

ORDINANCE NO. _____

1 AN ORDINANCE amending Title 2 of the Lincoln Municipal Code by amending
 2 Chapter 2.62, Police and Fire Pension Plan “A”; Chapter 2.65, Police and Fire Pension Plan “B”;
 3 and Chapter 2.66, Police and Fire Pension Plan “C” to provide for compliance with the Internal
 4 Revenue Code; and repealing Sections 2.62.040, 2.62.050, 2.62.055, 2.62.120, 2.62.230, 2.65.040,
 5 2.65.050, 2.65.055, 2.65.120, 2.65.220, 2.66.040, 2.66.050, 2.66.055, 2.66.095, 2.66.200 of the
 6 Lincoln Municipal Code as hitherto existing.

7 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

8 Section 1. That Section 2.62.040 of the Lincoln Municipal Code be amended to read
 9 as follows:

10 **2.62.040 Age and Service Retirement Benefits.**

11 (a) Regular age and service retirement benefit. A member who (i) has attained normal
 12 retirement age, (ii) has completed twenty-five years of service, and (iii) elects to retire shall be
 13 entitled to receive a regular age and service retirement benefit. Such benefit shall be equal to regular
 14 pay multiplied by sixty-four percent.

15 (b) Early age and service retirement benefit. A member who (i) has attained normal
 16 retirement age, (ii) has completed at least twenty-one years of service, but has not completed twenty-
 17 five years of service and (iii) elects to retire shall be entitled to receive an early age and service
 18 retirement benefit. Such benefit shall be equal to regular pay multiplied by a ratio of the number
 19 of years of the member’s service over the number twenty-five, (not to exceed 25/25) multiplied by
 20 sixty-four percent.

21 (c) Any member requesting benefits under this section shall notify the City in writing
 22 of his or her selection of pension payment options on or prior to his or her date of retirement.
 23 Failure to notify the City of his or her selection shall result in the member being deemed to have
 24 selected the straight life option.

25 (d) Benefit payments ~~shall commence no later than April 1 of the calendar year following~~
 26 ~~the later of (i) the calendar year in which the member attains age 70 1/2 or (ii) the calendar year in~~
 27 ~~which the member’s employment with the City terminates~~ will comply with applicable provisions
 28 of 2.62.230.

29 Section 2. That Section 2.62.050 of the Lincoln Municipal Code be amended to read
 30 as follows:

1 **2.62.050 Pension Payment Options; Survivorship Options; Beneficiary Designation.**

2 (a) On or prior to the effective date of a member’s termination, but not thereafter, any
3 member may elect, by written notice filed with the City, to receive his or her retirement benefits as
4 a straight life annuity, or to receive the actuarial equivalent of a straight life annuity to reflect the
5 selection of Option 1 or Option 2 below, and to designate a survivor beneficiary, having an insurable
6 interest, to receive either of the following two survivorship options:

7 (1) Option 1. Upon the member’s death, an amount equal to the member’s
8 annuity shall be payable to the survivor beneficiary for the remainder of his or her life.

9 (2) Option 2. Upon the member’s death, an amount equal to one-half of the
10 member’s annuity shall be payable to the survivor beneficiary for the remainder of his or her life.

11 (b) Any election or designation made by a member under this section may be revoked
12 or changed by the member without the consent of any other person, or a new election or designation
13 may be substituted by the member, but not later than the date of retirement.

14 (c) Distributions will comply with applicable provisions of ~~the Internal Revenue Code~~
15 Section 2.62.230.

16 Section 3. That Section 2.62.055 of the Lincoln Municipal Code be amended to read
17 as follows:

18 **2.62.055 Limitations of Benefits.**

19 ~~The benefits payable to a member from this Plan by City contributions shall be subject to the~~
20 ~~limitations of Internal Revenue Code Section 415 in accordance with subsections (a) and (b) below:~~

21 ~~—————(a)———— Any annual pension payable to a member of the defined benefit plan shall not exceed~~
22 ~~the amount specified under Internal Revenue Code Section 415(b), specifically the lesser of:~~

23 ~~—————(1)———— One hundred forty thousand dollars (\$140,000) adjusted for increases in the~~
24 ~~cost of living as prescribed by the Secretary of the Treasury or his delegate effective January 1 of~~
25 ~~each calendar year. The dollar limitation described in this subsection will not be reduced if a~~
26 ~~member retires before Social Security retirement age in accordance with the provisions of Internal~~
27 ~~Revenue Code Section 415(b)(2)(G) which exempts police and fire personnel from the reduction in~~
28 ~~the dollar limitation described in this subsection; or~~

29 ~~—————(2)———— One hundred percent (100%) of the employee’s average earnings for the three~~
30 ~~consecutive calendar years while a member in the Plan in which his earnings were the highest.~~
31 ~~Effective for years after December 31, 1994, the salary limitations described by this subsection do~~
32 ~~not apply to governmental plans as defined by Internal Revenue Code Section 414(d):~~

33 ~~—————(b)———— Any optional DROP contributions made to the DROP account shall constitute annual~~
34 ~~additions as defined by Treas. Reg. Section 1.415-6(b)(1) and shall be subject to the limitations of~~
35 ~~Internal Revenue Code Section 415(c) and shall not exceed the lesser of:~~

36 ~~—————(1)———— Thirty thousand dollars (\$30,000) adjusted for increases in the cost of living~~
37 ~~as prescribed by the Secretary of the Treasury or his delegate, or~~

38 ~~—————(2)———— Twenty-five percent (25%) of the member’s compensation for the limitation~~
39 ~~year.~~

40 ~~—————The term annual additions as defined by Treas. Reg. Section 1.415-6(b)(1) and for purposes~~
41 ~~of this section, shall mean the sum credited to a participant’s account for any limitation year of~~
42 ~~employee contributions, employer contributions, and forfeitures.~~

1 ~~———— (c) ———~~ ~~DROP account assets attributable to eligible pension benefit payments deposited in~~
2 ~~the DROP account shall constitute a transfer from one qualified plan to another and will not be~~
3 ~~considered annual additions as described in subsection (b) of this section. Such transfers are~~
4 ~~excluded from the definition of annual additions as provided by Treas. Reg. Section 1.415-6(b)(2).~~
5 ~~Such transfers shall be subject to the limitations imposed by Internal Revenue Code Section 415(b)~~
6 ~~before the transfer occurs.~~

7 (a) Notwithstanding any other provisions of the Plan to the contrary, the member
8 contributions paid to and retirement benefits paid from the Plan shall be limited to such extent as
9 may be necessary to conform to the requirements of Section 415 of the Internal Revenue Code for
10 a qualified pension plan.

11 (b) Participation in Other Qualified Plans: Aggregation of Limits.

12 (1) The 415(b) limit with respect to any member who at any time has been a
13 member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code
14 maintained by the City in this Plan shall apply as if the total benefits payable under all such defined
15 benefit plans in which the member has been a member were payable from one plan.

16 (2) The 415(c) limit with respect to any member who at any time has been a
17 member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue
18 Code maintained by the City in this Plan shall apply as if the total annual additions under all such
19 defined contribution plans in which the member has been a member were payable from one plan.

20 (c) Basic 415(b) Limitation.

21 (1) Before January 1, 1995, a member may not receive an annual benefit that
22 exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable
23 adjustments in that Section. On and after January 1, 1995, a member may not receive an annual
24 benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue
25 Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and
26 subject to any additional limits that may be specified in the Plan. In no event shall a member's
27 benefit payable under the plan in any limitation year be greater than the limit applicable at the
28 annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal
29 Revenue Code and the regulations thereunder.

30 (2) For purposes of Section 415(b) of the Internal Revenue Code, the “annual
31 benefit” means a benefit payable annually in the form of a straight life annuity (with no ancillary
32 benefits) without regard to the benefit attributable to after-tax employee contributions (except

1 pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined
2 in Section 415(b)(2)(A) of the Internal Revenue Code). The “benefit attributable” shall be
3 determined in accordance with Treasury Regulations.

4 (d) Adjustments to Basic 415(b) Limitation for Form of Benefit. If the benefit under the
5 Plan is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that
6 it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

7 (1) If the form of benefit without regard to the automatic benefit increase feature
8 is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence
9 is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the
10 annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined
11 using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into
12 account the additional benefits under the form of benefit as follows:

13 (2) For a benefit paid in a form to which Section 417(e)(3) of the Internal
14 Revenue Code does not apply [a monthly benefit], the actuarially equivalent straight life annuity
15 benefit that is the greater of (or the reduced Limit applicable at the annuity starting date which is the
16 “lesser of” when adjusted in accordance with the following assumptions):

17 (i) The annual amount of the straight life annuity (if any) payable to the
18 member under the plan commencing at the same annuity starting date as the form of benefit to the
19 member, or

20 (ii) The annual amount of the straight life annuity commencing at the
21 same annuity starting date that has the same actuarial present value as the form of benefit payable
22 to the member, computed using a 5% interest assumption (or the applicable statutory interest
23 assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in
24 Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue
25 Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after
26 December 31, 2008, the applicable mortality tables described in Internal Revenue Code Section
27 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing
28 Internal Revenue Code Section 417(e)(3)(B)); or

29 (iii) For a benefit paid in a form to which Section 417(e)(3) of the Internal
30 Revenue Code applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit

1 that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable
2 at the annuity starting date which is the “least of” when adjusted in accordance with the following
3 assumptions:

4 A. The annual amount of the straight life annuity commencing
5 at the annuity starting date that has the same actuarial present value as the particular form of benefit
6 payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan
7 for actuarial experience;

8 B. The annual amount of the straight life annuity commencing
9 at the annuity starting date that has the same actuarial present value as the particular form of benefit
10 payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest
11 assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in
12 Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue
13 Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after
14 December 31, 2008, the applicable mortality tables described in Internal Revenue Code Section
15 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing
16 Internal Revenue Code Section 417(e)(3)(B)); or

17 C. The annual amount of the straight life annuity commencing
18 at the annuity starting date that has the same actuarial present value as the particular form of benefit
19 payable (computed using the applicable interest rate for the distribution under Treasury Regulation
20 Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1 2007, using the rate in effect
21 for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the
22 first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1,
23 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2)
24 (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions
25 of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality
26 tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent
27 Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)),
28 divided by 1.05.

29 (e) Benefits Not Taken into Account for 415(b) Limitation. For purposes of this section,
30 the following benefits shall not be taken into account in applying these limits:

1 (1) Any ancillary benefit which is not directly related to retirement income
2 benefits;

3 (2) That portion of any joint and survivor annuity that constitutes a qualified joint
4 and survivor annuity;

5 (3) Any other benefit not required under Section 415(b)(2) of the Internal
6 Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the
7 limitation of Section 415(b)(1) of the Internal Revenue Code.

8 (f) Other Adjustments in 415(b) Limitation.

9 (1) In the event the member's retirement benefits become payable before age
10 sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury
11 Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such
12 limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit
13 begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) (as adjusted) annual
14 benefit beginning at age sixty-two (62).

15 (2) In the event the member's benefit is based on at least fifteen (15) years of
16 service as a full-time employee of any police or fire department or on fifteen (15) years of military
17 service, the adjustments provided for in (1) above shall not apply.

18 (3) The reductions provided for in (1) above shall not be applicable to
19 pre-retirement disability benefits or pre-retirement death benefits.

20 (g) Less than Ten Years of Service Adjustment for 415(b) Limitations. The maximum
21 retirement benefits payable to any member who has completed less than ten years of service shall
22 be the amount determined under subsection (c) multiplied by a fraction, the numerator of which is
23 the number of the member's years of service and the denominator of which is ten. The reduction
24 provided by this subsection cannot reduce the maximum benefit below 10%. The reduction
25 provided for in this subsection shall not be applicable to pre-retirement disability benefits or
26 pre-retirement death benefits.

27 (h) \$10,000 Limit. Notwithstanding the foregoing, the retirement benefit payable with
28 respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect
29 to such member under this plan and under all other qualified defined benefit pension plans to which
30 the member's employer contributes, do not exceed \$10,000 for the applicable limitation year and for

1 any prior limitation year and the employer has not any time maintained a qualified defined
2 contribution plan in which the member participated.

