

ORDINANCE NO.: 5554

AN ORDINANCE TO AMEND CHAPTER 25, CODE OF ORDINANCES, CITY OF MEMPHIS SO AS TO ADOPT A DEFINED CONTRIBUTION PLAN

The City of Memphis, Tennessee hereby adopts a Defined Contribution Plan with the following terms and provisions, such terms and provisions to be incorporated by adoption of a Participation Adoption Agreement into a complete Volume Submitter or adoption of an individually designed plan provided by a commercial provider, with in substance the provisions below plus such other provisions as required by applicable law and necessary to effectuate the below Plan provisions, as approved by City Council, obtained through a Request for Proposal procedure conducted by the Division of Finance:

1. *Name:* The name of the Defined Contribution Plan shall be The City of Memphis, Tennessee Contributory Employees Retirement Plan.
2. *Exclusive Benefit:* The Plan shall be maintained for the exclusive benefit of the Participants and their beneficiaries and is intended to qualify as a defined contribution plan under the Internal Revenue Code.
3. *Social Security Replacement Plan:* It is intended that this Plan qualify as a Social Security Replacement Plan under Internal Revenue Code §3121(b)(7)(F).
4. *Effective Date:* The Effective Date of the Plan shall be July 1, 2015.
5. *Plan Year:* The Plan Year shall be the calendar year: January 1 to December 31 .
6. *Eligibility and Participation:*
  - a. *Eligible Employees:* Employees eligible to participate in the Plan shall be those employees:
    - i. Hired on or after July 1, 2015, or
    - ii. Actively in the employ of the City on June 30, 2015 who were hired on or before June 30, 2015 but who as of July 1, 2015 have less than ten (10) years of service with the City or an employee who is less than 65 years old and has less than five (5) years of service with the City as of July 1, 2015 and who were on June 30, 2015 a Participant in the

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City of Memphis Retirement System for General Employees under  
City Ordinance Chapter 25, Articles I through VII,

who are in the regular, full-time employment of the City to the extent that the City contributes to the salary of such employee in a job classification or title that the City administration shall designate as eligible for participation in the Plan, including any person who is elected to his/her office by the people, but not including the light, gas and water division of the City, temporary employees as classified by the City, part-time employees, or any employee mandated by law to contribute to the federal Social Security system and not eligible to be a Participant by his/her job classification.

b. *Participation:*

- i. Each Eligible Employee shall become a Participant as of his/her Employment Creditable Service Date without any further action on the employee's part. The Eligible Employee shall remain a Participant until he/she terminates employment with the City.
- ii. Any Eligible Employee who is elected to his/her position, including the Mayor or any member of the City Council, may elect to participate in this Plan as of the date he/she begins his/her elected duties, provided:
  1. Such elected employee makes a written election to the Board within ninety (90) days of such date; and
  2. If such elected Eligible Employee elects to begin participation after the date he/she begins his elected duties, he/she
    - a. Enters this Plan before the expiration of his/her then current term of office; and
    - b. Upon such entry, pays into the Trust Fund the Employee Contributions payable for the period since such date he/she began his/her elected duties, with compounded interest at the rate established by the Board.

- c. *Employment Creditable Service Date:* Employment Creditable Service Date shall be the date on which the Eligible Employee is deemed to have first performed an hour of service as an employee.

7. *Contribution and Allocation:*

a. *Contributions:*

- i. *Employee Contributions:* Each participating Eligible Employee shall make a mandatory employee contribution of eight percent (8%) of the Participant's Compensation, which shall be designated pursuant to Code Section 414(h) as contributions made by the City, made through payroll deduction pursuant to rules and regulations adopted by the Board governing the making of employee contributions by payroll deduction. The head of each City department shall apply the rate of contribution to the Compensation of each Participant, and shall certify to the comptroller on each payroll the amount to be contributed, and shall promptly furnish to the Board a copy of each payroll; and such amounts shall be deducted by the Comptroller and shall be paid into the Trust Fund and credited by the Board as Employee Contributions of the Participant for whom the contributions were made. Every Participant shall be deemed to have consented and agreed to the Employee Contributions provided and made hereunder. Payment of salary, less such contributions, shall be a full and complete discharge of all claims and demands whatsoever for the service rendered by such person to the City during the period covered by such payment, except his/her claim to the benefits to which he/she may be entitled under the terms and provisions of this Plan.

