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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE CODE OF ORDINANCES OF THE CITY BY AMENDING CHAPTER 39: PERSONNEL REGULATIONS AND BENEFITS; RETIREMENT AND PENSIONS.

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

Section 1. Authorization to implement changes to Chapter 39 outlined within this Ordinance.

The 401(h) group health insurance fund under the city of Sioux Falls Employee's Retirement System, pursuant to the city of Sioux Falls Code of Ordinances ("Sioux Falls Code") § 39.258, is hereby terminated effective December 31, 2016. After the satisfaction of all liabilities under the 401(h) group health insurance fund as of its termination, any remaining assets shall revert to the city and be deposited in the city health/life benefit internal service fund (the "reverted balance").

The 401(h) group health insurance fund under the city of Sioux Falls Firefighters' Pension Fund, pursuant to Sioux Falls Code § 39.342, is hereby terminated effective December 31, 2016. After the satisfaction of all liabilities under the 401(h) group health insurance fund as of its termination, any remaining assets shall revert to the city and be deposited in the city health/life benefit internal service fund (the "reverted balance").

On January 1, 2017, or as soon thereafter as feasible, the city shall transfer an actuarially determined amount of the reverted balance sufficient to pay required retiree health care benefits from the city health/life benefit internal service fund to the city of Sioux Falls Other Post-Employment Benefits (OPEB) 115 Trust Fund, which has been established to fund retiree health care benefits as of January 1, 2017, as provided under the Sioux Falls Code for eligible retirees of the city of Sioux Falls Employees' Retirement System and for eligible retirees of the city of Sioux Falls Firefighters' Pension Fund.

On January 1, 2017, or as soon thereafter as feasible, the city shall transfer from the city health/life benefit internal service fund the entire remaining reverted balance to the city of Sioux Falls Employees' Retirement System and the city of Sioux Falls Firefighters' Pension Fund. The amount so transferred shall be allocated between the Employees' Retirement System and the Firefighters' Pension Fund in proportion to the amounts reverted to the city as a result of terminating the two 401(h) group health insurance funds and after deducting the amount contributed to the city of Sioux Falls OPEB 115 Trust Fund.

The city is authorized to take all necessary actions to effectuate the transactions described in this ordinance, including, but not limited to, the maintenance of separate sub-trusts or accounts in the applicable trust fund.

Section 2. That the Code of Ordinances of Sioux Falls, SD, are hereby amended by adding a section to be numbered 39.006 to read:

General Provisions

§ 39.006 IRREVOCABLE 115 TRUST ESTABLISHED.

The city of Sioux Falls Other Post Employment Benefits (OPEB) 115 Trust Fund Agreement established in this chapter effective January 1, 2017, shall be irrevocable and shall conform to all applicable sections of the Internal Revenue Code, the statement and purpose of this section, and all ordinances, rules, regulations interpreting the foregoing provisions.

The 115 Trust shall consist of city contributions and may contain employee contributions. The 115 Trust shall be used as a funding vehicle whereby the trustee of the 115 Trust will accept contributions to the 115 Trust for holding and administration. The trustee will: (i) hold, invest, and reinvest the 115 Trust, and (ii) pay benefits from the 115 Trust solely to provide health and welfare benefits to retirees and eligible spouses and dependents of retirees entitled to health coverage under this chapter.

The 115 Trust provides that in no event will Trust assets be distributed to or revert to any entity that is not a state, a political subdivision of a state, or an entity whose income is excluded from gross income under section 115 of the Internal Revenue Code. Contributions to fund the benefits under the 115 Trust shall be designated by the city. None of the contributions are elective or discretionary, directly or indirectly. The amount of the contributions is established by the city and is not subject to any election of the employees.

Section 3. That Section 39.220 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

Employee's Retirement System; Generally

§ 39.220 DEFINITIONS.

For the purposes of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCUMULATED CONTRIBUTIONS. The sum of all amounts deducted from the compensation of a member and credited to his or her individual accumulated contributions account, together with regular interest thereon.

ANNUITY. An annual amount, derived from a member's accumulated contributions, payable in equal monthly installments throughout the future life of a person, or for a temporary period.

BENEFICIARY. Any person, except a retirant, who is in receipt of, or who is designated to receive, a retirement allowance or other benefit payable by the retirement system.

BOARD OF TRUSTEES or BOARD. The board of trustees provided in this subchapter.

CHILD. An eligible child who is an unmarried child under age 18, born to or legally adopted by the member.

COMPENSATION. A member's regular salary or wages paid to the member by the city for personal services rendered to the city. If a member's **COMPENSATION** is not all paid in money, the council shall fix the value of the portion of **COMPENSATION** that is not paid in money. In determining regular salary or wages paid, persons receiving workers' compensation or payments in lieu of sick leave shall be treated as if they had not received workers' compensation payments or payments in lieu of sick leave but had been paid their regular salary or wages during the period of time under consideration.

CREDITED SERVICE. The number of years and months of service standing to a member's credit.

ELIGIBLE HANDICAPPED CHILD.

- (1) An unmarried, dependent child born to or legally adopted by the member, irrespective of age, including any child for whom an application is currently pending, and for which the board is provided medical proof that the child is permanently unable to hold fully self-supporting gainful employment because of mental or physical disability. Whether the child is dependent shall be determined in the discretion of the board on an individual basis. Factors which may be considered in determining dependency include, but are not limited to:
 - A. Whether the child is claimed as a dependent on another person's federal income tax return; and
 - B. Whether, and the extent to which, the child receives economic, social or other living assistance.
- (2) The board shall decide in each individual case how often to require confirming medical proof of handicapped or evidence of dependency for continuation of benefits.

EMPLOYER. The city of Sioux Falls.

FINAL AVERAGE PAY.

- (1) As it applies to all members, means the average of the highest annual compensation paid during any three consecutive years of credited service, selected by the member, contained within the ten years of credited service immediately preceding the date employment with the city last terminates. If a member has less than three years of credited service, **FINAL AVERAGE PAY** shall be the average of the annual rates of compensation for the total period of service of the member. For any year chosen, that year's annual compensation shall include sick leave payments and vacation payments, if received in that year, but shall not include payments for mileage reimbursement, car allowance, clothing allowance and other incidental payments.
- (2) Notwithstanding any provision to the contrary, the annual compensation of each member taken into account in determining the **FINAL AVERAGE PAY** used to determine benefit accruals in any calendar year beginning after December 31, 2003, shall not exceed \$205,000. The \$205,000 limit on annual compensation shall be adjusted for cost-of-living

increases in accordance with § 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within the calendar year.

FINAL PAY. A member's annual rate of compensation at the time his or her employment with the city last terminates.

GENERAL MEMBER. Any member except a police officer member or a firefighter member.

INTERNAL REVENUE CODE.

- (a) All references to the Internal Revenue Code mean the Internal Revenue Code of 1986, as amended.
- (b) The plan year is the fiscal year commencing January 1 and ending December 31.
- (c) For 415 testing purposes, the limitation year is the calendar year.

MANAGEMENT MEMBER. Any member who is elected as mayor, appointed or employed by the city as an appointive officer, or manager of the city, but shall not include temporary employees nor elected members of the council.

MEMBER. Any person who is included in the membership of the retirement system.

PENSION. An annual amount, derived from contributions made by the city, payable in equal monthly installments throughout the future life of a person, or for a temporary period.

POLICE OFFICER MEMBER. Any member who is employed in the police department holding the rank of police officer, including probationary police officer, or higher rank; but it shall not include any person who is privately employed as a police officer, nor any person who is temporarily employed as a police officer for an emergency, nor any civilian employee in the police department.

REGULAR INTEREST. The rate of interest per annum as the board shall from time to time adopt.

RETIRANT. Any member who retires with a retirement allowance payable by the retirement system.

RETIREMENT. A member's withdrawal from city employment with a retirement allowance payable by the retirement system.

RETIREMENT ALLOWANCE. The sum of the annuity and pension payable to a retirant or beneficiary.

RETIREMENT SYSTEM. The city Employee's Retirement System. The retirement system is established as a qualified defined benefit plan under Chapter 39 of the city of Sioux Falls, South Dakota, Code of Ordinances as amended from time to time, pursuant to Internal Revenue Code §§ 401(a) and 414(d) or such other provisions of the Internal Revenue Code as applicable and applicable Treasury Regulations and other guidance. The retirement system consists of:

- (1) All sums of money or property that are contributed by gifts, devises and bequests;
- (2) All income derived from the investments of monies in the retirement system,
- (3) An amount as may be annually designated by the council pursuant to law;
- (4) All contributions by members of the retirement system; and
- (5) All contributions by the city.

SERVICE. Personal service rendered to the city by the mayor or appointed officer of the city or by an employee of the city.

VOLUNTARY RETIREMENT AGE.

- (1) Age 60 years with five or more years of credited service or age 55 years with 30 or more years of credited service for a general member; and
- (2) Age 50 years for a police officer member.

WORKERS' COMPENSATION PERIOD. The period a person is in receipt of workers' compensation on account of a member's disability or death arising out of and in the course of his or her city employment. If the person is paid a single sum in lieu of his or her future workers' compensation, his or her workers' compensation period shall be the period, if any, he or she was in receipt of workers' compensation in weekly or other periodic payments plus the period arrived at by dividing the single sum by his or her weekly or other periodic payment award.

Section 4. That Section 39.221 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.221 OFFICERS OF RETIREMENT SYSTEM.

- (a) The board shall elect from its own members a chairperson and a chairperson pro tem.
- (b) The director of human resources shall serve as the administrative officer to the board of trustees and shall transact all business of the retirement system except for the accounting and investment activities which shall be delegated to the city finance director.
- (c) The city finance director shall be treasurer of the retirement system and shall administer the accounting and investment activities of the retirement system as well as be custodian of all the assets except those placed with a funding agent or investment counsel as provided in § 39.255.
- (d) The city attorney shall be legal advisor to the board.
- (e) The board shall appoint an actuary who shall be the technical advisor to the board on matters regarding the operation of the retirement system. He or she shall perform those other duties as are required of him or her under this subchapter.

- (f) The board shall appoint as medical director a physician who is neither a retirant nor beneficiary of the retirement system. The medical director shall be responsible to and shall serve at the pleasure of the board. He or she shall arrange for and pass upon all medical examinations required under this subchapter; he or she shall investigate all essential statements and certificates of a medical nature furnished by or on behalf of a member, retirant or beneficiary in connection with a claim for disability or service-connected death benefits; and he or she shall report in writing to the board his or her conclusions on medical matters referred to him or her by the board.
- (g) The board may employ professional and other services as are required for the proper operation of the retirement system.
- (h) The board shall have power to select and employ a funding agent or engage in contract for investment counsel and advice as provided in § 39.255.
- (i) The board of trustees, by resolution, may appoint an administrator and hire additional employees as may be required to transact the business of the retirement system. The board of trustees shall require bonding of the administrator in an amount set by the board of trustees, which may be included under any city employee's blanket bond. The bond premium may be paid by the retirement system.
- (j) The administrator shall make available to any member of the retirement system and to any beneficiary of the retirement system a summary retirement system description. The summary retirement system description shall be written in a manner to be understood by the average member of the retirement system and shall be sufficiently accurate and comprehensive to apprise participants and beneficiaries of their rights and obligations under the retirement system. The summary retirement system description shall include:
 - (1) The name and address of the administrator;
 - (2) Names, titles and addresses of any trustee or trustees;
 - (3) A description of the relevant provisions of any applicable collective bargaining agreement;
 - (4) The retirement system's requirements respecting eligibility for participation and benefits;
 - (5) A description of provisions providing for nonforfeitable pension benefits;
 - (6) Circumstances which may result in disqualification, ineligibility or denial or loss of benefits;
 - (7) The source of financing of the retirement system and the identity of any organization through which benefits are provided;
 - (8) The date of the end of the retirement system year and whether the records of the retirement system are kept on a calendar, policy or fiscal year basis; and

- (9) The procedures to be followed in presenting claims for benefits under the retirement system and the remedies available under the retirement system for the redress of claims which are denied in whole or in part.
- (k) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary retirement system description, the latest annual report and any bargaining agreement, trust agreement, contract or other instrument under which the retirement system is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing complete copies.
- (l) The administrator shall annually furnish to each retirement system member or beneficiary a statement showing, on the basis of the latest available information, the member's or beneficiary's accumulated contributions, if any, total benefits accrued and nonforfeitable benefits, if any, which have accrued or the earliest date on which the benefits will become nonforfeitable.

Section 5. That Section 39.222 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.222 COMPOSITION OF MEMBERSHIP.

- (a) The membership of the city's retirement system shall include and be limited to the following:
 - (1) All officers and employees of the city hired prior to July 1, 2013, and having certified civil service status, except those employees exempt under §§ 39.263(b) and (c); but not including those who are members or retirants of the city Firefighter's Pension Fund;
 - (2) All officers and employees of the city who do not have certified civil service status, who were members December 31, 1966;
 - (3) All officers and employees of the city who are appointed by the mayor and/or council prior to July 1, 2013, except those exempt under §§ 39.263(b) and (c); and
 - (4) The mayor elected prior to July 1, 2013, but no other elected council members.
- (b) In all cases of doubt, the human resources director shall decide who is a member of the Employee's Retirement System within the meaning of the provisions of this article and applicable federal law.
- (c) All officers and employees hired or appointed on or after July 1, 2013, shall participate in the South Dakota Retirement System and will not be eligible for any benefits within this chapter.

Section 6. That Section 39.223 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.223 TERMINATION OF MEMBERSHIP.

Except as otherwise provided in this subchapter, if any member leaves the employ of the city for any reason except death and retirement, membership in the retirement system shall cease and credited service at that time shall be forfeited. If the member is reemployed by the city prior to July 1, 2013, in a position covered by the retirement system, membership shall be restored. If the reemployment occurs within a period of six years after the date of leaving the employ of the city, the member's credited service last forfeited shall be restored to the member's credit, provided the member returns to the accumulated contributions account any amount withdrawn, together with regular interest from the date of withdrawal to the date of repayment. A reemployed member must notify the retirement system of the member's intention to claim or reject forfeited credited service time within 30 days after reemployment by the city or the effective date of the ordinance from which this section is derived, whichever is later. Upon death or retirement, membership in the retirement system shall cease and credited service shall be used in the calculation of final benefits.

Section 7. That Section 39.224 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.224 CREDITED SERVICE.

The service rendered by a member shall be credited to the member by the board in accordance with the rules and regulations as the board shall from time to time adopt consistent with the provisions of this subchapter. In no case shall less than ten days of service rendered in any calendar month by a member be credited as a month of service other than as provided in § 39.225, nor shall less than ten months of service rendered by the member in any calendar year be credited as a year of service, other than as provided in § 39.225, nor shall more than one year of service be credited any member for all service rendered by the member in any calendar year.

Section 8. That Section 39.225 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.225 MILITARY SERVICE CREDIT.

- (a) Except as provided otherwise in (c) through (f), if any officer or employee, who while employed by the city, entered or enters any armed service of the United States for active duty, active duty for training or inactive duty for training, the member shall have the service credited as city service, provided that:
 - (1) The employee is reemployed by the city within one year from and after the date of termination of the armed service actually required;
 - (2) The employee returns to the employee's accumulated contributions account the amount, if any, withdrawn therefrom at the time of entry or while in the armed service, together with regular interest from the date of withdrawal to the date of repayment; and
 - (3) In no case shall more than five years of city service be credited any member for all armed service rendered, unless the employee is unable to obtain a release from military service.