3 (i) Effect of COLA without a Lump Sum Component on 415(b) Testing. Effective on
4 and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal
5 Revenue Code (the "Limit") to a member with no lump sum benefit, the following will apply:

6 (1) A member's applicable Limit will be applied to the member's annual benefit
7 in the member's first limitation year without regard to any cost of living adjustments under Section
8 2.62.140;

9 (2) To the extent that the member's annual benefit equals or exceeds the Limit,
10 the member will no longer be eligible for cost of living increases until such time as the benefit plus
11 the accumulated increases are less than the Limit; and

12 (3) Thereafter, in any subsequent limitation year, a member's annual benefit,
13 including any cost of living increases under Section 2.62.140, shall be tested under the then
14 applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal
15 Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations
16 thereunder.

17 (j) Effect of COLA with a Lump Sum Component on 415(b) Testing. On and after
18 January 1, 2009, with respect to a member who receives a portion of the member's annual benefit
19 in a lump sum (a DROP lump sum), a member's applicable Limit will be applied taking into
20 consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code
21 and applicable Treasury Regulations.

22 (k) Section 415(c) limitations on contributions and other additions. After-tax member
23 contributions or other annual additions with respect to a member may not exceed the lesser of
24 \$40,000 (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or 100% of the
25 member's compensation.

26 (1) Annual additions are defined to mean the sum (for any year) of employer
27 contributions to a defined contribution plan, member contributions, and forfeitures credited to a
28 member's individual account. Member contributions are determined without regard to rollover
29 contributions and to picked-up employee contributions that are paid to a defined benefit plan.

1 (2) For purposes of applying Section 415(c) of the Internal Revenue Code and
2 for no other purpose, the definition of compensation where applicable will be compensation actually
3 paid or made available during a limitation year, except as noted below and as permitted by Treasury
4 Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member
5 contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as
6 compensation.

7 (3) Compensation will be defined as wages within the meaning of Section
8 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by
9 an employer for which the employer is required to furnish the employee a written statement under
10 Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without
11 regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration
12 included in wages based on the nature or location of the employment or the services performed (such
13 as the exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).

14 (i) However, for limitation years beginning after December 31, 1997,
15 compensation will also include amounts that would otherwise be included in compensation but for
16 an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue
17 Code. For limitation years beginning after December 31, 2000, compensation shall also include any
18 elective amounts that are not includible in the gross income of the member by reason of Section
19 132(f)(4) of the Internal Revenue Code.

20 (ii) For limitation years beginning on and after January 1, 2008,
21 compensation for the limitation year shall also include compensation paid by the later of 2½ months
22 after a member's severance from employment or the end of the limitation year that includes the date
23 of the member's severance from employment if:

24 A. The payment is regular compensation for services during the
25 member's regular working hours, or compensation for services outside the member's regular working
26 hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and,
27 absent a severance from employment, the payments would have been paid to the member while the
28 member continued in employment with the employer; or

29 B. The payment is for unused accrued bona fide sick, vacation
30 or other leave that the member would have been able to use if employment had continued; or

1 C. Payments pursuant to a nonqualified unfunded deferred
2 compensation plan, but only if the payments would have been paid to the member at the same time
3 if the member had continued employment with the employer and only to the extent that the payment
4 is includible in the member's gross income.

5 Any payments not described in paragraph (ii) above are not considered compensation
6 if paid after severance from employment, even if they are paid within two and one-half (2½) months
7 following severance from employment, except for payments to the individual who does not currently
8 perform services for the employer by reason of qualified military service (within the meaning of
9 Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the
10 amounts the individual would have received if the individual had continued to perform services for
11 the employer rather than entering qualified military service.

12 An employee who is in qualified military service (within the meaning of Section
13 414(u)(1) of the Internal Revenue Code) shall be treated as receiving compensation from the
14 employer during such period of qualified military service equal to (i) the compensation the employee
15 would have received during such period if the employee were not in qualified military service,
16 determined based on the rate of pay the employee would have received from the employer but for
17 the absence during the period of qualified military service, or (ii) if the compensation the employee
18 would have received during such period was not reasonably certain, the employee's average
19 compensation from the employer during the twelve month period immediately preceding the
20 qualified military service (or, if shorter, the period of employment immediately preceding the
21 qualified military service).

22 (iii) Back pay, within the meaning of Treasury Regulation Section
23 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay
24 relates to the extent the back pay represents wages and compensation that would otherwise be
25 included under this definition.

26 (iv) For limitation years beginning on or after January 1, 2008, a member's
27 compensation for purposes of subsection (k) shall not exceed the annual limit under Section
28 401(a)(17) of the Internal Revenue Code.

29 (l) Service Purchases under Section 415(n). Effective for permissive service credit
30 contributions made in limitation years beginning after December 31, 1997, if a member makes one

1 or more contributions to purchase permissive service credit under the plan, then the requirements
2 of Section 415(n) of the Internal Revenue Code will be treated as met only if:

3 (1) The requirements of Section 415(b) of the Internal Revenue Code are met,
4 determined by treating the accrued benefit derived from all such contributions as an annual benefit
5 for purposes of Section 415(b) of the Internal Revenue Code, or

6 (2) The requirements of Section 415(c) of the Internal Revenue Code are met,
7 determined by treating all such contributions as annual additions for purposes of Section 415(c) of
8 the Internal Revenue Code.

9 (3) For purposes of applying this section, the Plan will not fail to meet the
10 reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this
11 subparagraph and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the
12 Internal Revenue Code solely by reason of this section.

13 (4) For purposes of this section the term “permissive service credit” means
14 service credit:

15 (i) recognized by the Plan for purposes of calculating a member's benefit
16 under the Plan,

17 (ii) which such member has not received under the Plan, and

18 (iii) which such member may receive only by making a voluntary
19 additional contribution, in an amount determined under the Plan, which does not exceed the amount
20 necessary to fund the benefit attributable to such service credit.

21 Effective for permissive service credit contributions made in limitation years beginning after
22 December 31, 1997, such term may include service credit for periods for which there is no
23 performance of service, and, notwithstanding clause (B), may include service credited in order to
24 provide an increased benefit for service credit which a member is receiving under the Plan.

25 (5) The Plan will fail to meet the requirements of this section if:

26 (i) more than five years of nonqualified service credit are taken into
27 account for purposes of this subparagraph, or

28 (ii) any nonqualified service credit is taken into account under this
29 paragraph before the member has at least five years of participation under the Plan.

1 (6) For purposes of paragraph (5) effective for permissive service credit
2 contributions made in limitation years beginning after December 31, 1997, the term “nonqualified
3 service credit” means permissive service credit other than that allowed with respect to:

4 (i) service (including parental, medical, sabbatical, and similar leave) as
5 an employee of the Government of the United States, any State or political subdivision thereof, or
6 any agency or instrumentality of any of the foregoing (other than military service or service for
7 credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal
8 Revenue Code),

9 (ii) service (including parental, medical, sabbatical, and similar leave) as
10 an employee (other than as an employee described in clause (A)) of an education organization
11 described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or
12 sectarian school which provides elementary or secondary education (through grade 12), or a
13 comparable level of education, as determined under the applicable law of the jurisdiction in which
14 the service was performed,

15 (iii) service as an employee of an association of employees who are
16 described in clause (A), or

17 (iv) military service (other than qualified military service under Section
18 414(u) of the Internal Revenue Code) recognized by the Plan.

19 In the case of service described in clause (i), (ii), or (iii), such service will be
20 nonqualified service if recognition of such service would cause a member to receive a retirement
21 benefit for the same service under more than one plan.

22 (7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which
23 Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal
24 Revenue Code applies (without regard to whether the transfer is made between plans maintained by
25 the same employer)-

26 (i) the limitations of paragraph (5) will not apply in determining whether
27 the transfer is for the purchase of permissive service credit, and

28 (ii) the distribution rules applicable under federal law to the Plan will
29 apply to such amounts and any benefits attributable to such amounts.

1 (8) For an eligible member, the limitation of Section 415(c)(1) of the Internal
2 Revenue Code shall not be applied to reduce the amount of permissive service credit which may be
3 purchased to an amount less than the amount which was allowed to be purchased under the terms
4 of a plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an
5 individual who first became a member in the Plan before January 1, 1998.

6 (m) Modification of Contributions for 415(c) and 415(n) Purposes. Notwithstanding any
7 other provision of law to the contrary, the Plan Administrator may modify a request by a member
8 to make a contribution to the Plan if the amount of the contribution would exceed the limits provided
9 in Section 415 of the Internal Revenue Code by using the following methods:

10 (1) If the law requires a lump sum payment for the purchase of service credit, the
11 Plan Administrator may establish a periodic payment plan for the member to avoid a contribution
12 in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.

13 (2) If payment pursuant to subparagraph (1) will not avoid a contribution in
14 excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the Plan
15 Administrator may either reduce the member's contribution to an amount within the limits of those
16 sections or refuse the member's contribution.

17 (n) Repayments of Cashouts. Any repayment of contributions (including interest
18 thereon) to the Plan with respect to an amount previously refunded upon a forfeiture of service credit
19 under the Plan or another governmental plan maintained by the City shall not be taken into account
20 for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury
21 Regulations.

22 (o) Reduction of Benefits Priority. Reduction of benefits and/or contributions to all
23 plans, where required, shall be accomplished by first reducing the member's benefit under any
24 defined benefit plans in which the member participated, such reduction to be made first with respect
25 to the plan in which the member most recently accrued benefits and thereafter in such priority as
26 shall be determined by the plan and the plan administrator of such other plans, and next, by reducing
27 or allocating excess forfeitures for defined contribution plans in which the member participated,
28 such reduction to be made first with respect to the plan in which the member most recently accrued
29 benefits and thereafter in such priority as shall be established by the plan and the plan administrator
30 for such other plans provided, however, that necessary reductions may be made in a different manner

1 and priority pursuant to the agreement of the plan and the plan administrator of all other plans
2 covering such member.

3 Section 4. That Section 2.62.120 of the Lincoln Municipal Code be amended to read
4 as follows:

5 **~~2.62.120~~ — ~~Trustee to Trustee Transfer.~~**

6 ~~— A member may elect to have any eligible rollover distribution to which such member is~~
7 ~~entitled paid directly to an eligible retirement plan provided that such member specifies in writing~~
8 ~~to the Plan Administrator the specific eligible retirement plan to which such distribution is to be paid~~
9 ~~at any time prior to the member receiving such distribution. For purposes of this subsection, the~~
10 ~~terms “eligible rollover distribution” and “eligible retirement plan” shall have the definitions as~~
11 ~~provided for such terms in 26 U.S.C. (a)(31)(C) and (D), respectively. Such distribution shall be~~
12 ~~made in the form of a direct trustee to trustee transfer to the eligible retirement plan so specified;~~
13 ~~provided, however, the City shall take no responsibility for evaluating whether or not the retirement~~
14 ~~plan specified by the member is in fact an eligible retirement plan.—~~

15 (a) For purposes of the Plan and compliance with Section 401(a)(31) of the Internal
16 Revenue Code, this section applies notwithstanding any contrary provision or retirement law that
17 would otherwise limit a distributee’s election to make a rollover. A distributee may elect, at the time
18 and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover
19 distribution paid directly to an eligible retirement plan specified by the distributee in a direct
20 rollover.

21 (b) “Eligible rollover distribution” means any distribution of all or any portion of the
22 balance to the credit of the distributee, except that an eligible rollover distribution does not include:
23 any distribution that is one of a series of substantially equal periodic payments (not less frequently
24 than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint
25 life expectancies) of the distributee and the distributee’s designated beneficiary, or for a specified
26 period of ten years or more; any distribution to the extent such distribution is required under Section
27 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross
28 income; and any other distribution that is reasonably expected to total less than \$200 during the year.
29 Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover
30 distribution merely because the portion consists of after-tax employee contributions that are not
31 includible in gross income. However, such portion may be transferred only (i) to an individual
32 retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to
33 a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code; (ii)

1 on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the
2 Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue
3 Code, that agrees to separately account for amounts so transferred (and earnings thereon), including
4 separately accounting for the portion of the distribution that is includible in gross income and the
5 portion of the distribution that is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA
6 described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition
7 of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or
8 former spouse who is an alternate payee under a qualified domestic relations order, as defined in
9 Section 414(p) of the Internal Revenue Code.