At the end of each pay period, the comptroller shall determine the aggregate amount of the Employee Contributions of the Participants who are employees of the general City government for such period, and shall be supplied with the aggregate amount of the Employee Contributions of the Participants of the various other City agencies, in the proper amount, and shall then transfer to the Trust Fund an amount equal to the aggregate Employee Contributions for all Participants for such pay period.

- ii. *Employer Contributions:* For each Participant who makes the required Employee Contributions hereunder, the City shall make an employer contribution of eight percent (8%) of each Participant's Compensation. The initial City contribution for such Participant shall be made as soon as administratively feasible following the pay period in which the Eligible Employee becomes vested in the City contribution. Thereafter, the City shall make such City contribution to the Plan for a particular Plan Year contemporaneous with its deposit to the Plan of Employee Contribution.
  
  - iii. *Transferred Accrued Benefit from the City of Memphis Retirement System for General Employees under City Ordinance Chapter 25, Articles I through VII:* For each Participant who is actively employed as of June 30, 2015 but who as of July 1, 2015 has less than ten (10) years of service with the City and who was on June 30, 2015 a Participant in City of Memphis Retirement System for General Employees under City Ordinance Chapter 25, Articles I through VII (the "City of Memphis Pension System") with an accrued benefit consisting of his/her employee contributions to the City of Memphis Pension System plus the multiple as provided in City Ordinance Ch 25 -1(b), the City shall transfer from the City of Memphis Pension System to this Plan the Participant's accrued benefit as defined above. Such contribution shall be referred to herein as the "Transferred Benefit."
- b. *Compensation:* For purposes of the above, compensation for each Plan Year means the amount of pay, not in excess of two hundred thousand dollars (\$200,000.00))(as such amount may be adjusted for inflation from time to time by the Secretary of the Treasury under Internal Code Section 401(a)(17) and 415(d)), received by the Participant for services rendered to the City, including shift premium pay, hazardous pay, longevity pay and incentive pay, but excluding overtime pay or any double-time compensation for holidays.
- c. *Allocation:*
- i. *Separate Accounting:* The Board shall establish and maintain an account in the name of each Participant to which the Board shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein.

- ii. *Allocation of Contributions:* The City shall provide the Board with all information required by the Board to make a proper allocation of the City's contribution, if any, for each Plan Year. Within a reasonable period of time after the date of receipt by the Board of such information, the Board shall allocate any Employer Contributions proportionately among the Participants of the Plan as provided in this Plan.
- iii. *Forfeitures:* Any forfeitures (1) first, shall be made available to reinstate previously forfeited account balances, if any, of any re-employed Participant as provided in the Plan; (2) second, shall be applied to pay Plan expenses; and (3) third, shall be applied to reduce the Employer Contributions due under the Plan.

8. *Participant Accounts and Participant Directed Investments:*

- a. *Participant Accounts:* The Board shall create and maintain adequate records to disclose the interest in the Trust Funds of each Participant, former Participant and beneficiary. Such records shall be in the form of individual accounts to which shall be credited the Participant's Employee Contributions, the Employer Contributions allocable to the Participant as provided herein, any Transferred Benefit of the Participant as provided herein, and the aggregate of all earnings and losses on such account.
- b. *Participant Directed Investments:* Each Participant may designate, in accordance with the procedures established from time to time by the Board, the manner in which the amounts allocated to each of his or her account shall be invested from among the investment funds made available from time to time by the Board. If a Participant fails to make a designation, then his or her account shall be invested in the investment fund or funds designated by the Board from time to time in a uniform manner. A Participant may change his or her investment designation for future contributions to be allocated to his or her account. Any such change shall be made in accordance with procedures established by the Board and the frequency of such change may be limited by such procedures. A Participant may elect to convert his or her investment designation with respect to the amounts already allocated to his or her account. Any such conversion shall be made in accordance with the procedures established by the Board, and the frequency of such conversions may be limited by such procedures.

9. *Vesting:*

- a. Participants are 100% vested in their Employee Contributions.
- b. Participants are 100% vested in their Transferred Benefit, as defined herein.
- c. Participants are 100% vested in Employer Contributions due and attributable to the Participant after the Participant has been continuously employed from his/her date of hire for a period of no less than one Hundred Eighty (180) days.
- d. Participants are 100% vested upon attaining Normal Retirement Age. Normal Retirement Age shall be age sixty-five (65).

10. *Retirement Benefits:*

- a. A Participant who terminates his or her employment on or after his or her Normal Retirement Age shall be entitled to a retirement benefit equal to the amount in his or her account as of the Valuation Date next preceding his/her date of retirement. For this purpose "Valuation Date(s)" shall be each and every business date during the Plan Year. Distributions may be made as soon as administratively feasible after the Valuation Date coincident with or next following the date of such Participant's termination of employment.