- (b) In case of doubt as to the period to be so credited a member the board shall have final power to determine the period consistent with applicable federal statutes relating to military obligations. During the period of the armed service and until reemployment by the city, the member's contributions to the retirement system shall be suspended and any balance standing to the member's credit in the accumulated contributions account shall be accumulated at regular interest.
- (c) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by § 401(a)(37) of the Internal Revenue Code, survivors of a member, are entitled to any additional benefits that the retirement system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.
- (d) Effective with respect to deaths and/or disabilities occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent permitted by § 414(u)(9) of the Internal Revenue Code, for benefit accrual purposes and in the case of death, for vesting purposes, the member shall be treated as having earned years of service for the period of qualified military service, having returned to employment on the day before the death and/or disability, and then having terminated on the date of death or disability. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.
- (e) Beginning January 1, 2009, to the extent required by § 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (as defined under § 3401(h)(2) of the Internal Revenue Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under § 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.
- (f) Effective December 12, 1994, notwithstanding any other provision of the retirement system law, contributions, benefits and service credit with respect to qualified military service are governed by §414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act of 1994.

Section 9. That Section 39.227 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.227 VOLUNTARY RETIREMENT.

- (a) Any member may retire upon written application filed with the board setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, the member desires to be retired, provided that the member has satisfied the applicable age and service requirements set forth as follows:

- (1) If a general or general management member, upon attainment of age 60 years with five or more years of credited service or attainment of age 55 years with 30 or more years of credited service; or
 - (2) If a police officer member, upon attainment of age 60 years with 15 or more years of credited service; or upon attainment of age 50 years with 25 or more years of credited service.
- (b) Upon retirement, the member shall receive a retirement allowance as provided in § 39.230 if a general member, or as provided in § 39.231 if a police officer member.
- (c) A member shall be 100 percent vested in his or her service retirement benefit upon attaining normal retirement age as defined in paragraph (a) of this Ordinance § 39.227.

Section 10. That Section 39.230 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.230 RETIREMENT ALLOWANCE; GENERAL MEMBER

- (a) Upon a general member's retirement, the member shall receive a straight life retirement allowance and shall have the right to elect to receive a retirement allowance under an option provided in § 39.236 in lieu of a straight life retirement allowance. The straight life retirement allowance shall consist of the benefits provided as follows:
- (1) An annuity which shall be the actuarial equivalent of the accumulated contributions standing to the member's credit in his or her accumulated contributions account at the time of retirement; and
 - (2) A pension which when added to the member's annuity will provide a retirement allowance equal to 1.8% of his or her final average pay multiplied by the number of years, and fraction of a year, of his or her credited service.
- (b) Notwithstanding any other provisions of the retirement system to the contrary, the member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of § 415 of the Internal Revenue Code for a qualified pension plan.
- (c) After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to § 415(d) of the Internal Revenue Code) or 100 percent of the member's compensation.
- (1) Annual additions are defined to mean the sum (for any year) of employer and member contributions to a defined contribution plan, post-tax member contributions to a defined benefit plan (except for purposes of service purchases, if tested under the modified limit of § 415(b) of the Internal Revenue Code), and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

- (2) For purposes of applying § 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable shall be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation § 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under § 414(h) of the Internal Revenue Code shall not be treated as compensation.
- (3) Compensation shall be defined as wages within the meaning of § 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under §§ 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and shall be determined without regard to any rules under § 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in § 3401(a)(2) of the Internal Revenue Code).
 - (A) However, for limitation years beginning after December 31, 1997, compensation shall also include amounts that would otherwise be included in compensation but for an election under §§ 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of § 132(f)(4) of the Internal Revenue Code.
 - (B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:
 - (I) the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or
 - (II) the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or
 - (III) the payment is pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

Any payments not described in paragraph (B) above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason

of qualified military service (within the meaning of § 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service or deemed compensation to the individual if permanently and totally disabled (as defined in § 22(e)(3) of the Internal Revenue Code).

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

- (C) Back pay, within the meaning of Treasury Regulation §1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.
 - (4) If the annual additions for any member for a plan year exceed the limitation under § 415(c) of the Internal Revenue Code, the excess annual addition shall be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).
 - (5) A member's compensation for purposes of applying these limits shall not exceed the annual limit under § 401(a)(17) of the Internal Revenue Code which applies for that year.
- (d) Participation in Other Qualified Plans: Aggregation of Limits.
- (1) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in § 414(j) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.
 - (2) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in § 414(i) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one (1) plan.

(e) Basic 415(b) Limitation.

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

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

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

(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the § 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation § 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit in subsections (f)(2) and (f)(3).

(2) For a benefit paid in a form to which § 417(e)(3) of the Internal Revenue Code does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

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

(B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation § 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in § 417(e)(3)(B) of

the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing § 417(e)(3)(B) of the Internal Revenue Code); or

- (3) For a benefit paid in a form to which § 417(e)(3) of the Internal Revenue Code applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:
 - (A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
 - (B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation § 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in § 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing § 417(e)(3)(B) of the Internal Revenue Code); or
 - (C) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation § 1.417(e)-1(d)(3) (using the rate in effect for the first day of the limitation year with a one-year stabilization period) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation § 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in § 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing § 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.
- (4) The actuary may adjust the 415(b) limit at the annuity starting date in accordance with the above subsections (2) and (3).
- (g) Benefits For Which No Adjustment of the 415(b) Limit is Required. For purposes of this section, the following benefits shall not be taken into account in adjusting these limits:
 - (1) Any ancillary benefit which is not directly related to retirement income benefits;
 - (2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

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

(h) Other Adjustments in 415(b) Limitation.

- (1) In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section for the member's annuity starting date shall be equal to the lesser of (i) the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the one hundred sixty thousand dollar (\$160,000) annual limit (as adjusted under § 415(d) of the Internal Revenue Code and, if required, under subsection (g) for years of participation less than ten (10)), with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for the annuity starting date as defined in the plan (expressing the member's age based on completed calendar months as of the annuity starting date), and (ii) the one hundred sixty thousand dollar (\$160,000) annual limit (as adjusted under § 415(d) of the Internal Revenue Code and, if required, under subsection (i) for years of participation less than ten (10) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age sixty-two (62), both determined without applying the limitations of this section.
 - (2) In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in (1) above shall not apply.
 - (3) The reductions provided for in (1) above shall not be applicable to pre-retirement disability benefits or preretirement death benefits.
- (i) Less than Ten (10) Years of Participation or Service Adjustment for 415(b) Limitations. The maximum retirement benefits payable to any member who has completed less than ten (10) years of participation shall be the amount determined under subsection (e), as adjusted under subsection (f) and/or (g), multiplied by a fraction, the numerator of which is the number of the member's years of participation and the denominator of which is ten (10). The limit under subsection (j) (concerning the \$10,000 limit) shall be similarly reduced for any member who has accrued less than ten (10) years of service, except the fraction shall be determined with respect to years of service instead of years of participation. The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to preretirement disability benefits or pre-retirement death benefits.
- (j) Ten Thousand Dollar (\$10,000) Limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year and for any prior limitation

year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated.

- (k) Effect of COLA on 415(b) Testing. For purposes of applying the limits under § 415(b) of the Internal Revenue Code (the “Limit”) to a member with no lump sum benefit, the following shall apply:
 - (1) a member’s applicable Limit shall be applied to the member’s annual benefit in the member’s first limitation year without regard to any cost of living adjustments;
 - (2) to the extent that the member’s annual benefit equals or exceeds the Limit, the member shall no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit; and
 - (3) thereafter, in any subsequent limitation year, a member’s annual benefit, including any cost of living increases, shall be tested under the then applicable benefit Limit including any adjustment to the § 415(b)(1)(A) of the Internal Revenue Code dollar limit under § 415(d) of the Internal Revenue Code, and the regulations thereunder.
- (l) Effect of a Lump Sum Component on 415(b) Testing. With respect to a member who receives a portion of the member’s annual benefit in a lump sum, a member’s applicable Limit shall be applied taking into consideration both the portion of the member’s benefit subject to § 417(e)(3) of the Internal Revenue Code and the portion not subject to § 417(e)(3) of the Internal Revenue Code, as required by § 415(b) of the Internal Revenue Code and applicable Treasury Regulations.
- (m) Service Purchases under § 415(n). Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of § 415(n) of the Internal Revenue Code shall be treated as met only if:
 - (1) the requirements of § 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of § 415(b) of the Internal Revenue Code, or
 - (2) the requirements of § 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of § 415(c) of the Internal Revenue Code.
 - (3) For purposes of applying this section, the retirement system shall not fail to meet the reduced limit under section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this subsection and shall not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this subsection.
 - (4) For purposes of this section the term “permissive service credit” means service credit—
 - (A) recognized by the retirement system for purposes of calculating a member’s benefit under the retirement system,

- (B) which such member has not received under the retirement system, and
- (C) which such member may receive only by making a voluntary additional contribution, in an amount determined under the retirement system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

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

- (5) The retirement system shall fail to meet the requirements of this section if—
 - (A) more than five years of nonqualified service credit are taken into account for purposes of this subparagraph, or
 - (B) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the retirement system.
- (6) For purposes of paragraph (5), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term “nonqualified service credit” means permissive service credit other than that allowed with respect to—
 - (A) service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in § 415(k)(3) of the Internal Revenue Code),
 - (B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (A)) of an education organization described in § 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,
 - (C) service as an employee of an association of employees who are described in clause (A), or
 - (D) military service (other than qualified military service under § 414(u) of the Internal Revenue Code) recognized by the retirement system.

In the case of service described in clause (A), (B), or (C), such service shall be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

- (7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which § 403(b)(13)(A) of the Internal Revenue Code or § 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer)—
- (A) the limitations of paragraph (5) shall not apply in determining whether the transfer is for the purchase of permissive service credit, and
 - (B) the distribution rules applicable under federal law to the retirement system shall apply to such amounts and any benefits attributable to such amounts.
- (8) For an eligible member, the limitation of § 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the retirement system before January 1, 1998.
- (n) Modification of Contributions for 415(c) and 415(n) Purposes. Notwithstanding any other provision of law to the contrary, the retirement system may modify a request by a member to make a contribution to the retirement system if the amount of the contribution would exceed the limits provided in § 415 of the Internal Revenue Code by using the following methods:
- (1) If the law requires a lump sum payment for the purchase of service credit, the retirement system may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under § 415(c) or 415(n) of the Internal Revenue Code.
 - (2) If payment pursuant to subparagraph (1) shall not avoid a contribution in excess of the limits imposed by § 415(c) or 415(n) of the Internal Revenue Code, the retirement system may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.
- (o) Repayments of Cashouts. Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the retirement system shall not be taken into account for purposes of § 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.
- (p) Effect of Direct Rollover on 415(b) Limit. If the plan accepts a direct rollover of an employee's or former employee's benefit from a defined contribution plan qualified under § 401(a) of the Internal Revenue Code which is maintained by the employer, any annuity resulting from the rollover amount that is determined using a more favorable actuarial basis than required under § 417(e) of the Internal Revenue Code shall be included in the annual benefit for purposes of the limit under § 415(b) of the Internal Revenue Code.
- (q) Reduction of Benefits Priority. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any

defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

Section 11. That Section 39.231 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.231 RETIREMENT ALLOWANCE; POLICE OFFICER MEMBER.

- (a) Upon a police officer member's retirement, as provided in this subchapter, the member shall receive a straight life retirement allowance and shall have the right to elect to receive a retirement allowance under an option provided in § 39.236 in lieu of a straight life retirement allowance. The straight life retirement allowance shall consist of the benefits provided as follows:
 - (1) An annuity which shall be the actuarial equivalent of the accumulated contributions standing to the member's credit in the accumulated contributions account at the time of the retirement; and
 - (2) A pension which when added to the member's annuity will provide a retirement allowance equal to the sum of 2.5% of the member's final average pay multiplied by the number of years, and fraction of a year, of the member's credited service not to exceed 25 years, plus 1.5% of the member's final average pay multiplied by the number of years, and fraction of a year, of the member's credited service which is in excess of 25 years.
- (b) Benefits provided under this section shall not exceed the limits set forth in Internal Revenue Code § 415 and rulings pertaining thereto. The same provisions as is § 39.230 shall apply to the police officer member's benefit.

Section 12. That Section 39.232 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.232 TERMINAL PAYMENT.

If a retirant dies before he or she has received in payment of his or her straight life retirement allowance an aggregate amount equal to his or her accumulated contributions standing to his or her credit in the accumulated contributions account at the time of his or her retirement, the difference between his or her accumulated contributions and the aggregate amount of straight life retirement allowance payments received by him or her shall be paid to the person as he or she shall have nominated by written designation duly executed and filed with the board. If there is no designated person surviving the retirant, the difference, if any, shall be paid to his or her legal

representative. No benefits shall be paid under this section on account of the death of a retirant who elected option A, B or C provided in § 39.236.

Section 13. That Section 39.233 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.233 MINIMUM RETIREMENT ALLOWANCE.

In no case shall the straight life retirement allowance payable to any member whose credited service includes service rendered prior to July 1, 1967, be less than the sum of:

- (a) An annuity which is the actuarial equivalent of his or her accumulated contributions standing to his or her credit in the accumulated contributions account at the time of his or her retirement; and
- (b) A pension equal to the sum of \$100 per year; plus one-one hundred thirty fifths of his or her final average pay multiplied by the number of years, and fraction of a year, of his or her credited service rendered after December 31, 1950; plus two-one hundred thirty-fifths of his or her final average pay multiplied by the number of years, and fraction of a year, of his or her credited service rendered prior January 1, 1951. The pension shall not exceed 50% of his or her final average pay.

Section 14. That Section 39.235 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.235 DEFERRED RETIREMENT ALLOWANCE.

- (a) If a general member with five or more years of credited service leaves the employ of the city before satisfying the service requirements for retirement for any reason except retirement or death, the member shall be entitled to a retirement allowance provided in § 39.230 according to the applicable section in force at the time the member left city employment. The retirement allowance shall begin the first day of the calendar month next following the date the application for retirement is filed with the board on or after attainment of age 60 years. If the accumulated contributions are withdrawn, the right to a deferred retirement allowance shall be forfeited. During the period of absence from the employ of the city before the retirement allowance begins, the accumulated contributions account shall be credited with regular interest.
- (b) If a police officer member with 15 or more years of credited service leaves the employ of the city before satisfying the service requirements for retirement for any reason except retirement or death, the member shall be entitled to a retirement allowance provided in § 39.231 according to the applicable section in force at the time the member left city employment. The retirement allowance shall begin the first day of the calendar month next following the date the application for retirement is filed with the board on or after attainment of age 60 years. If the accumulated contributions are withdrawn, the right to a deferred retirement allowance shall be forfeited. During the period of absence from the employ of the city before the retirement allowance begins, the accumulated contributions account shall be credited with regular interest.

Section 15. That Section 39.236 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.236 RETIREMENT ALLOWANCE OPTIONS.

