION PLAN AND TRUST AND THE CITY OF LA VISTA CITY ADMINISTRATORS' DEFINED CONTRIBUTION PENSION PLAN AND TRUST, FOR CHANGES IN APPLICABLE TAX LAWS, 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 General Employees Defined Contribution Pension Plan and Trust and the City of La Vista City Administrators' Defined Contribution Pension Plan and Trust ("Plans"). The City Council is authorized to amend the Plans and an amendment to each of the Plans has been presented with this Resolution for the Pension Protection Act of 2006 and subsequent legislation enacted by the United States Congress ("Amendment No. 1").

SECTION 2. The City Council hereby adopts and approves Amendment No. 1 for each of the Plans as presented with this Resolution.

SECTION 3. The Mayor is hereby authorized and directed to execute said Amendment No. 1 for each of the Plans and the City Administrator or her designee from time to time shall take any and all further actions as determined necessary or appropriate to implement said amendments and carry out the actions adopted and approved herein, obtain a determination from the Internal Revenue Service of the affect of said amendments and any other amendments on the qualified status of the Plans under the Internal Revenue Code, if a decision is made to obtain a determination, and otherwise maintain the qualified status of the Plans under the Internal Revenue Code, including, but not limited to, modifying amendments or adopting such further amendments to the Plans or either of them as the City Administrator determines necessary or advisable.

PASSED AND APPROVED THIS 4TH DAY OF JANUARY, 2011.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

**CITY OF LA VISTA GENERAL EMPLOYEES  
DEFINED CONTRIBUTION PENSION PLAN AND TRUST ("PLAN")**

**AMENDMENT NO. 1**

**ARTICLE I  
PREAMBLE**

- 1.1 **Plan and amendment authority.** The City of La Vista, a Nebraska municipality, ("City" or "Employer") maintains the City of La Vista General Employees Defined Contribution Pension Plan and Trust pursuant to Neb. Rev. Stat. Section 19-3501 and Internal Revenue Code, Sections 401(a) and 501(a), as set forth in the Adoption Agreement and corresponding Basic Municipal Employees Plan and Trust Agreement, ("Plan"), and hereby adopts and approves this Amendment No. 1 to the Plan and authorizes the Mayor or his designee to execute it below.
- 1.2 **Effective date of Amendment.** This Amendment is effective as indicated below for the respective provisions; provided, however, that an effective date shall not be earlier than the effective date of the Plan.
- 1.3 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.4 **Construction.** Provisions of this Amendment that are applicable to a defined benefit plan are included to the extent the Plan provides a minimum defined benefit. Except as otherwise provided in this Amendment, any reference to "Article" or "Section" in this Amendment refers only to articles or sections within this Amendment, and is not a reference to the Plan.
- 1.5 **Effect of restatement of Plan.** If the City of La Vista restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated into a plan document which incorporates Pension Protection Act of 2006 ("PPA"), and other provisions herein for subsequent legislation and guidance).

**ARTICLE II  
CITY ELECTIONS**

- 2.1 **Applicable Provisions.** Unless the City otherwise specifies in this Amendment, the following will apply:
  - a. The applicable mortality table described in Amendment Section 3.3.3(c) is effective for years beginning after December 31, 2008.
  - b. Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.
  - c. In-Service distributions prior to Normal Retirement Age are not permitted.
  - d. Once Code Section 436 benefit restrictions no longer apply, the Amendment provides for the (1) automatic restoration of benefit accruals, and (2) no "annuity starting date"; provided, however, Code Section 436 benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and

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

e. Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided. Distributions upon deemed severance of employment under the HEART Act are not permitted.

f. The applicable interest rate shall be based on the first month (lookback month) prior to the Plan Year (stability period) during which a distribution is made.

2.2 **Effective date of applicable mortality table set forth in Amendment Section 3.3.3(c).** The applicable mortality table described in Amendment Section 3.3.3(c) is effective for years beginning after December 31, 2008.

2.3 **Non-spousal rollovers** (Article IV). Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.

2.4 **In-service distributions** (Article VIII). In-Service Distributions prior to Normal Retirement Age are not permitted.

2.5 **Code Section 436 Benefit Restrictions (Article XII)**

**Treatment of Plan as of Close of Prohibited or Cessation Period (Section XII(h)).** Unless otherwise elected below, accruals that had been limited under Code Section 436(e) will be automatically restored as of the "Section 436 measurement date" that the limitation ceases to apply; and

**Accelerated Benefit Distributions (Section XII(h)).** Unless otherwise elected below, (1) there is no new "annuity starting date" with respect to payments made as a result of the benefit limitations no longer being applicable, and (2) there are no optional forms of benefit that are only available for the period of the benefit restrictions;

Provided, however, the Code Section 436 benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being excluded from the funding requirements of Code Section 412.

2.6 **Continued benefit accruals and distributions upon deemed severance (Article XIII).** Continued benefit accruals for the Heart Act (Amendment Section 13.2) will not apply. Further, distributions upon deemed severance of employment under the HEART Act (Amendment Section 13.4) will not be permitted.

2.7 **Applicable interest rate.** For purposes of Amendment Section 14.2, unless otherwise elected below, the stability period is the Plan Year during which a distribution is made and the lookback month is the first calendar month preceding the first day of the stability period.

### **ARTICLE III PENSION FUNDING EQUITY ACT OF 2004 AS MODIFIED BY SUBSEQUENT LEGISLATION**

3.1 **General Rule.** This Article applies to the determination of Code Section 415 limits.

3.1.1 **Effective date.** The City adopts this Article III to reflect certain provisions of the Pension Funding Equity Act of 2004 (PFEA), as modified by the Pension Protection Act of 2006 and the

Worker, Retiree and Employer Recovery Act of 2008. Except as otherwise provided herein, effective for distributions in Plan Years beginning after December 31, 2003, the required determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with this Amendment. However, this Amendment does not supersede any prior election to apply the transition rule of section 101(d)(3) of PFEA as described in Notice 2004-78.

**3.1.2 Definition of "Applicable Mortality Table."** The "applicable mortality table" means the applicable mortality table within the meaning of Code Section 417(e)(3)(B) (as described in Article XIV), subject to any special effective dates specified in this Article III.

### **3.2 Benefit Forms Not Subject to the Present Value Rules of Code Section 417(e)(3)**

**3.2.1 Form of benefit.** The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Section 3.2 if the form of the Participant's benefit is either:

- (a) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or
- (b) An annuity that decreases during the life of the Participant merely because of:
  - (1) The death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or
  - (2) The cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).

**3.2.2 Limitation Years beginning before July 1, 2007 –** For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount:

- (a) the interest rate and mortality table (or other tabular factor specified in the Plan for adjusting benefits in the same form; and
- (b) a 5 percent interest rate assumption and the "applicable mortality table" defined in the Plan for that annuity starting date.

**3.2.3 Limitation Years beginning on or after July 1, 2007.** For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

- (a) The annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same annuity starting date as the Participant's form of benefit; and
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table defined in the Plan for that annuity starting date.

### 3.3 **Benefit Forms Subject to the Present Value Rules of Code Section 417(e)(3).**

**3.3.1 Form of benefit.** The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined as indicated under this Section 3.3 if the form of the Participant's benefit is other than a benefit form described in Section 3.2.1 above.

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

- (a) The interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and
- (b) A 5.5 percent interest rate assumption and the applicable mortality table described in Article XIV.

**3.3.3 Annuity Starting Date in Plan Years Beginning After 2005.** Except as provided in Section 3.3.2, if the annuity starting date of the Participant's form of benefit is in a Plan Year beginning after December 31, 2005, the actuarially equivalent straight life annuity is equal to the greatest of:

- (a) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form;
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below); and
- (c) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate for the distribution under Treasury Regulations Section 1.417(e)-1(d)(3) (determined in accordance with Article XIV for Plan Years after the effective date of that Article) and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below), divided by 1.05.

The effective date of the applicable mortality table above is for years beginning after December 31, 2008.

**3.3.4 Annuity Starting Date in Plan Years Beginning in 2004 or 2005 –** If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as

the participant's form of benefit, computed using whichever of the following produces the greater annual amount:

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

(b) A 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Regulations Section 1.417(e)-1(d)(2).

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

#### **ARTICLE IV DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION**

- 4.1 **Non-spouse beneficiary rollover right (for distributions on or after January 1, 2008).** A non-spouse beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under Code Section 401(a)(31).
- 4.2 **Applicability of certain requirements.** For Plan Years beginning on or after January 1, 2010, any direct rollover of a distribution by a nonspouse beneficiary shall be subject to the direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B)), the notice requirements of Code Section 402(f) and the mandatory withholding requirements of Code Section 3405(c). Before that date, any such distribution shall not be subject to said requirements. Any distribution from the Plan to a non-spouse beneficiary shall not be eligible for a 60-day (non-direct) rollover.
- 4.3 **Trust beneficiary.** Subject to Section 4.1, if the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).
- 4.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary is not permitted to roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulations Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

#### **ARTICLE V ROLLOVER OF AFTER-TAX AMOUNTS**

- 5.1 **Direct rollover to qualified plan/403(b) plan (for taxable years beginning after December 31, 2006).** A Participant may elect to transfer employee after-tax contributions, if any, by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred (including interest thereon), including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.



**ARTICLE VI  
PARTICIPANT DISTRIBUTION NOTIFICATION**

- 6.1 **180-day notification period (effective for distribution notices in Plan Years beginning after December 31, 2006).** Reference to the 90-day maximum notice period requirements of Code Sections 402(f) (the rollover notice), 411(a)(11) (Participant's consent to distribution), and 417 (notice regarding the joint and survivor annuity rules), if any, is changed to 180 days.
- 6.2 **Effect of delay of distribution.** Notices given to Participants pursuant to Code Section 411(a)(11) in Plan Years beginning after December 31, 2006, if any, shall include a description of the consequences of failing to defer a distribution, including (i) for any individual account balance, a description of investment options available under the Plan (including fees) that will be available if the Participant defers distribution, (ii) for any defined benefit, how much larger benefits will be if the commencement of distributions is deferred, and (iii) the portion of the summary plan description that contains any special rules that might affect materially a Participant's decision to defer.
- 6.3 **Explanation of relative value.** Notices to Participants shall include the relative values of the various optional forms of benefit under the Plan as provided in Treasury Regulations Section 1.417(a)-3, to the extent said Regulations are applicable to the Plan. This provision is effective as of the applicable effective date set forth in Treasury Regulations (i.e., to qualified pre-retirement survivor annuity explanations provided on or after July 1, 2004; to qualified joint and survivor annuity explanations with respect to any distribution with an annuity starting date that is on or after February 1, 2006, or on or after October 1, 2004 with respect to any optional form of benefit that is subject to the requirements of Code Section 417(e)(3) if the actuarial present value of that optional form is less than the actuarial present value as determined under Code Section 417(e)(3)). Provided, however, pursuant to the flush language of Code Section 401(a) and Code Section 411(e)(1)(B), the provisions of Code Sections 401(a)(11) and 417, and consequently this Article VI, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

**ARTICLE VII  
QUALIFIED DOMESTIC RELATIONS ORDERS**

- 7.1 **Permissible QDROs (effective on and after April 6, 2007).** For purposes of provisions of the Plan regarding domestic relations orders, if any, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order (QDRO) will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.
- 7.2 **Other QDRO requirements apply.** A domestic relations order described in Section 7.1 is subject to the same requirements and protections that apply to any other QDRO.

**ARTICLE VIII  
PRE-RETIREMENT PENSION IN-SERVICE DISTRIBUTIONS**

- 8.1 **No age 62 in-service distributions.** As specified in Amendment Section 2.4, a Participant who has attained the specified age and who is not separated from employment may not elect to receive a distribution of his or her vested Accrued Benefit.

**ARTICLE IX**  
**QUALIFIED OPTIONAL SURVIVOR ANNUITY**

- 9.1 **Right to Elect Qualified Optional Survivor Annuity (effective for distributions with annuity starting dates in Plan Years beginning after December 31, 2007).** A Participant who elects to waive the qualified joint and survivor annuity form of benefit under the Plan, if provided for under the Plan, shall be entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity, if required, shall explain the terms and conditions of the "qualified optional survivor annuity." Provided, however, the following rules apply in the specified circumstances:

(a) **Special Effective Date Rules.**

1. If the Plan permits retroactive annuity starting dates and a Participant elects a distribution with a retroactive annuity starting date (pursuant to Treasury Regulations Section 1.417(e)-1(b)(3)(iv)) that is before the aforementioned effective date, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of applying the rules of this paragraph.

2. In the case of a plan that is subject to Code Section 401(a)(11) and that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006 (the date of enactment of PPA '06), the changes to Code Section 417 made by Section 1004 of PPA '06 apply to distributions with annuity starting dates during plan years beginning on or after the earlier of (i) January 1, 2008 or, if later, the date on which the last collective bargaining agreement related to the plan terminates (determined without regard to any extensions to a collective bargaining agreement made after August 17, 2006), or (ii) January 1, 2009.

(b) **Inapplicability to Governmental Plans.** Pursuant to the flush language of Code Section 401(a) and the provisions of Code Section 411(e)(1)(A), the provisions of Code Sections 401(a)(11) and 417, and consequently this Article IX, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

9.2 **Definition of Qualified Optional Survivor Annuity.**

(a) For purposes of this Article, the term "qualified optional survivor annuity" means an annuity:

- (1) For the life of the Participant with a survivor annuity for the life of the Participant's spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the Participant's spouse, and
- (2) Which is the actuarial equivalent of a single annuity for the life of the Participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(b) For purposes of this Section, the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the Participant and the spouse). If the survivor annuity percentage is less than seventy-five percent (75%), then the "applicable percentage" is seventy-five percent (75%). If the

survivor annuity percentage is equal to or greater than seventy-five percent (75%), the "applicable percentage" is fifty percent (50%).