10 (c) “Eligible retirement plan” means any of the following that accepts the distributee’s
11 eligible rollover distribution:

12 (1) An individual retirement account described in Section 408(a) of the Internal
13 Revenue Code.

14 (2) An individual retirement annuity described in Section 408(b) of the Internal
15 Revenue Code.

16 (3) An annuity plan described in Section 403(a) of the Internal Revenue Code,

17 (4) A qualified trust described in Section 401(a) of the Internal Revenue Code,

18 (5) Effective January 1, 2002, an annuity contract described in Section 403(b)
19 of the Internal Revenue Code,

20 (6) Effective January 1, 2002, a plan eligible under Section 457(b) of the Internal
21 Revenue Code that is maintained by a state, political subdivision of a state, or any agency or
22 instrumentality of a state or a political subdivision of a state that agrees to separately account for
23 amounts transferred into that plan from this Plan, or

24 (7) Effective January 1, 2008, a Roth IRA described in Section 408A of the
25 Internal Revenue Code.

26 (d) “Distributee” means an employee or former employee. It also includes the
27 employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse
28 or former spouse who is the alternate payee under a qualified domestic relations order, as defined
29 in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further
30 includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E)

1 of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only
2 to an individual retirement account or individual retirement annuity established for the purpose of
3 receiving the distribution, and the account or annuity will be treated as an “inherited” individual
4 retirement account or annuity.

5 (e) “Direct rollover” means a payment by the plan to the eligible retirement plan
6 specified by the distributee.

7 (f) In the event of a mandatory distribution greater than \$1,000 in accordance with the
8 provisions of Section 2.62.045(b)(5), if the member does not elect to have such distribution paid
9 directly to an eligible retirement plan specified by the member in a direct rollover or to receive the
10 distribution directly in accordance with subsection (a), then the Plan Administrator will pay the
11 distribution in a direct rollover to an individual retirement plan designated by the Plan
12 Administrator.

13 Section 5. That Section 2.62.230 of the Lincoln Municipal Code be amended to read
14 as follows:

15 **2.62.230 Qualified Retirement Plan.**

16 The City intends that the Plan be a qualified governmental plan under Sections 401(a) and
17 414(d) of the Internal Revenue Code, as amended. The Plan shall be administered so as to fulfill
18 this intent, including but not limited to the following:

19 (a) Distributions from the Plan will comply with the requirements of Internal Revenue
20 Code Section 401(a)(8) and regulations thereunder, including that forfeitures of benefits by any
21 member or former member of the Plan will not be applied to increase the benefits that any member
22 would otherwise be entitled to receive under the Plan. However, such forfeitures may be used to
23 reduce employer contributions.

24 (b) A member shall be 100% vested in his or her accumulated contributions at all times.

25 (c) Minimum Distributions. The Plan will pay all benefits in accordance with a good
26 faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the
27 regulations in effect under that section, as applicable to a governmental plan within the meaning of
28 Section 414(d) of the Internal Revenue Code. The Plan is subject to the following provisions:

29 (1) Distribution of a member’s benefit must begin by the required beginning date,
30 which is the later of the April 1 following the calendar year in which the member attains age 70 ½

1 or April 1 of the year following the calendar year in which the member terminates. If a member fails
2 to apply for retirement benefits by the later of either of those dates, the Plan shall begin distribution
3 of the monthly benefit as required by this rule in the form of a straight life annuity.

4 (2) The member's entire interest must be distributed over the member's life or
5 the lives of the member and a designated beneficiary, or over a period not extending beyond the life
6 expectancy of the member or of the member and a designated beneficiary.

7 (3) The Plan, pursuant to a qualified domestic relations order, may establish
8 separate benefits for a member and nonmember.

9 (4) If a member dies after the required distribution of benefits has begun, the
10 remaining portion of the member's interest must be distributed at least as rapidly as under the
11 method of distribution before the member's death.

12 (5) If a member dies before required distribution of the member's benefits has
13 begun, the member's entire interest must be either:

14 (i) Distributed (in accordance with federal regulations) over the life or
15 life expectancy of the designated beneficiary, with the distributions beginning no later than
16 December 31 of the calendar year following the calendar year of the member's death, or

17 (ii) Distributed within five years of the member's death.

18 (6) The amount of an annuity paid to a member's beneficiary may not exceed the
19 maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the
20 Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury
21 Regulation Section 1.401(a)(9)-6, Q&A-2.

22 (7) The death and disability benefits provided by the Plan are limited by the
23 incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury
24 Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death
25 or disability benefits payable may not exceed 25% of the cost for all of the members' benefits
26 received from the Plan.

27 (8) Notwithstanding the other provisions of this rule or the provisions of the
28 Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9)
29 of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

30 (d) Compensation Limits

1 (1) Effective with respect to plan years beginning on and after September 1, 1996,
2 and before September 1, 2002, the annual compensation of a plan member which exceeds \$150,000
3 (as adjusted for cost-of-living increases under Section 401(a)(17)(B) of the Internal Revenue Code)
4 shall be disregarded for purposes of computing employee and employer contributions to or benefits
5 due from the Plan. Effective only for the 1996 plan year, in determining the compensation of an
6 employee eligible for consideration under this provision, the rules of Section 414(g)(6) of the
7 Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall
8 include only the spouse of the member and any lineal descendants of the employee who have not
9 attained age 19 before the close of the year.

10 (2) Effective with respect to plan years beginning on and after September 1, 2002,
11 the annual compensation of a plan member which exceeds \$200,000 (as adjusted for cost-of-living
12 increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code) may not be taken
13 into account in determining benefits or contributions due for any plan year. Annual compensation
14 means compensation during the plan year or such other consecutive 12-month period over which
15 compensation is otherwise determined under the plan (the determination period). The cost-of-living
16 adjustment in effect for a calendar year applies to annual compensation for the determination period
17 that begins with or within such calendar year. If the determination period consists of fewer than 12
18 months, the annual compensation limit is an amount equal to the otherwise applicable annual
19 compensation limit multiplied by a fraction, the numerator of which is the number of months in the
20 short determination period, and the denominator of which is 12. If the compensation for any prior
21 determination period is taken into account in determining a plan member's contributions or benefits
22 for the current plan year, the compensation for such prior determination period is subject to the
23 applicable annual compensation limit in effect for that prior period.

24 (e) Veterans' Rights.

25 (1) Effective December 12, 1994, notwithstanding any other provision of the
26 Plan, contributions, benefits and service credit with respect to qualified military service are governed
27 by Section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and
28 Reemployment Rights Act of 1994.

29 (2) Effective with respect to deaths occurring on or after January 1, 2007, while
30 a member is performing qualified military service (as defined in Chapter 43 of Title 38, United

1 States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors
2 of a member, are entitled to any additional benefits that the Plan would provide if the member had
3 resumed employment and then died, such as accelerated vesting or survivor benefits that are
4 contingent on the member's death while employed.

5 (3) Beginning January 1, 2009, to the extent required by Sections 3401(h) and
6 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (while
7 the individual is performing qualified military service (as defined in Chapter 43 of Title 38, United
8 State Code) from an employer shall be treated as employed by that employer and the differential
9 wage payment shall be treated as earned compensation, but contributions attributable to such
10 differential wage payments shall not be made unless and until the member returns to active
11 employment and makes up the missed contributions. This provision shall be applied to all similarly
12 situated individuals in a reasonably equivalent manner.

13 Section 6. That Section 2.65.040 of the Lincoln Municipal Code be amended to read
14 as follows:

15 **2.65.040 Age and Service Retirement Benefits.**

16 (a) Regular age and service retirement benefits. A member who (i) has attained normal
17 retirement age, (ii) completed twenty-one years of service, and (iii) elects to retire from active
18 service shall be entitled to receive their regular age and service retirement benefits upon retirement
19 from active duty. Such benefit shall be equal to fifty-eight percent of regular pay.

20 (b) Extended age and extended service retirement benefits. A member who (i) has
21 previously become eligible for a regular age and service retirement benefit, (ii) has worked for a
22 period of between 0-60 months after becoming eligible, and (iii) elects to retire from active service
23 shall be entitled to receive an extended age and extended service benefit upon retirement from active
24 duty. Such benefit shall be equal to a regular age and service retirement benefit with the percentage
25 increased by two percent per year for each of a member's years of service after becoming eligible
26 for a regular age and service retirement benefit for a maximum of 60 months or ten percent.

27 (c) Partial annuity benefits. A member who (i) has attained normal retirement age, (ii)
28 completed at least ten years of service, and (iii) elects to retire from active service shall be entitled
29 to receive a partial annuity benefit. Such benefit shall be equal to a regular age and service
30 retirement benefit reduced by multiplying the member's regular age and service retirement benefit
31 by a fraction, the denominator of which is twenty-one and the numerator of which is the number of
32 years of service completed by the member at the date of his or her normal retirement (not to exceed
33 twenty-one).

34 (d) Early retirement benefit. A member who (i) has attained age fifty, (ii) completed at
35 least twenty-one years of service, and (iii) elects to retire from active service shall be entitled to
36 receive an early retirement benefit. Such benefit shall be based on the following:

37 The early retirement benefit shall be equal to:
38 at age 50 and 21 years of service = 52%

1 at age 51 and 21 years of service = 54%
2 at age 52 and 21 years of service = 56%

3 The pension of a member whose age, on the date of retirement, exceeds an otherwise
4 applicable age and service level as set forth above will be increased by an amount equalling two
5 percent of regular pay times a fraction, the denominator of which is 365 and the numerator of which
6 is the number of days by which the member's age exceeds the otherwise applicable age and service
7 level.

8 (e) Benefit payments shall ~~commence no later than April 1 of the calendar year following~~
9 ~~the later of (i) the calendar year in which the member attains age 70 ½ or (ii) the calendar year in~~
10 ~~which the member's employment with the City terminates~~ comply with applicable provisions of
11 Section 2.65.220.

12 Section 7. That Section 2.65.050 of the Lincoln Municipal Code be amended to read
13 as follows:

14 **2.65.050 Pension Payment Options; Survivorship Options; Beneficiary Designation.**

15 (a) On or prior to the effective date of a member's retirement, but not thereafter, any
16 member may elect, by written notice filed with the City,
17 to receive:

18 (1) An annuity commensurate with the applicable age and service retirement
19 benefit; or

20 (2) A lump sum distribution of such member's contributions plus regular interest
21 to the date of disbursement of funds and a reduced annuity, equal to the annuity which would
22 otherwise have commenced upon retirement reduced by the portion of such benefits that are
23 actuarially equivalent to the amount of the contributions and interest withdrawn.

24 (b) On or prior to the effective date of a member's retirement, but not thereafter, any
25 member may elect, by written notice filed with the City, to receive the annuity provided for in (a)
26 above as a straight life annuity, or to receive the actuarial equivalent of a straight life annuity
27 throughout his or her life, reduced actuarially to reflect the selection of Option 1 or Option 2 below,
28 and designate a survivor beneficiary, having an insurable interest, to receive either of the following
29 two survivorship options:

30 (1) Option 1. Upon the member's death, an amount equal to the member's annuity
31 shall be payable to the survivor beneficiary for the remainder of his or her life.

32 (2) Option 2. Upon the member's death, an amount equal to one-half of the
33 member's annuity shall be payable to the survivor beneficiary for the remainder of his or her life.

34 (c) Any election or designation made by a member under this section may be revoked
35 or changed by the member without the consent of any other person, or a new election or designation
36 may be substituted by the member as long as he or she may desire, but not later than the date of
37 retirement.

38 (d) Distributions will comply with applicable ~~requirements of Section 401(a)(9) of the~~
39 ~~Internal Revenue Code~~ provisions of Section 2.65.220.