- (a) Prior to the effective date of retirement, but not thereafter, a member may elect to receive a retirement allowance as a straight life retirement allowance payable for life, or may elect to receive the actuarial equivalent of the straight life retirement allowance in a reduced retirement allowance, and nominate a beneficiary in accordance with the provisions of option A, B, C, D or E set forth as follows. If a member does not elect an option prior to the effective date of retirement, the retirement allowance shall be paid as a straight life retirement allowance.
- (1) *Option A; allowance for ten years certain and life thereafter.* Under option A, a retirant shall receive a reduced retirement allowance payable for the retirant's life with the provisions that, if deceased before receiving 120 monthly retirement allowance payments, the payments shall be continued for the remainder of the 120 months to the person as the retirant shall have nominated by written designation duly executed and filed with the board. If no designated beneficiary survives to receive the remaining monthly retirement allowance payments, the payments as they become due shall be paid to the estate of the last survivor of the retirant or the survivor's designated beneficiaries.
 - (2) *Option B; joint and survivor allowance.* Under option B, a retirant shall receive a reduced retirement allowance payable for life with the provision that upon death the reduced retirement allowance shall be continued throughout the life of and paid to the person, having an insurable interest in the retirant's life, as shall have been nominated by written designation duly executed and filed with the board prior to the effective date of retirement.
 - (3) *Option C; modified joint and survivor allowance.* Under option C, a retirant shall receive a reduced retirement allowance payable for life with the provision that upon death one-half of the reduced retirement allowance shall be continued throughout the life of and paid to the person, having an insurable interest in the retirant's life, as shall have been nominated by written designation duly executed and filed with the board prior to the effective date of retirement.
 - (4) *Option D; joint and survivor pop-up allowance.* Under option D a retirant shall receive a reduced retirement allowance with the provision that upon death the reduced retirement allowance shall be continued throughout the life of and paid to the person, having an insurable interest in the retirant's life, as shall have been nominated by written designation duly executed and filed with the board prior to the effective date of retirement. If the nominated beneficiary dies first, the retirant shall, upon the death of the nominated beneficiary, begin to receive an allowance equal to the straight life allowance which would have been payable had no option been elected.
 - (5) *Option E; modified joint and survivor pop-up allowance.* Under option E, a retirant shall receive a reduced retirement allowance with the provision that upon death one-half of the reduced retirement allowance shall be continued throughout the life of and

paid to the person, having an insurable interest in the retirant's life, as shall have been nominated by written designation duly executed and filed with the board prior to the effective date of retirement. If the nominated beneficiary dies first, the retirant shall, upon the death of the nominated beneficiary, begin to receive an allowance equal to the straight life allowance which would have been payable had no options been elected.

- (b) If a retirant who elected option B, C, D or E provided in division (a) above and the retirant's beneficiary both die before they have received, in retirement allowances, an aggregate amount equal to the retirant's accumulated contributions account at the time of retirement, the difference between the accumulated contributions and the aggregate amount of retirement allowance payments received by them shall be paid to the person as the retirant shall have nominated by written designation duly executed and filed with the board. If there be no designated persons surviving the retirant, the difference, if any, shall remain in the retirement system.
- (c) Notwithstanding any provision to the contrary, the retirement system shall pay all benefits in accordance with a good faith interpretation of the requirements of Internal Revenue Code § 401(a)(9) and regulations pertaining thereto, as applicable to a governmental plan within the meaning of Internal Revenue Code § 414(d).
 - (1) A member's benefits shall be distributed to him or her not later than April 1 of the calendar year following the later of:
 - A. The calendar year in which the member attains age 70 and one-half; or
 - B. The calendar year in which the member retires.
 - (2) Distributions to a member and his or her beneficiaries shall only be made in accordance with the incidental death benefit requirements of Internal Revenue Code § 401(a)(9)(G) and rulings pertaining thereto.

Section 16. That Section 39.245 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.245 SERVICE-CONNECTED DEATH BENEFITS.

- (a) If a member dies as the result of a personal injury or disease arising solely and exclusively out of and in the course of his or her employment by the city, and the board finds that his or her death, injury or disease resulting in death is the result of his or her actual performance of duty in the employ of the city, the applicable benefits provided in this division (a) shall be paid, subject to the condition that workers' compensation is granted on account of the member's death.
 - (1) The member's accumulated contributions account at the time of death shall be paid in accordance with § 39.247.
 - (2) A pension of one-third of the deceased member's final average pay shall be paid the spouse. The spouse's pension:

- A. Shall terminate upon the spouse's death; and
 - B. Shall be subject to § 39.244.
- (3) If, in addition to a spouse who is entitled to a pension payable from the retirement system, the deceased member leaves an eligible child or eligible handicapped child, each child shall receive a pension of an equal share of one-sixth of the member's final average pay. A child's pension shall terminate upon the attainment of age 18 years, or adoption, marriage or death. A handicapped child's pension shall terminate upon adoption, marriage, full recovery from handicap or death. Upon termination of a child's or handicapped child's pension, the pensions payable to the member's remaining eligible children, if any, shall be adjusted to an equal share of one-sixth of the member's final average pay, provided, however, the minimum benefit for this division (a)(3) shall be \$200 per month for each eligible child. Any child's or handicapped child's pension shall be subject to § 39.244.
- (4) If there is no spouse surviving the deceased member, or if the spouse dies and an eligible child or eligible handicapped child survives, the child shall each receive a pension of one-fourth of the member's final average pay. If there are more than two surviving children, each child shall receive a pension of an equal share of one-half of the member's final average pay. Upon termination of a child's or handicapped child's pension as provided in division (a)(3) above, the pensions payable to the member's remaining eligible children, if any, shall be adjusted to an equal share of one-half of the member's final average pay, provided that any child's pension shall not exceed one-fourth of the member's final average pay, provided, however, the minimum benefit for this division (a)(4) shall be \$200 per month for each eligible child. Any child's or handicapped child's pension shall be subject to § 39.244.
- (5) If the deceased member leaves neither a spouse nor children eligible to receive pensions under this section, a father and mother, or either of them, whom the board finds to be dependent upon the member for financial support, shall each receive a pension of one-sixth of the member's final average pay. A parent's pension:
- A. Shall not exceed \$600 per year; and
 - B. Shall be subject to § 39.244.
- (b) Notwithstanding any provision in the retirement system to the contrary, distributions upon the death of a member shall be made in accordance with the following requirements and shall otherwise comply with Internal Revenue Code § 401(a)(9) and the rulings pertaining thereto. If it is determined that the distribution of a member's interest has begun and the member dies before the entire interest has been distributed to the member, the remaining portion of the interest shall be distributed at least as rapidly as under the method of distribution selected by the member at retirement. If a member dies before beginning to receive any distributions of the interest under the retirement system, then any death benefits shall be distributed to the beneficiaries by December 31 of the calendar year in which the fifth anniversary of the date of death occurs. However, the five-year distribution requirement shall not apply to any portion of the deceased member's interest which is payable to or for a designated beneficiary. In that event, the portion may be distributed over

the life of the designated beneficiary (or over a period not extending beyond the life expectancy of the beneficiary), provided the distributions begin not later than December 1 of the calendar year immediately following the calendar year in which the member died.

- (c) Any death benefit payable under this section shall be compared with the death benefits payable under § 39.246, and the higher death benefit shall be paid.

Section 17. That Section 39.246 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.246 NATURAL DEATH PENSIONS.

- (a) Any member who has ten or more years of credited service may at any time prior to the effective date of his or her retirement, but not thereafter, elect option B provided in § 39.236 in the same manner as if he or she were then retiring from city employment, and nominate a beneficiary whom the board finds to be dependent upon the member for financial support. Prior to the effective date of the member's retirement, the member may revoke his or her election of option B and nomination of beneficiary and he or she may again elect the option B and nominate a beneficiary as provided in this division (a). His or her election of option B and nomination of beneficiary shall be automatically revoked upon the marriage or death of the beneficiary prior to the member's retirement. Upon the death of a member who has an option B election in force, the beneficiary shall immediately receive a retirement allowance computed according to the applicable § 39.230 or § 39.231 in the same manner in all respects as if the member had retired the day preceding the date of his or her death, notwithstanding that he or she might not have satisfied the applicable age and service requirements for retirement provided in § 39.227. The retirement allowance payable to the beneficiary shall not be less than \$360 per year and shall be subject to § 39.244. If a member has an option B election in force at the time of his or her retirement, his or her election of option B and nomination of beneficiary shall thereafter continue in force, provided, however that prior to the effective date of the member's retirement, he or she shall have the right to elect to receive his or her retirement allowance as a straight life retirement allowance or under another option provided in § 39.236. No retirement allowance shall be paid under this division (a) on account of the death of a member if any benefits are or will become payable under § 39.245 on account of their death.
- (b) (1) If a member has ten or more years of credited service and does not have an option B election provided in division (a) above in force, and dies while in the employ of the city, and leaves a spouse, the following benefits shall be paid:
 - A. 1. The spouse shall immediately receive a retirement allowance computed according to the applicable § 39.230 or § 39.231 in the same manner in all respects as if the member had retired the day preceding the date of his or her death, notwithstanding that he or she might not have satisfied the applicable age and service requirements for retirement provided in § 39.227, elected option B provided in § 39.236 and nominated his or her spouse as beneficiary; and
 - 2. The retirement allowance payable to the spouse shall not be less than \$360 per year and shall be subject to § 39.244.

- B. If the deceased member does not leave a spouse eligible to receive a retirement allowance provided in this division (b), his or her accumulated contributions account at the time of his or her death shall be paid in accordance with § 39.247(b); and
- C. In addition to the retirement allowance, if any, payable to the deceased member's spouse, their eligible children or eligible handicapped child shall each receive a pension of \$200 per month, and shall be subject to § 39.244. A child's pension shall terminate upon attainment of age 18 years, adoption, marriage or death. A handicapped child's pension shall terminate upon adoption, marriage, full recovery from handicap or death.

(2) No benefits shall be paid under this division (b) on account of the death of a member if any benefits are or will become payable under § 39.245 on account of the member's death.

(c) Any benefits paid under this section shall comply with the distribution rules in § 39.245(b).

Section 18. That Section 39.247 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.247 REFUND OF ACCUMULATED CONTRIBUTIONS.

- (a) If a member ceases to be employed by the city, for any reason except his or her retirement or death, before he or she has satisfied the age and service requirements for retirement provided in § 39.227, he or she shall be paid his or her accumulated contributions account upon his or her written request filed with the board.
- (b) Should a member die and no retirement allowance or pension becomes or will become payable by the retirement system on account of his or her death, except as provided in § 39.245, his or her accumulated contributions account at the time of his or her death shall be paid to that person as he or she shall have nominated by written designation duly executed and filed with the board. If there is no designated person surviving the member, his or her accumulated contributions shall be paid to his or her legal representative.
- (c) If a member dies without heirs, and without having nominated a beneficiary as provided in division (b) above, his or her accumulated contributions account at the time of his or her death may be used to pay his or her burial expenses, not to exceed a reasonable sum to be determined by the board, provided that he or she leaves no other estate sufficient for that purpose.
- (d) Payments of refunds of accumulated contributions, as provided in this section, may be paid in a single sum or in installments according to the rules and regulations as the board may from time to time adopt.
- (e) (1) Notwithstanding any provisions of the plan to the contrary that would otherwise limit a distributee's election under this rule, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover

distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

- (2) For the purposes of this division (e), the following definitions shall apply throughout this rule.

DIRECT ROLLOVER. A payment by the plan to the eligible retirement plan specified by the distributee.

DISTRIBUTEES. Includes an employee or former employee. Effective January 1, 2007, a ***DISTRIBUTEES*** further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code § 401(a)(9)(E). However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an “inherited” individual retirement account or annuity.

ELIGIBLE RETIREMENT PLAN.

1. The following that accepts a distributee’s eligible rollover distribution;
 - a. An individual retirement account described in § 408(a) of the Internal Revenue Code;
 - b. An individual retirement annuity described in § 408(b) of the Internal Revenue Code;
 - c. An annuity plan described in § 403(a) of the Internal Revenue Code;
 - d. A qualified trust described in § 401(a) of the Internal Revenue Code;
 - e. On or after January 1, 2008, to a Roth IRA described in § 408A of the Internal Revenue Code; or
 - f. With respect to any distribution made after December 31, 2001, an annuity contract described in § 403(b) of the Internal Revenue Code or an eligible plan described under § 457(b) of the Internal Revenue Code, which is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this plan.

An eligible rollover distribution does not include any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of § 415 of the Internal Revenue Code.

2. The definition of ***ELIGIBLE RETIREMENT PLAN*** shall also apply in the case of a distribution to a surviving spouse.

ELIGIBLE ROLLOVER DISTRIBUTION. Any distribution of all or any portion of the balance to the credit of the distributee, except that an ***ELIGIBLE ROLLOVER DISTRIBUTION*** does not include the following:

1. Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;
2. Any distribution to the extent the distribution is required under § 401(a)(9) of the Internal Revenue Code; and
3. With respect to any distribution made prior to January 1, 2002, the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). With respect to any distribution made after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not included in gross income. However, that portion may be transferred only to an individual retirement account or annuity described in § 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in §§ 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable.

Section 19. That Section 39.248 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.248 ACCUMULATED CONTRIBUTIONS ACCOUNTS.

- (a) The accumulated contributions accounts shall be the accounts in which shall be accumulated, at regular interest, the contributions deducted from the compensations of members and from which shall be made refunds and transfers of accumulated contributions as provided in this plan.
- (b) The contribution of a general member shall be 3% of the employee's compensation and the contribution of a police officer member shall be 8% of the employee's compensation. Effective January 6, 2014, the contribution of a general member shall be 4% of the employee's compensation; effective January 5, 2015, the contribution of a general member shall be 5% of the employee's compensation. Effective January 6, 2014, the contribution of a police officer member shall be 9% of the employee's compensation; effective January 5, 2015, the contribution of a police officer member shall be 10% of the employee's compensation.
- (c) The officer responsible for making the payroll shall cause the contributions provided in division (b) above to be deducted from the compensation of each member on each and every payroll, for each and every payroll period, so long as he or she remains a member in the employ of the city. The members' contributions provided for in this section shall be made notwithstanding that the minimum compensation provided by law for any member shall be changed thereby. Every member shall be deemed to consent and agree to the deductions made and provided for in this section, and payment of his or her compensation less the deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by him or her during the period covered by

the payment, except as to benefits provided by this subchapter. The contributions when deducted from the compensation of a member shall be credited to his or her individual account in the accumulated contributions accounts.

- (d) At the expiration of a period of four years from and after the date a member's employment by the city terminated, any balance in his or her accumulated contributions account, unclaimed by him or her or his or her legal representative shall remain with the retirement system, provided that no retirement allowance will become payable by the retirement system on his or her account.
- (e) In addition to the contributions deducted from the compensation of a member as provided in this section, the member shall pay into the accumulated contributions accounts, by a single contribution within six months after the date of reemployment, the amount required to be repaid by § 39.223. In no case shall any member be given credit for service rendered prior to the date the member withdrew the accumulated contributions until the member repays to the accumulated contributions accounts all amounts due the accumulated contributions accounts by the member.
- (f)
 - (1) The city shall pick up the member contribution required by division (b) above for all compensation earned after the effective date of this division (f). The contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code. The city shall pick up the member contributions from funds established and available in the salaries account, which funds would otherwise have been designated as member contributions and paid to the retirement system. Member contributions picked up by the city pursuant to this division (f) shall be treated for all other purposes of this and other laws of the city in the same manner and to the same extent as member contributions made prior to the effective date of this division (f).
 - (2) Member contributions to the retirement system shall be paid by the city on behalf of all members. Payment of the member's contribution picked up by the city shall be made by reducing the amount of the compensation payable to those members and making payment of the amount directly to the retirement system. Contributions, although designated as member contributions, are being paid by the city in lieu of contributions by the members. Members do not have the option of choosing to receive the contributed amounts directly instead of having them paid by the city to the retirement system.
 - (3) The effective date of this division (f) shall be the first day of the first pay period after the city has received notification of approval from the Internal Revenue Service that, pursuant to § 414(h) of the United States Internal Revenue Code, the member contributions so picked up shall not be included in gross income for tax purposes until that time as they are distributed by refund or benefit payment, but the effective date shall not be prior to December 15, 2003.

Section 20. That Section 39.249 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.249 RETIREMENT SYSTEM PAYMENTS.

- (a) The retirement system shall be the fund from which shall be paid all annuities, pensions, retirement allowances, and administrative expenses payable as provided in this subchapter. Upon the return of a disability retirant to the employ of the city, his or her accumulated contributions, computed as of the date of his or her return, shall be credited to his or her individual accumulated contributions account.

Section 21. That Section 39.250 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.250 RETIREMENT SYSTEM CONTRIBUTIONS.