## **ARTICLE X DIRECT ROLLOVER TO ROTH IRA**

- 10.1 **Roth IRA rollover.** For distributions made after December 31, 2007, a Participant or beneficiary may elect to roll over directly an "eligible rollover distribution" to a Roth IRA described in Code Section 408A(b); provided, however, for taxable years beginning before January 1, 2010, an individual cannot make a qualified rollover contribution from an eligible retirement plan other than a Roth IRA if, for the year the eligible rollover distribution is made, he or she has modified adjusted gross income exceeding \$100,000 or is married and files a separate return. For this purpose, the term "eligible rollover distribution" includes a rollover distribution described in Article V, if applicable.

## **ARTICLE XI TOP-HEAVY PROVISIONS**

- 11.1 **Severance from employment.** Effective for any Plan Year beginning after December 31, 2001, any provisions of the Plan setting forth the top-heavy provisions of Code Section 416 are modified by substituting the term "separation from service" with "severance from employment."

## **ARTICLE XII BENEFIT RESTRICTIONS**

- (a) **Effective Date and Application of Article.**

(1) **Effective Date.** The provisions of this Article apply to Plan Years beginning after December 31, 2007.

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

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

(B) **Governmental Plans.** Code Section 436 benefit restrictions and other provisions described in this Article do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being exempt from the funding requirements of Code Section 412.

(3) The limitations described in Subsections (b), (c) and (e) do not apply to the Plan for the first five (5) Plan Years of the Plan. Except as otherwise provided by the Commissioner in

guidance of general applicability, the Plan Years taken into account for this purpose include the following (in addition to Plan Years during which the Plan was maintained by the Employer):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(d) Limitations on Prohibited Payments**

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

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

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

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

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

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

(B) Bifurcation if optional form unavailable.

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

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

(2) Commence benefits with respect to the Participant's or Beneficiary's entire benefit under the Plan in any other optional form of benefit available under the Plan at the same "annuity starting date" that satisfies Regulations Section 1.436-1(d)(3)(i); or

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

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

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

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

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

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

(iii) Unrestricted portion of the benefit:

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

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

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

(D) Other Rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Temporary modification of limitation. In the case of the first Plan Year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, the provisions of (e)(1) above shall be applied by substituting the Plan's "adjusted funding target attainment



percentage” for the preceding Plan Year for such percentage for such Plan Year, but only if the “adjusted funding target attainment percentage” for the preceding year is greater.

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

The application of the Code Section 436 benefit limitations may be avoided or terminated in accordance with any of the rules set forth in Code Section 436 and Regulations Section 1.436-1(f).

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

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

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

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

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

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

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

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

(ii) Enrolled actuary’s certification in following year. In any case in which the Plan’s enrolled actuary has issued the certification under Regulations Section 1.436-1(h)(4) of the adjusted funding target attainment percentage of the Plan for

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

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

- (i) The first day of the 4th month of the Plan Year if paragraph (g)(2) of this section applies;
- (ii) The first day of the 10th month of the Plan Year if paragraph (g)(3) of this section applies;
- (iii) The date of a change in the presumed adjusted funding target attainment percentage under Regulations Section 1.436-1(g)(4); or
- (iv) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year.

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

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

- (i) The presumed "adjusted funding target attainment percentage" of the Plan for the Plan Year is reduced by 10 percentage points; and
- (ii) The first day of the 4th month of the Plan Year is a "Section 436 measurement date."

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

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

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

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

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

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

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

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

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

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

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

(1) Application to prohibited payments and accruals.

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

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

(2) Restoration of options and missed benefit accruals. If elected at Amendment Section 2.5, then Participants who had an "annuity starting date" within a period during which a limitation under Regulations Section 1.436-1(d) applied to the Plan will be provided with the opportunity to have a new "annuity starting date" (which would constitute a new "annuity starting date" under Code Sections 415 and 417) under which the form of benefit previously elected may be modified, subject to applicable qualification requirements, once the limitations of Regulations Section 1.436-1(d) cease to apply. In addition, subject to the rules of Regulations Section 1.436-1(c)(3) and any election made at Amendment Section 2.5, the Plan will automatically restore benefit accruals that had been limited under Code Section 436(e) as of the "Section 436 measurement date" that the limitation ceases to apply.

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

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

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

(1) The term "adjusted funding target attainment percentage" means the "funding target attainment percentage" per paragraph (A) below, and increasing each of the amounts under subparagraphs (A) and (B) of Code Section 430(d)(2) by the aggregate amount of purchases of

annuities for employees other than highly compensated employees (as defined in Code Section 414(q)) which were made by the Plan during the preceding two (2) Plan Years.

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

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

(1) In general. In the case of a Plan for any Plan Year, if the "funding target attainment percentage" is one hundred percent (100%) or more (determined without regard to the reduction in the value of assets under Code Section 430(f)(4)), the "funding target attainment percentage" for purposes of paragraphs (1) and (1)(A) above shall be determined without regard to such reduction.

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

In the case of a Plan Year beginning in calendar year:	The applicable percentage is:
2008	92%
2009	94%
2010	96%

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

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

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

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

### ARTICLE XIII HEART ACT PROVISIONS

13.1 **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period

of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

- 13.2 **Benefit accrual.** If, pursuant to Amendment Section 2.6, the City elects to apply this Section 13.2, then effective on or after the effective date specified in Section 2.6, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated said employment on the actual date of death or disability.

- (a) **Determination of benefits.** The Plan will determine the amount of employee contributions, if any, of an individual treated as reemployed under this Section 13.2 for purposes of applying Code Section 414(u)(8)(C) on the basis of the individual's average actual employee contributions for the lesser of: (i) the 12-month period of service with the employer immediately prior to qualified military service; or (ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.

- 13.3 **Differential wage payments.** For years beginning after December 31, 2008:

(i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), shall be treated as an employee of the employer making the payment,

(ii) the differential wage payment shall be treated as compensation for purposes of Code Section 415(c)(3) and Regulations Section 1.415(c)-2 (e.g. for purposes of Code Section 415, top heavy provisions of Code Section 416 and determination of highly compensated employees under Code Section 414(q)), and

(iii) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) (or any corresponding plan provisions, including, but not limited to, Plan provisions related to the average deferral percentage or average contribution percentage, to the extent applicable) by reason of any contribution or benefit which is based on the differential wage payment. Differential wage payments (as described herein) shall constitute compensation for all Plan purposes.

- (a) **Nondiscrimination Requirements.** Provided, however, for purposes of subparagraph (iii), all employees of the employer (as determined under Code Section 414(b), (c), (m) and (o)) performing service in the uniformed services described in Code Section 3401(h)(2)(A) shall be entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions, if contributions are permitted, based on the payments on reasonably equivalent terms (taking into account the provisions of Code Section 410(b)(3), (4) and (5) to the extent applicable).

- 13.4 **Deemed Severance.** As provided in Section 2.6, the Plan does not permit distribution upon deemed severance of employment.

**ARTICLE XIV**  
**CHANGE IN APPLICABLE INTEREST RATE AND**  
**APPLICABLE MORTALITY ASSUMPTION**

- 14.1 **Effective date.** Except as provided in regulations or other guidance by the Pension Benefit Guaranty Corporation (PBGC) and IRS, to the extent said regulations or guidance is applicable to this Plan, the limitations of this Article shall first apply in determining the amount payable to a Participant having an annuity starting date in a Plan Year beginning on or after January 1, 2008.
- 14.2 **Applicable interest rate.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate" or "applicable mortality table" used for purposes of Code Section 417(e), any provision prescribing the use of the annual rate of interest on 30-year U.S. Treasury securities shall be implemented by instead using the rate of interest determined by the applicable interest rate described by Code Section 417(e) after its amendment by PPA. Specifically, the applicable interest rate shall be the adjusted first, second, and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C) for the calendar month (lookback month) before the first day of the Plan Year in which the annuity starting date occurs (stability period). For this purpose, the first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code Section 430(h)(2)(C) if:
- (a) Code Section 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section, and
  - (b) Code Section 430(h)(2)(G)(i)(II) were applied by substituting "Section 417(e)(3)(A)(ii)(II)" for "Section 412(b)(5)(B)(ii)(II)," and
  - (c) The applicable percentage under Code Section 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.
- 14.3 **Applicable mortality assumption.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate," any Plan provision directly or indirectly prescribing the use of the mortality table described in Revenue Ruling 2001-62 shall be amended to prescribe the use of the applicable annual mortality table within the meaning set forth in Code Section 417(e)(3)(B), as initially described in Revenue Ruling 2007-67.

**ARTICLE XV**  
**2009 REQUIRED MINIMUM DISTRIBUTIONS**  
**(IRC SECTION 401(a)(9)(H))**

- 15.1 Notwithstanding anything in the Plan to the contrary:
- (a) **Suspension of Required Minimum Distributions for 2009.** A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated "Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not

receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence; and

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

This amendment is hereby executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

CITY OF LA VISTA, a Nebraska municipality

By: \_\_\_\_\_  
DOUGLAS KINDIG, Mayor



**CITY OF LA VISTA, NEBRASKA CITY ADMINISTRATORS'  
DEFINED CONTRIBUTION PENSION PLAN AND TRUST ("PLAN")**

**AMENDMENT NO. 1**

**ARTICLE I  
PREAMBLE**

- 1.1 **Plan and amendment authority.** The City of La Vista, a Nebraska municipality, ("City" or "Employer") maintains the City of La Vista City Administrators' Defined Contribution Pension Plan and Trust pursuant to Neb. Rev. Stat. Section 19-3501 and Internal Revenue Code, Sections 401(a) and 501(a), as set forth in the Adoption Agreement and corresponding Basic Municipal Employees Plan and Trust Agreement, ("Plan"), and hereby adopts and approves this Amendment No. 1 to the Plan and authorizes the Mayor or his designee to execute it below.
- 1.2 **Effective date of Amendment.** This Amendment is effective as indicated below for the respective provisions; provided, however, that an effective date shall not be earlier than the effective date of the Plan.
- 1.3 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.4 **Construction.** Provisions of this Amendment that are applicable to a defined benefit plan are included to the extent the Plan provides a minimum defined benefit. Except as otherwise provided in this Amendment, any reference to "Article" or "Section" in this Amendment refers only to articles or sections within this Amendment, and is not a reference to the Plan.
- 1.5 **Effect of restatement of Plan.** If the City of La Vista restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated into a plan document which incorporates Pension Protection Act of 2006 ("PPA"), and other provisions herein for subsequent legislation and guidance).

**ARTICLE II  
CITY ELECTIONS**

- 2.1 **Applicable Provisions.** Unless the City otherwise specifies in this Amendment, the following will apply:
  - a. The applicable mortality table described in Amendment Section 3.3.3(c) is effective for years beginning after December 31, 2008.
  - b. Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.
  - c. In-Service distributions prior to Normal Retirement Age are not permitted.
  - d. Once Code Section 436 benefit restrictions no longer apply, the Amendment provides for the (1) automatic restoration of benefit accruals, and (2) no "annuity starting date"; provided, however, Code Section 436 benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and

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

- e. Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided. Distributions upon deemed severance of employment under the HEART Act are not permitted.
  - f. The applicable interest rate shall be based on the first month (lookback month) prior to the Plan Year (stability period) during which a distribution is made.
- 2.2 **Effective date of applicable mortality table set forth in Amendment Section 3.3.3(c).** The applicable mortality table described in Amendment Section 3.3.3(c) is effective for years beginning after December 31, 2008.
- 2.3 **Non-spousal rollovers (Article IV).** Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.
- 2.4 **In-service distributions (Article VIII).** In-Service Distributions prior to Normal Retirement Age are not permitted.
- 2.5 **Code Section 436 Benefit Restrictions (Article XII)**

**Treatment of Plan as of Close of Prohibited or Cessation Period (Section XII(h)).** Unless otherwise elected below, accruals that had been limited under Code Section 436(e) will be automatically restored as of the "Section 436 measurement date" that the limitation ceases to apply; and

**Accelerated Benefit Distributions (Section XII(h)).** Unless otherwise elected below, (1) there is no new "annuity starting date" with respect to payments made as a result of the benefit limitations no longer being applicable, and (2) there are no optional forms of benefit that are only available for the period of the benefit restrictions;

Provided, however, the Code Section 436 benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being excluded from the funding requirements of Code Section 412.

- 2.6 **Continued benefit accruals and distributions upon deemed severance (Article XIII).** Continued benefit accruals for the Heart Act (Amendment Section 13.2) will not apply. Further, distributions upon deemed severance of employment under the HEART Act (Amendment Section 13.4) will not be permitted.
- 2.7 **Applicable interest rate.** For purposes of Amendment Section 14.2, unless otherwise elected below, the stability period is the Plan Year during which a distribution is made and the lookback month is the first calendar month preceding the first day of the stability period.

### ARTICLE III PENSION FUNDING EQUITY ACT OF 2004 AS MODIFIED BY SUBSEQUENT LEGISLATION

- 3.1 **General Rule.** This Article applies to the determination of Code Section 415 limits.

3.1.1 **Effective date.** The City adopts this Article III to reflect certain provisions of the Pension Funding Equity Act of 2004 (PFEA), as modified by the Pension Protection Act of 2006 and the

Worker, Retiree and Employer Recovery Act of 2008. Except as otherwise provided herein, effective for distributions in Plan Years beginning after December 31, 2003, the required determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with this Amendment. However, this Amendment does not supersede any prior election to apply the transition rule of section 101(d)(3) of PFEA as described in Notice 2004-78.