1 Section 8. That Section 2.65.055 of the Lincoln Municipal Code be amended to read
2 as follows:

3 **~~2.65.055~~ Limitations of Benefits.**

4 ~~———— The benefits payable to a member from this Plan by City contributions shall be subject to the~~
5 ~~limitations of Internal Revenue Code Section 415 in accordance with subsections (a) and (b) below:~~

6 ~~———— (a) — Any annual pension payable to a member of the defined benefit plan shall not exceed~~
7 ~~the amount specified under Internal Revenue Code Section 415(b), specifically the lesser of:~~

8 ~~———— (1) — One hundred forty thousand dollars (\$140,000) adjusted for increases in the~~
9 ~~cost of living as prescribed by the Secretary of the Treasury or his delegate effective January 1 of~~
10 ~~each calendar year. The dollar limitation described in this subsection will not be reduced if a~~
11 ~~member retires before Social Security retirement age in accordance with the provisions of Internal~~
12 ~~Revenue Code Section 415(b)(2)(G) which exempts police and fire personnel from the reduction in~~
13 ~~the dollar limitation described in this subsection; or~~

14 ~~———— (2) — One hundred percent (100%) of the employee's average earnings for the three~~
15 ~~consecutive calendar years while a member in the Plan in which his earnings were the highest.~~
16 ~~Effective for years after December 31, 1994, the salary limitations described by this subsection do~~
17 ~~not apply to governmental plans as defined by Internal Revenue Code Section 414(d).~~

18 ~~———— (b) — Any optional DROP contributions made to the DROP account shall constitute annual~~
19 ~~additions as defined by Treas. Reg. Section 1.415-6(b)(1) and shall be subject to the limitations of~~
20 ~~Internal Revenue Code Section 415(c) and shall not exceed the lesser of:~~

21 ~~———— (1) — Thirty thousand dollars (\$30,000) adjusted for increases in the cost of living~~
22 ~~as prescribed by the Secretary of the Treasury or his delegate; or~~

23 ~~———— (2) — Twenty-five percent (25%) of the member's compensation for the limitation~~
24 ~~year.~~

25 ~~———— The term annual additions as defined by Treas. Reg. Section 1.415-6(b)(1) and for purposes~~
26 ~~of this section, shall mean the sum credited to a participant's account for any limitation year of~~
27 ~~employee contributions, employer contributions, and forfeitures.~~

28 ~~———— (c) — DROP account assets attributable to eligible pension benefit payments deposited in~~
29 ~~the DROP account shall constitute a transfer from one qualified plan to another and will not be~~
30 ~~considered annual additions as described in subsection (b) of this section. Such transfers are~~
31 ~~excluded from the definition of annual additions as provided by Treas. Reg. Section 1.415-6(b)(2).~~
32 ~~Such transfers shall be subject to the limitations imposed by Internal Revenue Code Section 415(b)~~
33 ~~before the transfer occurs.—~~

34 (a) Notwithstanding any other provisions of the Plan to the contrary, the member
35 contributions paid to and retirement benefits paid from the Plan shall be limited to such extent as
36 may be necessary to conform to the requirements of Section 415 of the Internal Revenue Code for
37 a qualified pension plan.

38 (b) Participation in Other Qualified Plans: Aggregation of Limits.

39 (1) The 415(b) limit with respect to any member who at any time has been a
40 member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code

1 maintained by the City in this Plan shall apply as if the total benefits payable under all such defined
2 benefit plans in which the member has been a member were payable from one plan.

3 (2) The 415(c) limit with respect to any member who at any time has been a
4 member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue
5 Code maintained by the City in this Plan shall apply as if the total annual additions under all such
6 defined contribution plans in which the member has been a member were payable from one plan.

7 (c) Basic 415(b) Limitation.

8 (1) Before January 1, 1995, a member may not receive an annual benefit that
9 exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable
10 adjustments in that Section. On and after January 1, 1995, a member may not receive an annual
11 benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue
12 Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and
13 subject to any additional limits that may be specified in the Plan. In no event shall a member's
14 benefit payable under the plan in any limitation year be greater than the limit applicable at the
15 annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal
16 Revenue Code and the regulations thereunder.

17 (2) For purposes of Section 415(b) of the Internal Revenue Code, the "annual
18 benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary
19 benefits) without regard to the benefit attributable to after-tax employee contributions (except
20 pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined
21 in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be
22 determined in accordance with Treasury Regulations.

23 (d) Adjustments to Basic 415(b) Limitation for Form of Benefit. If the benefit under the
24 Plan is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that
25 it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

26 (1) If the form of benefit without regard to the automatic benefit increase feature
27 is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence
28 is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the
29 annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined

1 using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into
2 account the additional benefits under the form of benefit as follows:

3 (2) For a benefit paid in a form to which Section 417(e)(3) of the Internal
4 Revenue Code does not apply [a monthly benefit], the actuarially equivalent straight life annuity
5 benefit that is the greater of (or the reduced Limit applicable at the annuity starting date which is the
6 “lesser of” when adjusted in accordance with the following assumptions):

7 (i) The annual amount of the straight life annuity (if any) payable to the
8 member under the plan commencing at the same annuity starting date as the form of benefit to the
9 member, or

10 (ii) The annual amount of the straight life annuity commencing at the
11 same annuity starting date that has the same actuarial present value as the form of benefit payable
12 to the member, computed using a 5% interest assumption (or the applicable statutory interest
13 assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in
14 Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue
15 Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after
16 December 31, 2008, the applicable mortality tables described in Internal Revenue Code Section
17 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing
18 Internal Revenue Code Section 417(e)(3)(B)); or

19 (iii) For a benefit paid in a form to which Section 417(e)(3) of the Internal
20 Revenue Code applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit
21 that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable
22 at the annuity starting date which is the “least of” when adjusted in accordance with the following
23 assumptions:

24 A. The annual amount of the straight life annuity commencing
25 at the annuity starting date that has the same actuarial present value as the particular form of benefit
26 payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan
27 for actuarial experience;

28 B. The annual amount of the straight life annuity commencing
29 at the annuity starting date that has the same actuarial present value as the particular form of benefit
30 payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest

1 assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in
2 Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue
3 Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after
4 December 31, 2008, the applicable mortality tables described in Internal Revenue Code Section
5 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing
6 Internal Revenue Code Section 417(e)(3)(B)); or

7 C. The annual amount of the straight life annuity commencing
8 at the annuity starting date that has the same actuarial present value as the particular form of benefit
9 payable (computed using the applicable interest rate for the distribution under Treasury Regulation
10 Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1 2007, using the rate in effect
11 for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the
12 first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1,
13 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2)
14 (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions
15 of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality
16 tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent
17 Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)),
18 divided by 1.05.

19 (e) Benefits Not Taken into Account for 415(b) Limitation. For purposes of this section,
20 the following benefits shall not be taken into account in applying these limits:

21 (1) Any ancillary benefit which is not directly related to retirement income
22 benefits;

23 (2) That portion of any joint and survivor annuity that constitutes a qualified joint
24 and survivor annuity;

25 (3) Any other benefit not required under Section 415(b)(2) of the Internal
26 Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the
27 limitation of Section 415(b)(1) of the Internal Revenue Code.

28 (f) Other Adjustments in 415(b) Limitation.

29 (1) In the event the member's retirement benefits become payable before age
30 sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury

1 Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such
2 limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit
3 begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) (as adjusted) annual
4 benefit beginning at age sixty-two (62).

5 (2) In the event the member's benefit is based on at least fifteen (15) years of
6 service as a full-time employee of any police or fire department or on fifteen (15) years of military
7 service, the adjustments provided for in (1) above shall not apply.

8 (3) The reductions provided for in (1) above shall not be applicable to
9 pre-retirement disability benefits or pre-retirement death benefits.

10 (g) Less than Ten Years of Service Adjustment for 415(b) Limitations. The maximum
11 retirement benefits payable to any member who has completed less than ten years of service shall
12 be the amount determined under subsection (c) multiplied by a fraction, the numerator of which is
13 the number of the member's years of service and the denominator of which is ten. The reduction
14 provided by this subsection cannot reduce the maximum benefit below 10%. The reduction
15 provided for in this subsection shall not be applicable to pre-retirement disability benefits or
16 pre-retirement death benefits.

17 (h) \$10,000 Limit. Notwithstanding the foregoing, the retirement benefit payable with
18 respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect
19 to such member under this plan and under all other qualified defined benefit pension plans to which
20 the member's employer contributes, do not exceed \$10,000 for the applicable limitation year and
21 for any prior limitation year and the employer has not any time maintained a qualified defined
22 contribution plan in which the member participated.

23 (i) Effect of COLA without a Lump Sum Component on 415(b) Testing. Effective on
24 and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal
25 Revenue Code (the "Limit") to a member with no lump sum benefit, the following will apply:

26 (1) A member's applicable Limit will be applied to the member's annual benefit
27 in the member's first limitation year without regard to any cost of living adjustments under Section
28 2.65.140;

1 (2) To the extent that the member’s annual benefit equals or exceeds the Limit,
2 the member will no longer be eligible for cost of living increases until such time as the benefit plus
3 the accumulated increases are less than the Limit; and

4 (3) Thereafter, in any subsequent limitation year, a member’s annual benefit,
5 including any cost of living increases under Section 2.65.140, shall be tested under the then
6 applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal
7 Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations
8 thereunder.

9 (j) Effect of COLA with a Lump Sum Component on 415(b) Testing. On and after
10 January 1, 2009, with respect to a member who receives a portion of the member’s annual benefit
11 in a lump sum (a DROP lump sum), a member’s applicable Limit will be applied taking into
12 consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code
13 and applicable Treasury Regulations.

14 (k) Section 415(c) limitations on contributions and other additions. After-tax member
15 contributions or other annual additions with respect to a member may not exceed the lesser of
16 \$40,000 (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or 100% of the
17 member’s compensation.

18 (1) Annual additions are defined to mean the sum (for any year) of employer
19 contributions to a defined contribution plan, member contributions, and forfeitures credited to a
20 member’s individual account. Member contributions are determined without regard to rollover
21 contributions and to picked-up employee contributions that are paid to a defined benefit plan.

22 (2) For purposes of applying Section 415(c) of the Internal Revenue Code and
23 for no other purpose, the definition of compensation where applicable will be compensation actually
24 paid or made available during a limitation year, except as noted below and as permitted by Treasury
25 Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member
26 contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as
27 compensation.

28 (3) Compensation will be defined as wages within the meaning of Section
29 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by
30 an employer for which the employer is required to furnish the employee a written statement under

1 Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without
2 regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration
3 included in wages based on the nature or location of the employment or the services performed (such
4 as the exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).

5 (i) However, for limitation years beginning after December 31, 1997,
6 compensation will also include amounts that would otherwise be included in compensation but for
7 an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue
8 Code. For limitation years beginning after December 31, 2000, compensation shall also include any
9 elective amounts that are not includible in the gross income of the member by reason of Section
10 132(f)(4) of the Internal Revenue Code.

11 (ii) For limitation years beginning on and after January 1, 2008,
12 compensation for the limitation year shall also include compensation paid by the later of 2½ months
13 after a member's severance from employment or the end of the limitation year that includes the date
14 of the member's severance from employment if:

15 A. The payment is regular compensation for services during the
16 member's regular working hours, or compensation for services outside the member's regular
17 working hours (such as overtime or shift differential), commissions, bonuses or other similar
18 payments, and, absent a severance from employment, the payments would have been paid to the
19 member while the member continued in employment with the employer; or

20 B. The payment is for unused accrued bona fide sick, vacation
21 or other leave that the member would have been able to use if employment had continued; or

22 C. Payments pursuant to a nonqualified unfunded deferred
23 compensation plan, but only if the payments would have been paid to the member at the same time
24 if the member had continued employment with the employer and only to the extent that the payment
25 is includible in the member's gross income.

26 Any payments not described in paragraph (ii) above are not considered compensation
27 if paid after severance from employment, even if they are paid within two and one-half (2½) months
28 following severance from employment, except for payments to the individual who does not currently
29 perform services for the employer by reason of qualified military service (within the meaning of
30 Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the

1 amounts the individual would have received if the individual had continued to perform services for
2 the employer rather than entering qualified military service.

3 An employee who is in qualified military service (within the meaning of Section
4 414(u)(1) of the Internal Revenue Code) shall be treated as receiving compensation from the
5 employer during such period of qualified military service equal to (i) the compensation the employee
6 would have received during such period if the employee were not in qualified military service,
7 determined based on the rate of pay the employee would have received from the employer but for
8 the absence during the period of qualified military service, or (ii) if the compensation the employee
9 would have received during such period was not reasonably certain, the employee's average
10 compensation from the employer during the twelve month period immediately preceding the
11 qualified military service (or, if shorter, the period of employment immediately preceding the
12 qualified military service).

