

AN ORDINANCE OF THE CITY OF MUSKOGEE, OKLAHOMA

ORDINANCE NO. 4014-A

AN ORDINANCE AMENDING THE EMPLOYEE RETIREMENT SYSTEM, DEFINED CONTRIBUTION PLAN FOR THE CITY OF MUSKOGEE, OKLAHOMA; PROVIDING RETIREMENT BENEFITS FOR ELIGIBLE EMPLOYEES OF THE CITY OF MUSKOGEE, OKLAHOMA; PERTAINING TO THE DEFINITION OF EMPLOYEE; PROVIDING FOR THE DETERMINATION OF VESTING FOR CITY CLERK; PROVIDING FOR REPEALER AND SEVERABILITY; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY CITY COUNCIL OF THE CITY OF MUSKOGEE, OKLAHOMA.

Section 1. **AMENDATORY.** The Employee Retirement System, Defined Contribution Plan, of the City of Muskogee, Oklahoma, is hereby amended as reflected on the attached Exhibit "A", which is incorporated herein and adopted by reference. These amendments shall become effective on **March 25, 2017**.

Section 2. **EXECUTION AUTHORIZATION.** The City Clerk and Mayor be and they are hereby authorized and directed to execute the amended Retirement System Plan documents and to do all the other acts necessary to put said amendment into effect and to maintain IRS qualification of the Plan. The executed amended document attached hereto as Exhibit "A" is hereby ratified and confirmed in all respects.

Section 3. **SEVERABILITY.** If, regardless of cause, any section, subsection, paragraph, sentence, or clause of this ordinance, including the System as set forth in Exhibit "A" is held invalid or to be unconstitutional, the remaining sections, subsections, paragraphs, sentences, or clauses shall continue in full force and effect and shall be construed thereafter as being the entire provisions of this ordinance.

Section 4. **REPEALER.** Any ordinance inconsistent with the terms and provisions of this ordinance is hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

Section 5. **EMERGENCY.** Whereas, in the judgment of the City Council of the City of Muskogee, Oklahoma, the public peace, health, safety, and welfare of the City of Muskogee, Oklahoma, and the inhabitants thereof demand the immediate passage of this ordinance, an emergency is hereby declared, the rules are suspended, and this ordinance shall be in full force and effect on its passage and approval.

END

The foregoing ordinance was introduced before the City Council on the _____ day of _____, _____, and was duly adopted and approved by the Mayor and City Council on the _____ day of _____, _____, after compliance with notice requirements of the Open Meeting Law (25 OSA, Section 301, et seq.).

ATTEST:

MAYOR

CITY CLERK

Approved as to form and legality on _____, _____.

CITY ATTORNEY

**OKLAHOMA MUNICIPAL RETIREMENT FUND
MASTER DEFINED CONTRIBUTION PLAN
JOINDER AGREEMENT**

City of Muskogee, a city, town, agency, instrumentality, or public trust located in the State of Oklahoma, with its principal office at Muskogee, hereby establishes a Defined Contribution Plan to be known as **City of Muskogee Plan** (the “Plan”) in the form of the Oklahoma Municipal Retirement Fund Master Defined Contribution Plan.

Except as otherwise provided herein, the definitions in Article II of the Plan apply.

1. Dates.

- This instrument is a new Plan effective ____ (date may not be prior to Plan Year of the date of execution).
- This instrument is an amendment, restatement and continuation of the Previous Plan, which was originally effective July 1, 1984. The effective date of this Joinder Agreement is **March 25, 2017** (date may not be prior to Plan Year of the date of execution), except as otherwise stated in the Plan and the Joinder Agreement.

2. Employee.

The word “Employee” shall mean:

- Any person, other than a Leased Employee, who, on or after the Effective Date, is considered to be a regular full-time employee in accordance with the Employer’s standard personnel policies and practices, and is receiving remuneration for such services rendered to the Employer (including any elected official and any appointed officer or employee of any department of the Employer, whether governmental or proprietary in nature), including persons on Authorized Leave of Absence. Employees shall not include independent contractors. Elected members of the City Council shall not be considered to be Employees solely by reason of their holding such office.
- Any person, other than a Leased Employee, who, on or after the Effective Date, is considered to be a regular employee in accordance with the Employer’s standard personnel policies and practices (including part-time, seasonal and temporary employees), and is receiving remuneration for such services rendered to the Employer (including any elected official and any appointed officer or employee of any department of the Employer, whether governmental or proprietary in nature), including persons on Authorized Leave of Absence. Employees shall not include independent contractors. Elected members of the City Council shall not be considered to be Employees solely by reason of their holding such office.
- Any person who, on or after the Effective Date, as of 8/18/2015, holds the position of:
- City Manager, City or Town Administrator, President, Chief Executive Officer, General Manager, or District Manager, as applicable.
- Assistant City Manager Chief of Police Fire Chief
- Department Head or Department Manager
- Finance Director or Chief Financial Officer
- General Counsel or Municipal Attorney Municipal Judge
- (specify position)
- Any person who, as of 1/1/2016, holds the position of Interim City Attorney.
- Any person who, as of 3/25/2017, holds the position of City Clerk.**

The word “Employee” shall not include:

- Any person who is currently accruing benefits under any other state or local retirement system.
- Any person in the following position and who is covered under another retirement program or system approved by the City:
- City Manager, City or Town Administrator, President, Chief Executive Officer, General Manager, or District Manager, as applicable.
- Assistant City Manager Chief of Police Fire Chief
- Department Head or Department Manager Finance Director or Chief Financial Officer
- General Counsel or Municipal Attorney Municipal Judge
- (specify position)
- Any person who .