**3.1.2 Definition of "Applicable Mortality Table."** The "applicable mortality table" means the applicable mortality table within the meaning of Code Section 417(e)(3)(B) (as described in Article XIV), subject to any special effective dates specified in this Article III.

### **3.2 Benefit Forms Not Subject to the Present Value Rules of Code Section 417(e)(3)**

**3.2.1 Form of benefit.** The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Section 3.2 if the form of the Participant's benefit is either:

- (a) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or
- (b) An annuity that decreases during the life of the Participant merely because of:
  - (1) The death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or
  - (2) The cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).

**3.2.2 Limitation Years beginning before July 1, 2007 –** For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount:

- (a) the interest rate and mortality table (or other tabular factor specified in the Plan for adjusting benefits in the same form; and
- (b) a 5 percent interest rate assumption and the "applicable mortality table" defined in the Plan for that annuity starting date.

**3.2.3 Limitation Years beginning on or after July 1, 2007.** For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

- (a) The annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same annuity starting date as the Participant's form of benefit; and
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table defined in the Plan for that annuity starting date.

### 3.3 **Benefit Forms Subject to the Present Value Rules of Code Section 417(e)(3).**

**3.3.1 Form of benefit.** The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined as indicated under this Section 3.3 if the form of the Participant's benefit is other than a benefit form described in Section 3.2.1 above.

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

- (a) The interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and
- (b) A 5.5 percent interest rate assumption and the applicable mortality table described in Article XIV.

**3.3.3 Annuity Starting Date in Plan Years Beginning After 2005.** Except as provided in Section 3.3.2, if the annuity starting date of the Participant's form of benefit is in a Plan Year beginning after December 31, 2005, the actuarially equivalent straight life annuity is equal to the greatest of:

- (a) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form;
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below); and
- (c) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate for the distribution under Treasury Regulations Section 1.417(e)-1(d)(3) (determined in accordance with Article XIV for Plan Years after the effective date of that Article) and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below), divided by 1.05.

The effective date of the applicable mortality table above is for years beginning after December 31, 2008.

**3.3.4 Annuity Starting Date in Plan Years Beginning in 2004 or 2005 –** If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as

the participant's form of benefit, computed using whichever of the following produces the greater annual amount:

- (a) The interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and
- (b) A 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Regulations Section 1.417(e)-1(d)(2).

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

#### **ARTICLE IV DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION**

- 4.1 **Non-spouse beneficiary rollover right (for distributions on or after January 1, 2008).** A non-spouse beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under Code Section 401(a)(31).
- 4.2 **Applicability of certain requirements.** For Plan Years beginning on or after January 1, 2010, any direct rollover of a distribution by a nonspouse beneficiary shall be subject to the direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B)), the notice requirements of Code Section 402(f) and the mandatory withholding requirements of Code Section 3405(c). Before that date, any such distribution shall not be subject to said requirements. Any distribution from the Plan to a non-spouse beneficiary shall not be eligible for a 60-day (non-direct) rollover.
- 4.3 **Trust beneficiary.** Subject to Section 4.1, if the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).
- 4.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary is not permitted to roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulations Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

#### **ARTICLE V ROLLOVER OF AFTER-TAX AMOUNTS**

- 5.1 **Direct rollover to qualified plan/403(b) plan (for taxable years beginning after December 31, 2006).** A Participant may elect to transfer employee after-tax contributions, if any, by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred (including interest thereon), including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

## ARTICLE VI PARTICIPANT DISTRIBUTION NOTIFICATION

- 6.1 **180-day notification period (effective for distribution notices in Plan Years beginning after December 31, 2006).** Reference to the 90-day maximum notice period requirements of Code Sections 402(f) (the rollover notice), 411(a)(11) (Participant's consent to distribution), and 417 (notice regarding the joint and survivor annuity rules), if any, is changed to 180 days.
- 6.2 **Effect of delay of distribution.** Notices given to Participants pursuant to Code Section 411(a)(11) in Plan Years beginning after December 31, 2006, if any, shall include a description of the consequences of failing to defer a distribution, including (i) for any individual account balance, a description of investment options available under the Plan (including fees) that will be available if the Participant defers distribution, (ii) for any defined benefit, how much larger benefits will be if the commencement of distributions is deferred, and (iii) the portion of the summary plan description that contains any special rules that might affect materially a Participant's decision to defer.
- 6.3 **Explanation of relative value.** Notices to Participants shall include the relative values of the various optional forms of benefit under the Plan as provided in Treasury Regulations Section 1.417(a)-3, to the extent said Regulations are applicable to the Plan. This provision is effective as of the applicable effective date set forth in Treasury Regulations (i.e., to qualified pre-retirement survivor annuity explanations provided on or after July 1, 2004; to qualified joint and survivor annuity explanations with respect to any distribution with an annuity starting date that is on or after February 1, 2006, or on or after October 1, 2004 with respect to any optional form of benefit that is subject to the requirements of Code Section 417(e)(3) if the actuarial present value of that optional form is less than the actuarial present value as determined under Code Section 417(e)(3)). Provided, however, pursuant to the flush language of Code Section 401(a) and Code Section 411(e)(1)(B), the provisions of Code Sections 401(a)(11) and 417, and consequently this Article VI, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

## ARTICLE VII QUALIFIED DOMESTIC RELATIONS ORDERS

- 7.1 **Permissible QDROs (effective on and after April 6, 2007).** For purposes of provisions of the Plan regarding domestic relations orders, if any, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order (QDRO) will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.
- 7.2 **Other QDRO requirements apply.** A domestic relations order described in Section 7.1 is subject to the same requirements and protections that apply to any other QDRO.

## ARTICLE VIII PRE-RETIREMENT PENSION IN-SERVICE DISTRIBUTIONS

- 8.1 **No age 62 in-service distributions.** As specified in Amendment Section 2.4, a Participant who has attained the specified age and who is not separated from employment may not elect to receive a distribution of his or her vested Accrued Benefit.

**ARTICLE IX**  
**QUALIFIED OPTIONAL SURVIVOR ANNUITY**

- 9.1 **Right to Elect Qualified Optional Survivor Annuity (effective for distributions with annuity starting dates in Plan Years beginning after December 31, 2007).** A Participant who elects to waive the qualified joint and survivor annuity form of benefit under the Plan, if provided for under the Plan, shall be entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity, if required, shall explain the terms and conditions of the "qualified optional survivor annuity." Provided, however, the following rules apply in the specified circumstances:

(a) **Special Effective Date Rules.**

1. If the Plan permits retroactive annuity starting dates and a Participant elects a distribution with a retroactive annuity starting date (pursuant to Treasury Regulations Section 1.417(e)-1(b)(3)(iv)) that is before the aforementioned effective date, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of applying the rules of this paragraph.

2. In the case of a plan that is subject to Code Section 401(a)(11) and that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006 (the date of enactment of PPA '06), the changes to Code Section 417 made by Section 1004 of PPA '06 apply to distributions with annuity starting dates during plan years beginning on or after the earlier of (i) January 1, 2008 or, if later, the date on which the last collective bargaining agreement related to the plan terminates (determined without regard to any extensions to a collective bargaining agreement made after August 17, 2006), or (ii) January 1, 2009.

(b) **Inapplicability to Governmental Plans.** Pursuant to the flush language of Code Section 401(a) and the provisions of Code Section 411(e)(1)(A), the provisions of Code Sections 401(a)(11) and 417, and consequently this Article IX, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

9.2 **Definition of Qualified Optional Survivor Annuity.**

(a) For purposes of this Article, the term "qualified optional survivor annuity" means an annuity:

- (1) For the life of the Participant with a survivor annuity for the life of the Participant's spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the Participant's spouse, and
- (2) Which is the actuarial equivalent of a single annuity for the life of the Participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(b) For purposes of this Section, the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the Participant and the spouse). If the survivor annuity percentage is less than seventy-five percent (75%), then the "applicable percentage" is seventy-five percent (75%). If the

survivor annuity percentage is equal to or greater than seventy-five percent (75%), the "applicable percentage" is fifty percent (50%).

## **ARTICLE X DIRECT ROLLOVER TO ROTH IRA**

- 10.1 **Roth IRA rollover.** For distributions made after December 31, 2007, a Participant or beneficiary may elect to roll over directly an "eligible rollover distribution" to a Roth IRA described in Code Section 408A(b); provided, however, for taxable years beginning before January 1, 2010, an individual cannot make a qualified rollover contribution from an eligible retirement plan other than a Roth IRA if, for the year the eligible rollover distribution is made, he or she has modified adjusted gross income exceeding \$100,000 or is married and files a separate return. For this purpose, the term "eligible rollover distribution" includes a rollover distribution described in Article V, if applicable.

## **ARTICLE XI TOP-HEAVY PROVISIONS**

- 11.1 **Severance from employment.** Effective for any Plan Year beginning after December 31, 2001, any provisions of the Plan setting forth the top-heavy provisions of Code Section 416 are modified by substituting the term "separation from service" with "severance from employment."

## **ARTICLE XII BENEFIT RESTRICTIONS**

(a) **Effective Date and Application of Article.**

(1) **Effective Date.** The provisions of this Article apply to Plan Years beginning after December 31, 2007.

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

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

(B) **Governmental Plans.** Code Section 436 benefit restrictions and other provisions described in this Article do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being exempt from the funding requirements of Code Section 412.

(3) The limitations described in Subsections (b), (c) and (e) do not apply to the Plan for the first five (5) Plan Years of the Plan. Except as otherwise provided by the Commissioner in



guidance of general applicability, the Plan Years taken into account for this purpose include the following (in addition to Plan Years during which the Plan was maintained by the Employer):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(d) Limitations on Prohibited Payments**

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

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

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

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

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

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

(B) Bifurcation if optional form unavailable.

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

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

(2) Commence benefits with respect to the Participant's or Beneficiary's entire benefit under the Plan in any other optional form of benefit available under the Plan at the same "annuity starting date" that satisfies Regulations Section 1.436-1(d)(3)(i); or

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

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

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

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

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

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

(iii) Unrestricted portion of the benefit:

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

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

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

(D) Other Rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Temporary modification of limitation. In the case of the first Plan Year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, the provisions of (e)(1) above shall be applied by substituting the Plan's "adjusted funding target attainment

percentage” for the preceding Plan Year for such percentage for such Plan Year, but only if the “adjusted funding target attainment percentage” for the preceding year is greater.

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

The application of the Code Section 436 benefit limitations may be avoided or terminated in accordance with any of the rules set forth in Code Section 436 and Regulations Section 1.436-1(f).

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

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

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

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

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

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

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

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

(ii) Enrolled actuary’s certification in following year. In any case in which the Plan’s enrolled actuary has issued the certification under Regulations Section 1.436-1(h)(4) of the adjusted funding target attainment percentage of the Plan for

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

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

- (i) The first day of the 4th month of the Plan Year if paragraph (g)(2) of this section applies;
- (ii) The first day of the 10th month of the Plan Year if paragraph (g)(3) of this section applies;
- (iii) The date of a change in the presumed adjusted funding target attainment percentage under Regulations Section 1.436-1(g)(4); or
- (iv) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year.

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

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

- (i) The presumed "adjusted funding target attainment percentage" of the Plan for the Plan Year is reduced by 10 percentage points; and
- (ii) The first day of the 4th month of the Plan Year is a "Section 436 measurement date."

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

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

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

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

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

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

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

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

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

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

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

(1) Application to prohibited payments and accruals.

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



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

(2) Restoration of options and missed benefit accruals. If elected at Amendment Section 2.5, then Participants who had an "annuity starting date" within a period during which a limitation under Regulations Section 1.436-1(d) applied to the Plan will be provided with the opportunity to have a new "annuity starting date" (which would constitute a new "annuity starting date" under Code Sections 415 and 417) under which the form of benefit previously elected may be modified, subject to applicable qualification requirements, once the limitations of Regulations Section 1.436-1(d) cease to apply. In addition, subject to the rules of Regulations Section 1.436-1(c)(3) and any election made at Amendment Section 2.5, the Plan will automatically restore benefit accruals that had been limited under Code Section 436(e) as of the "Section 436 measurement date" that the limitation ceases to apply.

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

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

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

(1) The term "adjusted funding target attainment percentage" means the "funding target attainment percentage" per paragraph (A) below, and increasing each of the amounts under subparagraphs (A) and (B) of Code Section 430(d)(2) by the aggregate amount of purchases of

annuities for employees other than highly compensated employees (as defined in Code Section 414(q)) which were made by the Plan during the preceding two (2) Plan Years.

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

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

(1) In general. In the case of a Plan for any Plan Year, if the "funding target attainment percentage" is one hundred percent (100%) or more (determined without regard to the reduction in the value of assets under Code Section 430(f)(4)), the "funding target attainment percentage" for purposes of paragraphs (1) and (1)(A) above shall be determined without regard to such reduction.

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

In the case of a Plan Year beginning in calendar year:	The applicable percentage is:
2008	92%
2009	94%
2010	96%

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

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

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

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

### ARTICLE XIII HEART ACT PROVISIONS

13.1 **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's

Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

- 13.2 **Benefit accrual.** If, pursuant to Amendment Section 2.6, the City elects to apply this Section 13.2, then effective on or after the effective date specified in Section 2.6, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated said employment on the actual date of death or disability.

- (a) **Determination of benefits.** The Plan will determine the amount of employee contributions, if any, of an individual treated as reemployed under this Section 13.2 for purposes of applying Code Section 414(u)(8)(C) on the basis of the individual's average actual employee contributions for the lesser of: (i) the 12-month period of service with the employer immediately prior to qualified military service; or (ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.