11. *Termination of Employment Other than After Attainment of Normal Retirement Age:*

- a. A Participant who terminates his/her employment prior to attaining his/her Normal Retirement Age shall be entitled to a termination benefit equal to the amount in his or her account in which he/she is vested as of the Valuation Date next preceding his/her date of retirement. For this purpose "Valuation Date(s)" shall be each and every business date during the Plan Year. Distributions may be made as soon as administratively feasible after the Valuation Date coincident with or next following the date of such Participant's termination of employment.

12. *Forms of Benefits:*

- a. A Participant shall be paid in one of the following alternative forms to be selected by the Participant, or in the absence of such an election then in a lump sum:

- i. A lump sum
  - ii. Periodic installment payments over a period to be determined by such Participant or his or her beneficiary. After periodic payments commence, the Participant or beneficiary shall have the right to direct the Board to reduce the period over which such periodic installments shall be made and the Board shall adjust the cash amount of such periodic installments accordingly. Upon the death of a beneficiary who is receiving installment payments, the remaining balance in the Participant's account shall be paid as soon as administratively feasible in one lump sum cash payment to the beneficiary's executor or administrator or to his or her heirs at laws if there is no court administration of such beneficiary's estate.
- b. Any distribution to a Participant who has a benefit which exceeds, or has ever exceeded, \$1,000 shall require such Participant's consent if such distribution commences prior to the his/her Normal Retirement Age.
  - c. If a Participant terminates his or her employment and his or her vested interest in his or her account is not in excess of \$1,000 and has never exceeded \$1,000 at the time of any prior distribution, such Participant's benefit shall be paid in one lump sum payment in lieu of any other form of benefit.
  - d. A Participant may elect, in lieu of a lump sum distribution, at the time and in the manner prescribed by the Board, to have all or any portion of an "eligible rollover distribution" paid directly to an "eligible retirement plan" specified by the Participant in a direct rollover.

13. *In-Service Distributions:*

- a. *In-Service Distributions:* In-service distributions are not permitted of any portion of a Participant's account, whether vested or not.
- b. *Loans:* Loans are not permitted of any portion of a Participant's account, whether vested or not.
- c. *Hardship Withdrawals:* Hardship withdrawals are not permitted of any portion of a Participant's account, whether vested or not.

14. *Trustee and Retirement Committee:*

- a. A Board of Administration (the "Board") under the direction of the Mayor shall administer the Plan and the Trust Fund. The Board shall consist of the Mayor, the Comptroller, and five (5) employees with at least ten (10) years of continuous service with the City, and a citizen member of the City. The Director of Personnel shall be an ex officio member without vote. The employees and citizen member shall be appointed on the second Tuesday in December in odd-numbered years by the City Council of the City of Memphis, Tennessee. The employees and citizen member shall be appointed for two-year terms, except for the first term upon the effective date of the Plan. The first term shall terminate on December 31, 2017, and each term thereafter shall begin on the January 1<sup>st</sup> next following the appointment.
- b. The members of the Board shall serve without compensation, but they shall be reimbursed for necessary expenses incurred by them as members of the Board.
- c. The Mayor shall be ex-officio chairman and the Comptroller ex-officio treasurer of the Board. The Board shall appoint a secretary who may, but need not necessarily, be a member of the Board.
- d. The Board shall meet not less than annually and may meet at any time that the business of the Plan shall require, and the chairman shall have the power to call a meeting at any time that it is necessary in order to carry out the business of the Board.
- e. A majority of the Board shall constitute a quorum to transact any business, but it shall require not less than four(4) affirmative votes to carry out any matter before the Board.
- f. The Board shall supervise the administration and enforcement of this chapter according to the terms and provisions of this chapter and shall have all powers necessary to accomplish these purposes, including, without limitation and in addition to any other implied powers and duties which may be needed to carry out the provisions of the Plan, the following specific powers and duties:
  - i. To make and enforce such rules and regulations as it shall in its discretion deem necessary or proper for the efficient administration of the Plan;