13 (iii) Back pay, within the meaning of Treasury Regulation Section
14 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay
15 relates to the extent the back pay represents wages and compensation that would otherwise be
16 included under this definition.

17 (iv) For limitation years beginning on or after January 1, 2008, a member's
18 compensation for purposes of subsection (k) shall not exceed the annual limit under Section
19 401(a)(17) of the Internal Revenue Code.

20 (1) Service Purchases under Section 415(n). Effective for permissive service credit
21 contributions made in limitation years beginning after December 31, 1997, if a member makes one
22 or more contributions to purchase permissive service credit under the plan, then the requirements
23 of Section 415(n) of the Internal Revenue Code will be treated as met only if:

24 (1) The requirements of Section 415(b) of the Internal Revenue Code are met,
25 determined by treating the accrued benefit derived from all such contributions as an annual benefit
26 for purposes of Section 415(b) of the Internal Revenue Code, or

27 (2) The requirements of Section 415(c) of the Internal Revenue Code are met,
28 determined by treating all such contributions as annual additions for purposes of Section 415(c) of
29 the Internal Revenue Code.

1 (3) For purposes of applying this section, the Plan will not fail to meet the
2 reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this
3 subparagraph and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the
4 Internal Revenue Code solely by reason of this section.

5 (4) For purposes of this section the term “permissive service credit” means
6 service credit-

7 (i) recognized by the Plan for purposes of calculating a member’s benefit
8 under the Plan,

9 (ii) which such member has not received under the Plan, and

10 (iii) which such member may receive only by making a voluntary
11 additional contribution, in an amount determined under the Plan, which does not exceed the amount
12 necessary to fund the benefit attributable to such service credit.

13 Effective for permissive service credit contributions made in limitation years beginning after
14 December 31, 1997, such term may include service credit for periods for which there is no
15 performance of service, and, notwithstanding clause (B), may include service credited in order to
16 provide an increased benefit for service credit which a member is receiving under the Plan.

17 (5) The Plan will fail to meet the requirements of this section if-

18 (i) more than five years of nonqualified service credit are taken into
19 account for purposes of this subparagraph, or

20 (ii) any nonqualified service credit is taken into account under this
21 paragraph before the member has at least five years of participation under the Plan.

22 (6) For purposes of paragraph (5) effective for permissive service credit
23 contributions made in limitation years beginning after December 31, 1997, the term “nonqualified
24 service credit” means permissive service credit other than that allowed with respect to-

25 (i) service (including parental, medical, sabbatical, and similar leave) as
26 an employee of the Government of the United States, any State or political subdivision thereof, or
27 any agency or instrumentality of any of the foregoing (other than military service or service for
28 credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal
29 Revenue Code).

1 (ii) service (including parental, medical, sabbatical, and similar leave) as
2 an employee (other than as an employee described in clause (A)) of an education organization
3 described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or
4 sectarian school which provides elementary or secondary education (through grade 12), or a
5 comparable level of education, as determined under the applicable law of the jurisdiction in which
6 the service was performed,

7 (iii) service as an employee of an association of employees who are
8 described in clause (A), or

9 (iv) military service (other than qualified military service under Section
10 414(u) of the Internal Revenue Code) recognized by the Plan.

11 In the case of service described in clause (i), (ii), or (iii), such service will be
12 nonqualified service if recognition of such service would cause a member to receive a retirement
13 benefit for the same service under more than one plan.

14 (7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which
15 Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal
16 Revenue Code applies (without regard to whether the transfer is made between plans maintained by
17 the same employer)-

18 (i) the limitations of paragraph (5) will not apply in determining whether
19 the transfer is for the purchase of permissive service credit, and

20 (ii) the distribution rules applicable under federal law to the Plan will
21 apply to such amounts and any benefits attributable to such amounts.

22 (8) For an eligible member, the limitation of Section 415(c)(1) of the Internal
23 Revenue Code shall not be applied to reduce the amount of permissive service credit which may be
24 purchased to an amount less than the amount which was allowed to be purchased under the terms
25 of a plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an
26 individual who first became a member in the Plan before January 1, 1998.

27 (m) Modification of Contributions for 415(c) and 415(n) Purposes. Notwithstanding any
28 other provision of law to the contrary, the Plan Administrator may modify a request by a member
29 to make a contribution to the Plan if the amount of the contribution would exceed the limits provided
30 in Section 415 of the Internal Revenue Code by using the following methods:

1 (1) If the law requires a lump sum payment for the purchase of service credit, the
2 Plan Administrator may establish a periodic payment plan for the member to avoid a contribution
3 in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.

4 (2) If payment pursuant to subparagraph (1) will not avoid a contribution in
5 excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the Plan
6 Administrator may either reduce the member's contribution to an amount within the limits of those
7 sections or refuse the member's contribution.

8 (n) Repayments of Cashouts. Any repayment of contributions (including interest
9 thereon) to the Plan with respect to an amount previously refunded upon a forfeiture of service credit
10 under the Plan or another governmental plan maintained by the City shall not be taken into account
11 for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury
12 Regulations.

13 (o) Reduction of Benefits Priority. Reduction of benefits and/or contributions to all
14 plans, where required, shall be accomplished by first reducing the member's benefit under any
15 defined benefit plans in which the member participated, such reduction to be made first with respect
16 to the plan in which the member most recently accrued benefits and thereafter in such priority as
17 shall be determined by the plan and the plan administrator of such other plans, and next, by reducing
18 or allocating excess forfeitures for defined contribution plans in which the member participated,
19 such reduction to be made first with respect to the plan in which the member most recently accrued
20 benefits and thereafter in such priority as shall be established by the plan and the plan administrator
21 for such other plans provided, however, that necessary reductions may be made in a different manner
22 and priority pursuant to the agreement of the plan and the plan administrator of all other plans
23 covering such member.

24 Section 9. That Section 2.65.120 of the Lincoln Municipal Code be amended to read
25 as follows:

26 **~~2.65.120~~ — ~~Trustee to Trustee Transfer:~~**

27 ~~— A member may elect to have any eligible rollover distribution to which such member is~~
28 ~~entitled paid directly to an eligible retirement plan provided that such member specifies in writing~~
29 ~~to the Plan Administrator the specific eligible retirement plan to which such distribution is to be paid~~
30 ~~at any time prior to the member receiving such distribution. For purposes of this subsection, the~~
31 ~~terms "eligible rollover distribution" and "eligible retirement plan" shall have the definitions as~~
32 ~~provided for such terms in 26 U.S.C. (a)(31)(C) and (D), respectively. Such distribution shall be~~
33 ~~made in the form of a direct trustee to trustee transfer to the eligible retirement plan so specified;~~

1 ~~provided, however, the City shall take no responsibility for evaluating whether or not the retirement~~
2 ~~plan specified by the member is in fact an eligible retirement plan.~~

3 (a) For purposes of the Plan and compliance with Section 401(a)(31) of the Internal
4 Revenue Code, this section applies notwithstanding any contrary provision or retirement law that
5 would otherwise limit a distributee’s election to make a rollover. A distributee may elect, at the time
6 and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover
7 distribution paid directly to an eligible retirement plan specified by the distributee in a direct
8 rollover.

9 (b) “Eligible rollover distribution” means any distribution of all or any portion of the
10 balance to the credit of the distributee, except that an eligible rollover distribution does not include:
11 any distribution that is one of a series of substantially equal periodic payments (not less frequently
12 than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint
13 life expectancies) of the distributee and the distributee’s designated beneficiary, or for a specified
14 period of ten years or more; any distribution to the extent such distribution is required under Section
15 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross
16 income; and any other distribution that is reasonably expected to total less than \$200 during the year.
17 Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover
18 distribution merely because the portion consists of after-tax employee contributions that are not
19 includible in gross income. However, such portion may be transferred only (i) to an individual
20 retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to
21 a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code; (ii)
22 on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the
23 Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue
24 Code, that agrees to separately account for amounts so transferred (and earnings thereon), including
25 separately accounting for the portion of the distribution that is includible in gross income and the
26 portion of the distribution that is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA
27 described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition
28 of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or
29 former spouse who is an alternate payee under a qualified domestic relations order, as defined in
30 Section 414(p) of the Internal Revenue Code.

1 (c) “Eligible retirement plan” means any of the following that accepts the distributee’s
2 eligible rollover distribution:

3 (1) An individual retirement account described in Section 408(a) of the Internal
4 Revenue Code.

5 (2) An individual retirement annuity described in Section 408(b) of the Internal
6 Revenue Code.

7 (3) An annuity plan described in Section 403(a) of the Internal Revenue Code,

8 (4) A qualified trust described in Section 401(a) of the Internal Revenue Code,

9 (5) Effective January 1, 2002, an annuity contract described in Section 403(b)
10 of the Internal Revenue Code.

11 (6) Effective January 1, 2002, a plan eligible under Section 457(b) of the Internal
12 Revenue Code that is maintained by a state, political subdivision of a state, or any agency or
13 instrumentality of a state or a political subdivision of a state that agrees to separately account for
14 amounts transferred into that plan from this Plan, or

15 (7) Effective January 1, 2008, a Roth IRA described in Section 408A of the
16 Internal Revenue Code.

17 (d) “Distributee” means an employee or former employee. It also includes the
18 employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse
19 or former spouse who is the alternate payee under a qualified domestic relations order, as defined
20 in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further
21 includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E)
22 of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only
23 to an individual retirement account or individual retirement annuity established for the purpose of
24 receiving the distribution, and the account or annuity will be treated as an “inherited” individual
25 retirement account or annuity.

26 (e) “Direct rollover” means a payment by the plan to the eligible retirement plan
27 specified by the distributee.

28 (f) In the event of a mandatory distribution greater than \$1,000 in accordance with the
29 provisions of Section 2.65.045(b)(5), if the member does not elect to have such distribution paid
30 directly to an eligible retirement plan specified by the member in a direct rollover or to receive the

1 distribution directly in accordance with subsection (a), then the Plan Administrator will pay the
2 distribution in a direct rollover to an individual retirement plan designated by the Plan
3 Administrator.

4 Section 10. That Section 2.65.220 of the Lincoln Municipal Code be amended to
5 read as follows:

6 **2.65.220 Qualified Retirement Plan.**

7 The City intends that the Plan be a qualified governmental plan under Sections 401(a) and
8 414(b) of the Internal Revenue Code, as amended. The Plan shall be administered so as to fulfill
9 this intent, including but not limited to the following:

10 (a) Distributions from the Plan will comply with the requirements of Internal Revenue
11 Code Section 401(a)(8) and regulations thereunder, including that forfeitures of benefits by any
12 member or former member of the Plan will not be applied to increase the benefits that any member
13 would otherwise be entitled to receive under the Plan. However, such forfeitures may be used to
14 reduce employer contributions.

15 (b) A member shall be 100% vested in his or her accumulated contributions at all times.

16 (c) Minimum Distributions. The Plan will pay all benefits in accordance with a good
17 faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the
18 regulations in effect under that section, as applicable to a governmental plan within the meaning of
19 Section 414(d) of the Internal Revenue Code. The Plan is subject to the following provisions:

20 (1) Distribution of a member's benefit must begin by the required beginning date,
21 which is the later of the April 1 following the calendar year in which the member attains age 70 ½
22 or April 1 of the year following the calendar year in which the member terminates. If a member fails
23 to apply for retirement benefits by the later of either of those dates, the Plan shall begin distribution
24 of the monthly benefit as required by this rule in the form of a straight life annuity.

25 (2) The member's entire interest must be distributed over the member's life or
26 the lives of the member and a designated beneficiary, or over a period not extending beyond the life
27 expectancy of the member or of the member and a designated beneficiary.

28 (3) The Plan, pursuant to a qualified domestic relations order, may establish
29 separate benefits for a member and nonmember.

1 (4) If a member dies after the required distribution of benefits has begun, the
2 remaining portion of the member's interest must be distributed at least as rapidly as under the
3 method of distribution before the member's death.