- (a) (1) The retirement system shall be the fund to which shall be credited contributions made by the city to the retirement system, for the general division and the police division. Upon the basis of the mortality and other tables of experience, and regular interest, as the board shall from time to time adopt, the actuary shall annually compute the amounts due for:
- A. Pensions being paid retirants and beneficiaries; and
 - B. Pensions to be paid on account of service rendered and to be rendered by members.
- (2) The city's annual contributions required to finance the retirement system shall be appropriated by the council and shall be subject to § 39.252. The contributions shall be determined, for the general division and the police division, according to the following.
- A. The city's appropriation for members' current service shall be a percent of their annual compensation which will produce amounts which if paid annually by the city during their future service will be sufficient to accumulate the assets at the time of their retirements for the pensions to be paid them based upon their future service.
 - B. The city's appropriation for members' accrued service shall be an amount which if paid annually by the city over a period of years, to be determined by the council, will amortize at regular interest the amounts for the accrued portions of the pensions to be paid them.
 - C. The city's appropriations for retirement allowances being paid retirants and beneficiaries shall be an amount which if paid annually by the city over a period of years, to be determined by the council, will amortize at regular interest the amounts for the accrued portions of the pensions to be paid them.
- (b) (1) All contributions made by the city under this retirement system shall be deposited in the retirement system fund. However, contributions made by the city are expressly

conditioned upon the initial qualification of the retirement system under the Internal Revenue Code. Upon the city's request, a contribution which was made by mistake of fact or conditioned upon initial qualification shall be returned to the city within one year after the payment of the contribution or the denial of the qualification.

- (2) Except as otherwise provided, all assets of the retirement system, including investment income, shall be retained for the exclusive benefit of members and their beneficiaries, shall be used to pay benefits to those persons or to pay administrative expenses to the extent not paid by the city, and shall not revert to or inure to the benefit of the city.
- (3) In no event shall the city receive any amounts from the retirement system fund upon termination of the retirement system, except that, and notwithstanding any other provision of the retirement system, the city shall receive those amounts, if any, as may remain after the satisfaction of all liabilities of the retirement system and arising out of any variations between actual requirements and expected actuarial requirements.

Section 22. That Section 39.251 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.251 ESTABLISHMENT OF GENERAL DIVISION, POLICE DIVISION.

There is hereby established a general division to cover the participation of the general members in the retirement system, and a police division to cover the participation of the police officer members. Separate accounting controls shall be maintained in the accumulated contributions accounts, for the general division and for the police division. The maintaining of separate accounting controls for the general division and the police division shall not cause the assets of the retirement system to be segregated in the divisions.

Section 23. That Section 39.252 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.252 LIMIT OF CITY'S CONTRIBUTIONS.

Total contributions in each year to a retirement system subject to §§ 39.220 through 39.268 shall be sufficient to fund the following:

- (a) The administrative cost of the plan during the year;
- (b) The actuarially determined cost of future benefits accruing to members during the year; and
- (c) An amount sufficient to amortize any unfunded liability of the retirement system over a period not to exceed 40 years on the basis of reasonable and generally accepted actuarial assumptions.

Section 24. That Section 39.253 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.253 PENSIONS ALLOWED PRIOR TO 1951.

All pensions being paid by the city prior to January 1, 1951, except to retired firefighters and their beneficiaries, shall become obligations of the retirement system and shall be paid from the retirement system, subject to § 39.252.

Section 25. That Section 39.254 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.254 ADMINISTRATIVE EXPENSES.

The administrative expenses of the retirement system as reasonably incurred shall be paid from the retirement system fund.

Section 26. That Section 39.255 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.255 INVESTMENT OF ASSETS.

- (a) The board of trustees shall be the trustees of the assets of the retirement system. The board shall have full and independent power to invest and reinvest the monies and assets of the retirement system and to hold, purchase, sell, assign, transfer and dispose of any securities and investments of the retirement system.
- (b) The board shall establish a written investment policy, with the advice and counsel of the advisors as the board deems necessary, and the investment policy shall set forth the types of investments into which shall be placed the assets of the retirement system. The policy shall further set forth appropriate provisions with respect to investments, including, but not limited to, the anticipated rate of return, quality of investment, class of investment, maturity and liquidity, cash reserves and acceptable risk. The investment policy shall be reviewed by the board periodically.
- (c) The board shall have the authority to invest and reinvest the assets of the retirement system in securities, investment vehicles or property, wherever situated and of whatever kinds, as shall be approved by the board and in accordance with the investment policy adopted by the board. The board may engage an investment advisor or investment counsel in contract for investment advice when they deem it necessary.
- (d) The board may select one or more funding agents or investment counsel for the management of the assets of the retirement system. The selection and appointment of funding agents or investment counsel shall be made by the board, and the board shall have the right to determine the form and substance of each and every agreement under which the funds are to be held and managed by the funding agent or investment counsel, provided that the agreement shall not be inconsistent with the provisions of this subchapter.
 - (1) The board shall require that any funding agent or investment counsel who has custody or control of any property of the plan to keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions pertaining to the trust property, and shall further require that all accounts, books and records pertaining thereto be open for inspection and audit at all reasonable times by the board or its designees and the city finance department or its designees. The board shall also be

authorized to have conducted an independent audit at the expense of the retirement system.

- (2) The board may retain the services of a qualified independent investment consultant who shall, at least on a semiannual basis, report on the relative performance of the retirement system's funding agents or investment counsel and recommend to the board the retention or replacement of the managers. A qualified independent investment consultant shall have the qualifications and experience as determined by the board from time to time.
- (e) (1) The board shall, in selecting a funding agent or investment counsel or advisor, exercise all judgment and care in the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs. Any funding agent, investment counsel or advisor shall have a minimum of five years of experience.
- (2) For the purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FUNDING AGENT. A corporate or individual trustee or trustees, insurance company or companies authorized to do business in the state, or combination thereof.

INVESTMENT ADVISOR. A corporation or individual who has registered with the United States Securities and Exchange Commission as an investment advisor and is authorized to do business in the state.

INVESTMENT COUNSEL. A corporation or individual authorized to do business under the Federal Investment Advisors Act of 1940, being 15 U.S.C. §§ 80b1 through 80-b-21, as amended from time to time, and authorized to do business in the state.

- (f) The board of trustees may, unless restricted by law, transfer all or any portion of the assets of the retirement system to a collective or common group trust, as permitted under Revenue Ruling 81-100, Revenue Ruling 2011-1, Notice 2012-6, and Revenue Ruling 2014-24 (or subsequent guidance), that is operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under § 401(a) of the Internal Revenue Code, individual retirement accounts that are exempt under § 408(e) of the Internal Revenue Code, eligible governmental plans that meet the requirements of § 457(b) of the Internal Revenue Code, and governmental plans under § 401(a)(24) of the Internal Revenue Code. For this purpose, a trust includes a custodial account or separate tax-favored account maintained by an insurance company that is treated as a trust under § 401(f) or under § 457(g)(3) of the Internal Revenue Code.
- (g) Any collective or common group trust to which assets of the retirement system are transferred pursuant to the above shall be adopted by the board of trustees as part of the plan by executing appropriate participation, adoption agreements, and/or trust agreements with the group trust's trustee.

- (h) The separate account maintained by the group trust for the plan pursuant shall not be used for, or diverted to, any purpose other than for the exclusive benefit of the members and beneficiaries of the plan.
- (i) For purposes of valuation, the value of the separate account maintained by the group trust for the plan shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.
- (j) The description of the various funds of the retirement system shall be interpreted to refer to the accounting records of the retirement system and not to the segregation of its assets in the funds of the retirement system. All assets of the retirement system shall be held for the sole purpose of meeting disbursements for annuities, pensions and other payments authorized by this subchapter and shall be used for no other purpose.

Section 27. That Section 39.256 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.256 METHOD OF MAKING PAYMENTS.

All payments from monies of the retirement system shall be made according to ordinance and charter provisions governing the disbursement of monies.

Section 28. That Section 39.257 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.257 RETIREMENT SYSTEM FUND; ALLOWANCE OF REGULAR INTEREST.

- (a) The retirement system fund shall be the fund to which shall be credited all interest, dividends and other income from investments of the retirement system; all transfers from the accumulated contributions account by reason of lack of claimant; and all other monies received by the retirement system, the disposition of which is not specifically provided by this subchapter. The board may accept gifts and bequests and such shall be credited to the retirement system. Whenever the board determines that the balance in the retirement system is more than sufficient to cover the charges to the fund the board may provide for contingency reserves.
- (b) (1) Provided, however, that no interest be credited a member after he or she leaves city employment except as is otherwise specifically provided in this subchapter, at the end of each fiscal year the board shall allow and credit regular interest on the balance standing to each member's credit in the accumulated contributions account at the beginning of each quarter of the fiscal year.

Section 29. That Section 39.258 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.258 GROUP INSURANCE DEDUCTION.

- (a) As permitted by law, in addition to retirement allowances payable under this subchapter, the retirement system shall pay from the retirement system one-half of the premium for the

retirant's and beneficiary's group health insurance plan participated in by the city. Effective after final termination and distribution of the 401(h) group health insurance fund, this premium will instead be paid from the OPEB 115 Trust Fund Agreement.

- (b) As permitted by law, if a retirant or beneficiary is covered by a group insurance plan participated in by the city, and is permitted to and elects to continue coverage as a retirant, the retirant or beneficiary may authorize the board to have deducted from all retirement allowances the payments required to continue coverage under the group insurance plan.
- (c) The benefits described in this section shall apply to any retired employee or officer who retires prior to January 1, 2014, is entitled to a retirement allowance and who shall have participated at least five years, immediately preceding separation from city employment in the group health insurance plan participated in by the city.
- (d) All contributions from the retirement allowances for purposes of the retirant's and/or beneficiary's group insurance fund shall be reasonable and ascertainable.
- (e) Contributions to fund the retirant's and beneficiary's 401(h) group health insurance plan must be subordinate to the contributions to the retirement system for retirement benefits. At no time shall the aggregate actual contributions to the 401(h) group health insurance fund (when added to actual contributions for life insurance protection under the plan, if any) be in excess of twenty-five percent (25%) of the total aggregate actual contributions made to the retirement system (not including contributions to fund past service credit, if applicable). The board shall annually determine whether the twenty-five percent (25%) test has been met. If at any time the 401(h) group health insurance fund (plus any life insurance contribution) would exceed the twenty-five percent (25%) test, the excess amount of contributions shall be transferred to the retirement system for retirement benefits.
- (f) Forfeitures from the group health insurance fund shall not be allocated to individual accounts, but shall be used for account expenses.
- (g) At no time prior to the satisfaction of all liabilities under the 401(h) group health insurance fund or termination of the retirement system shall any assets for purposes of group health insurance be used for, or diverted to, any purpose other than the providing of payment of the retirement system portion of the monthly retiree health insurance premium benefit in this section, and the payment of administrative expenses.
- (h) The provisions of § 401(h)(5) of the Internal Revenue Code shall apply upon the satisfaction of all liabilities under law.
- (i) Effective December 31, 2016, the 401(h) group health insurance fund shall be terminated. After satisfaction of all liabilities under the 401(h) group health insurance fund to provide certain retiree medical benefits, any amounts remaining in this fund must be returned to the city, pursuant to § 401(h)(5) of the Internal Revenue Code.
- (j) Effective January 1, 2017, the OPEB Trust shall be created and effective pursuant to §39.006. The OPEB 115 Trust Fund Agreement will be used to make the payments described in (a) of this section as soon thereafter as is administratively reasonable in the board's judgment.

Section 30. That Section 39.258.1 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.258.1 STIPEND.

- (a) Any officer or employee who retires from city employment with an immediate annuitized pension benefit after December 31, 2013, shall upon retirement receive a monthly stipend. The stipend shall be paid at the rate of \$40 per month per year of service until such retirant is Medicare eligible or upon death, whichever is sooner. Such stipend shall be adjusted for inflation at an annual rate of 3% beginning in January, 2015.
- (b) Credited service for purposes of calculation of the monthly stipend will be determined in the same manner as identified in § 39.224 for members that retire with a regular, early reduced, duty-incurred disability or non-duty-incurred disability retirement benefit.

Section 31. That Section 39.261 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.261 REDETERMINATION OF RETIREMENT ALLOWANCES.

- (a) The board of trustees shall provide annual post-retirement redetermination of retirement allowances. The redetermined amount shall not be less than the amount of retirement allowances otherwise payable. Any provision of this subchapter which limits the amount of retirement allowances shall not apply to the operation of this section in redetermining the amount of retirement allowances. The application of any provision redetermining retirement allowance amounts may be restricted to retirement allowances having an effective date of payment either prior to or subsequent to a specified date. Any post-retirement redetermination of one or more retirement allowances within a retirement system shall be prefunded and may not bring the retirement system into noncompliance with the provisions of § 39.252(c).
- (b) Pursuant to division (a) above, the retirement allowance upon which redeterminations of retirement allowances are made shall be increased once on January 1, 1986, by 0.5% for each year of retirement based on the current retirement allowance for each person retiring on or before December 31, 1974, and 0.5% for each year of retirement based on the original retirement allowance for each person retiring after December 31, 1974.
- (c) (1) Starting January 1, 1991, on the first of the month following the thirty-sixth full month of retirement, the board shall redetermine the retirement allowances of those retirants and beneficiaries whose retirement allowances were effective 36 full months prior to the date of redetermination, and the retirement allowances shall be increased as provided in this section effective on the first of the month following the thirty-sixth full month of retirement. On January 1, 1991, and thereafter on each January 1, the board shall redetermine the retirement allowances of all retirants and beneficiaries, and the retirement allowances shall be increased as provided in this section. The retirement allowance and forecast base shall be increased by an amount equal to the current base times the pension increase percentage. The pension increase percentage shall be equal to the percentage increase, to a maximum of 3%, in the *Consumer Price Index for All*

Urban Consumers, as computed by the United States Department of Labor, for the year ending in the month of June preceding the January 1 redetermination date.

- (2) Any calculation of benefits required in this section shall be made effective as of the dates mentioned in this section, and the calculation of benefits may be made on a later date. Changes in amounts paid to retirants and beneficiaries shall be paid as soon as practicable after the end of the calendar year.

Section 32. That Section 39.263 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.263 ADOPTION OF DEPARTMENT OF COMMUNITY DEVELOPMENT EMPLOYEE'S PENSION PLAN AND TRUST FOR EMPLOYEES THEREOF.

- (a) As of December 21, 1983, the city shall adopt, for the benefit of and on behalf of the current employees of the department of community development, an agency of the city, the employee's pension plan and trust previously established by the agency on January 13, 1970, as amended.
- (b)
 - (1) Effective on January 10, 1984, continued participation in the department of community development employee's pension plan and trust will be limited to those employees who have attained 55 years of age on that date and are currently employed by the department of community development. The plan shall be funded with contributions to be made by the city in the same net percentage as that made on behalf of the general members under the city Employee's Retirement System together with employee contributions to be deducted from community development employee's compensation in the same percentage as that contributed by other general members of the city Employee's Retirement System, not to exceed 5% of the compensation paid to the employees by the city, unless increased by a two-thirds majority vote of the members of the retirement board.
 - (2) The remaining members, except those mentioned in this section, along with any other current employees and any future employees, will start their years of service effective on January 10, 1984, and participate in the city Employee's Retirement System in the same manner and upon the same conditions as other general members of the city's Employee's Retirement System.
- (c) All future employees of the department of community development shall be ineligible to participate under the department of community development employee's pension plan and trust.
- (d) The department of community development employee's pension plan and trust shall continue to provide benefits to its participants upon death, retirement or termination of employment from the agency, until a time as all funds have been distributed from the trust or until an earlier time as authorized by the council.
- (e) A copy of the employee pension plan of the department of community development is on file in the city clerk of records' office.