- 13.3 **Differential wage payments.** For years beginning after December 31, 2008:

- (i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), shall be treated as an employee of the employer making the payment,

- (ii) the differential wage payment shall be treated as compensation for purposes of Code Section 415(c)(3) and Regulations Section 1.415(c)-2 (e.g. for purposes of Code Section 415, top heavy provisions of Code Section 416 and determination of highly compensated employees under Code Section 414(q)), and

- (iii) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) (or any corresponding plan provisions, including, but not limited to, Plan provisions related to the average deferral percentage or average contribution percentage, to the extent applicable) by reason of any contribution or benefit which is based on the differential wage payment. Differential wage payments (as described herein) shall constitute compensation for all Plan purposes.

- (a) **Nondiscrimination Requirements.** Provided, however, for purposes of subparagraph (iii), all employees of the employer (as determined under Code Section 414(b), (c), (m) and (o)) performing service in the uniformed services described in Code Section 3401(h)(2)(A) shall be entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions, if contributions are permitted, based on the payments on reasonably equivalent terms (taking into account the provisions of Code Section 410(b)(3), (4) and (5) to the extent applicable).

- 13.4 **Deemed Severance.** As provided in Section 2.6, the Plan does not permit distribution upon deemed severance of employment.

**ARTICLE XIV**  
**CHANGE IN APPLICABLE INTEREST RATE AND**  
**APPLICABLE MORTALITY ASSUMPTION**

- 14.1 **Effective date.** Except as provided in regulations or other guidance by the Pension Benefit Guaranty Corporation (PBGC) and IRS, to the extent said regulations or guidance is applicable to this Plan, the limitations of this Article shall first apply in determining the amount payable to a Participant having an annuity starting date in a Plan Year beginning on or after January 1, 2008.
- 14.2 **Applicable interest rate.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate" or "applicable mortality table" used for purposes of Code Section 417(e), any provision prescribing the use of the annual rate of interest on 30-year U.S. Treasury securities shall be implemented by instead using the rate of interest determined by the applicable interest rate described by Code Section 417(e) after its amendment by PPA. Specifically, the applicable interest rate shall be the adjusted first, second, and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C) for the calendar month (lookback month) before the first day of the Plan Year in which the annuity starting date occurs (stability period). For this purpose, the first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code Section 430(h)(2)(C) if:
- (a) Code Section 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section, and
  - (b) Code Section 430(h)(2)(G)(i)(II) were applied by substituting "Section 417(e)(3)(A)(ii)(II)" for "Section 412(b)(5)(B)(ii)(II)," and
  - (c) The applicable percentage under Code Section 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.
- 14.3 **Applicable mortality assumption.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate," any Plan provision directly or indirectly prescribing the use of the mortality table described in Revenue Ruling 2001-62 shall be amended to prescribe the use of the applicable annual mortality table within the meaning set forth in Code Section 417(e)(3)(B), as initially described in Revenue Ruling 2007-67.

**ARTICLE XV**  
**2009 REQUIRED MINIMUM DISTRIBUTIONS**  
**(IRC SECTION 401(a)(9)(H))**

- 15.1 Notwithstanding anything in the Plan to the contrary:
- (a) **Suspension of Required Minimum Distributions for 2009.** A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated "Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not

receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence; and

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

This amendment is hereby executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

CITY OF LA VISTA, a Nebraska municipality

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

DOUGLAS KINDIG, Mayor

**CITY OF LA VISTA  
FIREFIGHTERS RETIREMENT PLAN AND TRUST ("PLAN")**

**AMENDMENT NO. 1**

**ARTICLE I  
PREAMBLE**

- 1.1 **Plan and amendment authority.** The City of La Vista, a Nebraska municipality, ("City" or "Employer") maintains the City of La Vista Firefighters Retirement Plan and Trust pursuant to Neb. Rev. Stat. Sections 16-1020 through 16-1042 and Internal Revenue Code, Sections 401(a) and 501(a), as set forth in the Adoption Agreement and corresponding Basic Municipal Employees Plan and Trust Agreement, ("Plan"), and hereby adopts and approves this Amendment No. 1 to the Plan and authorizes the Mayor or his designee to execute it below.
- 1.2 **Effective date of Amendment.** This Amendment is effective as indicated below for the respective provisions; provided, however, that an effective date shall not be earlier than the effective date of the Plan.
- 1.3 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.4 **Construction.** Provisions of this Amendment that are applicable to a defined benefit plan are included to the extent the Plan provides a minimum defined benefit. Except as otherwise provided in this Amendment, any reference to "Article" or "Section" in this Amendment refers only to articles or sections within this Amendment, and is not a reference to the Plan.
- 1.5 **Effect of restatement of Plan.** If the City of La Vista restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated into a plan document which incorporates Pension Protection Act of 2006 ("PPA"), and other provisions herein for subsequent legislation and guidance).

**ARTICLE II  
CITY ELECTIONS**

- 2.1 **Applicable Provisions.** Unless the City otherwise specifies in this Amendment, the following will apply:
- a. The applicable mortality table described in Amendment Section 3.3.3(c) is effective for years beginning after December 31, 2008.
  - b. Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.
  - c. In-Service distributions prior to Normal Retirement Age are not permitted.
  - d. Once Code Section 436 benefit restrictions no longer apply, the Amendment provides for the (1) automatic restoration of benefit accruals, and (2) no "annuity starting date"; provided, however, Code Section 436 benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and

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

- e. Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided. Distributions upon deemed severance of employment under the HEART Act are not permitted.
  - f. The applicable interest rate shall be based on the first month (lookback month) prior to the Plan Year (stability period) during which a distribution is made.
- 2.2 **Effective date of applicable mortality table set forth in Amendment Section 3.3.3(c).** The applicable mortality table described in Amendment Section 3.3.3(c) is effective for years beginning after December 31, 2008.
- 2.3 **Non-spousal rollovers** (Article IV). Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.
- 2.4 **In-service distributions** (Article VIII). In-Service Distributions prior to Normal Retirement Age are not permitted.
- 2.5 **Code Section 436 Benefit Restrictions (Article XII)**

**Treatment of Plan as of Close of Prohibited or Cessation Period (Section XII(h)).** Unless otherwise elected below, accruals that had been limited under Code Section 436(e) will be automatically restored as of the "Section 436 measurement date" that the limitation ceases to apply; and

**Accelerated Benefit Distributions (Section XII(h)).** Unless otherwise elected below, (1) there is no new "annuity starting date" with respect to payments made as a result of the benefit limitations no longer being applicable, and (2) there are no optional forms of benefit that are only available for the period of the benefit restrictions;

Provided, however, the Code Section 436 benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being excluded from the funding requirements of Code Section 412.

- 2.6 **Continued benefit accruals and distributions upon deemed severance (Article XIII).** Continued benefit accruals for the Heart Act (Amendment Section 13.2) will not apply. Further, distributions upon deemed severance of employment under the HEART Act (Amendment Section 13.4) will not be permitted.
- 2.7 **Applicable interest rate.** For purposes of Amendment Section 14.2, unless otherwise elected below, the stability period is the Plan Year during which a distribution is made and the lookback month is the first calendar month preceding the first day of the stability period.

### ARTICLE III PENSION FUNDING EQUITY ACT OF 2004 AS MODIFIED BY SUBSEQUENT LEGISLATION

- 3.1 **General Rule.** This Article applies to the determination of Code Section 415 limits.

3.1.1 **Effective date.** The City adopts this Article III to reflect certain provisions of the Pension Funding Equity Act of 2004 (PFEA), as modified by the Pension Protection Act of 2006 and the

Worker, Retiree and Employer Recovery Act of 2008. Except as otherwise provided herein, effective for distributions in Plan Years beginning after December 31, 2003, the required determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with this Amendment. However, this Amendment does not supersede any prior election to apply the transition rule of section 101(d)(3) of PFEA as described in Notice 2004-78.

**3.1.2 Definition of "Applicable Mortality Table."** The "applicable mortality table" means the applicable mortality table within the meaning of Code Section 417(e)(3)(B) (as described in Article XIV), subject to any special effective dates specified in this Article III.

### **3.2 Benefit Forms Not Subject to the Present Value Rules of Code Section 417(e)(3)**

**3.2.1 Form of benefit.** The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Section 3.2 if the form of the Participant's benefit is either:

- (a) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or
- (b) An annuity that decreases during the life of the Participant merely because of:
  - (1) The death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or
  - (2) The cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).

**3.2.2 Limitation Years beginning before July 1, 2007 –** For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount:

- (a) the interest rate and mortality table (or other tabular factor specified in the Plan for adjusting benefits in the same form; and
- (b) a 5 percent interest rate assumption and the "applicable mortality table" defined in the Plan for that annuity starting date.

**3.2.3 Limitation Years beginning on or after July 1, 2007.** For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

- (a) The annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same annuity starting date as the Participant's form of benefit; and
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table defined in the Plan for that annuity starting date.



### 3.3 **Benefit Forms Subject to the Present Value Rules of Code Section 417(e)(3).**

**3.3.1 Form of benefit.** The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined as indicated under this Section 3.3 if the form of the Participant's benefit is other than a benefit form described in Section 3.2.1 above.

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

- (a) The interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and
- (b) A 5.5 percent interest rate assumption and the applicable mortality table described in Article XIV.

**3.3.3 Annuity Starting Date in Plan Years Beginning After 2005.** Except as provided in Section 3.3.2, if the annuity starting date of the Participant's form of benefit is in a Plan Year beginning after December 31, 2005, the actuarially equivalent straight life annuity is equal to the greatest of:

- (a) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form;
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below); and
- (c) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate for the distribution under Treasury Regulations Section 1.417(e)-1(d)(3) (determined in accordance with Article XIV for Plan Years after the effective date of that Article) and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below), divided by 1.05.

The effective date of the applicable mortality table above is for years beginning after December 31, 2008.

**3.3.4 Annuity Starting Date in Plan Years Beginning in 2004 or 2005 –** If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as

the participant's form of benefit, computed using whichever of the following produces the greater annual amount:

- (a) The interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and
- (b) A 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Regulations Section 1.417(e)-1(d)(2).

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

#### **ARTICLE IV DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION**

- 4.1 **Non-spouse beneficiary rollover right (for distributions on or after January 1, 2008).** A non-spouse beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under Code Section 401(a)(31).
- 4.2 **Applicability of certain requirements.** For Plan Years beginning on or after January 1, 2010, any direct rollover of a distribution by a nonspouse beneficiary shall be subject to the direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B)), the notice requirements of Code Section 402(f) and the mandatory withholding requirements of Code Section 3405(c). Before that date, any such distribution shall not be subject to said requirements. Any distribution from the Plan to a non-spouse beneficiary shall not be eligible for a 60-day (non-direct) rollover.
- 4.3 **Trust beneficiary.** Subject to Section 4.1, if the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).
- 4.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary is not permitted to roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulations Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

#### **ARTICLE V ROLLOVER OF AFTER-TAX AMOUNTS**

- 5.1 **Direct rollover to qualified plan/403(b) plan (for taxable years beginning after December 31, 2006).** A Participant may elect to transfer employee after-tax contributions, if any, by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred (including interest thereon), including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

## ARTICLE VI PARTICIPANT DISTRIBUTION NOTIFICATION

- 6.1 **180-day notification period (effective for distribution notices in Plan Years beginning after December 31, 2006).** Reference to the 90-day maximum notice period requirements of Code Sections 402(f) (the rollover notice), 411(a)(11) (Participant's consent to distribution), and 417 (notice regarding the joint and survivor annuity rules), if any, is changed to 180 days.
- 6.2 **Effect of delay of distribution.** Notices given to Participants pursuant to Code Section 411(a)(11) in Plan Years beginning after December 31, 2006, if any, shall include a description of the consequences of failing to defer a distribution, including (i) for any individual account balance, a description of investment options available under the Plan (including fees) that will be available if the Participant defers distribution, (ii) for any defined benefit, how much larger benefits will be if the commencement of distributions is deferred, and (iii) the portion of the summary plan description that contains any special rules that might affect materially a Participant's decision to defer.
- 6.3 **Explanation of relative value.** Notices to Participants shall include the relative values of the various optional forms of benefit under the Plan as provided in Treasury Regulations Section 1.417(a)-3, to the extent said Regulations are applicable to the Plan. This provision is effective as of the applicable effective date set forth in Treasury Regulations (i.e., to qualified pre-retirement survivor annuity explanations provided on or after July 1, 2004; to qualified joint and survivor annuity explanations with respect to any distribution with an annuity starting date that is on or after February 1, 2006, or on or after October 1, 2004 with respect to any optional form of benefit that is subject to the requirements of Code Section 417(e)(3) if the actuarial present value of that optional form is less than the actuarial present value as determined under Code Section 417(e)(3)). Provided, however, pursuant to the flush language of Code Section 401(a) and Code Section 411(e)(1)(B), the provisions of Code Sections 401(a)(11) and 417, and consequently this Article VI, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

## ARTICLE VII QUALIFIED DOMESTIC RELATIONS ORDERS

- 7.1 **Permissible QDROs (effective on and after April 6, 2007).** For purposes of provisions of the Plan regarding domestic relations orders, if any, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order (QDRO) will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.
- 7.2 **Other QDRO requirements apply.** A domestic relations order described in Section 7.1 is subject to the same requirements and protections that apply to any other QDRO.

## ARTICLE VIII PRE-RETIREMENT PENSION IN-SERVICE DISTRIBUTIONS

- 8.1 **No age 62 in-service distributions.** As specified in Amendment Section 2.4, a Participant who has attained the specified age and who is not separated from employment may not elect to receive a distribution of his or her vested Accrued Benefit.

