

RESOLUTION NO. 01-18

BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF LEXINGTON, NEBRASKA:

1. Adoption of Amendment of the City of Lexington, Nebraska Police Officers' Pension Plan: NOW, BE IT RESOLVED, that effective November 13, 2001, the City shall amend and it hereby does adopt an amendment of the City of Lexington, Nebraska Police Officers' Pension Plan and Trust (the "Plan"), in the form of the Plan amendment attached hereto and by this reference fully incorporated herein. The purpose of said amendment is to amend the Plan provisions to allow daily valuation of participants' accounts, and to permit participants to change their investment directions on a daily basis pursuant to rules and procedures established by the Trustee, City, and Retirement Committee.
2. Authorizations: NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Mayor and other appropriate elected officials and officers of the City of Lexington shall be, and they hereby are, authorized to do all things necessary to carry out and accomplish the foregoing Resolution, including the execution of any document or amendment which may be necessary or appropriate to amend and administer the aforesaid Plan, including such actions as may be necessary or appropriate to achieve and maintain qualification of the aforesaid Plan under Section 401(a) of the Internal Revenue Code of 1986, as amended.

PASSED AND APPROVED this 13th day of November, 2001.

CITY OF LEXINGTON, NEBRASKA

By: *Gregory J. Foyt*

Its: *Mayor*

By: *Jacqueline*

Its: *City Clerk*



**AMENDMENT TO THE
CITY OF LEXINGTON, NEBRASKA
POLICE OFFICERS' PENSION PLAN AND TRUST**

The City of Lexington, Nebraska Police Officers' Pension Plan and Trust (the "Plan"), established as of January 1, 1984, as amended and restated effective July 15, 1992, and as further amended and restated effective June 12, 2001, is hereby further amended effective November 13, 2001, as follows.

I.

Article II of the Plan is hereby amended by the addition of a new Section 2.15 to provide as follows:

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

II.

Section 12.3 of the Plan is hereby amended to provide as follows:

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

- (a) An income and equity growth fund, in which sums received for investment in such fund shall be invested primarily in a diversified portfolio or portfolios of common stocks of U.S. companies, or securities convertible into common stocks of U.S. Companies, with a view to both income from cash dividends and opportunity of growth in value;
- (b) An equity growth fund, in which sums received for investment in such fund shall be invested primarily in a diversified portfolio or portfolios of common stocks, or securities convertible into common stocks of companies which have higher market growth potential, with better performance over longer periods of time, but having dividend income which may be incidental to the growth of capital. This fund will normally carry a higher risk profile than the equity fund described in (a) above;
- (c) An international equity fund, in which sums received for investment in such fund shall be primarily invested in a diversified portfolio or portfolios of common stocks, or securities convertible into

common stocks, of companies which are non-U.S. based or companies established in major world markets.

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

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

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

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

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

(a) All investment directions shall be in form and manner as prescribed by the Trustee, City, and Retirement Committee. A Participant's directions may be filed on a daily basis, subject to such rules and regulations as may be established by the Trustee, City, and

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

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

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

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

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

management fees, and other related investment expenses, shall be charged and debited to such Fund.

(e) Following the death of the Participant, each of the Participant's Beneficiaries shall have the right to direct the investment of the portion of the Participant's accounts held on behalf of the Beneficiary, subject to the same terms and conditions as applied to the Participant prior to death.

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

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

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

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

III.

Except as amended above, the Plan is hereby reaffirmed and ratified in all respects.

IN WITNESS WHEREOF, the City of Lexington, Nebraska, has caused this Amendment of the Plan and Trust to be executed by its duly authorized city official and the Trustee has executed this Amendment of the Plan and Trust this 13th day of November, 2001.

CITY OF LEXINGTON, NEBRASKA

By: *John H. Fyfe*

Its: *Mayor*

FIRST NATIONAL BANK OF OMAHA, Trustee

By: _____

Its: _____

DOSC/468427.1