Section 33. That Section 39.264 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.264 CHANGES IN EMPLOYEE CONTRIBUTION LEVELS.

No change may be made in employee contribution levels of this retirement system or present or future benefits of this retirement system, by ordinance or otherwise, without an affirmative vote by both the council and the membership of this retirement system.

Section 34. That Section 39.265 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.265 CHANGE OR MODIFICATION OF BENEFITS; ACTUARIAL STATEMENT.

No benefits, present or future, may be changed or modified in any manner unless the retirement system's actuaries have prepared an actuarial statement showing the effect of those changes on the retirement system. No benefits, present or future, may be changed or modified if the change or modification will bring the retirement system into noncompliance with the provisions of § 39.252.

Section 35. That Section 39.266 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.266 CITY TO MAINTAIN RECORDS; INFORMATION TO BE FURNISHED TO ADMINISTRATOR.

The city shall maintain records with respect to each employee sufficient to determine benefits due or which may become due to the employee. The city shall furnish to the retirement system administrator any information necessary for the administrator to make reports required under the provisions of this subchapter.

Section 36. That Section 39.280 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

Employee's Retirement System; Board Of Trustees

§ 39.280 ADMINISTRATION OF RETIREMENT SYSTEM.

- (a) The authority and responsibility for the administration, management and proper operation of the retirement system and for construing and making effective the provisions of this subchapter shall be vested in the board of trustees.
- (b) The retirement system is established as a qualified defined benefit plan known as the "city of Sioux Falls Employee's Retirement System" as amended from time to time, pursuant to §§ 401(a) and 414(d) of the Internal Revenue Code and such other provision of the Internal Revenue Code as applicable and applicable Treasury Regulations and other guidance.

Section 37. That Section 39.281 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.281 COMPOSITION.

The board of trustees of the Employee's Retirement System shall be composed of seven trustees as follows:

- (a) The mayor, or that person as the mayor shall designate to act on the mayor's behalf; and two members who may or may not be members of the council appointed by the mayor with advice and consent of the council, to represent the council;
- (b) Three members of the retirement and pension system selected by the membership, two of whom shall be general members elected by the general division members and one of whom shall be a police member elected by the police division members. Elections shall be in accordance with § 39.282; and
- (c) One resident of the city who is not an official or employee of the city and whose membership on the board of trustees creates no conflict of interest. The member shall be nominated and approved by an affirmative majority vote of the trustees selected pursuant to divisions (a) and (b) above.

Section 38. That Section 39.283 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.283 TERMS OF OFFICE.

- (a) The regular term of office for trustee members appointed by the mayor shall be four years to expire on December 31 in the year of the mayoral election. The regular term of office for the trustees provided in § 39.281(b) and (c) shall be four years, one term to expire each year.
- (b) No trustee selected under s § 39.281(a) or (c), except the mayor or their designee, shall serve more than two consecutive full terms of office.

Section 39. That Section 39.285 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.285 FILLING OF VACANCIES.

- (a) If a member trustee shall cease to be an officer or employee of the city, or should any appointed trustee not serving as the mayor, or the citizen trustee fail to attend scheduled meetings of the board for three consecutive meetings, unless in each case excused for cause by the remaining trustees attending the meeting, the trustee shall be considered to have resigned from board membership and the board shall by resolution declare the office vacated as of the date of adoption of the resolution. Any vacancy occurring in the office of trustee shall be filled within 90 days from and after the date the vacancy occurs, for the unexpired term, in the same manner as the office was previously filled.

- (b) Except for the mayor, if a trustee is unable to attend two consecutive meetings because of a leave of absence from duties, the remaining trustee members by unanimous vote may appoint a temporary replacement eligible in accordance with § 39.281. The appointment is effective until the term expires or the board member returns.

Section 40. That Section 39.292 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.292 ANNUAL REPORT.

- (a) The city human resources director or their designee shall present a report to the board of trustees at the time of the annual actuarial valuation report each year showing the fiscal transactions of the retirement system for the year ended the preceding December 31, and the last balance sheet showing the financial condition of the retirement system by means of an actuarial valuation basis.
- (b) The board of trustees shall publish an annual report containing financial statements and an actuarial valuation of the retirement system. The report shall be filed with the retirement laws committee created by SDCL 2-6-8 and shall be available to each member of the retirement system. The financial statements contained in the report shall be audited by an independent certified public accountant. The actuarial valuation required in the report shall include the information required under the provisions of SDCL 3-12-47(6) and shall be performed by an approved actuary as defined by SDCL 3-12-47(9).

Section 41. That Section 39.294 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.294 RESPONSIBILITY OF FIDUCIARY.

Every fiduciary shall discharge his or her duties solely in the interest of the participants and beneficiaries of this retirement system, for the exclusive purpose of providing benefits to participants and their beneficiaries and with the skill, care, prudence and diligence, under the circumstances then prevailing, of a prudent person familiar with the matters and acting in a similar capacity. For purposes of this section, the word **FIDUCIARY** means any person or entity who exercises any discretionary authority control over the management of this retirement system or its assets, any person or entity who renders investment advice to this retirement system for a fee or other compensation, or any person or entity who has any discretionary authority or discretionary responsibility in the administration of this retirement system.

Section 42. That Section 39.305 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

Firefighters' Pension Fund; Generally

§ 39.305 DEFINITIONS.

For the purposes of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCUMULATED CONTRIBUTIONS. The sum of all amounts deducted from the compensations of a member and credited to his or her individual accumulated contributions account in the pension fund, together with regular interest thereon.

BENEFICIARY. Any person, except a retirant, who is in receipt of a pension or other benefit payable from the pension fund.

BOARD. The retirement board provided for in this subchapter.

CHILD. An eligible child who is an unmarried child under age 18, born to or legally adopted by the member.

COMPENSATION. The annual rate of salary paid a firefighter by the city for service rendered by him or her as a firefighter in the employ of the city. The word **COMPENSATION** shall include longevity pay increases, if any, granted him or her.

CREDITED SERVICE. Service credited a member to the extent provided in this subchapter.

ELIGIBLE HANDICAPPED CHILD.

- (1) An unmarried, dependent child born to or legally adopted by the member, irrespective of age, for which the board is provided medical proof that the child is permanently unable to hold fully self-supporting gainful employment because of mental or physical disability. Whether the child is dependent shall be determined in the discretion of the board on an individual basis. Factors which may be considered in determining dependency include, but are not limited to:
 - A. Whether the child is claimed as a dependent on another person's federal income tax return; and
 - B. Whether, and the extent to which, the child receives economic, social or other living assistance.
- (2) The board shall decide in each individual case how often to require confirming medical proof of handicapped for continuation of benefits.

EMPLOYER. The city of Sioux Falls.

FINAL AVERAGE COMPENSATION.

- (1) The average of the annual compensations received by a member for a period of three consecutive years of credited service immediately preceding retirement. If a member has less than three years of credited service, **FINAL AVERAGE COMPENSATION** shall be the average of the annual compensations received for the member's total years of credited service. For any year chosen, that year's annual compensation shall include sick leave payments and vacation payments, if received in that year, but shall not include payments for mileage reimbursement, car allowance, clothing allowance and other incidental payments.
- (2) Notwithstanding any provision to the contrary, the annual compensation of each member taken into account in determining the final average pay used to determine benefit accruals in

any calendar year beginning after December 31, 2003, shall not exceed \$205,000. The \$205,000 limit on annual compensation shall be adjusted for cost-of-living increases in accordance with § 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within the calendar year.

FINAL COMPENSATION. A member's regular annual rate of compensation at the time employment is last terminated with the city as a firefighter. In determining regular, annual rate of compensation, persons receiving workers' compensation or payments in lieu of sick leave shall be treated as if they had not received workers' compensation payments or payments in lieu of sick leave but had been paid their regular salary or wages during the period of time under consideration.

FIREFIGHTER. A full-time officer or employee of the fire department of the city. The word **FIREFIGHTER** shall not include any civilian employee of the fire department, nor any person temporarily employed as a firefighter for an emergency, nor any person who is privately employed as a firefighter.

FIREFIGHTER'S SALARY. The annual rate of compensation of a firefighter at step 9 or equivalent step in the pay schedule.

INTERNAL REVENUE CODE. (a) All references to the Internal Revenue Code mean the Internal Revenue Code of 1986, as amended. (b) The plan year is the fiscal year commencing January 1 and ending December 31. (c) For 415 testing purposes, the limitation year is the calendar year.

MEDICAL COMMITTEE. A committee of two physicians, one of whom is designated by the board, and one by or on behalf of a member, retiree or beneficiary who is claiming benefits under this subchapter. If the two physicians do not concur, the **MEDICAL COMMITTEE** means a committee of the two physicians and one additional member selected by them.

MEMBER. Any person included in the membership of the pension fund.

PENSION. An annual amount payable, from the pension fund, in equal monthly installments for life.

PENSION FUND. Consists of:

- (1) All sums of money or property that are contributed by gifts, devises and bequests;
- (2) All money received by the city from the state division of insurance as its proportionate share of the insurance fund collected from the various insurance companies;
- (3) All income derived from the investments of monies in the pension fund;
- (4) An amount as may be annually designated by the council pursuant to law;
- (5) All contributions by members of the pension fund; and
- (6) All contributions by the city.

REGULAR INTEREST. Interest at the rate or rate per annum as the board shall from time to time determine.

RETIRANT. A member who retires with a pension payable from the pension fund.

SERVICE. Service rendered to the city by a person in the employ of the city as a firefighter.

VOLUNTARY RETIREMENT AGE.

- (1) Age 55 years for a member with 20 or more years of credited service. For a member with less than 20 years of credited service at age 55 years, **VOLUNTARY RETIREMENT AGE** means the age at the time 20 years of credited service are acquired; or
- (2) A member whose age and years of service, when added, equal 80 as calculated in § 39.312(a)(2).

Section 43. That Section 39.306 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.306 OFFICERS OF PENSION FUND.

The officers of the Firefighters' Pension Fund shall be as follows.

- (a) The board shall elect from its members a chairperson and a chairperson pro tem.
- (b) The director of human resources shall serve as the administrative officer to the board of trustees and shall transact all business of the pension fund except for the accounting and investment activities which shall be delegated to the city finance director.
- (c) The city finance director shall be treasurer of the pension fund and shall administer the accounting and investment activities of the pension fund as well as be custodian of all the assets except those placed with a funding agent or investment counsel as provided in § 39.332.
- (d) The city attorney shall be legal advisor to the board.
- (e) The board shall appoint an actuary who shall be the technical advisor to the board on matters regarding the operation of the pension fund who shall perform those other duties as are required in connection therewith.
- (f) The board shall have power to select and employ a funding agent or engage in contract for investment counsel and advice as provided in § 39.332.
- (g) The board of trustees, by resolution, may appoint an administrator and may hire additional employees as may be required to transact the business of the pension fund. The board of trustees shall require bonding of the administrator in an amount set by the board of trustees, which may be included under any city employee's blanket bond. The bond premium may be paid by the pension fund.

- (h) The administrator shall make available to any member of the pension fund and to any beneficiary of the pension fund a summary pension fund description. The summary pension fund description shall be written in a manner to be understood by the average member of the pension fund and shall be sufficiently accurate and comprehensive to apprise participants and beneficiaries of their rights and obligations under the pension fund. The summary pension fund description shall include:
 - (1) The name and address of the administrator;
 - (2) Names, titles and addresses of any trustees;
 - (3) A description of the relevant provisions of any applicable collective bargaining agreement;
 - (4) The pension fund's requirements respecting eligibility for participation and benefits;
 - (5) A description of provisions providing for nonforfeitable pension benefits;
 - (6) Circumstances which may result in disqualification, ineligibility or denial or loss of benefits;
 - (7) The source of financing of the pension fund and the identity of any organization through which benefits are provided;
 - (8) The date of the end of the pension fund year and whether the records of the pension fund are kept on a calendar, policy or fiscal year basis; and
 - (9) The procedures to be followed in presenting claims for benefits under the pension fund and the remedies available under the pension fund for the redress of claims which are denied in whole or in part.
- (i) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary pension fund description, the latest annual report and any bargaining agreement, trust agreement, contract or other instrument under which the pension fund is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing complete copies.
- (j) The administrator shall annually furnish to each pension fund member or beneficiary a statement showing, on the basis of the latest available information, the member's or beneficiary's accumulated contributions, if any; total benefits accrued and nonforfeitable benefits, if any, which have accrued; or the earliest date on which his or her benefits will become nonforfeitable.

Section 44. That Section 39.307 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.307 COMPOSITION OF MEMBERSHIP.

The membership of the Firefighters' Pension Fund shall include all firefighters hired by the city prior to July 1, 2013. In all cases of doubt, the human resources director shall decide who is a

member of the Firefighters' Pension Fund within the meaning of the provisions of this subchapter and applicable federal law. All firefighters hired or appointed on or after July 1, 2013, shall participate in the South Dakota Retirement System and will not be eligible for any benefits within this chapter.

Section 45. That Section 39.308 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.308 TERMINATION OF MEMBERSHIP.

Except as otherwise provided in this subchapter, if any member leaves the employ of the city for any reason except death and retirement, membership in the pension fund shall cease and credited service at that time shall be forfeited. If the member is reemployed by the city prior to July 1, 2013, as a firefighter, membership in the pension fund shall be restored. If the member is reemployed in any other position in the city, credited service shall not be restored. If the reemployment occurs within a period of six years after the date of leaving the employ of the city, the member's credited service last forfeited shall be restored to the member's credit, provided the member returns to the accumulated contributions account any amount withdrawn, together with regular interest from the date of withdrawal to the date of repayment. A reemployed member must notify the pension fund of the member's intention to claim or reject forfeited credited service time within 30 days after reemployment by the city or the effective date of the ordinance from which this section derives, whichever is later. Upon death or retirement, membership in the pension fund shall cease and credited service shall be used in the calculation of final benefits.

Section 46. That Section 39.309 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.309 CREDITED SERVICE.

Under this subchapter, the board shall fix and determine, by appropriate rules and regulations, how much service in any calendar year is equivalent to a year of service, provided, that in no case shall less than ten days of service rendered by a member in any calendar month be credited as a month of service, other than as provided in § 39.310, nor shall less than 12 months of service rendered in any calendar year be credited as a year of service, nor shall more than one year of service be credited any member for all service rendered by the member in any calendar year, nor shall any service rendered to the city by a member outside the classification of firefighter be credited the member except as provided in § 39.310.

Section 47. That Section 39.310 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.310 MILITARY SERVICE CREDIT.

- (a) Except as provided otherwise in (b) through (e), should a firefighter, who while employed by the city, be called or enlisted in the armed service of the United States and should the person be reemployed by the city as a firefighter within one year after the date of termination of armed service, the armed service shall be credited as city service, provided the firefighter returns to the pension fund all amounts withdrawn therefrom at the time of

entering, or while in, the armed service, together with regular interest thereon from the date of withdrawal to the date of repayment. In case of doubt as to the period to be so credited any member, the board shall have final power to determine that period. During the period of the armed service rendered to the federal government and until reemployment by the city as a firefighter, the firefighter's contributions to the accumulated contributions account shall be suspended and the balance standing to the firefighter's credit in the fund shall be accumulated at regular interest.

- (b) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by § 401(a)(37) of the Internal Revenue Code, survivors of a member are entitled to any additional benefits that the pension fund would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.
- (c) Effective with respect to deaths and/or disabilities occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent permitted by § 414(u)(9) of the Internal Revenue Code, for benefit accrual purposes and in the case of death, for vesting purposes, the member shall be treated as having earned years of service for the period of qualified military service, having returned to employment on the day before the death and/or disability, and then having terminated on the date of death or disability. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.
- (d) Beginning January 1, 2009, to the extent required by § 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (as defined under § 3401(h)(2) of the Internal Revenue Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under § 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.
- (e) Effective December 12, 1994, notwithstanding any other provision of the pension fund law, contributions, benefits and service credit with respect to qualified military service are governed by § 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act of 1994.