**ARTICLE IX**  
**QUALIFIED OPTIONAL SURVIVOR ANNUITY**

- 9.1 **Right to Elect Qualified Optional Survivor Annuity (effective for distributions with annuity starting dates in Plan Years beginning after December 31, 2007).** A Participant who elects to waive the qualified joint and survivor annuity form of benefit under the Plan, if provided for under the Plan, shall be entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity, if required, shall explain the terms and conditions of the "qualified optional survivor annuity." Provided, however, the following rules apply in the specified circumstances:

(a) **Special Effective Date Rules.**

1. If the Plan permits retroactive annuity starting dates and a Participant elects a distribution with a retroactive annuity starting date (pursuant to Treasury Regulations Section 1.417(e)-1(b)(3)(iv)) that is before the aforementioned effective date, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of applying the rules of this paragraph.

2. In the case of a plan that is subject to Code Section 401(a)(11) and that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006 (the date of enactment of PPA '06), the changes to Code Section 417 made by Section 1004 of PPA '06 apply to distributions with annuity starting dates during plan years beginning on or after the earlier of (i) January 1, 2008 or, if later, the date on which the last collective bargaining agreement related to the plan terminates (determined without regard to any extensions to a collective bargaining agreement made after August 17, 2006), or (ii) January 1, 2009.

(b) **Inapplicability to Governmental Plans.** Pursuant to the flush language of Code Section 401(a) and the provisions of Code Section 411(e)(1)(A), the provisions of Code Sections 401(a)(11) and 417, and consequently this Article IX, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

9.2 **Definition of Qualified Optional Survivor Annuity.**

(a) For purposes of this Article, the term "qualified optional survivor annuity" means an annuity:

- (1) For the life of the Participant with a survivor annuity for the life of the Participant's spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the Participant's spouse, and
- (2) Which is the actuarial equivalent of a single annuity for the life of the Participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(b) For purposes of this Section, the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the Participant and the spouse). If the survivor annuity percentage is less than seventy-five percent (75%), then the "applicable percentage" is seventy-five percent (75%). If the

survivor annuity percentage is equal to or greater than seventy-five percent (75%), the "applicable percentage" is fifty percent (50%).

## **ARTICLE X DIRECT ROLLOVER TO ROTH IRA**

- 10.1 **Roth IRA rollover.** For distributions made after December 31, 2007, a Participant or beneficiary may elect to roll over directly an "eligible rollover distribution" to a Roth IRA described in Code Section 408A(b); provided, however, for taxable years beginning before January 1, 2010, an individual cannot make a qualified rollover contribution from an eligible retirement plan other than a Roth IRA if, for the year the eligible rollover distribution is made, he or she has modified adjusted gross income exceeding \$100,000 or is married and files a separate return. For this purpose, the term "eligible rollover distribution" includes a rollover distribution described in Article V, if applicable.

## **ARTICLE XI TOP-HEAVY PROVISIONS**

- 11.1 **Severance from employment.** Effective for any Plan Year beginning after December 31, 2001, any provisions of the Plan setting forth the top-heavy provisions of Code Section 416 are modified by substituting the term "separation from service" with "severance from employment."

## **ARTICLE XII BENEFIT RESTRICTIONS**

- (a) **Effective Date and Application of Article.**

(1) **Effective Date.** The provisions of this Article apply to Plan Years beginning after December 31, 2007.

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

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

(B) **Governmental Plans.** Code Section 436 benefit restrictions and other provisions described in this Article do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being exempt from the funding requirements of Code Section 412.

(3) The limitations described in Subsections (b), (c) and (e) do not apply to the Plan for the first five (5) Plan Years of the Plan. Except as otherwise provided by the Commissioner in

guidance of general applicability, the Plan Years taken into account for this purpose include the following (in addition to Plan Years during which the Plan was maintained by the Employer):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(d) Limitations on Prohibited Payments**

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

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

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

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

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

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

(B) Bifurcation if optional form unavailable.

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

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

(2) Commence benefits with respect to the Participant's or Beneficiary's entire benefit under the Plan in any other optional form of benefit available under the Plan at the same "annuity starting date" that satisfies Regulations Section 1.436-1(d)(3)(i); or

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

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

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

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

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

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

(iii) Unrestricted portion of the benefit:

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



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

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

(D) Other Rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Temporary modification of limitation. In the case of the first Plan Year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, the provisions of (e)(1) above shall be applied by substituting the Plan's "adjusted funding target attainment

percentage” for the preceding Plan Year for such percentage for such Plan Year, but only if the “adjusted funding target attainment percentage” for the preceding year is greater.

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

The application of the Code Section 436 benefit limitations may be avoided or terminated in accordance with any of the rules set forth in Code Section 436 and Regulations Section 1.436-1(f).

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

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

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

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

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

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

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

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

(ii) Enrolled actuary’s certification in following year. In any case in which the Plan’s enrolled actuary has issued the certification under Regulations Section 1.436-1(h)(4) of the adjusted funding target attainment percentage of the Plan for

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

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

- (i) The first day of the 4th month of the Plan Year if paragraph (g)(2) of this section applies;
- (ii) The first day of the 10th month of the Plan Year if paragraph (g)(3) of this section applies;
- (iii) The date of a change in the presumed adjusted funding target attainment percentage under Regulations Section 1.436-1(g)(4); or
- (iv) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year.

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

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

- (i) The presumed "adjusted funding target attainment percentage" of the Plan for the Plan Year is reduced by 10 percentage points; and
- (ii) The first day of the 4th month of the Plan Year is a "Section 436 measurement date."

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

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

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

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

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

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

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

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

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

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

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

(1) Application to prohibited payments and accruals.

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

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

(2) Restoration of options and missed benefit accruals. If elected at Amendment Section 2.5, then Participants who had an "annuity starting date" within a period during which a limitation under Regulations Section 1.436-1(d) applied to the Plan will be provided with the opportunity to have a new "annuity starting date" (which would constitute a new "annuity starting date" under Code Sections 415 and 417) under which the form of benefit previously elected may be modified, subject to applicable qualification requirements, once the limitations of Regulations Section 1.436-1(d) cease to apply. In addition, subject to the rules of Regulations Section 1.436-1(c)(3) and any election made at Amendment Section 2.5, the Plan will automatically restore benefit accruals that had been limited under Code Section 436(e) as of the "Section 436 measurement date" that the limitation ceases to apply.

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

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

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

(1) The term "adjusted funding target attainment percentage" means the "funding target attainment percentage" per paragraph (A) below, and increasing each of the amounts under subparagraphs (A) and (B) of Code Section 430(d)(2) by the aggregate amount of purchases of

annuities for employees other than highly compensated employees (as defined in Code Section 414(q)) which were made by the Plan during the preceding two (2) Plan Years.

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

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

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

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

In the case of a Plan Year beginning in calendar year:	The applicable percentage is:
2008	92%
2009	94%
2010	96%

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

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

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

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

## ARTICLE XIII HEART ACT PROVISIONS

- 13.1 **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.
- 13.2 **Benefit accrual.** If, pursuant to Amendment Section 2.6, the City elects to apply this Section 13.2, then effective on or after the effective date specified in Section 2.6, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated said employment on the actual date of death or disability.
- (a) **Determination of benefits.** The Plan will determine the amount of employee contributions, if any, of an individual treated as reemployed under this Section 13.2 for purposes of applying Code Section 414(u)(8)(C) on the basis of the individual's average actual employee contributions for the lesser of: (i) the 12-month period of service with the employer immediately prior to qualified military service; or (ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.
- 13.3 **Differential wage payments.** For years beginning after December 31, 2008:
- (i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), shall be treated as an employee of the employer making the payment,
- (ii) the differential wage payment shall be treated as compensation for purposes of Code Section 415(c)(3) and Regulations Section 1.415(c)-2 (e.g. for purposes of Code Section 415, top heavy provisions of Code Section 416 and determination of highly compensated employees under Code Section 414(q)), and
- (iii) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) (or any corresponding plan provisions, including, but not limited to, Plan provisions related to the average deferral percentage or average contribution percentage, to the extent applicable) by reason of any contribution or benefit which is based on the differential wage payment. Differential wage payments (as described herein) shall constitute compensation for all Plan purposes.
- (a) **Nondiscrimination Requirements.** Provided, however, for purposes of subparagraph (iii), all employees of the employer (as determined under Code Section 414(b), (c), (m) and (o)) performing service in the uniformed services described in Code Section 3401(h)(2)(A) shall be entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions, if contributions are permitted, based on the payments on reasonably equivalent terms (taking into account the provisions of Code Section 410(b)(3), (4) and (5) to the extent applicable).
- 13.4 **Deemed Severance.** As provided in Section 2.6, the Plan does not permit distribution upon deemed severance of employment.



**ARTICLE XIV**  
**CHANGE IN APPLICABLE INTEREST RATE AND**  
**APPLICABLE MORTALITY ASSUMPTION**

- 14.1 **Effective date.** Except as provided in regulations or other guidance by the Pension Benefit Guaranty Corporation (PBGC) and IRS, to the extent said regulations or guidance is applicable to this Plan, the limitations of this Article shall first apply in determining the amount payable to a Participant having an annuity starting date in a Plan Year beginning on or after January 1, 2008.
- 14.2 **Applicable interest rate.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate" or "applicable mortality table" used for purposes of Code Section 417(e), any provision prescribing the use of the annual rate of interest on 30-year U.S. Treasury securities shall be implemented by instead using the rate of interest determined by the applicable interest rate described by Code Section 417(e) after its amendment by PPA. Specifically, the applicable interest rate shall be the adjusted first, second, and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C) for the calendar month (lookback month) before the first day of the Plan Year in which the annuity starting date occurs (stability period). For this purpose, the first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code Section 430(h)(2)(C) if:
- (a) Code Section 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section, and
  - (b) Code Section 430(h)(2)(G)(i)(II) were applied by substituting "Section 417(e)(3)(A)(ii)(II)" for "Section 412(b)(5)(B)(ii)(II)," and
  - (c) The applicable percentage under Code Section 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.
- 14.3 **Applicable mortality assumption.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate," any Plan provision directly or indirectly prescribing the use of the mortality table described in Revenue Ruling 2001-62 shall be amended to prescribe the use of the applicable annual mortality table within the meaning set forth in Code Section 417(e)(3)(B), as initially described in Revenue Ruling 2007-67.

**ARTICLE XV**  
**2009 REQUIRED MINIMUM DISTRIBUTIONS**  
**(IRC SECTION 401(a)(9)(H))**

- 15.1 Notwithstanding anything in the Plan to the contrary:
- (a) **Suspension of Required Minimum Distributions for 2009.** A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's

designated "Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence; and

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

This amendment is hereby executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

CITY OF LA VISTA, a Nebraska municipality

By:

\_\_\_\_\_  
DOUGLAS KINDIG, Mayor

**CITY OF LA VISTA  
POLICE OFFICERS RETIREMENT PLAN AND TRUST ("PLAN")**

**AMENDMENT NO. 1**

**ARTICLE I  
PREAMBLE**

- 1.1 **Plan and amendment authority.** The City of La Vista, a Nebraska municipality, ("City" or "Employer") maintains the City of La Vista Police Officers Retirement Plan and Trust pursuant to Neb. Rev. Stat. Sections 16-1001 through 16-1019 and Internal Revenue Code, Sections 401(a) and 501(a), as set forth in the Adoption Agreement and corresponding Basic Municipal Employees Plan and Trust Agreement, ("Plan"), and hereby adopts and approves this Amendment No. 1 to the Plan and authorizes the Mayor or his designee to execute it below.
- 1.2 **Effective date of Amendment.** This Amendment is effective as indicated below for the respective provisions; provided, however, that an effective date shall not be earlier than the effective date of the Plan.
- 1.3 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.4 **Construction.** Provisions of this Amendment that are applicable to a defined benefit plan are included to the extent the Plan provides a minimum defined benefit. Except as otherwise provided in this Amendment, any reference to "Article" or "Section" in this Amendment refers only to articles or sections within this Amendment, and is not a reference to the Plan.
- 1.5 **Effect of restatement of Plan.** If the City of La Vista restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated into a plan document which incorporates Pension Protection Act of 2006 ("PPA"), and other provisions herein for subsequent legislation and guidance).

**ARTICLE II  
CITY ELECTIONS**

- 2.1 **Applicable Provisions.** Unless the City otherwise specifies in this Amendment, the following will apply:
  - a. The applicable mortality table described in Amendment Section 3.3.3(c) is effective for years beginning after December 31, 2008.
  - b. Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.
  - c. In-Service distributions prior to Normal Retirement Age are not permitted.
  - d. Once Code Section 436 benefit restrictions no longer apply, the Amendment provides for the (1) automatic restoration of benefit accruals, and (2) no "annuity starting date"; provided, however, Code Section 436 benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and

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

- e. Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided. Distributions upon deemed severance of employment under the HEART Act are not permitted.
  - f. The applicable interest rate shall be based on the first month (lookback month) prior to the Plan Year (stability period) during which a distribution is made.
- 2.2 **Effective date of applicable mortality table set forth in Amendment Section 3.3.3(c).** The applicable mortality table described in Amendment Section 3.3.3(c) is effective for years beginning after December 31, 2008.
- 2.3 **Non-spousal rollovers** (Article IV). Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.
- 2.4 **In-service distributions** (Article VIII). In-Service Distributions prior to Normal Retirement Age are not permitted.
- 2.5 **Code Section 436 Benefit Restrictions (Article XII)**

**Treatment of Plan as of Close of Prohibited or Cessation Period (Section XII(h)).** Unless otherwise elected below, accruals that had been limited under Code Section 436(e) will be automatically restored as of the "Section 436 measurement date" that the limitation ceases to apply; and

**Accelerated Benefit Distributions (Section XII(h)).** Unless otherwise elected below, (1) there is no new "annuity starting date" with respect to payments made as a result of the benefit limitations no longer being applicable, and (2) there are no optional forms of benefit that are only available for the period of the benefit restrictions;

Provided, however, the Code Section 436 benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being excluded from the funding requirements of Code Section 412.