4 (5) If a member dies before required distribution of the member's benefits has
5 begun, the member's entire interest must be either:

6 (i) Distributed (in accordance with federal regulations) over the life or
7 life expectancy of the designated beneficiary, with the distributions beginning no later than
8 December 31 of the calendar year following the calendar year of the member's death, or

9 (ii) Distributed within five years of the member's death.

10 (6) The amount of an annuity paid to a member's beneficiary may not exceed the
11 maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the
12 Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury
13 Regulation Section 1.401(a)(9)-6, Q&A-2.

14 (7) The death and disability benefits provided by the Plan are limited by the
15 incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury
16 Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death
17 or disability benefits payable may not exceed 25% of the cost for all of the members' benefits
18 received from the Plan.

19 (8) Notwithstanding the other provisions of this rule or the provisions of the
20 Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9)
21 of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

22 (d) Compensation Limits

23 (1) Effective with respect to plan years beginning on and after September 1, 1996,
24 and before September 1, 2002, the annual compensation of a plan member which exceeds \$150,000
25 (as adjusted for cost-of-living increases under Section 401(a)(17)(B) of the Internal Revenue Code)
26 shall be disregarded for purposes of computing employee and employer contributions to or benefits
27 due from the Plan. Effective only for the 1996 plan year, in determining the compensation of an
28 employee eligible for consideration under this provision, the rules of Section 414(g)(6) of the
29 Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall

1 include only the spouse of the member and any lineal descendants of the employee who have not
2 attained age 19 before the close of the year.

3 (2) Effective with respect to plan years beginning on and after September 1, 2002,
4 the annual compensation of a plan member which exceeds \$200,000 (as adjusted for cost-of-living
5 increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code) may not be taken
6 into account in determining benefits or contributions due for any plan year. Annual compensation
7 means compensation during the plan year or such other consecutive 12-month period over which
8 compensation is otherwise determined under the plan (the determination period). The cost-of-living
9 adjustment in effect for a calendar year applies to annual compensation for the determination period
10 that begins with or within such calendar year. If the determination period consists of fewer than 12
11 months, the annual compensation limit is an amount equal to the otherwise applicable annual
12 compensation limit multiplied by a fraction, the numerator of which is the number of months in the
13 short determination period, and the denominator of which is 12. If the compensation for any prior
14 determination period is taken into account in determining a plan member's contributions or benefits
15 for the current plan year, the compensation for such prior determination period is subject to the
16 applicable annual compensation limit in effect for that prior period.

17 (e) Veterans' Rights.

18 (1) Effective December 12, 1994, notwithstanding any other provision of the
19 Plan, contributions, benefits and service credit with respect to qualified military service are governed
20 by Section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and
21 Reemployment Rights Act of 1994.

22 (2) Effective with respect to deaths occurring on or after January 1, 2007, while
23 a member is performing qualified military service (as defined in Chapter 43 of Title 38, United
24 States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors
25 of a member, are entitled to any additional benefits that the Plan would provide if the member had
26 resumed employment and then died, such as accelerated vesting or survivor benefits that are
27 contingent on the member's death while employed.

28 (3) Beginning January 1, 2009, to the extent required by Sections 3401(h) and
29 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (while
30 the individual is performing qualified military service (as defined in Chapter 43 of Title 38, United

1 State Code) from an employer shall be treated as employed by that employer and the differential
2 wage payment shall be treated as earned compensation, but contributions attributable to such
3 differential wage payments shall not be made unless and until the member returns to active
4 employment and makes up the missed contributions. This provision shall be applied to all similarly
5 situated individuals in a reasonably equivalent manner.

6 Section 11. That Section 2.66.040 of the Lincoln Municipal Code be amended to
7 read as follows:

8 **2.66.040 Age and Service Retirement Benefits.**

9 (a) Regular age and service retirement benefits. A member who (i) has attained normal
10 retirement age, (ii) completed twenty-one years of service, and (iii) elects to retire from active
11 service shall be entitled to receive regular age and service retirement benefits upon retirement from
12 active duty. Such benefit shall be equal to fifty-four percent of regular pay.

13 (b) Extended age and extended service retirement benefits. A member who (i) has
14 previously become eligible for a regular age and service retirement benefit, (ii) has worked for a
15 period of between 0-60 months after becoming eligible, and (iii) elects to retire from active service
16 shall be entitled to receive an extended age and extended service benefit upon retirement from active
17 duty. Such benefit shall be equal to a regular age and service retirement benefit with the percentage
18 increased by two percent per year for each of a member's years of service after becoming eligible
19 for a regular age and service retirement benefit for a maximum of sixty months or ten percent.

20 (c) Partial annuity benefits. A member who (i) has attained normal retirement age, (ii)
21 completed at least ten years of service, and (iii) elects to retire from active service shall be entitled
22 to receive a partial annuity benefit. Such benefit shall be equal to a regular age and service
23 retirement benefit reduced by multiplying the member's regular age and service retirement benefit
24 by a fraction, the denominator of which is twenty-one and the numerator of which is the number of
25 years of service completed by the member at the date of his or her normal retirement (not to exceed
26 twenty-one).

27 (d) Early retirement benefit. A member who (i) has attained age fifty, (ii) completed at
28 least twenty-one years of service, and (iii) elects to retire from active service shall be entitled to
29 receive an early retirement benefit. Such benefit shall be based on the following:

30 The early retirement benefit shall be equal to:

31 at age 50 and 21 years of service = 48%

32 at age 51 and 21 years of service = 50%

33 at age 52 and 21 years of service = 52%

34 The pension of a member whose age, on the date of retirement, exceeds an otherwise
35 applicable age and service level as set forth above will be increased by an amount equalling two
36 percent of regular pay times a fraction, the denominator of which is 365 and the numerator of which
37 is the number of days by which the member's age exceeds the otherwise applicable age and service
38 level.

39 (e) Benefit payments shall commence no later than April 1 of the calendar year following
40 the later of (i) the calendar year in which the member attains age 70 1/2 or (ii) the calendar year in

1 ~~which the member's employment with the City terminates. will comply with applicable provisions~~
2 ~~of Section 2.66.200.~~

3 Section 12. That Section 2.66.050 of the Lincoln Municipal Code be amended to
4 read as follows:

5 **2.66.050 Pension Payment Options; Survivorship Options; Beneficiary Designation.**

6 (a) On or prior to the effective date of a member's retirement, but not thereafter, any member
7 may elect, by written notice filed with the City, to receive:

8 (1) An annuity commensurate with the applicable age and service retirement
9 benefit; or

10 (2) A lump sum distribution of such member's contributions plus regular interest
11 to the date of disbursement of funds and a reduced annuity, equal to the annuity which would
12 otherwise have commenced upon retirement reduced by the portion of such benefits that are
13 actuarially equivalent to the amount of the contributions and interest withdrawn.

14 (b) On or prior to the effective date of a member's retirement, but not thereafter, any
15 member may elect, by written notice filed with the City, to receive the annuity provided for in (a)
16 above as a straight life annuity, or to receive the actuarial equivalent of a straight life annuity
17 throughout his or her life, reduced actuarially to reflect the selection of Option 1 or Option 2 below,
18 and designate a survivor beneficiary, having an insurable interest, to receive either of the following
19 two survivorship options:

20 (1) Option 1. Upon the member's death, an amount equal to the member's annuity
21 shall be payable to the survivor beneficiary for the remainder of his or her life.

22 (2) Option 2. Upon the member's death, an amount equal to one-half of the
23 member's annuity shall be payable to the survivor beneficiary for the remainder of his or her life.

24 (c) Any election or designation made by a member under this section may be revoked
25 or changed by the member without the consent of any other person, or a new election or designation
26 may be substituted by the member as long as he or she may desire, but not later than the date of
27 retirement.

28 (d) Distributions will comply with applicable ~~requirements of Section 401(a)(9) of the~~
29 ~~Internal Revenue Code~~ provisions of Section 2.66.200.

30 Section 13. That Section 2.66.055 of the Lincoln Municipal Code be amended to
31 read as follows:

32 **2.66.055 Limitations of Benefits.**

33 ~~The benefits payable to a member from this Plan by City contributions shall be subject to the~~
34 ~~limitations of Internal Revenue Code Section 415 in accordance with subsections (a) and (b) below:~~

35 ~~— (a) — Any annual pension payable to a member of the defined benefit plan shall not exceed~~
36 ~~the amount specified under Internal Revenue Code Section 415(b), specifically the lesser of:~~

37 ~~— (1) — One hundred forty thousand dollars (\$140,000) adjusted for increases in the~~
38 ~~cost of living as prescribed by the Secretary of the Treasury or his delegate effective January 1 of~~
39 ~~each calendar year. The dollar limitation described in this subsection will not be reduced if a~~
40 ~~member retires before Social Security retirement age in accordance with the provisions of Internal~~

1 Revenue Code Section 415(b)(2)(G) which exempts police and fire personnel from the reduction in
2 the dollar limitation described in this subsection; or

3 ~~————— (2) ——— One hundred percent (100%) of the employee's average earnings for the three
4 consecutive calendar years while a member in the Plan in which his earnings were the highest.
5 Effective for years after December 31, 1994, the salary limitations described by this subsection do
6 not apply to governmental plans as defined by Internal Revenue Code Section 414(d).~~

7 ~~————— (b) ——— Any optional DROP contributions made to the DROP account shall constitute annual
8 additions as defined by Treas. Reg. Section 1.415-6(b)(1) and shall be subject to the limitations of
9 Internal Revenue Code Section 415(c) and shall not exceed the lesser of:~~

10 ~~————— (1) ——— Thirty thousand dollars (\$30,000) adjusted for increases in the cost of living
11 as prescribed by the Secretary of the Treasury or his delegate, or~~

12 ~~————— (2) ——— Twenty-five percent (25%) of the member's compensation for the limitation
13 year.~~

14 ~~————— The term annual additions as defined by Treas. Reg. Section 1.415-6(b)(1) and for purposes
15 of this section, shall mean the sum credited to a participant's account for any limitation year of
16 employee contributions, employer contributions, and forfeitures.~~

17 ~~————— (c) ——— DROP account assets attributable to eligible pension benefit payments deposited in
18 the DROP account shall constitute a transfer from one qualified plan to another and will not be
19 considered annual additions as described in subsection (b) of this section. Such transfers are
20 excluded from the definition of annual additions as provided by Treas. Reg. Section 1.415-6(b)(2).
21 Such transfers shall be subject to the limitations imposed by Internal Revenue Code Section 415(b)
22 before the transfer occurs.—~~

23 (a) Notwithstanding any other provisions of the Plan to the contrary, the member
24 contributions paid to and retirement benefits paid from the Plan shall be limited to such extent as
25 may be necessary to conform to the requirements of Section 415 of the Internal Revenue Code for
26 a qualified pension plan.

27 (b) Participation in Other Qualified Plans: Aggregation of Limits.

28 (1) The 415(b) limit with respect to any member who at any time has been a
29 member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code
30 maintained by the City in this Plan shall apply as if the total benefits payable under all such defined
31 benefit plans in which the member has been a member were payable from one plan.

32 (2) The 415(c) limit with respect to any member who at any time has been a
33 member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue
34 Code maintained by the City in this Plan shall apply as if the total annual additions under all such
35 defined contribution plans in which the member has been a member were payable from one plan.

36 (c) Basic 415(b) Limitation.

1 (1) Before January 1, 1995, a member may not receive an annual benefit that
2 exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable
3 adjustments in that Section. On and after January 1, 1995, a member may not receive an annual
4 benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue
5 Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and
6 subject to any additional limits that may be specified in the Plan. In no event shall a member's
7 benefit payable under the plan in any limitation year be greater than the limit applicable at the
8 annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal
9 Revenue Code and the regulations thereunder.

10 (2) For purposes of Section 415(b) of the Internal Revenue Code, the "annual
11 benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary
12 benefits) without regard to the benefit attributable to after-tax employee contributions (except
13 pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined
14 in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be
15 determined in accordance with Treasury Regulations.