Section 48. That Section 39.312 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.312 VOLUNTARY RETIREMENT.

- (a) Any member may retire upon written application filed with the board setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, the member desires to be retired, provided that one of the following requirements for applicable age and service has been satisfied:

- (1) The member has attained age 55 years and has 20 or more years of credited service; or
 - (2) The member has age and years of service which, when added, equal 80 or more. Minimum age of retirement is 50 years of age. For purposes of this division (a), **AGE AT TIME OF HIRE** shall mean age in years and months, rounded to the nearest whole month, subtracted from the beginning service date, rounded to the nearest whole month. When calculating eligibility, subtract from 80 the age of the member at hire date. Divide this number in half. This results in the number of years and months of service required in order to be eligible to retire. Add the required years and months of service for eligibility to the beginning service date. The beginning service date is the member's hire date plus service forfeited and repaid according to §§ 39.308 and 39.325(e).
- (b) Upon retirement, the member shall receive the superannuation pension provided in § 39.315.
- (c) A member shall be 100 percent vested in his or her service retirement benefit upon attaining normal retirement age as defined in paragraph (a) of this Ordinance § 39.312.

Section 49. That Section 39.313 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.313 EARLY RETIREMENT; REDUCTION OF BENEFIT.

Any member or former member of the Firefighters' Pension Fund on deferred status as defined in § 39.316 may retire prior to voluntary retirement as described in § 39.312 with an actuarially reduced benefit provided that the member has completed 20 or more years of credited service. The actuarial reduction shall be based on the interest and mortality assumptions used to calculate optional forms of benefits and shall be computed so that the actuarial present value of the reduced benefit is equivalent to the actuarial present value had the member terminated employment and elected to receive a deferred benefit commencing at his or her earliest voluntary retirement age. For the purposes of this section, **EARLIEST VOLUNTARY RETIREMENT** age shall mean the earliest age at which the member could have retired with unreduced benefits had the member remained in service.

Section 50. That Section 39.314 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.314 NORMAL RETIREMENT.

Any member of the Firefighters' Pension Fund who has attained or attains age 60 years shall be retired by the board on the first day of the calendar month next following the month in which the member attains age 60 years, provided that, upon the written request of the member, approved by the department head, the board may continue the member in service for periods not to extend beyond age 70 years. Upon retirement, the member shall receive a superannuation pension provided for in § 39.315, if the member has 15 or more years of credited service.

Section 51. That Section 39.315 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.315 SUPERANNUATION PENSION GENERALLY AND BENEFIT LIMITS.

- (a) Members of the Firefighters' Pension Fund who retire at or after the voluntary retirement age shall receive a superannuation pension equal to 2.5% of their final average compensation multiplied by the first 25 years of credited service, plus 1.5% of the member's final average compensation multiplied by the number of years, and fraction of a year, of the credited service in excess of 25 years. Upon retirement the member shall have the right to elect an option provided for in § 39.317.
- (b) Notwithstanding any other provisions of the pension fund to the contrary, the member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of § 415 of the Internal Revenue Code for a qualified pension plan.
- (c) After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to § 415(d) of the Internal Revenue Code) or 100% of the member's compensation.
 - (1) Annual additions are defined to mean the sum (for any year) of employer and member contributions to a defined contribution plan, post-tax member contributions to a defined benefit plan (except for purposes of service purchases, if tested under the modified limit of § 415(b) of the Internal Revenue Code), and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.
 - (2) For purposes of applying § 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable shall be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation § 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under § 414(h) of the Internal Revenue Code shall not be treated as compensation.
 - (3) Compensation shall be defined as wages within the meaning of § 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under §§ 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and shall be determined without regard to any rules under § 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in § 3401(a)(2) of the Internal Revenue Code).
 - (A) However, for limitation years beginning after December 31, 1997, compensation shall also include amounts that would otherwise be included in compensation but for an election under §§ 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000,

compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of § 132(f)(4) of the Internal Revenue Code.

- (B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:
- (I) the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or
 - (II) the payment is for unused accrued bona fide sick, vacation, or other leave that the member would have been able to use if employment had continued; or
 - (III) the payment is pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

Any payments not described in paragraph (B) above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of § 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service or deemed compensation to the individual if permanently and totally disabled (as defined in § 22(e)(3) of the Internal Revenue Code).

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

- (C) Back pay, within the meaning of Treasury Regulation § 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.
 - (4) If the annual additions for any member for a plan year exceed the limitation under § 415(c) of the Internal Revenue Code, the excess annual addition shall be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).
 - (5) A member's compensation for purposes of applying these limits shall not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code which applies for that year.
- (d) Participation in Other Qualified Plans: Aggregation of Limits.
- (1) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in § 414(j) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.
 - (2) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in § 414(i) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one (1) plan.
- (e) Basic 415(b) Limitation.
- (1) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in § 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in § 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in § 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the pension fund. In no event shall a member's annual benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Internal Revenue Code and the regulations thereunder.
 - (2) For purposes of § 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to § 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in § 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(f) Adjustments to Basic 415(b) Limitation for Form of Benefit.

If the benefit under the plan is other than the form specified in subsection (e)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

- (1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the § 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation § 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit in subsections (f)(2) and (f)(3).
- (2) For a benefit paid in a form to which § 417(e)(3) of the Internal Revenue Code does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:
 - (A) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or
 - (B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation § 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in § 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing § 417(e)(3)(B) of the Internal Revenue Code); or
- (3) For a benefit paid in a form to which § 417(e)(3) of the Internal Revenue Code applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:
 - (A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
 - (B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation § 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions

of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in § 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing § 417(e)(3)(B) of the Internal Revenue Code); or

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

(4) The actuary may adjust the 415(b) limit at the annuity starting date in accordance with the above subsections (2) and (3).

(g) Benefits For Which No Adjustment of the 415(b) Limit is Required.

For purposes of this section, the following benefits shall not be taken into account in adjusting these limits:

- (1) Any ancillary benefit which is not directly related to retirement income benefits;
- (2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
- (3) Any other benefit not required under § 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of § 415(b)(1) of the Internal Revenue Code.

(h) Other Adjustments in 415(b) Limitation.

- (1) In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section for the member's annuity starting date shall be equal to the lesser of (i) the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the one hundred sixty thousand dollar (\$160,000) annual limit (as adjusted under § 415(d) of the Internal Revenue Code and, if required, under subsection (g) for years of participation less than ten (10)), with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for the annuity starting date as defined in the plan (expressing the member's age based on completed calendar months as of the annuity starting date), and (ii) the one hundred sixty thousand dollar (\$160,000) annual limit (as adjusted under

§ 415(d) of the Internal Revenue Code and, if required, under subsection (i) for years of participation less than ten (10)) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age sixty-two (62), both determined without applying the limitations of this section.

- (2) In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in (1) above shall not apply.
 - (3) The reductions provided for in (1) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.
- (i) **Less than Ten (10) Years of Participation or Service Adjustment for 415(b) Limitations.** The maximum retirement benefits payable to any member who has completed less than ten (10) years of participation shall be the amount determined under subsection (e), as adjusted under subsection (f) and/or (g), multiplied by a fraction, the numerator of which is the number of the member's years of participation and the denominator of which is ten (10). The limit under subsection (j) (concerning the \$10,000 limit) shall be similarly reduced for any member who has accrued less than ten (10) years of service, except the fraction shall be determined with respect to years of service instead of years of participation. The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.
- (j) **Ten Thousand Dollar (\$10,000) Limit.** Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated.
- (k) **Effect of COLA on 415(b) Testing.** For purposes of applying the limits under § 415(b) of the Internal Revenue Code (the "Limit") to a member with no lump sum benefit, the following shall apply:
- (1) a member's applicable limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any cost of living adjustments;
 - (2) to the extent that the member's annual benefit equals or exceeds the Limit, the member shall no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the limit; and
 - (3) thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases, shall be tested under the then applicable benefit limit including any adjustment to the § 415(b)(1)(A) of the Internal Revenue Code dollar limit under § 415(d) of the Internal Revenue Code, and the regulations thereunder.

- (l) Effect of a Lump Sum Component on 415(b) Testing. With respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit shall be applied taking into consideration both the portion of the member's benefit subject to § 417(e)(3) of the Internal Revenue Code and the portion not subject to § 417(e)(3) of the Internal Revenue Code, as required by § 415(b) of the Internal Revenue Code and applicable Treasury Regulations.
- (m) Service Purchases under § 415(n). Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of § 415(n) of the Internal Revenue Code shall be treated as met only if:
 - (1) the requirements of § 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of § 415(b) of the Internal Revenue Code, or
 - (2) the requirements of § 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of § 415(c) of the Internal Revenue Code.
 - (3) For purposes of applying this section, the pension fund shall not fail to meet the reduced limit under § 415(b)(2)(C) of the Internal Revenue Code solely by reason of this subsection and shall not fail to meet the percentage limitation under § 415(c)(1)(B) of the Internal Revenue Code solely by reason of this subsection.
 - (4) For purposes of this section the term "permissive service credit" means service credit—
 - (A) recognized by the pension fund for purposes of calculating a member's benefit under the pension fund,
 - (B) which such member has not received under the pension fund, and
 - (C) which such member may receive only by making a voluntary additional contribution, in an amount determined under the pension fund, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

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

- (5) The pension fund shall fail to meet the requirements of this section if—
 - (A) more than five years of nonqualified service credit are taken into account for purposes of this subparagraph, or

- (B) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the pension fund.
- (6) For purposes of paragraph (5), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to—
- (A) service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in § 415(k)(3) of the Internal Revenue Code),
 - (B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (A)) of an education organization described in § 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,
 - (C) service as an employee of an association of employees who are described in clause (A), or
 - (D) military service (other than qualified military service under § 414(u) of the Internal Revenue Code) recognized by the pension fund.

In the case of service described in clause (A), (B), or (C), such service shall be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

- (7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which § 403(b)(13)(A) of the Internal Revenue Code or § 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer)—
- (A) the limitations of paragraph (5) shall not apply in determining whether the transfer is for the purchase of permissive service credit, and
 - (B) the distribution rules applicable under federal law to the pension fund shall apply to such amounts and any benefits attributable to such amounts.
- (8) For an eligible member, the limitation of § 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the pension fund before January 1, 1998.

- (n) Modification of Contributions for 415(c) and 415(n) Purposes. Notwithstanding any other provision of law to the contrary, the pension fund may modify a request by a member to make a contribution to the pension fund if the amount of the contribution would exceed the limits provided in § 415 of the Internal Revenue Code by using the following methods:
 - (1) If the law requires a lump sum payment for the purchase of service credit, the pension fund may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under § 415(c) or 415(n) of the Internal Revenue Code.
 - (2) If payment pursuant to subparagraph (1) shall not avoid a contribution in excess of the limits imposed by § 415(c) or 415(n) of the Internal Revenue Code, the pension fund may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.
- (o) Repayments of Cashouts. Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the pension fund shall not be taken into account for purposes of § 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.
- (p) Effect of Direct Rollover on 415(b) Limit. If the plan accepts a direct rollover of an employee's or former employee's benefit from a defined contribution plan qualified under § 401(a) of the Internal Revenue Code which is maintained by the employer, any annuity resulting from the rollover amount that is determined using a more favorable actuarial basis than required under § 417(e) of the Internal Revenue Code shall be included in the annual benefit for purposes of the limit under § 415(b) of the Internal Revenue Code.
- (q) Reduction of Benefits Priority. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

Section 52. That Section 39.316 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.316 DEFERRED SUPERANNUATION RETIREMENT PENSION.

Should any member of the Firefighters' Pension Fund who has 15 or more years of credited service cease to be employed by the city as a firefighter prior to becoming eligible for voluntary retirement benefits, for any reason except to become a retirant or death, that person shall remain a member during the period of absence from city service for the exclusive purpose only of receiving a superannuation retirement pension provided for in § 39.315. The pension shall begin

on the first day of the calendar month next following the month in which the member files an application for pension with the board on or after attainment of age 60 years. If the member withdraws all or part of his or her accumulated contributions, that person shall thereupon cease to be a member and shall forfeit all rights in and to a deferred pension provided for in this section.

Section 53. That Section 39.317 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.317 RETIREMENT PENSION OPTIONS.

- (a) Prior to the effective date of retirement, but not thereafter, a member may elect to receive a firefighter's pension as an option 1 pension payable for life or may elect to receive the actuarial equivalent of option 1 pension in a reduced pension and nominate a beneficiary, in accordance with the provisions of option 2, 3, 4 or 5 as set forth in this section. If a member does not elect an option, the pension shall be paid under option 1.
- (1) *Option 1.* Under option 1, if a retirant dies before receiving in pension payments an aggregate amount equal to the retiree's accumulated contributions account at the time of retirement, the difference between the accumulated contributions account and the aggregate amount of pension payments received shall be paid from the pension fund to that person as shall have been nominated by written designation duly executed and filed with the board. If there is no designated person surviving the retirant, the difference, if any, shall be paid to the retirant's legal representative.
 - (2) *Option 2.* Under option 2, upon the death of a retirant, the reduced pension shall be continued throughout the life of and paid to the person, having an insurable interest in the retirant's life, as shall have been nominated by written designation duly executed and filed with the board prior to the effective date of retirement.
 - (3) *Option 3.* Under option 3, upon the death of a retirant, one-half of the reduced pension shall be continued throughout the life of and paid to the person, having an insurable interest in the retirant's life, as shall have been nominated by written designation duly executed and filed with the board prior to the effective date of retirement.
 - (4) *Option 4.* Under option 4, upon the death of a retirant, the reduced pension shall be continued throughout the life of and paid to the person, having an insurable interest in the retirant's life, as shall have been nominated by written designation duly executed and filed with the board prior to the effective date of retirement. If the nominated beneficiary dies first, the retirant shall, upon the death of the nominated beneficiary, begin to receive a pension equal to the option 1 pension which would have been payable had no option been elected.
 - (5) *Option 5.* Under option 5, upon the death of a retirant, one-half of the reduced pension shall be continued throughout the life of and paid to the person, having an insurable interest in the retirant's life, as shall have been nominated by written designation duly executed and filed with the board prior to the effective date of retirement. If the nominated beneficiary dies first, the retirant shall, upon the death of the nominated beneficiary, begin to receive a pension equal to the option 1 pension which would have been payable had no option been elected.

- (b) Notwithstanding any provision to the contrary, the pension fund shall pay all benefits in accordance with a good faith interpretation of the requirements of § 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of § 414(d) of the Internal Revenue Code.

Section 54. That Section 39.319 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.319 DISABILITY PENSIONS.

- (a) A member who retires on account of disability, as provided in § 39.318, with ten or more years of credited service in the Firefighters' Pension Fund, when the disability is found to be caused by reasons of a personal injury or disease having occurred as the result of causes arising other than in the course of his or her actual performance of duty as a firefighter, shall receive a primary disability pension computed the same as in § 39.315. In no case shall the primary disability pension be less than 20% of a firefighter's salary. The primary disability pension shall be subject to § 39.320. Upon application for retirement, the member applicant shall have the right to elect an option provided for in § 39.317.
- (b) A member who retires on account of disability, as provided in § 39.318, regardless of credited years of service with the Firefighters' Pension Fund, when the disability is found to be caused by reasons having occurred as the natural and proximate result of causes arising in whole or in part out of and in the course of his or her employment with the city, shall receive a primary disability pension as calculated in § 39.315 with no less than ten years of credited service. In no case shall the primary disability pension be less than 50% of a firefighter's salary. Unless the board determines that the retirement, including any retirement for which application is currently pending, is the result of an injury described in SDCL 9-16-45, the recipient must be receiving workers' compensation on account of this injury. The primary disability pension shall be subject to §§ 39.320 and 39.321. Upon application for retirement, the member shall have the right to elect an option provided for in § 39.317 applicable to the member's primary disability pension, provided that if any benefits become payable under § 39.322 on account of the death of a disability retiree the pension payable or to be paid to the survivor beneficiary under either option 2 or 3 shall terminate.