- 2.6 **Continued benefit accruals and distributions upon deemed severance (Article XIII).** Continued benefit accruals for the Heart Act (Amendment Section 13.2) will not apply. Further, distributions upon deemed severance of employment under the HEART Act (Amendment Section 13.4) will not be permitted.
- 2.7 **Applicable interest rate.** For purposes of Amendment Section 14.2, unless otherwise elected below, the stability period is the Plan Year during which a distribution is made and the lookback month is the first calendar month preceding the first day of the stability period.

### ARTICLE III PENSION FUNDING EQUITY ACT OF 2004 AS MODIFIED BY SUBSEQUENT LEGISLATION

- 3.1 **General Rule.** This Article applies to the determination of Code Section 415 limits.

3.1.1 **Effective date.** The City adopts this Article III to reflect certain provisions of the Pension Funding Equity Act of 2004 (PFEA), as modified by the Pension Protection Act of 2006 and the

Worker, Retiree and Employer Recovery Act of 2008. Except as otherwise provided herein, effective for distributions in Plan Years beginning after December 31, 2003, the required determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with this Amendment. However, this Amendment does not supersede any prior election to apply the transition rule of section 101(d)(3) of PFEA as described in Notice 2004-78.

**3.1.2 Definition of "Applicable Mortality Table."** The "applicable mortality table" means the applicable mortality table within the meaning of Code Section 417(e)(3)(B) (as described in Article XIV), subject to any special effective dates specified in this Article III.

### **3.2 Benefit Forms Not Subject to the Present Value Rules of Code Section 417(e)(3)**

**3.2.1 Form of benefit.** The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Section 3.2 if the form of the Participant's benefit is either:

- (a) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or
- (b) An annuity that decreases during the life of the Participant merely because of:
  - (1) The death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or
  - (2) The cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).

**3.2.2 Limitation Years beginning before July 1, 2007** – For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount:

- (a) the interest rate and mortality table (or other tabular factor specified in the Plan for adjusting benefits in the same form; and
- (b) a 5 percent interest rate assumption and the "applicable mortality table" defined in the Plan for that annuity starting date.

**3.2.3 Limitation Years beginning on or after July 1, 2007.** For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

- (a) The annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same annuity starting date as the Participant's form of benefit; and
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table defined in the Plan for that annuity starting date.

### 3.3 **Benefit Forms Subject to the Present Value Rules of Code Section 417(e)(3).**

3.3.1 **Form of benefit.** The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined as indicated under this Section 3.3 if the form of the Participant's benefit is other than a benefit form described in Section 3.2.1 above.

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

- (a) The interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and
- (b) A 5.5 percent interest rate assumption and the applicable mortality table described in Article XIV.

3.3.3 **Annuity Starting Date in Plan Years Beginning After 2005.** Except as provided in Section 3.3.2, if the annuity starting date of the Participant's form of benefit is in a Plan Year beginning after December 31, 2005, the actuarially equivalent straight life annuity is equal to the greatest of:

- (a) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form;
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below); and
- (c) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate for the distribution under Treasury Regulations Section 1.417(e)-1(d)(3) (determined in accordance with Article XIV for Plan Years after the effective date of that Article) and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below), divided by 1.05.

The effective date of the applicable mortality table above is for years beginning after December 31, 2008.

3.3.4 **Annuity Starting Date in Plan Years Beginning in 2004 or 2005** – If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as

the participant's form of benefit, computed using whichever of the following produces the greater annual amount:

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

(b) A 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Regulations Section 1.417(e)-1(d)(2).

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

#### **ARTICLE IV DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION**

- 4.1 **Non-spouse beneficiary rollover right (for distributions on or after January 1, 2008).** A non-spouse beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under Code Section 401(a)(31).
- 4.2 **Applicability of certain requirements.** For Plan Years beginning on or after January 1, 2010, any direct rollover of a distribution by a nonspouse beneficiary shall be subject to the direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B)), the notice requirements of Code Section 402(f) and the mandatory withholding requirements of Code Section 3405(c). Before that date, any such distribution shall not be subject to said requirements. Any distribution from the Plan to a non-spouse beneficiary shall not be eligible for a 60-day (non-direct) rollover.
- 4.3 **Trust beneficiary.** Subject to Section 4.1, if the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).
- 4.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary is not permitted to roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulations Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

#### **ARTICLE V ROLLOVER OF AFTER-TAX AMOUNTS**

- 5.1 **Direct rollover to qualified plan/403(b) plan (for taxable years beginning after December 31, 2006).** A Participant may elect to transfer employee after-tax contributions, if any, by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred (including interest thereon), including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

## ARTICLE VI PARTICIPANT DISTRIBUTION NOTIFICATION

- 6.1 **180-day notification period (effective for distribution notices in Plan Years beginning after December 31, 2006).** Reference to the 90-day maximum notice period requirements of Code Sections 402(f) (the rollover notice), 411(a)(11) (Participant's consent to distribution), and 417 (notice regarding the joint and survivor annuity rules), if any, is changed to 180 days.
- 6.2 **Effect of delay of distribution.** Notices given to Participants pursuant to Code Section 411(a)(11) in Plan Years beginning after December 31, 2006, if any, shall include a description of the consequences of failing to defer a distribution, including (i) for any individual account balance, a description of investment options available under the Plan (including fees) that will be available if the Participant defers distribution, (ii) for any defined benefit, how much larger benefits will be if the commencement of distributions is deferred, and (iii) the portion of the summary plan description that contains any special rules that might affect materially a Participant's decision to defer.
- 6.3 **Explanation of relative value.** Notices to Participants shall include the relative values of the various optional forms of benefit under the Plan as provided in Treasury Regulations Section 1.417(a)-3, to the extent said Regulations are applicable to the Plan. This provision is effective as of the applicable effective date set forth in Treasury Regulations (i.e., to qualified pre-retirement survivor annuity explanations provided on or after July 1, 2004; to qualified joint and survivor annuity explanations with respect to any distribution with an annuity starting date that is on or after February 1, 2006, or on or after October 1, 2004 with respect to any optional form of benefit that is subject to the requirements of Code Section 417(e)(3) if the actuarial present value of that optional form is less than the actuarial present value as determined under Code Section 417(e)(3)). Provided, however, pursuant to the flush language of Code Section 401(a) and Code Section 411(e)(1)(B), the provisions of Code Sections 401(a)(11) and 417, and consequently this Article VI, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

## ARTICLE VII QUALIFIED DOMESTIC RELATIONS ORDERS

- 7.1 **Permissible QDROs (effective on and after April 6, 2007).** For purposes of provisions of the Plan regarding domestic relations orders, if any, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order (QDRO) will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.
- 7.2 **Other QDRO requirements apply.** A domestic relations order described in Section 7.1 is subject to the same requirements and protections that apply to any other QDRO.

## ARTICLE VIII PRE-RETIREMENT PENSION IN-SERVICE DISTRIBUTIONS

- 8.1 **No age 62 in-service distributions.** As specified in Amendment Section 2.4, a Participant who has attained the specified age and who is not separated from employment may not elect to receive a distribution of his or her vested Accrued Benefit.



**ARTICLE IX**  
**QUALIFIED OPTIONAL SURVIVOR ANNUITY**

- 9.1 **Right to Elect Qualified Optional Survivor Annuity (effective for distributions with annuity starting dates in Plan Years beginning after December 31, 2007).** A Participant who elects to waive the qualified joint and survivor annuity form of benefit under the Plan, if provided for under the Plan, shall be entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity, if required, shall explain the terms and conditions of the "qualified optional survivor annuity." Provided, however, the following rules apply in the specified circumstances:

(a) **Special Effective Date Rules.**

1. If the Plan permits retroactive annuity starting dates and a Participant elects a distribution with a retroactive annuity starting date (pursuant to Treasury Regulations Section 1.417(e)-1(b)(3)(iv)) that is before the aforementioned effective date, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of applying the rules of this paragraph.

2. In the case of a plan that is subject to Code Section 401(a)(11) and that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006 (the date of enactment of PPA '06), the changes to Code Section 417 made by Section 1004 of PPA '06 apply to distributions with annuity starting dates during plan years beginning on or after the earlier of (i) January 1, 2008 or, if later, the date on which the last collective bargaining agreement related to the plan terminates (determined without regard to any extensions to a collective bargaining agreement made after August 17, 2006), or (ii) January 1, 2009.

(b) **Inapplicability to Governmental Plans.** Pursuant to the flush language of Code Section 401(a) and the provisions of Code Section 411(e)(1)(A), the provisions of Code Sections 401(a)(11) and 417, and consequently this Article IX, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

9.2 **Definition of Qualified Optional Survivor Annuity.**

(a) For purposes of this Article, the term "qualified optional survivor annuity" means an annuity:

- (1) For the life of the Participant with a survivor annuity for the life of the Participant's spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the Participant's spouse, and
- (2) Which is the actuarial equivalent of a single annuity for the life of the Participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(b) For purposes of this Section, the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the Participant and the spouse). If the survivor annuity percentage is less than seventy-five percent (75%), then the "applicable percentage" is seventy-five percent (75%). If the

survivor annuity percentage is equal to or greater than seventy-five percent (75%), the "applicable percentage" is fifty percent (50%).

## **ARTICLE X DIRECT ROLLOVER TO ROTH IRA**

- 10.1 **Roth IRA rollover.** For distributions made after December 31, 2007, a Participant or beneficiary may elect to roll over directly an "eligible rollover distribution" to a Roth IRA described in Code Section 408A(b); provided, however, for taxable years beginning before January 1, 2010, an individual cannot make a qualified rollover contribution from an eligible retirement plan other than a Roth IRA if, for the year the eligible rollover distribution is made, he or she has modified adjusted gross income exceeding \$100,000 or is married and files a separate return. For this purpose, the term "eligible rollover distribution" includes a rollover distribution described in Article V, if applicable.

## **ARTICLE XI TOP-HEAVY PROVISIONS**

- 11.1 **Severance from employment.** Effective for any Plan Year beginning after December 31, 2001, any provisions of the Plan setting forth the top-heavy provisions of Code Section 416 are modified by substituting the term "separation from service" with "severance from employment."

## **ARTICLE XII BENEFIT RESTRICTIONS**

- (a) **Effective Date and Application of Article.**

(1) **Effective Date.** The provisions of this Article apply to Plan Years beginning after December 31, 2007.

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

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

(B) **Governmental Plans.** Code Section 436 benefit restrictions and other provisions described in this Article do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being exempt from the funding requirements of Code Section 412.

(3) The limitations described in Subsections (b), (c) and (e) do not apply to the Plan for the first five (5) Plan Years of the Plan. Except as otherwise provided by the Commissioner in

guidance of general applicability, the Plan Years taken into account for this purpose include the following (in addition to Plan Years during which the Plan was maintained by the Employer):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) **Limitations on Prohibited Payments**

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

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

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

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

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

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

(B) Bifurcation if optional form unavailable.

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

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

(2) Commence benefits with respect to the Participant's or Beneficiary's entire benefit under the Plan in any other optional form of benefit available under the Plan at the same "annuity starting date" that satisfies Regulations Section 1.436-1(d)(3)(i); or

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

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

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

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

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

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

(iii) Unrestricted portion of the benefit:

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

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

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

(D) Other Rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Temporary modification of limitation. In the case of the first Plan Year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, the provisions of (e)(1) above shall be applied by substituting the Plan's "adjusted funding target attainment

percentage” for the preceding Plan Year for such percentage for such Plan Year, but only if the “adjusted funding target attainment percentage” for the preceding year is greater.

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

The application of the Code Section 436 benefit limitations may be avoided or terminated in accordance with any of the rules set forth in Code Section 436 and Regulations Section 1.436-1(f).

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

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

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

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

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

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

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

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

(ii) Enrolled actuary’s certification in following year. In any case in which the Plan’s enrolled actuary has issued the certification under Regulations Section 1.436-1(h)(4) of the adjusted funding target attainment percentage of the Plan for



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

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

- (i) The first day of the 4th month of the Plan Year if paragraph (g)(2) of this section applies;
- (ii) The first day of the 10th month of the Plan Year if paragraph (g)(3) of this section applies;
- (iii) The date of a change in the presumed adjusted funding target attainment percentage under Regulations Section 1.436-1(g)(4); or
- (iv) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year.

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

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

- (i) The presumed "adjusted funding target attainment percentage" of the Plan for the Plan Year is reduced by 10 percentage points; and
- (ii) The first day of the 4th month of the Plan Year is a "Section 436 measurement date."

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

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

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

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

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

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

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

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

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

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

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

(1) Application to prohibited payments and accruals.

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

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

(2) Restoration of options and missed benefit accruals. If elected at Amendment Section 2.5, then Participants who had an "annuity starting date" within a period during which a limitation under Regulations Section 1.436-1(d) applied to the Plan will be provided with the opportunity to have a new "annuity starting date" (which would constitute a new "annuity starting date" under Code Sections 415 and 417) under which the form of benefit previously elected may be modified, subject to applicable qualification requirements, once the limitations of Regulations Section 1.436-1(d) cease to apply. In addition, subject to the rules of Regulations Section 1.436-1(c)(3) and any election made at Amendment Section 2.5, the Plan will automatically restore benefit accruals that had been limited under Code Section 436(e) as of the "Section 436 measurement date" that the limitation ceases to apply.

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

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

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

(1) The term "adjusted funding target attainment percentage" means the "funding target attainment percentage" per paragraph (A) below, and increasing each of the amounts under subparagraphs (A) and (B) of Code Section 430(d)(2) by the aggregate amount of purchases of

annuities for employees other than highly compensated employees (as defined in Code Section 414(q)) which were made by the Plan during the preceding two (2) Plan Years.