16 (d) Adjustments to Basic 415(b) Limitation for Form of Benefit. If the benefit under the
17 Plan is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that
18 it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

19 (1) If the form of benefit without regard to the automatic benefit increase feature
20 is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence
21 is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the
22 annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined
23 using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into
24 account the additional benefits under the form of benefit as follows:

25 (2) For a benefit paid in a form to which Section 417(e)(3) of the Internal
26 Revenue Code does not apply [a monthly benefit], the actuarially equivalent straight life annuity
27 benefit that is the greater of (or the reduced Limit applicable at the annuity starting date which is the
28 "lesser of" when adjusted in accordance with the following assumptions):

1 (i) The annual amount of the straight life annuity (if any) payable to the
2 member under the plan commencing at the same annuity starting date as the form of benefit to the
3 member, or

4 (ii) The annual amount of the straight life annuity commencing at the
5 same annuity starting date that has the same actuarial present value as the form of benefit payable
6 to the member, computed using a 5% interest assumption (or the applicable statutory interest
7 assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in
8 Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue
9 Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after
10 December 31, 2008, the applicable mortality tables described in Internal Revenue Code Section
11 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing
12 Internal Revenue Code Section 417(e)(3)(B)); or

13 (iii) For a benefit paid in a form to which Section 417(e)(3) of the Internal
14 Revenue Code applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit
15 that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable
16 at the annuity starting date which is the “least of” when adjusted in accordance with the following
17 assumptions:

18 A. The annual amount of the straight life annuity commencing
19 at the annuity starting date that has the same actuarial present value as the particular form of benefit
20 payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan
21 for actuarial experience;

22 B. The annual amount of the straight life annuity commencing
23 at the annuity starting date that has the same actuarial present value as the particular form of benefit
24 payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest
25 assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in
26 Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue
27 Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after
28 December 31, 2008, the applicable mortality tables described in Internal Revenue Code Section
29 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing
30 Internal Revenue Code Section 417(e)(3)(B)); or

1 C. The annual amount of the straight life annuity commencing
2 at the annuity starting date that has the same actuarial present value as the particular form of benefit
3 payable (computed using the applicable interest rate for the distribution under Treasury Regulation
4 Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1 2007, using the rate in effect
5 for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the
6 first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1,
7 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2)
8 (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions
9 of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality
10 tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent
11 Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)),
12 divided by 1.05.

13 (e) Benefits Not Taken into Account for 415(b) Limitation. For purposes of this section,
14 the following benefits shall not be taken into account in applying these limits:

15 (1) Any ancillary benefit which is not directly related to retirement income
16 benefits;

17 (2) That portion of any joint and survivor annuity that constitutes a qualified joint
18 and survivor annuity;

19 (3) Any other benefit not required under Section 415(b)(2) of the Internal
20 Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the
21 limitation of Section 415(b)(1) of the Internal Revenue Code.

22 (f) Other Adjustments in 415(b) Limitation.

23 (1) In the event the member's retirement benefits become payable before age
24 sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury
25 Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such
26 limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit
27 begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) (as adjusted) annual
28 benefit beginning at age sixty-two (62).

1 (2) In the event the member’s benefit is based on at least fifteen (15) years of
2 service as a full-time employee of any police or fire department or on fifteen (15) years of military
3 service, the adjustments provided for in (1) above shall not apply.

4 (3) The reductions provided for in (1) above shall not be applicable to
5 pre-retirement disability benefits or pre-retirement death benefits.

6 (g) Less than Ten Years of Service Adjustment for 415(b) Limitations. The maximum
7 retirement benefits payable to any member who has completed less than ten years of service shall
8 be the amount determined under subsection (c) multiplied by a fraction, the numerator of which is
9 the number of the member’s years of service and the denominator of which is ten. The reduction
10 provided by this subsection cannot reduce the maximum benefit below 10%. The reduction
11 provided for in this subsection shall not be applicable to pre-retirement disability benefits or
12 pre-retirement death benefits.

13 (h) \$10,000 Limit. Notwithstanding the foregoing, the retirement benefit payable with
14 respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect
15 to such member under this plan and under all other qualified defined benefit pension plans to which
16 the member’s employer contributes, do not exceed \$10,000 for the applicable limitation year and
17 for any prior limitation year and the employer has not any time maintained a qualified defined
18 contribution plan in which the member participated.

19 (i) Effect of COLA without a Lump Sum Component on 415(b) Testing. Effective on
20 and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal
21 Revenue Code (the “Limit”) to a member with no lump sum benefit, the following will apply:

22 (1) A member’s applicable Limit will be applied to the member’s annual benefit
23 in the member’s first limitation year without regard to any cost of living adjustments under Section
24 2.66.107;

25 (2) To the extent that the member’s annual benefit equals or exceeds the Limit,
26 the member will no longer be eligible for cost of living increases until such time as the benefit plus
27 the accumulated increases are less than the Limit; and

28 (3) Thereafter, in any subsequent limitation year, a member’s annual benefit,
29 including any cost of living increases under Section 2.66.107, shall be tested under the then
30 applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal

1 Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations
2 thereunder.

3 (j) Effect of COLA with a Lump Sum Component on 415(b) Testing. On and after
4 January 1, 2009, with respect to a member who receives a portion of the member's annual benefit
5 in a lump sum (a DROP lump sum), a member's applicable Limit will be applied taking into
6 consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code
7 and applicable Treasury Regulations.

8 (k) Section 415(c) limitations on contributions and other additions. After-tax member
9 contributions or other annual additions with respect to a member may not exceed the lesser of
10 \$40,000 (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or 100% of the
11 member's compensation.

12 (1) Annual additions are defined to mean the sum (for any year) of employer
13 contributions to a defined contribution plan, member contributions, and forfeitures credited to a
14 member's individual account. Member contributions are determined without regard to rollover
15 contributions and to picked-up employee contributions that are paid to a defined benefit plan.

16 (2) For purposes of applying Section 415(c) of the Internal Revenue Code and
17 for no other purpose, the definition of compensation where applicable will be compensation actually
18 paid or made available during a limitation year, except as noted below and as permitted by Treasury
19 Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member
20 contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as
21 compensation.

22 (3) Compensation will be defined as wages within the meaning of Section
23 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by
24 an employer for which the employer is required to furnish the employee a written statement under
25 Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without
26 regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration
27 included in wages based on the nature or location of the employment or the services performed (such
28 as the exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).

29 (i) However, for limitation years beginning after December 31, 1997,
30 compensation will also include amounts that would otherwise be included in compensation but for

1 an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue
2 Code. For limitation years beginning after December 31, 2000, compensation shall also include any
3 elective amounts that are not includible in the gross income of the member by reason of Section
4 132(f)(4) of the Internal Revenue Code.

5 (ii) For limitation years beginning on and after January 1, 2008,
6 compensation for the limitation year shall also include compensation paid by the later of 2½ months
7 after a member's severance from employment or the end of the limitation year that includes the date
8 of the member's severance from employment if:

9 A. The payment is regular compensation for services during the
10 member's regular working hours, or compensation for services outside the member's regular
11 working hours (such as overtime or shift differential), commissions, bonuses or other similar
12 payments, and, absent a severance from employment, the payments would have been paid to the
13 member while the member continued in employment with the employer; or

14 B. The payment is for unused accrued bona fide sick, vacation
15 or other leave that the member would have been able to use if employment had continued; or

16 C. Payments pursuant to a nonqualified unfunded deferred
17 compensation plan, but only if the payments would have been paid to the member at the same time
18 if the member had continued employment with the employer and only to the extent that the payment
19 is includible in the member's gross income.

20 Any payments not described in paragraph (ii) above are not considered compensation
21 if paid after severance from employment, even if they are paid within two and one-half (2½) months
22 following severance from employment, except for payments to the individual who does not currently
23 perform services for the employer by reason of qualified military service (within the meaning of
24 Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the
25 amounts the individual would have received if the individual had continued to perform services for
26 the employer rather than entering qualified military service.

27 An employee who is in qualified military service (within the meaning of Section
28 414(u)(1) of the Internal Revenue Code) shall be treated as receiving compensation from the
29 employer during such period of qualified military service equal to (i) the compensation the employee
30 would have received during such period if the employee were not in qualified military service,

1 determined based on the rate of pay the employee would have received from the employer but for
2 the absence during the period of qualified military service, or (ii) if the compensation the employee
3 would have received during such period was not reasonably certain, the employee’s average
4 compensation from the employer during the twelve month period immediately preceding the
5 qualified military service (or, if shorter, the period of employment immediately preceding the
6 qualified military service).

7 (iii) Back pay, within the meaning of Treasury Regulation Section
8 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay
9 relates to the extent the back pay represents wages and compensation that would otherwise be
10 included under this definition.

11 (iv) For limitation years beginning on or after January 1, 2008, a member’s
12 compensation for purposes of subsection (k) shall not exceed the annual limit under Section
13 401(a)(17) of the Internal Revenue Code.

14 (l) Service Purchases under Section 415(n). Effective for permissive service credit
15 contributions made in limitation years beginning after December 31, 1997, if a member makes one
16 or more contributions to purchase permissive service credit under the plan, then the requirements
17 of Section 415(n) of the Internal Revenue Code will be treated as met only if:

18 (1) The requirements of Section 415(b) of the Internal Revenue Code are met,
19 determined by treating the accrued benefit derived from all such contributions as an annual benefit
20 for purposes of Section 415(b) of the Internal Revenue Code, or

21 (2) The requirements of Section 415(c) of the Internal Revenue Code are met,
22 determined by treating all such contributions as annual additions for purposes of Section 415(c) of
23 the Internal Revenue Code.

24 (3) For purposes of applying this section, the Plan will not fail to meet the
25 reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this
26 subparagraph and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the
27 Internal Revenue Code solely by reason of this section.

28 (4) For purposes of this section the term “permissive service credit” means
29 service credit-

1 (i) recognized by the Plan for purposes of calculating a member's benefit
2 under the Plan,

3 (ii) which such member has not received under the Plan, and

4 (iii) which such member may receive only by making a voluntary
5 additional contribution, in an amount determined under the Plan, which does not exceed the amount
6 necessary to fund the benefit attributable to such service credit.

7 Effective for permissive service credit contributions made in limitation years beginning after
8 December 31, 1997, such term may include service credit for periods for which there is no
9 performance of service, and, notwithstanding clause (B), may include service credited in order to
10 provide an increased benefit for service credit which a member is receiving under the Plan.

11 (5) The Plan will fail to meet the requirements of this section if-

12 (i) more than five years of nonqualified service credit are taken into
13 account for purposes of this subparagraph, or

14 (ii) any nonqualified service credit is taken into account under this
15 paragraph before the member has at least five years of participation under the Plan.

16 (6) For purposes of paragraph (5) effective for permissive service credit
17 contributions made in limitation years beginning after December 31, 1997, the term "nonqualified
18 service credit" means permissive service credit other than that allowed with respect to-

19 (i) service (including parental, medical, sabbatical, and similar leave) as
20 an employee of the Government of the United States, any State or political subdivision thereof, or
21 any agency or instrumentality of any of the foregoing (other than military service or service for
22 credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal
23 Revenue Code),

24 (ii) service (including parental, medical, sabbatical, and similar leave) as
25 an employee (other than as an employee described in clause (A)) of an education organization
26 described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or
27 sectarian school which provides elementary or secondary education (through grade 12), or a
28 comparable level of education, as determined under the applicable law of the jurisdiction in which
29 the service was performed,

1 (iii) service as an employee of an association of employees who are
2 described in clause (A), or

3 (iv) military service (other than qualified military service under Section
4 414(u) of the Internal Revenue Code) recognized by the Plan.

5 In the case of service described in clause (i), (ii), or (iii), such service will be
6 nonqualified service if recognition of such service would cause a member to receive a retirement
7 benefit for the same service under more than one plan.

8 (7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which
9 Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal
10 Revenue Code applies (without regard to whether the transfer is made between plans maintained by
11 the same employer)-

12 (i) the limitations of paragraph (5) will not apply in determining whether
13 the transfer is for the purchase of permissive service credit, and

14 (ii) the distribution rules applicable under federal law to the Plan will
15 apply to such amounts and any benefits attributable to such amounts.

16 (8) For an eligible member, the limitation of Section 415(c)(1) of the Internal
17 Revenue Code shall not be applied to reduce the amount of permissive service credit which may be
18 purchased to an amount less than the amount which was allowed to be purchased under the terms
19 of a plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an
20 individual who first became a member in the Plan before January 1, 1998.