- ii. To decide all questions relating to the eligibility of employees to participate in the Plan;
- iii. To interpret the Plan, construe all terms, provisions, conditions and limitations of the Plan (in all cases, the construction necessary for the Plan to qualify under the applicable provisions of the Internal Revenue Code shall control), and to decide any and all matters arising hereunder, in its discretion, including the right to resolve ambiguities, inconsistencies and omissions; provided, however, that all such interpretations and decisions shall be applied in a uniform and nondiscriminatory manner to all Participants similarly situated;
- iv. To compute and determine the amount, manner and time of payments of any Plan benefits which shall be payable to any Participant or beneficiary in accordance with the provisions of the Plan, and to prescribe procedures to be followed by distributees in obtaining benefits;
- v. To determine the rights of Participants and beneficiaries to Plan benefits; to determine the existence of any Participant or beneficiary; to take any actions necessary to assure timely payment of benefits to any eligible Participant or beneficiary; and to take any actions necessary to assure a full and fair review for any person who is denied a claim to any benefits under the Plan;
- vi. To authorize disbursements from the Trust Fund;
- vii. To prepare, file and distribute, in such manner as the Board determines to be appropriate, such information and material as may be required by law;
- viii. To establish and maintain records relating to Participants (including former Participants) and beneficiaries and such other records as are necessary for proper operation of the Plan, making such records available to the City or any Participant or beneficiary during the business hours except that a Participant or beneficiary shall examine only such records as pertain exclusively to the examining Participant or beneficiary and the Plan as currently in effect or hereafter amended;

- ix. To prepare and furnish to Participants all information required under federal law or provisions of the Plan;
- x. To prepare and file with all appropriate governmental agencies all reports and other information required by applicable law;
- xi. To receive and review reports from the Comptroller as to the financial condition of the Trust Fund, including its receipts and disbursements;
- xii. To provide procedures for determination of claims for benefits;
- xiii. To create subcommittees, task forces or study groups to make recommendations to the Board concerning the administration and enforcement of the Plan;
- xiv. To employ or retain such persons, including legal counsel (who may be counsel for the City), actuaries, consultants, accountants, and other agents as it shall deem advisable and necessary to administer the Plan, to render advice with respect to any responsibility or authority being carried out by the Board, and to assist in the administration of the Plan;
- xv. To pay the costs and expenses of the Plan, the Board and the fees of legal counsel, actuaries, consultants, accountants, and other agents out of the Trust Fund to the extent any such costs are not paid by the City, and to allocate such expense among Participant accounts;
- xvi. To establish a policy to carry out the objectives of the Trust Fund and a method to determine investment funds to be made available under that policy;
- xvii. To appoint and provide a trustee (which may be the Comptroller) to serve as trustee for the Trust Fund;
- xviii. To take any action necessary or appropriate to assure that the Plan is administered for the exclusive purposes of providing benefits to Participants and their beneficiaries and defraying reasonable expenses of administering the Plan, subject to the requirements of any applicable law; and

- xix. Generally, to operate and administer the Plan in all matters other than those specifically designated to another party under the Plan, all as further set forth herein.
  
- g. The Board shall in its discretion determine all claims for benefits. Any Participant, beneficiary or legal representative thereof may file a claim for benefits under the Plan by submitting to the Board a written statement describing the nature of the claim and requesting a determination of its validity under the terms of the Plan. The Board, upon its review of the claim and all facts relevant to the claim, shall issue a ruling with respect to the claim. If the claim is wholly or partially denied, written notice shall be furnished to the claimant, which notice shall set forth in a manner calculated to be understood by the claimant:
  - i. The specific reason or reasons for denial;
  - ii. Specific reference to pertinent Plan provisions on which the denial is based;
  - iii. A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
  - iv. An explanation of the claims review procedures.

Any Participant or beneficiary (or his or her authorized representative) whose claim for benefits has been denied, may appeal such denial by resubmitting to the Board a written statement requesting a further review of the decision within sixty (60) days of the date the claimant receives notice of such denial. Such statement shall set forth the reasons supporting the claim, the reasons such claim should not have been denied, and any other issues or comments which the claimant deems appropriate with respect to the claim. If the claimant shall request in writing, the Committee shall make copies of the Plan documents pertinent to his claim available for examination of the claimant.

Within sixty (60) days after the request for further review is received (or if the Board has not met within such sixty (60) days then within sixty (60) days of the first meeting of the Board after receipt of the request), the Board shall review its determination of benefits and the reasons therefor and notify the claimant in writing of its final decision. Such written notice

shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, with specific references to the pertinent Plan provisions on which the decision is based. The decision made by the Board shall be final and conclusive on all parties.