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

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

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

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

In the case of a Plan Year beginning in calendar year:	The applicable percentage is:
2008	92%
2009	94%
2010	96%

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

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

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

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

### ARTICLE XIII HEART ACT PROVISIONS

13.1 **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant’s

Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

- 13.2 **Benefit accrual.** If, pursuant to Amendment Section 2.6, the City elects to apply this Section 13.2, then effective on or after the effective date specified in Section 2.6, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated said employment on the actual date of death or disability.

- (a) **Determination of benefits.** The Plan will determine the amount of employee contributions, if any, of an individual treated as reemployed under this Section 13.2 for purposes of applying Code Section 414(u)(8)(C) on the basis of the individual's average actual employee contributions for the lesser of: (i) the 12-month period of service with the employer immediately prior to qualified military service; or (ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.

- 13.3 **Differential wage payments.** For years beginning after December 31, 2008:

(i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), shall be treated as an employee of the employer making the payment,

(ii) the differential wage payment shall be treated as compensation for purposes of Code Section 415(c)(3) and Regulations Section 1.415(c)-2 (e.g. for purposes of Code Section 415, top heavy provisions of Code Section 416 and determination of highly compensated employees under Code Section 414(q)), and

(iii) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) (or any corresponding plan provisions, including, but not limited to, Plan provisions related to the average deferral percentage or average contribution percentage, to the extent applicable) by reason of any contribution or benefit which is based on the differential wage payment. Differential wage payments (as described herein) shall constitute compensation for all Plan purposes.

- (a) **Nondiscrimination Requirements.** Provided, however, for purposes of subparagraph (iii), all employees of the employer (as determined under Code Section 414(b), (c), (m) and (o)) performing service in the uniformed services described in Code Section 3401(h)(2)(A) shall be entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions, if contributions are permitted, based on the payments on reasonably equivalent terms (taking into account the provisions of Code Section 410(b)(3), (4) and (5) to the extent applicable).

- 13.4 **Deemed Severance.** As provided in Section 2.6, the Plan does not permit distribution upon deemed severance of employment.

**ARTICLE XIV**  
**CHANGE IN APPLICABLE INTEREST RATE AND**  
**APPLICABLE MORTALITY ASSUMPTION**

- 14.1 **Effective date.** Except as provided in regulations or other guidance by the Pension Benefit Guaranty Corporation (PBGC) and IRS, to the extent said regulations or guidance is applicable to this Plan, the limitations of this Article shall first apply in determining the amount payable to a Participant having an annuity starting date in a Plan Year beginning on or after January 1, 2008.
- 14.2 **Applicable interest rate.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate" or "applicable mortality table" used for purposes of Code Section 417(e), any provision prescribing the use of the annual rate of interest on 30-year U.S. Treasury securities shall be implemented by instead using the rate of interest determined by the applicable interest rate described by Code Section 417(e) after its amendment by PPA. Specifically, the applicable interest rate shall be the adjusted first, second, and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C) for the calendar month (lookback month) before the first day of the Plan Year in which the annuity starting date occurs (stability period). For this purpose, the first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code Section 430(h)(2)(C) if:
- (a) Code Section 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section, and
  - (b) Code Section 430(h)(2)(G)(i)(II) were applied by substituting "Section 417(e)(3)(A)(ii)(II)" for "Section 412(b)(5)(B)(ii)(II)," and
  - (c) The applicable percentage under Code Section 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.
- 14.3 **Applicable mortality assumption.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate," any Plan provision directly or indirectly prescribing the use of the mortality table described in Revenue Ruling 2001-62 shall be amended to prescribe the use of the applicable annual mortality table within the meaning set forth in Code Section 417(e)(3)(B), as initially described in Revenue Ruling 2007-67.

**ARTICLE XV**  
**2009 REQUIRED MINIMUM DISTRIBUTIONS**  
**(IRC SECTION 401(a)(9)(H))**

- 15.1 Notwithstanding anything in the Plan to the contrary:
- (a) **Suspension of Required Minimum Distributions for 2009.** A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated "Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not

receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence; and

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

This amendment is hereby executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

CITY OF LA VISTA, a Nebraska municipality

By: \_\_\_\_\_  
DOUGLAS KINDIG, Mayor

D

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

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE LA VISTA CITY CLERK TO FILE WITH THE SARPY COUNTY TREASURER A SPECIAL ASSESSMENT FOR PROPERTY IMPROVEMENTS AT LOCATIONS AND IN AMOUNTS CITED HEREIN.

WHEREAS, the property owners of  
7780 Greenleaf Drive/Lot 210 Granville East, \$282.29; and  
7121 Harrison St., Lot 1C EX PT TO RD/La Vista Replat, \$2,000.00  
were notified to clean up their property as they were in violation of the City Municipal Code, Section 133.01 and/or hazardous waste removal, or the City would do so and bill them accordingly, and

WHEREAS, the property owners of said addresses chose not to clean the property, thus necessitating the City to do the clean up, and

WHEREAS, the City sent the property owners bills for said clean up which have not been paid, and

WHEREAS, the City may file a Special Assessment for Improvements against property for which a City bill for services has not been paid.

NOW THEREFORE BE IT RESOLVED, that the La Vista City Clerk is hereby authorized to file with the Sarpy County Treasurer Special Assessments for Improvements in the amounts and against the properties specified above, all located within Sarpy County, La Vista, Nebraska.

PASSED AND APPROVED THIS 4TH DAY OF JANUARY, 2011

CITY OF LA VISTA

ATTEST:

\_\_\_\_\_  
Douglas Kindig, Mayor

\_\_\_\_\_  
Pamela A. Bueth, CMC  
City Clerk



## Code Enforcement Case Management



CASE ADDRESS: 7780 Greenleaf Dr      DATE INITIATED: 10/13/2010

NAME OF PROPERTY OWNER/RESIDENT: Ngoc Nguyen & LE Linh

CODE VIOLATION(S): Grass/133.01

[illegible]



November 24, 2010

**CERTIFIED MAIL**

Bank of America  
P O Box 5170  
Simi Valley CA 93062-5170

RE: 7780 Greenleaf Drive/Lot 210 Granville East

Dear Property Owner;

On October 13, 2010, the property on Greenleaf Drive in La Vista was in violation of the City of La Vista's Municipal Code, Section 133.01 and a letter was sent that stated the property needed to be mowed and trimmed by October 20, 2010 or the City would correct the violation at the owner's expense. On November 15, 2010, the Public Works Department mowed and line-trimmed the entire yard. The cost of \$282.29 was incurred by the City for the clean up. The cost breakdown is as follows:

Administrative Fee	\$	50.00
Mowing/Line-Trim		
One Worker 2 hours		46.76
One Worker 2 hours		47.48
Equipment Cost		108.50
Material		29.55
TOTAL	\$	<u>282.29</u>

Please remit \$282.29, payable to the City of La Vista, 8116 Park View Blvd., La Vista, Nebraska 68128, within 30 days. If payment is not received within 30 days of issuance of this statement, the City Council will, on January 4, 2011, take action to file the above referenced cost with the Sarpy County Treasurer as a special assessment for improvements against your property.

Thank you for your attention to this matter.

Sincerely,

Pamela A. Bueth, CMC  
City Clerk

Cc: Ngoc Nguyen & LE Linh 7780 Greenleaf Dr La Vista NE 68128 (Certified Mail)

**City Hall**  
8116 Park View Blvd.  
La Vista, NE 68128-2198  
p: 402-331-4343  
f: 402-331-4375

**Community Development**  
8116 Park View Blvd.  
p: 402-331-4343  
f: 402-331-4375

**Fire**  
8110 Park View Blvd.  
p: 402-331-4748  
f: 402-331-0410

**Golf Course**  
8305 Park View Blvd.  
p: 402-339-9147

**Library**  
9110 Giles Rd.  
p: 402-537-3900  
f: 402-537-3902

**Police**  
7701 South 96th St.  
p: 402-331-1582  
f: 402-331-7210

**Public Works**  
9900 Portal Rd.  
p: 402-331-8927  
f: 402-331-1051

**Recreation**  
8116 Park View Blvd.  
p: 402-331-3455  
f: 402-331-0299

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

Bank of America  
P.O. Box 5170  
Simi Valley, CA  
93062-5170

## 2. Article Number

(Transfer from service label)

7009 0820 0001 7684 5159

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

## COMPLETE THIS SECTION ON DELIVERY

## A. Signature

X

- ☐ Agent  
☐ Addressee

## B. Received by (Printed Name)

NELSON A. HERNANDEZ

## C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

## 3. Service Type

- ☐ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

## 4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service™

## CERTIFIED MAIL™ RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

OFFICIAL USE

Postage

\$

.44

Certified Fee

2.80

Return Receipt Fee  
(Endorsement Required)

2.30

Restricted Delivery Fee  
(Endorsement Required)

Total Postage &amp; Fees

\$

5.40

Postmark  
Here

Sent To

Street, Apt. No.,  
or PO Box No.

City, State, ZIP+4

PS Form 3800, August 2006

See Reverse for Instructions



## Active

Parcel Number: 010419934  
 Location: 07780 \GREENLEAF DR  
 Owner: NGUYEN/NGOC V  
 C/O & LINH T LE  
 Mail Address: 7780 GREENLEAF DR  
 LA VISTA NE 68128-  
 Legal: LOT 210 GRANVILLE EAST  
 Tax District: 27002  
 Map #: 2959-14-0-30013-000-0210



8806 Granville Pkwy #201  
 La Vista, NE 68128

Click Picture/Sketch for Larger View.  
 Use arrows to view Picture/Sketch.

Residential Information for 1 January Roll Year 2010									
City	SID #	SID	Status	Zoning	Overlay Dist.	Jurisdiction	School	Police	
La Vista				R-1 - Single Family Residential	Null	LaVista	Papillion-La Vista	La Vista Police	
Fire	Voting Precinct	Congressional Dist.	State Legislative Dist.	District	Commissioner				
La Vista Fire 1	45	2	14	4	Patrick J Thomas				
Style:		Split Entry							
Year Built:		1974		#Bedrooms above Grade 3					
#Bathrooms Above Grade 2				Total Sqft		1152			
Total Bsmt Finish Sqft		384		Bsmt Total Sqft		1104			
Garage Type				Garage Sqft		0			
Lot Depth		125		Lot Width		65			
Misc									
Description				Sqft or Quantity					
OPEN SLAB PORCH				24					
BSMT GARAGE FINISH				576					



Dear Owner/Resident:

The City of La Vista is committed to maintaining quality neighborhoods and an excellent community environment. Our citizens expect us to do everything we can in this regard.

An investigation is being conducted at your property. This investigation has revealed violation(s) of the La Vista Municipal Code, **Grass 133.01**.

The attached sheet categorizes your violation(s) and copies of the codes are provided for your review as an educational package to assist you in achieving compliance and preventing future violation(s).

Violation(s) are required to be corrected within **5 Days** depending upon the violation(s). By completing a "Compliance Agreement:" additional time may be granted depending on health and safety and will be evaluated on a case by case basis.

You must contact me immediately upon receipt of this letter to demonstrate cooperation to eliminate these violation(s). The enclosed "Compliance Agreement" must be completed and returned immediately to ensure additional time for compliance. We hope you will work with us to maintain a positive community environment. Your cooperation will be greatly appreciated.

Please contact me at (402) 331-1582 ext. 251 between the hours of 9:30 a.m. and 6:00 p.m. Please leave a voicemail if I am not available. **It is important that you leave your name, address, return phone number and best date and time to contact you.** Failure to comply may result in this matter being forwarded to the City Legal Department and other necessary agencies for Civil and/or Criminal Prosecution. A copy of the agreement and letter are also being sent to the financial institution, however it is still your responsibility until the bank notifies the City of La Vista or according to the Assessor for Sarpy County updates that the bank is the owner.

Sincerely,

Stacy Corbit  
Code Enforcement Officer  
La Vista Police Department

City Hall  
8116 Park View Blvd.  
La Vista, NE 68128-2198  
p: 402-331-4343  
f: 402-331-4375

Community Development  
8116 Park View Blvd.  
p: 402-331-4343  
f: 402-331-4375

Fire  
8110 Park View Blvd.  
p: 402-331-4748  
f: 402-331-0410

Golf Course  
8305 Park View Blvd.  
p: 402-339-9147

Library  
9110 Giles Rd.  
p: 402-537-3900  
f: 402-537-3902

Police  
7701 South 96th St.  
p: 402-331-1582  
f: 402-331-7210

Public Works  
9900 Portal Rd.  
p: 402-331-8927  
f: 402-331-1051

2<sup>nd</sup> offense

## LA VISTA POLICE DEPARTMENT

### MUNICIPAL CODE COMPLIANCE AGREEMENT

FULL NAME: FIRST, MIDDLE, LAST Ngoc Nguyen/Le Linh	DATE OF BIRTH —
RESIDING ADDRESS STREET, CITY, STATE, ZIP, PHONE NUMBER 7780 Greenleaf Dr, LaVista, NE 68128	
PROPERTY WHERE VIOLATION EXISTS STREET, CITY, STATE, ZIP, PHONE NUMBER 7780 Greenleaf Dr, LaVista, NE 68128	
CONDITIONS REQUIRING CORRECTION Grass/133.01	
CORRECTIVE MEASURES please cut front & back yard.	

#### AGREEMENT:

The above named agrees that the conditions set forth in this Agreement must be eliminated, as described above on or before (Date) 10/20, 2010.