Section 55. That Section 39.320 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.320 CONDITIONS AFFECTING DISABILITY RETIREES.

- (a) At least once each year during the first five years following the retirement of a member of the Firefighters' Pension Fund with a disability pension, and at least once in each three-year period thereafter, the board shall have the retiree, who has not attained age 55 years, undergo a medical examination to be made by or under the direction of a physician designated by the board. If the retiree refuses to submit to a medical examination in any period, the board may suspend that retiree's pension until the refusal is withdrawn. Should the refusal continue for one year, the board may discontinue the pension. If upon a medical examination of a retiree, the physician reports to the board that the retiree is physically

able and capable of resuming employment with the city as a firefighter, and the report is concurred in by the board, the retirant shall be restored to active service with the city at the same or equivalent rank held at the time of the disability retirement, and the disability pension shall be discontinued.

- (b) A disability retirant restored to active service in the employ of the city shall again become a member of the pension fund. Credited service at the time of the retirement shall be restored to full force and effect and service credit shall be given for any period the retirant was in receipt of workers' compensation on account of the disability arising out of city service.

Section 56. That Section 39.322 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.322 DEATH IN LINE OF DUTY.

- (a) In either case (division (a)(1) or (a)(2) below), the death, injury, or disease resulting in death is found by the board to have been the result of his or her actual performance of duty in the service of the city, the applicable benefits provided in divisions (b)(1) through (b)(5) below shall be paid, provided that the pensions provided for (in divisions (b)(2) through (b)(5) below) shall be subject to the conditions that workers' compensation is paid on account of the death of the member; and provided further that the pensions shall be subject to division (b)(6) below and to § 39.321:
 - (1) If a member dies as the result of a personal injury or disease arising solely and exclusively out of and in the course of employment with the city as a firefighter; or
 - (2) If a disability retirant dies, within a period of five years from and after the effective date of retirement and prior to his or her voluntary retirement age, as the result of the same injury or disease for which he or she was retired.
- (b)
 - (1) If the person dies prior to retirement, his or her accumulated contributions account at the time of his or her death shall be paid to the person as he or she shall have nominated by written designation duly executed and filed with the board. If there is no designated person surviving the member, his or her accumulated contributions shall be paid to his or her legal representative.
 - (2) If the deceased person leaves a spouse, the spouse shall receive a pension of one-third of a firefighter's salary. Upon the spouse's death, the pension shall terminate.
 - (3) If, in addition to a spouse who is entitled to a pension payable from the pension fund, the deceased person leaves an eligible child or an eligible handicapped child, each child shall receive a pension of an equal share of one-fourth of a firefighter's salary. A child's pension shall terminate upon the attainment of age 18 years, or adoption or marriage or death. A handicapped child's pension shall terminate upon adoption, marriage, full recovery from handicap or death. Upon termination of a child's or handicapped child's pension, the board shall redistribute the one-fourth of a firefighter's salary to the remaining eligible children, provided, however, the minimum benefit for this division (b)(3) shall be \$200 per month for each eligible child.

- (4) If the deceased person does not leave a spouse, or if the spouse dies and an eligible child or eligible handicapped child survives, the child shall each receive a pension of one-fourth of a firefighter's salary, provided that, if there are more than two surviving children under age 18 years, each child shall receive a pension of an equal share of one-half of a firefighter's salary. Upon termination of a child's or handicapped child's pension as provided in division (b)(3) above, the board shall redistribute the one-half of a firefighter's salary to the remaining eligible children, provided that, in no case shall any child's pension be more than one-fourth of a firefighter's salary, provided, however, the minimum benefit for this division (b)(4) shall be \$200 per month for each eligible child.
- (5) If the deceased person leaves neither a spouse nor children eligible to receive pensions under this section, there shall be paid to each his or her father and mother, or either of them, a pension of one-sixth of a firefighter's salary, provided, the board finds that either or both his or her father and mother were dependent upon the person, at the time of death, for at least 50% of his or her support through absence of earning power due to physical or mental incapacity. Upon the remarriage or death of a parent, his or her pension shall terminate.
- (6) Wherever the word *SPOUSE* is used in this section, it shall mean the person to whom the person was married at the time his or her employment with the city as a firefighter last terminated.
- (7) Notwithstanding any provision in the pension fund to the contrary, distributions upon the death of a member shall be made in accordance with the following requirements and shall otherwise comply with Internal Revenue Code § 401(a)(9) and the rulings pertaining thereto. If it is determined that the distribution of a member's interest has begun and the member dies before the entire interest has been distributed to the member, the remaining portion of the interest shall be distributed at least as rapidly as under the method of distribution selected by the member at retirement. If a member dies before beginning to receive any distributions of the interest under the pension fund, then any death benefits shall be distributed to the beneficiaries by December 31 of the calendar year in which the fifth anniversary of the date of death occurs. However, the five-year distribution requirement shall not apply to any portion of the deceased member's interest which is payable to or for a designated beneficiary. In that event, the portion may be distributed over the life of the designated beneficiary (or over a period not extending beyond the life expectancy of the beneficiary), provided the distributions begin not later than December 1 of the calendar year immediately following the calendar year in which the member died.
- (8) Any death benefit payable under this section shall be compared with the death benefits payable under § 39.323, and the higher death benefit shall be paid.

Section 57. That Section 39.324 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.324 REFUND OF ACCUMULATED CONTRIBUTIONS.

- (a) Except as otherwise provided in this subchapter, should any member cease to be in the employ of the city for any reason except to become a retirant or his or her death, he or she shall be paid all or part of his or her accumulated contributions account as he or she shall demand in writing on forms furnished by the board.
- (b) Except as otherwise provided in this subchapter, upon the death of a member his or her accumulated contributions account shall be paid to the person as he or she shall have nominated by written designation duly executed and filed with the board. If there be no designated person surviving the member, his or her accumulated contributions account shall be paid to his or her legal representative.
- (c) If any member dies intestate, without heirs and without having nominated a beneficiary, as provided in division (b) above, his or her accumulated contributions account at the time of his or her death may be used to pay his or her burial expenses, not to exceed a reasonable sum to be determined by the board, provided the member leaves no other estate sufficient for that purpose.
- (d) Payment of refunds of a member's accumulated contributions account, as provided for in this section, may be made in monthly installments according to the rules and regulations as the board shall from time to time adopt.
- (e) (1) Notwithstanding any provisions of the plan to the contrary that would otherwise limit a distributee's election under this rule, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (2) For the purposes of this section, the following definitions shall apply throughout this rule.

DIRECT ROLLOVER. A payment by the plan to the eligible retirement plan specified by the distributee.

DISTRIBUTEES. Includes an employee or former employee. Effective January 1, 2007, a ***DISTRIBUTEES*** further includes a nonspouse beneficiary who is a designated beneficiary as defined by § 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.

ELIGIBLE RETIREMENT PLAN.

1. The following that accepts a distributee's eligible rollover distribution:
 - a. An individual retirement account described in § 408(a) of the Internal Revenue Code;
 - b. An individual retirement annuity described in § 408(b) of the Internal Revenue Code;
 - c. An annuity plan described in § 403(a) of the Internal Revenue Code;
 - d. A qualified trust described in § 401(a) of the Internal Revenue Code;
 - e. On or after January 1, 2008, to a Roth IRA described in § 408A of the Internal Revenue Code; or
 - f. With respect to any distribution made after December 31, 2001, an annuity contract described in § 403(b) of the Internal Revenue Code or an eligible plan described under § 457(b) of the Internal Revenue Code, which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this plan.

An eligible rollover distribution does not include any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of § 415 of the Internal Revenue Code.

2. The definition of ***ELIGIBLE RETIREMENT PLAN*** shall also apply in the case of a distribution to a surviving spouse.

ELIGIBLE ROLLOVER DISTRIBUTION.

1. Any distribution of all or any portion of the balance to the credit of the distributee, except that an ***ELIGIBLE ROLLOVER DISTRIBUTION*** does not include the following:
 - a. Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; and
 - b. Any distribution to the extent the distribution is required under § 401(a)(9) of the Internal Revenue Code.
2. With respect to any distribution made prior to January 1, 2002, the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

With respect to any distribution made after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not included in gross income. However, the portion may be transferred only to an individual retirement account or annuity described in § 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in § 401(a) or § 403(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable.

Section 58. That Section 39.325 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.325 ACCUMULATED CONTRIBUTION ACCOUNTS.

- (a) The accumulated contribution accounts are hereby created. It shall be the accounts in which shall be accumulated at regular interest the contributions deducted from the compensation of members to finance their share of the costs of providing pensions, and from which refunds and transfers of accumulated contributions shall be made as provided in this subchapter.
- (b) The contribution of members to the pension fund shall be 8% of the compensation paid by the city for services rendered to the city as a firefighter. Effective January 6, 2014, the contribution of a firefighter member shall be 9% of the employee's compensation; effective January 5, 2015, the contribution of a firefighter member shall be 10% of the employee's compensation.
- (c) The officer responsible for making up the payroll shall cause the contributions provided for in division (b) above to be deducted from the compensation of each member on each and every payroll, for each and every payroll period, so long as he or she remains a member in the employ of the city. The contributions provided for in this section shall be made notwithstanding that the minimum compensation provided by law for any member shall be changed thereby. Each member shall be deemed to consent and agree to the deductions made and provided for in this section, and payment of his or her compensation less the deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the member during the period covered by the payment except as to benefits provided by this subchapter. The officer responsible for making up the payroll shall certify to the city finance director the contribution to be deducted from the compensation of each member for each and every payroll. Each of the amounts shall be deducted by the city finance director and when deducted shall be paid into the pension fund and credited to the individual accumulated contributions account of the member from whose compensation the deduction was made.
- (d) At the expiration of a period of four years following the date a member's membership terminates any balance of accumulated contributions in his or her accumulated contributions account, unclaimed by the member or his or her legal representative, shall remain with the pension fund.

- (e) In addition to the contributions deducted from the compensation of a member, as provided in this section, the member shall pay into the accumulated contributions account, by a single contribution within six months after the date of reemployment, the amount required to be repaid by § 39.308. In no case shall any member be given credit for service rendered prior to the date the member withdrew the accumulated contributions until the member repays to the accumulated contributions account all amounts due the accumulated contributions account by the member.
- (f) (1) The city shall pick up the member contribution required by division (b) above for all compensation earned after the effective date of this division (f). The contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code. The city shall pick up the member contributions from funds established and available in the salaries account, which funds would otherwise have been designated as member contributions and paid to the pension fund. Member contributions picked up by the city pursuant to this division (f)(1) shall be treated for all other purposes of this and other laws of the city in the same manner and to the same extent as member contributions made prior to the effective date of this division (f)(1).
- (2) Member contributions to the pension fund shall be paid by the city on behalf of all members. Payment of the member's contribution picked up by the city shall be made by reducing the amount of the compensation payable to those members and making payment of the amount directly to the pension fund. Contributions, although designated as member contributions, are being paid by the city in lieu of contributions by the members. Members do not have the option of choosing to receive the contributed amounts directly instead of having them paid by the city to the pension fund.
- (3) The effective date of this division (f)(3) shall be the first day of the first pay period after the city has received notification of approval from the Internal Revenue Service that, pursuant to § 414(h) of the United States Internal Revenue Code, the member contributions so picked up shall not be included in gross income for tax purposes until a time as they are distributed by refund or benefit payment, but the effective date shall not be prior to December 15, 2003.

Section 59. That Section 39.326 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.326 PENSION FUND CONTRIBUTIONS.

- (a) (1) The pension fund is hereby created. It shall be the fund in which shall be accumulated reserves for the payment of pensions payable from funds provided by the city.
- (2) Upon the basis of the mortality and other tables of experience, and regular interest, as the board shall from time to time adopt, the actuary shall annually compute the reserves for:
- A. Pensions being paid retirants and beneficiaries; and

- B. Pensions likely to be paid on account of service rendered and to be rendered by members.
- (3) The fund shall be financed by annual appropriations, to be made by the council, determined according to this division (a) and divisions (b), (c) and (d) below.
- (b) The appropriations for members' current service shall be a percent of their annual compensations which will produce an amount which if paid annually by the city during their future service will be sufficient to provide the reserves at the time of their retirements, for the portions of the pensions to be paid them based upon their future service.
- (c) The appropriation for members' accrued service shall be a percent of their annual compensations which will produce an amount which if paid annually by the city over a period of years, to be determined by the council, will amortize, at regular interest, the unfunded pension funds for the accrued service portions of the pensions to which they might be entitled.
- (d) The appropriation for pensions being paid retirants and beneficiaries shall be a percent of the annual compensations of members which will produce an amount which if paid annually by the city over a period of years, to be determined by the council, will amortize, at regular interest, the unfunded amounts for pensions being paid retirants and beneficiaries.
- (e) Until the reserves accumulated in the pension fund equal or exceed the present value of all pensions payable from the fund, the city's contributions to the pension fund, in any fiscal year, shall not be less than 12% of the aggregate compensations paid members during the preceding fiscal year.
- (f) To cover all or part of the city's contributions to the pension fund, as provided in this section, the city may levy an annual tax upon the assessed valuation of the city for the current year, which levy shall be in addition to the amount authorized to be levied for general purposes. The levy shall be determined by the council as required in this section.
- (g) All contributions made by the city under this pension fund shall be deposited in the pension fund. However, contributions made by the city are expressly conditioned upon the initial qualification of the pension fund under the Internal Revenue Code. Upon the city's request, a contribution which was made by mistake of fact or conditioned upon initial qualification shall be returned to the city within one year after the payment of the contribution or the denial of the qualification.
- (h) Except as otherwise provided in this section, all assets of the pension fund, including investment income, shall be retained for the exclusive benefit of members and their beneficiaries, shall be used to pay benefits to those persons or to pay administrative expenses to the extent not paid by the city and shall not revert to or inure to the benefit of the city.
- (i) In no event shall the city receive any amounts from the fund upon termination of the pension fund, except that, and notwithstanding any other provision of the pension fund, the city shall receive those amounts, if any, as may remain after the satisfaction of all liabilities

of the pension fund and arising out of any variations between actual requirements and expected actuarial requirements.

Section 60. That Section 39.327 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.327 PENSION FUND PAYMENTS.

The pension fund shall be the fund from which shall be paid pensions as provided in this subchapter in addition to the administrative expenses.

Section 61. That Section 39.328 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.328 CREDITING OF STATE CONTRIBUTIONS, GIFTS AND THE LIKE.

All monies received by the city from the insurance department of the state, as the city's proportionate share of the insurance fund collected from the various insurance companies, shall be credited to the pension fund. All gifts, devises and bequests to the pension fund shall be credited to the pension fund.

Section 62. That Section 39.330 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.330 PENSIONS PREVIOUSLY ALLOWED.

Any pensions being paid, at the effective date of the ordinance from which this subchapter derives, from funds of the predecessor Firefighters' Pension Fund shall become, as of the effective date, an obligation of the pension fund. The pensions shall be continued without change as to amount, subject to § 39.329. All property, assets and records of every description held in the name of the predecessor Firefighters' Pension Fund shall be transferred to the pension fund established by this subchapter.

Section 63. That Section 39.331 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.331 ADMINISTRATIVE EXPENSES.

The administrative expenses of the Firefighters' Pension Fund as reasonably incurred shall be paid from the pension fund.

Section 64. That Section 39.332 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.332 INVESTMENT OF FUNDS.