- h. The Board will be entitled to rely conclusively upon all tables, valuations, certificates, opinions and reports which will be furnished by an enrolled actuary, accountant, controller, counsel or other person who is employed or engaged for such purposes.
- i. No member of the Board shall be precluded from becoming a Participant under the Plan if he or she is otherwise eligible, but he or she shall not be entitled to act, vote or otherwise influence a decision of the Board specifically relating to his or her own participation under the Plan.
- j. The Committee shall not have any responsibility for the investment of the assets of the Plan, which assets shall be invested by Participant direction as provided in the Plan.
- k. No benefit shall be required to be paid until a properly completed claims form is filed with the Board for such benefit. All claims shall be processed in accordance with the rules and regulations established by the Board. Any payment to a Participant or his/her beneficiary, or to a legal representative or heirs at law of any of them, made in accordance with the Plan shall be to the extent of such payment in full satisfaction of all claims under the Plan against the Plan, the Comptroller, the Board, or the City, any of whom may require such person, his legal representative, or his/her heirs at law, as a condition precedent to such payment, to execute a receipt and release for such payment in such form as shall be determined by the Comptroller, the Board or the City, as the case may be.

15. *General Provisions:*

- a. *Assignment or Alienation:* Except as otherwise provided by law, no benefit, payment or distribution under the Plan shall be subject either to the claim of any creditor of a Participant or beneficiary to attachment, garnishment, levy (other than a federal tax levy under Internal Revenue Code Section 6331), execution or other legal or equitable process, by any creditor of such person, and no such person shall have any right to alienate, commute, anticipate, or assign (either at law or equity) all or any portion of any benefit payment or distribution under the Plan.
- b. *Trust Fund:* Any person who claims any benefit under the Plan shall look solely to the assets of the Trust Fund established hereunder. In no event will the Comptroller, the Board, the City, the City Council, or any employee of the

City be liable in its or their individual capacities to any person for the payment of benefits under the Plan.

- c. *Amendment of Plan:* The Employer intends to continue the Plan indefinitely. Nevertheless, the Employer reserves the right to terminate the Plan and to suspend, or completely discontinue contributions to the Plan, at any time with only such notice as required by law, if any. The Employer may amend or modify the Plan from time to time; provided, however, that no such action shall adversely affect Participants to the extent of their vested benefits. Notwithstanding the foregoing, however, any modification or amendment of the Plan may be made retroactively, if necessary, or appropriate to qualify or maintain the Plan as a Plan meeting the requirements of the Internal Revenue Code to the extent permitted by the Code. Nothing herein shall confer to Participants an implied right to future retirement benefit arrangements or to any indefinite continuation of the retirement formulas, contribution rates, and eligibility in effect at the time of employment; provided, however, the actuarial value of accrued benefits earned by Participants prior to the effective date of any such amendment or repeal shall remain an enforceable right and may not be reduced or otherwise forfeited except by the consent of the Participant.
- d. *Merger:* The Plan shall not be automatically terminated by the Employer's merger into any other municipality, city, county or other governmental body, but the Plan shall be continued after such merger provided the successor has agreed to assume all allocated liabilities, assets and obligations of the Plan. All rights to amend, modify, suspend or terminate the Plan shall be transferred to the successor, effective as of the date of the merger. No assets shall be transferred under this paragraph until the successor has established the existence of a qualified plan and fund as evidenced by the receipt of a determination letter from the Internal Revenue Service approving such qualification. The merger or consolidation with, or transfer of assets and liabilities to, any other qualified retirement plan shall be permitted only if the benefit each Plan Participant would receive if the Plan were terminated immediately after such merger or consolidation or transfer of assets and liabilities, would be at least as great as the benefit he or she would have received had the Plan been terminated immediately before any such transaction.
- e. *Plan Termination:* In the event the Plan shall be terminated, or partially terminated, the accounts of all affected Participants shall immediately become 100% vested.
- f. *No Rights to Continuation of Employment:* The establishment of the Plan shall not be construed as conferring any legal rights in any employee or any person for continuation of employment, nor shall it interfere with the rights of

the City to discharge any employee without regard to the effect such discharge might have upon him or her as a Participant in the Plan.

- g. *Determination of Qualification:* This Plan is conditioned upon a determination by the Internal Revenue Service that it is a qualified tax-exempt employee retirement plan pursuant to Section 401(a) of the Code, and regulations issued thereunder, so that such contributions will not be taxed to the Participants as income at the time of contribution, and so that the Fund hereunder will be exempt from income taxes.
- h. *Applicable Law:* The Plan will be construed, regulated and administered in accordance with the applicable laws of the Internal Revenue Code and the State of Tennessee.