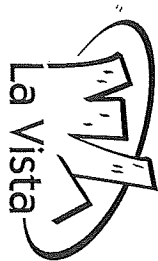
The undersigned agrees to allow the City to inspect the property as necessary to determine compliance with this agreement. This Agreement shall be interpreted in accordance with the law of the State of Nebraska.

No amendment or modification of this Agreement shall be valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of this Agreement.

Failure to comply with the agreement deadline will result in prosecution for violations of the La Vista Municipal Codes.

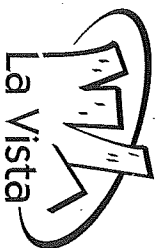
This form must be filled out completely to be valid.

**Signature:** \_\_\_\_\_, and **date** \_\_\_\_\_, 20\_\_\_\_,  
**accepting responsibility for compliance.**



City of La Vista  
8116 Park View Blvd.  
La Vista, NE 68128

Ngoc Nguyen  
Le Linh  
7780 Greenleaf Dr  
La Vista, NE 68128



City of La Vista  
8116 Park View Blvd.  
La Vista, NE 68128

Bank of America  
Po box 5170  
Simi Valley, CA 93062-5170

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Bank of America  
PO box 5170  
Simi Valley, CA 93062-5170

2. Article Number

(Transfer from service label)

7008 1140 0000 6669 0554

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
**X** Agent  
☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☒ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ngoc Nguyen  
Le Linh  
7780 Greenleaf Dr  
Lavista, NE 68128

2. Article Number

(Transfer from service label)

7008 1140 0000 6669 0561

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
**X** Agent  
☐ Addressee

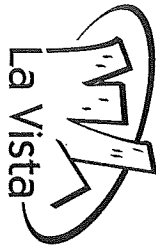
B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☒ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes





City of La Vista  
8116 Park View Blvd.  
La Vista, NE 68128

Ngoc Nguyen  
Le Linh  
8506 Granville Pkwy #201  
La Vista, NE 68128

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ngoc Nguyen  
Le Binh  
8500 Granville Pkwy  
#201  
La Vista, NE 68128

**COMPLETE THIS SECTION ON DELIVERY**

- A. Signature ☒ Agent ☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery
- D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☒ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

Article Number 7008 1140 0000 6669 0585

2. Article Number  
(Transfer from service label)

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

To: Stacy Corbit  
Code Enforcement Officer  
Police Dept.

Fr: Cindy Norris  
Administrative Assistant  
Public Works Dept.

The following is a list of the expenses incurred by the Public Works Department on November 15, 2010 while mowing and line-trimming the front and back yard at 7780 Greenleaf Dr., per your request.

	<u>HOURLY WAGE</u>	<u>HOURS</u>	<u>TOTAL</u>
Employee #1	23.38	2	46.76
Employee #2	23.74	2	47.48
<b>TOTAL</b>			<b>\$94.24</b>

	<u>HOURLY RATE</u>	<u>HOURS</u>	<u>TOTAL</u>
(1) 1/2 ton pickup	19.00	2	38.00
(1) 8 1/2' x 12' trailer	4.75	2	9.50
(1) 36" walk behind mower	15.00	2	30.00
(1) line trimmer	7.50	2	15.00
(1) leaf blower	8.00	2	16.00
<b>TOTAL</b>			<b>\$108.50</b>

(1) trailer dumpster fee	\$25.00
(7) heavy duty trash bags @ \$.65/ea.	\$4.55
<hr/> TOTAL	<hr/> \$29.55

<b>TOTAL LABOR, EQUIPMENT and MATERIALS :</b>	<b>\$232.29</b>
---	-----------------



Before Pictures  
Taken By: S. Corbit

*S. Corbit*





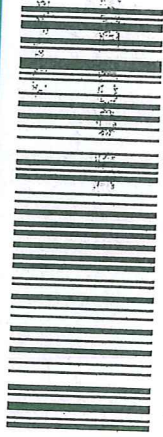
After Pictures  
Taken By: S. Corbit  
*S. Corbit*



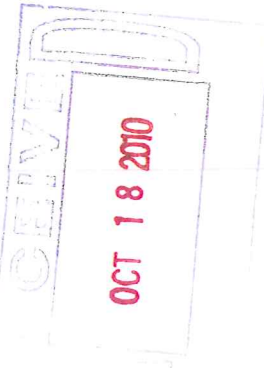
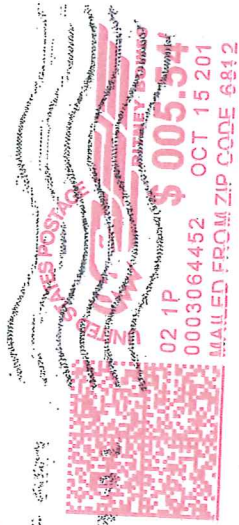


City of La Vista  
8116 Park View Blvd.  
La Vista, NE 68128

CERTIFIED MAIL™



7008 1140 0000 6669 0561



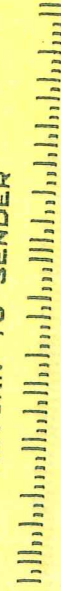
FWD

Ngoc Nguyen  
Le Linh  
T78C  
La Vi

X 691 NFE 1 609C 00 10/16/10  
FORWARD TIME EXP RTN TO SEND  
NGUYEN  
8906 GRANVILLE PKWY APT 201  
LA VISTA NE 68128-2408

RETURN TO SENDER

681283275912802198





10/13/10 11:52 hrs

Location 1780 Greenleaf

Violation 133.01

Time to Comply 5 days

Description Sending letter to bank has been tagged once 2nd offense

Follow-up Officer Corbit/54

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at www.usps.com<sup>®</sup>

**OFFICIAL USE**

Postmark Here 10-21-10

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent to Corbit P.D.

Ngoc Nguyen or Le Linh  
 8506 Granville Pkwy #201  
 City, State, ZIP+4<sup>®</sup> Lavista, NE 68148

PS Form 3800, August 2006 See Reverse for Instructions

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-16

2. Article Number 7008 1140 0000 6669 0554 (Transfer from service label)

1. Article Addressed to:  
 Bank of America  
 PO box 5170  
 Simi Valley, CA 93062

3. Service Type  
☒ Certified Mail  
☐ Registered Mail  
☐ Insured Mail  
☐ C.O.D.  
☐ Return Receipt for Merchandise

4. Restricted Delivery? (Extra Fee)  
☐ Yes  
☐ No

COMPLETE THIS SECTION ON DELIVERY

A. Signature X  
 B. Received by (Printed Name) Neilson Hernandez  
 C. Date of Delivery  
☐ Agent  
☐ Address  
☐ Yes  
☐ No  
 If YES, enter delivery address below:

102595-02-M-16

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at www.usps.com<sup>®</sup>

**OFFICIAL USE**

Postmark Here 10/15/10

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent to Corbit P.D.

Bank of America  
 PO Box 5170  
 Simi Valley, CA 93062

7008 1140 0000 6669 0554

SENDER: COMPLETE THIS SECTION

1. Article Addressed to:  
 Ngoc Nguyen  
 Le Linh  
 8506 Granville Pkwy  
 #201  
 Lavista, NE 68148

2. Article Addressed to:  
 Attach this card to the back of the mailpiece, so that we can return the card to you.  
 Print your name and address on the reverse item 4 if Restricted Delivery is desired.  
 Complete items 1, 2, and 3. Also complete or on the front if space permits.

3. Service Type  
☒ Certified Mail  
☐ Registered Mail  
☐ Insured Mail  
☐ C.O.D.  
☒ Return Receipt for Merchandise

4. Restricted Delivery? (Extra Fee)  
☐ Yes  
☐ No

COMPLETE THIS SECTION ON DELIVERY

A. Signature X  
 B. Received by (Printed Name)  
 C. Date of Delivery  
☐ Agent  
☐ Address  
☐ Yes  
☐ No  
 If YES, enter delivery address below:

THUY LINH LE

102595-02-M-16



November 24, 2010

Earl & Leta Long  
7501 S 76<sup>th</sup> Ave  
La Vista, NE 68128

RE: 7121 Harrison St, La Vista, NE 68128  
Lot 1C EX PT TO RD/La Vista Replat/Sarpy County, NE

Dear Mr. & Mrs. Long:

On June 15, 2010 the building at 7121 Harrison Street was demolished. The cost of \$2,000.00 was incurred for hazardous waste removal. The cost breakdown is as follows:

Hazardous Waste Removal	2,000.00
TOTAL	\$ 2,000.00

Please remit \$2,000.00, payable to the City of La Vista, 8116 Park View Blvd., La Vista, Nebraska 68128, within 30 days. If payment is not received within 30 days of issuance of this statement, the City Council will, on January 4, 2011, take action to file the above referenced cost with the Sarpy County Treasurer as a special assessment for improvements against your property.

Thank you for your attention to this matter.

Sincerely,

Pamela A. Buethe, CMC  
City Clerk

City Hall  
8116 Park View Blvd.  
La Vista, NE 68128-2198  
p: 402-331-4343  
f: 402-331-4375

Community Development  
8116 Park View Blvd.  
p: 402-331-4343  
f: 402-331-4375

Fire  
8110 Park View Blvd.  
p: 402-331-4748  
f: 402-331-0410

Golf Course  
8305 Park View Blvd.  
p: 402-339-9147

Library  
9110 Giles Rd.  
p: 402-537-3900  
f: 402-537-3902

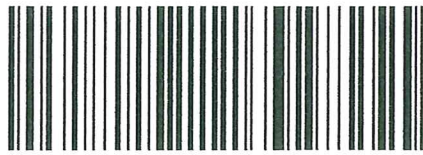
Police  
7701 South 96th St.  
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Recreation  
8116 Park View Blvd.  
p: 402-331-3455  
f: 402-331-0299



City of La Vista  
8116 Park View Blvd.  
La Vista, NE 68128



7009 0820 0001 7684 5135



Earl & Leta Long  
7501 S 76<sup>th</sup> Ave  
La Vista, NE 68128

NAME

103110100

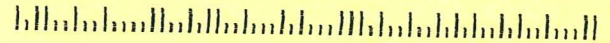
02110100

ES  
11-26  
12.8

NIXIE 681 DE 1 00 12/15/10

RETURN TO SENDER  
UNCLAIMED  
UNABLE TO FORWARD

BC: 68128219899 \*1735-10977-24-40



68128219899

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$ .44
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.40

Postmark  
Here

Sent To  
Earl & Leta Long  
Street, Apt. No.,  
or PO Box No. 7501 S 76<sup>th</sup> Ave  
City, State, ZIP+4  
La Vista, NE 68128

PS Form 3800, August 2006

See Reverse for Instructions

7009 0820 0001 7684 5135

# Heritage-Crystal Clean, LLC

## Invoice

Page 1 of 1

Billing Inquiries: (877) 938-7948  
custserv@crystal-clean.com

Remit to:  
13621 COLLECTIONS  
CENTER DRIVE  
CHICAGO, IL 60693-0136



Service Location: **OMAHA**  
PO No.:  
Service Agreement: **586598**  
Release Info: **WO# 352698**

Invoice No: **11582838**  
Date Issued: **10/29/2010**  
Account No: **137270**  
Item Total: **\$2,000.00**  
Pre-paid Amount: **\$0.00**  
Current Charges: **\$2,000.00**  
Previous Amount Due: **\$0.00**  
Total Due: **\$2,000.00**  
Subject to finance charges if payment not received by 11/28/10

|||||  
CITY OF LA VISTA  
ATTN: ACCTS PAYABLE  
8116 PARK VIEW BLVD  
LA VISTA, NE 68128

NOV - 8 2010

Svc Dt	Work Order	Product Description / Comment	Equip	Qty	Unit Price	Tax Amt	Total Cost
10/29/10	00-003T3P9	THIRD PARTY SERVICES LAB PACK PICKUP		1	\$2,000.00	\$0.00	\$2,000.00
<div style="border: 1px solid black; padding: 5px; margin: 10px;"> <p>City of La Visto</p> <p>Vndr# <u>4178</u> Inv# <u>11582838</u></p> <p>Gds _____ PO# _____</p> <p>Claim Date <u>12-21-10</u></p> <p>GL# <u>H80505</u> Amt <u>2000.00</u></p> <p>GL# _____ Amt _____</p> <p>GL# _____ Amt _____</p> <p>GL# _____ Amt _____</p> <p>GL# _____ Amt _____</p> <p>GL# _____ Amt _____</p> <p>GL# _____ Amt _____</p> <p>GL# _____ Amt _____</p> </div> <div style="margin-top: 10px;"> <p><i>Lab Pack Pickup - Amgo</i></p> <p><i>Consent Agenda 12-7-10</i></p> <p><i>01-18-0505</i></p> <p><i>Dec Longs</i></p> <p><i>LCC Ann</i></p> </div>							

This form (invoice) is deemed part of the above referenced Service Agreement between Heritage-Crystal Clean, LLC and the identified customer and all terms and conditions and certifications contained therein are deemed a part hereof.

Item Total: **\$2,000.00**

TO ENSURE PROPER CREDIT PLEASE INCLUDE THIS PORTION WITH YOUR PAYMENT

### Heritage-Crystal Clean Remittance

Current Charges:  
**\$2,000.00**

Invoice Number:  
**11582838**

LA VISTA PUBLIC WORKS  
9906 PORTAL RD  
LA VISTA, NE 68128

Total Amt Due:  
**\$2,000.00**

Amount Enclosed:

Account Number:  
**137270**

Change of Address ?  
Check box and complete other side. ☐

Payment Due Upon Receipt

PO Number:

Payment by Mastercard, Visa, and  
American Express available.  
Check box and complete other side. ☐

Remit to:

|||||  
HERITAGE CRYSTAL CLEAN, LLC  
13621 COLLECTIONS CENTER DRIVE  
CHICAGO, IL 60693-0136

00137270 0011582838 00200000 00200000 06