21 (m) Modification of Contributions for 415(c) and 415(n) Purposes. Notwithstanding any
22 other provision of law to the contrary, the Plan Administrator may modify a request by a member
23 to make a contribution to the Plan if the amount of the contribution would exceed the limits provided
24 in Section 415 of the Internal Revenue Code by using the following methods:

25 (1) If the law requires a lump sum payment for the purchase of service credit, the
26 Plan Administrator may establish a periodic payment plan for the member to avoid a contribution
27 in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.

28 (2) If payment pursuant to subparagraph (1) will not avoid a contribution in
29 excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the Plan

1 Administrator may either reduce the member's contribution to an amount within the limits of those
2 sections or refuse the member's contribution.

3 (n) Repayments of Cashouts. Any repayment of contributions (including interest
4 thereon) to the Plan with respect to an amount previously refunded upon a forfeiture of service credit
5 under the Plan or another governmental plan maintained by the City shall not be taken into account
6 for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury
7 Regulations.

8 (o) Reduction of Benefits Priority. Reduction of benefits and/or contributions to all
9 plans, where required, shall be accomplished by first reducing the member's benefit under any
10 defined benefit plans in which the member participated, such reduction to be made first with respect
11 to the plan in which the member most recently accrued benefits and thereafter in such priority as
12 shall be determined by the plan and the plan administrator of such other plans, and next, by reducing
13 or allocating excess forfeitures for defined contribution plans in which the member participated,
14 such reduction to be made first with respect to the plan in which the member most recently accrued
15 benefits and thereafter in such priority as shall be established by the plan and the plan administrator
16 for such other plans provided, however, that necessary reductions may be made in a different manner
17 and priority pursuant to the agreement of the plan and the plan administrator of all other plans
18 covering such member.

19 Section 14. That Section 2.66.095 of the Lincoln Municipal Code be amended to
20 read as follows:

21 **2.66.095 Trustee to Trustee Transfer.**

22 ~~A member may elect to have any eligible rollover distribution to which such member is~~
23 ~~entitled paid directly to an eligible retirement plan provided that such member specifies in writing~~
24 ~~to the Plan Administrator the specific eligible retirement plan to which such distribution is to be paid~~
25 ~~at any time prior to the member receiving such distribution. For purposes of this subsection, the~~
26 ~~terms "eligible rollover distribution" and "eligible retirement plan" shall have the definitions as~~
27 ~~provided for such terms in 26 U.S.C. (a)(31)(C) and (D), respectively. Such distribution shall be~~
28 ~~made in the form of a direct trustee to trustee transfer to the eligible retirement plan so specified;~~
29 ~~provided, however, the City shall take no responsibility for evaluating whether or not the retirement~~
30 ~~plan specified by the member is in fact an eligible retirement plan.~~

31 (a) For purposes of the Plan and compliance with Section 401(a)(31) of the Internal
32 Revenue Code, this section applies notwithstanding any contrary provision or retirement law that
33 would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time

1 and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover
2 distribution paid directly to an eligible retirement plan specified by the distributee in a direct
3 rollover.

4 (b) “Eligible rollover distribution” means any distribution of all or any portion of the
5 balance to the credit of the distributee, except that an eligible rollover distribution does not include:
6 any distribution that is one of a series of substantially equal periodic payments (not less frequently
7 than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint
8 life expectancies) of the distributee and the distributee’s designated beneficiary, or for a specified
9 period of ten years or more; any distribution to the extent such distribution is required under Section
10 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross
11 income; and any other distribution that is reasonably expected to total less than \$200 during the year.
12 Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover
13 distribution merely because the portion consists of after-tax employee contributions that are not
14 includible in gross income. However, such portion may be transferred only (i) to an individual
15 retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to
16 a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code; (ii)
17 on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the
18 Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue
19 Code, that agrees to separately account for amounts so transferred (and earnings thereon), including
20 separately accounting for the portion of the distribution that is includible in gross income and the
21 portion of the distribution that is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA
22 described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition
23 of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or
24 former spouse who is an alternate payee under a qualified domestic relations order, as defined in
25 Section 414(p) of the Internal Revenue Code.

26 (c) “Eligible retirement plan” means any of the following that accepts the distributee’s
27 eligible rollover distribution:

28 (1) An individual retirement account described in Section 408(a) of the Internal
29 Revenue Code.

1 (2) An individual retirement annuity described in Section 408(b) of the Internal
2 Revenue Code.

3 (3) An annuity plan described in Section 403(a) of the Internal Revenue Code,

4 (4) A qualified trust described in Section 401(a) of the Internal Revenue Code,

5 (5) Effective January 1, 2002, an annuity contract described in Section 403(b)
6 of the Internal Revenue Code,

7 (6) Effective January 1, 2002, a plan eligible under Section 457(b) of the Internal
8 Revenue Code that is maintained by a state, political subdivision of a state, or any agency or
9 instrumentality of a state or a political subdivision of a state that agrees to separately account for
10 amounts transferred into that plan from this Plan, or

11 (7) Effective January 1, 2008, a Roth IRA described in Section 408A of the
12 Internal Revenue Code.

13 (d) “Distributee” means an employee or former employee. It also includes the
14 employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse
15 or former spouse who is the alternate payee under a qualified domestic relations order, as defined
16 in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further
17 includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E)
18 of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only
19 to an individual retirement account or individual retirement annuity established for the purpose of
20 receiving the distribution, and the account or annuity will be treated as an “inherited” individual
21 retirement account or annuity.

22 (e) “Direct rollover” means a payment by the plan to the eligible retirement plan
23 specified by the distributee.

24 (f) In the event of a mandatory distribution greater than \$1,000 in accordance with the
25 provisions of Section 2.66.045(b)(5), if the member does not elect to have such distribution paid
26 directly to an eligible retirement plan specified by the member in a direct rollover or to receive the
27 distribution directly in accordance with subsection (a), then the Plan Administrator will pay the
28 distribution in a direct rollover to an individual retirement plan designated by the Plan
29 Administrator.

1 Section 15. That Section 2.66.200 of the Lincoln Municipal Code be amended to
2 read as follows:

3 **2.66.200 Qualified Retirement Plan.**

4 The City intends that the Plan be a qualified governmental plan under Sections 401(a) and
5 414(d) of the Internal Revenue Code, as amended. The Plan shall be administered so as to fulfill
6 this intent, including but not limited to the following:

7 (a) Distributions from the Plan will comply with the requirements of Internal Revenue
8 Code Section 401(a)(8) and regulations thereunder, including that forfeitures of benefits by any
9 member or former member of the Plan will not be applied to increase the benefits that any member
10 would otherwise be entitled to receive under the Plan. However, such forfeitures may be used to
11 reduce employer contributions.

12 (b) A member shall be 100% vested in his or her accumulated contributions at all times.

13 (c) Minimum Distributions. The Plan will pay all benefits in accordance with a good
14 faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the
15 regulations in effect under that section, as applicable to a governmental plan within the meaning of
16 Section 414(d) of the Internal Revenue Code. The Plan is subject to the following provisions:

17 (1) Distribution of a member's benefit must begin by the required beginning date,
18 which is the later of the April 1 following the calendar year in which the member attains age 70 ½
19 or April 1 of the year following the calendar year in which the member terminates. If a member fails
20 to apply for retirement benefits by the later of either of those dates, the Plan shall begin distribution
21 of the monthly benefit as required by this rule in the form of a straight life annuity.

22 (2) The member's entire interest must be distributed over the member's life or
23 the lives of the member and a designated beneficiary, or over a period not extending beyond the life
24 expectancy of the member or of the member and a designated beneficiary.

25 (3) The Plan, pursuant to a qualified domestic relations order, may establish
26 separate benefits for a member and nonmember.

27 (4) If a member dies after the required distribution of benefits has begun, the
28 remaining portion of the member's interest must be distributed at least as rapidly as under the
29 method of distribution before the member's death.

1 (5) If a member dies before required distribution of the member's benefits has
2 begun, the member's entire interest must be either:

3 (i) Distributed (in accordance with federal regulations) over the life or
4 life expectancy of the designated beneficiary, with the distributions beginning no later than
5 December 31 of the calendar year following the calendar year of the member's death, or

6 (ii) Distributed within five years of the member's death.

7 (6) The amount of an annuity paid to a member's beneficiary may not exceed the
8 maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the
9 Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury
10 Regulation Section 1.401(a)(9)-6, Q&A-2.

11 (7) The death and disability benefits provided by the Plan are limited by the
12 incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury
13 Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death
14 or disability benefits payable may not exceed 25% of the cost for all of the members' benefits
15 received from the Plan.

16 (8) Notwithstanding the other provisions of this rule or the provisions of the
17 Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9)
18 of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

19 (d) Compensation Limits

20 (1) Effective with respect to plan years beginning on and after September 1, 1996,
21 and before September 1, 2002, the annual compensation of a plan member which exceeds \$150,000
22 (as adjusted for cost-of-living increases under Section 401(a)(17)(B) of the Internal Revenue Code)
23 shall be disregarded for purposes of computing employee and employer contributions to or benefits
24 due from the Plan. Effective only for the 1996 plan year, in determining the compensation of an
25 employee eligible for consideration under this provision, the rules of Section 414(g)(6) of the
26 Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall
27 include only the spouse of the member and any lineal descendants of the employee who have not
28 attained age 19 before the close of the year.

29 (2) Effective with respect to plan years beginning on and after September 1, 2002,
30 the annual compensation of a plan member which exceeds \$200,000 (as adjusted for cost-of-living

1 increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code) may not be taken
2 into account in determining benefits or contributions due for any plan year. Annual compensation
3 means compensation during the plan year or such other consecutive 12-month period over which
4 compensation is otherwise determined under the plan (the determination period). The cost-of-living
5 adjustment in effect for a calendar year applies to annual compensation for the determination period
6 that begins with or within such calendar year. If the determination period consists of fewer than 12
7 months, the annual compensation limit is an amount equal to the otherwise applicable annual
8 compensation limit multiplied by a fraction, the numerator of which is the number of months in the
9 short determination period, and the denominator of which is 12. If the compensation for any prior
10 determination period is taken into account in determining a plan member's contributions or benefits
11 for the current plan year, the compensation for such prior determination period is subject to the
12 applicable annual compensation limit in effect for that prior period.

13 (e) Veterans' Rights.

14 (1) Effective December 12, 1994, notwithstanding any other provision of the
15 Plan, contributions, benefits and service credit with respect to qualified military service are governed
16 by Section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and
17 Reemployment Rights Act of 1994.

18 (2) Effective with respect to deaths occurring on or after January 1, 2007, while
19 a member is performing qualified military service (as defined in Chapter 43 of Title 38, United
20 States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors
21 of a member, are entitled to any additional benefits that the Plan would provide if the member had
22 resumed employment and then died, such as accelerated vesting or survivor benefits that are
23 contingent on the member's death while employed.

24 (3) Beginning January 1, 2009, to the extent required by Sections 3401(h) and
25 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (while
26 the individual is performing qualified military service (as defined in Chapter 43 of Title 38, United
27 State Code) from an employer shall be treated as employed by that employer and the differential
28 wage payment shall be treated as earned compensation, but contributions attributable to such
29 differential wage payments shall not be made unless and until the member returns to active

1 employment and makes up the missed contributions. This provision shall be applied to all similarly
2 situated individuals in a reasonably equivalent manner.

3 Section 16. That Sections 2.62.040, 2.62.050, 2.62.055, 2.62.120, 2.62.230, 2.65.040,
4 2.65.050, 2.65.055, 2.65.120, 2.65.220, 2.66.040, 2.66.050, 2.66.055, 2.66.095, 2.66.200 of the
5 Lincoln Municipal Code as hitherto existing be and the same are hereby repealed.

6 Section 17. Pursuant to Article VII, Section 7 of the City Charter, this ordinance
7 shall be posted on the official bulletin board of the City, located on the wall adjoining the City
8 Clerk's office at 555 S. 10th Street, in lieu of and in place of newspaper publication with notice of
9 passage and such posting to be given by publication one time in the official newspaper by the City
10 Clerk. This ordinance shall take effect and be in force from and after its passage and publication
11 as herein and in the City Charter provided.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2009: _____ Mayor