- (a) The retirement board shall be the trustees of the assets of the Firefighters' Pension Fund. The board shall have full and independent power to invest and reinvest the monies and assets of the fund and to hold, purchase, sell, assign, transfer and dispose of any securities and investments of the fund.
- (b) The board shall establish a written investment policy, with the advice and counsel of the advisors as the board deems necessary, and the investment policy shall set forth the types of investments into which shall be placed the assets of the pension fund. The policy shall further set forth appropriate provisions with respect to those investments, including, but not limited to, the anticipated rate of return, quality of investment, class of investment, maturity and liquidity, cash reserves and acceptable risk. The investment policy shall be reviewed by the board periodically.
- (c) The board shall have the authority to invest and reinvest the assets of the pension fund in the securities, investment vehicles or property, wherever situated and of whatever kinds, as shall be approved by the board and in accordance with the investment policy adopted by the board. The board may engage investment counsel or investment advisors in contract for investment advice when they deem it necessary.
- (d) The board may select one or more funding agents or investment counsel for the management of the assets of the fund. The selection and the appointment of the funding agent or investment counsel shall be made by the board, and the board shall have the right to determine the form and substance of each and every agreement under which the funds are to be held and managed by the funding agents or investment counsel, provided that the agreement shall not be inconsistent with the provisions of this subchapter.
 - (1) The board shall require that any funding agent or investment counsel who has custody or control of any property of the plan to keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions pertaining to trust property, and shall further require that all accounts, books and records pertaining thereto be open for inspection and audit at all reasonable times by the board or its designees and the city finance department or its designees. The board shall also be authorized to have conducted an independent audit at the expense of the fund.
 - (2) The board may retain the services of a qualified independent investment consultant who shall, at least on a semiannual basis, report on the relative performance of the fund's funding agent or investment counsel and recommend to the board the retention or replacement of the managers. A qualified independent investment consultant shall have the qualifications and experience as determined by the board from time to time.
- (e) (1) The board shall, in selecting a funding agent or other investment counsel or advisor, exercise all judgment and care in the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs.

Any funding agent or other investment counsel or advisor shall have a minimum of five years of experience.

- (2) For the purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

FUNDING AGENT. A corporate or individual trustee or trustees, insurance company or companies authorized to do business in the state, or combination thereof.

INVESTMENT ADVISOR. A corporation or individual who has registered with the United States Securities and Exchange Commission as an investment advisor and is authorized to do business in the state.

INVESTMENT COUNSEL. A corporation or individual authorized to do business under the Federal Investment Advisors Act of 1940, being 15 U.S.C. §§ 80b1 through 80-b-21, as amended from time to time, and authorized to do business in the state.

- (f) The board of trustees may, unless restricted by law, transfer all or any portion of the assets of the pension fund to a collective or common group trust, as permitted under Revenue Ruling 81-100, Revenue Ruling 2011-1, Notice 2012-6, and Revenue Ruling 2014-24 (or subsequent guidance), that is operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under § 401(a) of the Internal Revenue Code, individual retirement accounts that are exempt under § 408(e) of the Internal Revenue Code, eligible governmental plans that meet the requirements of § 457(b) of the Internal Revenue Code, and governmental plans under § 401(a)(24) of the Internal Revenue Code. For this purpose, a trust includes a custodial account or separate tax-favored account maintained by an insurance company that is treated as a trust under § 401(f) or under § 457(g)(3) of the Internal Revenue Code.
- (g) Any collective or common group trust to which assets of the pension fund are transferred pursuant to the above shall be adopted by the board of trustees as part of the plan by executing appropriate participation, adoption agreements, and/or trust agreements with the group trust's trustee.
- (h) The separate account maintained by the group trust for the plan shall not be used for, or diverted to, any purpose other than for the exclusive benefit of the members and beneficiaries of the plan.
- (i) For purposes of valuation, the value of the separate account maintained by the group trust for the plan shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.
- (j) All assets of the pension fund shall be held for the sole purpose of meeting disbursements for annuities, pensions and other payments authorized by this subchapter and shall be used for no other purpose.

Section 65. That Section 39.333 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.333 METHOD OF MAKING PAYMENTS.

All payments from monies of the Firefighters' Pension Fund shall be made according to charter and ordinance provisions governing the disbursements of monies.

Section 66. That Section 39.334 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.334 ALLOWANCE OF REGULAR INTEREST.

At the end of each fiscal year the board of the Firefighters' Pension Fund shall allow and credit regular interest on the balance standing to each member's credit in the accumulated contributions account at the beginning of each quarter.

Section 67. That Section 39.335 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.335 ASSIGNMENTS PROHIBITED.

The right of a person to a pension, to the return of accumulated contributions, the pension itself, any optional benefit, any other right accrued or accruing under the provisions of this subchapter to any member, retirant or beneficiary and all monies belonging to the pension fund shall be unassignable and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or any other process of law whatsoever except as is specifically provided in this subchapter.

Section 68. That Section 39.336 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.336 ERRORS.

Should any change or error in the records result in any member, retirant or beneficiary receiving from the Firefighters' Pension Fund more or less than he or she would have been entitled to receive had the records been correct, the board shall correct the error and as far as is practicable shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the member, retirant or beneficiary was correctly entitled shall be paid.

Section 69. That Section 39.337 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.337 REDETERMINATION OF PENSIONS.

- (a) The board of trustees of the Firefighters' Pension Fund shall provide annual post-retirement redetermination of pensions. The redetermined amount shall not be less than the amount of pension otherwise payable. Any provision of this subchapter which limits the amount of

pension shall not apply to the operation of this section in redetermining the amount of pension. The application of any provision redetermining pension amounts may be restricted to pensions having an effective date of payment either prior to or subsequent to a specified date. Any post-retirement redetermination of one or more pensions within a pension fund shall be prefunded and may not bring the pension fund into noncompliance with the provisions of § 39.339(c).

- (b) Pursuant to division (a) above, the pension upon which redeterminations of pension are made shall be increased once on January 1, 1986, by 0.5% for each year of retirement based on the current pension for each person retiring on or before December 31, 1974, and 0.5% for each year of retirement based on the original pension for each person retiring after December 31, 1974.
- (c) (1) Starting January 1, 1991, on the first of the month following the thirty- sixth full month of retirement, the board shall redetermine the pensions of those retirants and beneficiaries whose pensions were effective 36 full months prior to the date of redetermination, and the pensions shall be increased as provided in this section effective on the first of the month following the thirty- sixth full month of retirement. On January 1, 1991, and thereafter on each January 1, the board shall redetermine the pensions of all retirants and beneficiaries and the pensions shall be increased as provided in this section. The pension shall be increased by an amount equal to the current forecast base times the pension increase percentage. The pension increase percentage shall be equal to the percentage increase, to a maximum of 3%, in the *Consumer Price Index for All Urban Consumers*, as computed by the United States Department of Labor, for the year ending in the month of June preceding the January 1 redetermination date.
- (2) Any transfer of funds and calculation of benefits required in this section shall be made effective as of the dates mentioned in this section, and the actual transfers and calculation of benefits may be made on a later date. Changes in amounts paid to retirants and beneficiaries shall be paid as soon as practicable after the end of the calendar year.

Section 70. That Section 39.338 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.338 CHANGE IN EMPLOYEE CONTRIBUTION LEVELS.

No change may be made in employee contribution levels of this Firefighters' Pension Fund or present or future benefits of this pension fund, by ordinance or otherwise, without an affirmative vote by both the council and the membership of the pension fund.

Section 71. That Section 39.339 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.339 LIMITS OF CONTRIBUTIONS.

Total contributions in each year to the Firefighters' Pension Fund, subject to §§ 39.305 through 39.344 shall be sufficient to fund the following:

- (a) The administrative cost of the plan during the year;
- (b) The actuarially determined cost of future benefits accruing to members during the year; and
- (c) An amount sufficient to amortize any unfunded liability of the pension fund over a period not to exceed 40 years on the basis of reasonable and generally accepted actuarial assumptions.

Section 72. That Section 39.340 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.340 CHANGES OR MODIFICATIONS OF BENEFITS; ACTUARIAL STATEMENT.

No benefits, present or future, may be changed or modified in any manner unless the pension fund's actuaries have prepared an actuarial statement showing the effect of those changes on the pension fund. No benefits, present or future, may be changed or modified if the change or modifications will bring the pension fund into noncompliance with the provisions of § 39.338.

Section 73. That Section 39.341 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.341 RECORDS; INFORMATION FURNISHED TO ADMINISTRATOR.

The city shall maintain records with respect to each employee sufficient to determine benefits due under this subchapter or which may become due to the employee. The city shall furnish to the pension fund administrator any information necessary for the administrator to make reports required under the provisions of this subchapter.

Section 74. That Section 39.342 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.342 GROUP INSURANCE DEDUCTION.

- (a) As permitted by law, in addition to pension payments payable under this subchapter, the pension fund shall pay from the pension fund one-half of the premium for the retiree's and beneficiary's group health insurance plan participated in by the city. Effective after final termination and distribution of the 401(h) group health insurance fund, this premium will instead be paid from the OPEB 115 Trust Fund Agreement.
- (b) As permitted by law, if a retiree or beneficiary is covered by a group insurance plan participated in by the city and is permitted to and elects to continue the coverage as a retiree, the retiree or beneficiary may authorize the board to have deducted from all retirement allowances the payments required to continue coverage under the group insurance plan.
- (c) The benefits described in this section shall apply to any retired employee or officer who retires prior to January 1, 2014, and is entitled to a retirement allowance and who shall have

participated at least five years, immediately preceding separation from city employment in the group health insurance plan participated in by the city.

- (d) All contributions from the retirement allowances for purposes of the retirant's and/or beneficiary's group insurance fund shall be reasonable and ascertainable.
- (e) Contributions to fund the retirant's and beneficiary's 401(h) group health insurance plan must be subordinate to the contributions to the city's Firefighters' Pension Fund for retirement benefits. At no time shall the aggregate actual contributions to the 401(h) group health insurance fund (when added to actual contributions for life insurance protection under the plan, if any) be in excess of twenty-five percent (25%) of the total aggregate actual contributions made to the Firefighters' Pension Fund (not including contributions to fund past service credit, if applicable). The Board shall annually determine whether the twenty-five percent (25%) test has been met. If at any time the 401(h) group health insurance fund (plus any life insurance contribution) would exceed the twenty-five percent (25%) test, the excess amount of contributions shall be transferred to the firefighters' Pension Fund for retirement benefits.
- (f) Forfeitures from the group health insurance fund shall not be allocated to individual accounts, but shall be used for account expenses.
- (g) At no time prior to the satisfaction of all liabilities under the 401(h) group health insurance fund or termination of the Firefighters' Pension Fund shall any assets for purposes of group health insurance be used for, or diverted to, any purpose other than the providing of payment of the Firefighters' Pension Fund portion of the monthly retiree health insurance premium benefit in this section, and the payment of administrative expenses.
- (h) The provisions of § 401(h)(5) of the Internal Revenue Code shall apply upon the satisfaction of all liabilities under law.
- (i) Effective December 31, 2016, the 401(h) group health insurance fund shall be terminated. After satisfaction of all liabilities under the 401(h) group health insurance fund to provide certain retiree medical benefits, any amounts remaining in this fund must be returned to the city, pursuant to § 401(h)(5) of the Internal Revenue Code.
- (j) Effective January 1, 2017, the OPEB Trust shall be created and effective pursuant to §39.006. The OPEB 115 Trust Fund Agreement will be used to make the payments described in (a) of this section as soon thereafter as is administratively reasonable in the Board's judgment.

Section 75. That Section 39.345 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.345 STIPEND.

- (a) Any officer or employee who retires from city employment with an immediate annuitized pension benefit after December 31, 2013, shall upon retirement receive a monthly stipend. The stipend shall be paid at the rate of \$40 per month per year of service until such retirant

is Medicare eligible or upon death, whichever is sooner. Such stipend shall be adjusted for inflation at an annual rate of 3% beginning in January, 2015.

- (b) Credited service for purposes of calculation of the monthly stipend will be determined in the same manner as identified in § 39.309 for members that retire with a regular, early reduced, duty-incurred disability or non-duty-incurred disability retirement benefit.

Section 76. That Section 39.355 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

Firefighters' Pension Fund; Retirement Board

§ 39.355 ADMINISTRATION.

- (a) There is hereby created a retirement board whose duties shall be to administer, manage and operate the Firefighter's Pension Fund and to construe and carry into effect the provisions of this subchapter, subject to those powers as are retained by the council.
- (b) The pension fund is established as a qualified defined benefit plan known as the "city of Sioux Falls Firefighters' Pension Fund" as amended from time to time, pursuant to §§ 401(a) and 414(d) of the Internal Revenue Code and such other provision of the Internal Revenue Code as applicable and applicable Treasury Regulations and other guidance.

Section 77. That Section 39.356 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.356 COMPOSITION, TERMS.

- (a) The board of trustees of the Firefighters' Pension Fund shall be composed of five trustees as follows:
 - (1) The mayor, or the person as the mayor shall designate to act on the mayor's behalf; and one member who may or may not be a member of the council appointed by the mayor with advice and consent of the council, to represent the council;
 - (2) Two members of the pension fund selected by the membership; and
 - (3) One resident of the city who is not an official or employee of the city and whose membership on the board of trustees creates no conflict of interest. The member shall be nominated and approved by an affirmative majority vote of the trustees selected pursuant to divisions (a)(1) and (a)(2) above.
- (b) The regular term of office for the trustees selected under divisions (a)(2) and (a)(3) above shall be three years, to expire on a staggered basis. The regular term of office for the trustee member appointed by the mayor shall be four years to expire on December 31 in the year of the mayoral election.
- (c) No trustee selected under divisions (a)(1) or (a)(3) above, except the mayor or their designee, shall serve more than two consecutive full terms of office.

Section 78. That Section 39.364 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.364 ADMINISTRATIVE RECORDS.

The administrative officer of the retirement board shall keep, or cause to be kept, the data as shall be necessary for an actuarial valuation of the assets and liabilities of the Firefighters' Pension Fund.

Section 79. That Section 39.365 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.365 ANNUAL REPORTS.

- (a) The city human resources director or their designee shall present a report to the board of trustees at the time of the annual actuarial valuation report each year showing the fiscal transactions of the Firefighters' Pension Fund for the year ended the preceding December 31, and the last balance sheet showing the financial condition of the pension fund by means of an actuarial valuation of its assets and liabilities.
- (b) The board of trustees shall publish an annual report containing financial statements and an actuarial valuation of the pension fund. The report shall be filed with the retirement laws committee created by SDCL 2-6-8 and shall be available to each member of the pension fund. The financial statements contained in the report shall be audited by an independent certified public accountant. The actuarial valuation required in the report shall include the information required under the provisions of SDCL 3-12-47(5) and shall be performed by an approved actuary as defined by SDCL 3-12-47(7).

Section 80. That Section 39.366 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.366 MORTALITY AND OTHER TABLES.

The retirement board shall adopt the mortality and other tables of experience, and regular interest, as are required in the operation of the Firefighters' Pension Fund on an actuarial basis.

Section 81. That Section 39.367 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.367 RESPONSIBILITIES OF FIDUCIARY.

Every fiduciary shall discharge his or her duties solely in the interest of the participants and beneficiaries of the pension fund, for the exclusive purpose of providing benefits to participants and their beneficiaries and with the skill, care, prudence and diligence, under the circumstances then prevailing, of a prudent person familiar with these matters and acting in a similar capacity. For purposes of this section, the word **FIDUCIARY** means any person or entity who exercises any discretionary authority control over the management of this pension fund or its assets, any person or entity who renders investment advice to this pension fund for a fee or other

compensation, or any person or entity who has any discretionary authority or discretionary responsibility in the administration of this pension fund.

Date adopted: _____

Mayor

ATTEST:

City Clerk