3. Entry Date.

Eligible Employees shall commence participation in the Plan: (Select only one)

- months** (any number of months up to twelve) after the later of the Employee's Employment Commencement Date or the date the definition of Employee in Section 2 hereof was met, provided that the individual has met the definition of Employee in Section 2 hereof throughout such period.
- On the Employee's Employment Commencement Date.** (If the Employer has opted out of Old Age and Disability Insurance (OADI), this option must be elected).

4. Definition of Compensation.

Compensation shall exclude the item(s) listed below:

- No exclusions.
- Overtime pay.
- Bonuses.
- Commissions.
- Longevity Pay.
- Severance pay.
- Fringe benefits, expense reimbursements, deferred compensation and welfare benefits.
- Accrued vacation or sick leave paid upon termination of employment and moving expenses.
- Other:

5. Plan Design.

The Employer hereby elects the following Plan design:

- Pick-up Option.** Each Employee shall be required to contribute to the Plan 3.00 % of his or her Compensation. These contributions shall be picked up and assumed by the Employer and paid to the Fund in lieu of contributions by the Participant. No Participant shall have the option of receiving the contributed amounts directly as Compensation.

- Thrift Plan Option.**

- A Participant may elect to contribute to the Plan for each Valuation Period an amount which is at least 1%, but no more than % of his Compensation ("Mandatory Contributions"). Mandatory Contributions shall be made by payroll deductions. A Participant shall authorize such deductions in writing on forms approved by, and filed with the Committee.

- The Employer shall contribute to the Fund an amount equal to % of the total Mandatory Contributions contributed by Participants.

The Employer contribution shall be allocated in the proportion which the Mandatory Contributions of each such Participant for such Valuation Period bear to the total Mandatory Contributions contributed by all such Participants for such Valuation Period. Forfeitures attributable to Employer contributions under the Thrift Plan Option of this Section 5 shall be used to reduce Employer contributions under such Option.

- Fixed Option.** The Employer shall contribute to the Fund an amount equal to 7.428% of the total covered Compensation of all Participants for the Valuation Period. The Employer contribution shall be allocated in the proportion which the Compensation of each such Participant for such Valuation Period bears to the Compensation paid to all such Participants for such Valuation Period.

- Variable Option.**

- The Employer intends to make a contribution to the Plan for the benefit of the Participants for each Valuation Period. The contribution may be varied from year to year by the Employer. (Select one option below)

- Option A:** The Employer contribution shall be allocated in the proportion that each such Participant's total points awarded bear to the total points awarded to all Participants with respect to such year. A Participant shall be awarded one point for each Year of Service.

- Option B:** The Employer contribution shall be allocated in the proportion which the Compensation of each such Participant for such Valuation Period bears to the Compensation paid to all such Participants for such Valuation Period.

- Option C:** A combination of Options A and B in the following ratios: 50 % for Option A, and 50 % for Option B.

- 401(k) Option.
(This Option available only if elected prior to May 1, 1986)
- Participant Deferral Elections shall be allowed under the provisions of Section 4.8 of the Plan. Participants shall be allowed to defer no more than % of their Compensation for each election period.
- Section 4.8(d) of the Plan (“Roth Elective Deferrals”) shall apply to contributions after _____ (enter a date later than January 1, 2006, but not earlier than the date the Roth option was initially adopted), and the Plan will accept a direct rollover from another Roth elective deferral account under an applicable retirement plan as described in Code Section 402A(e)(1).
- Matching Contribution Option. The Employer shall contribute to the Fund an amount equal to _____% of the Participant's contributions under the Employer's Section 457(b) Deferred Compensation Plan. The Employer matching contribution shall be limited to _____% of the Participant's Compensation. Forfeitures attributable to Employer matching contributions under this Matching Contribution Option of Section 5 shall be used to reduce Employer matching contributions under such Option.
- No Employer Contribution Option.

6. Other Participant Contribution Options.

- Voluntary Nondeductible Contributions by Participants shall be allowed under the provisions of Section 4.4 of the Plan.
- A Participant may not withdraw Voluntary Nondeductible Contributions.
- Participants shall not contribute to the Plan.

7. Self-Directed Investments.

- Are permitted.
- Are not permitted.

8. Allocation of Forfeitures Available.

Forfeitures of Employer contributions attributable to the Fixed Option or Variable Option under Section 5 hereof:

- Shall be added to Employer contribution under such Option.
- Shall reduce the Employer contribution under such Option.

9. Service for Worker's Compensation Period.

If a Participant is on an Authorized Leave of Absence and is receiving worker's compensation during such Authorized Leave of Absence, such Participant

- shall be credited with Service for such period for purposes of vesting only and not for purposes of allocations of Employer Contributions.
- shall not be credited with Service for such period.

10. Vesting.

For purposes of vesting under Section 6.4 of the Plan, the Employer hereby elects the following Option:

Option A

<u>Years of Service</u>	<u>Vested Percentage</u>	<u>Forfeited Percentage</u>
less than 1	0%	100%
at least 1 but less than 2	10%	90%
at least 2 but less than 3	20%	80%
at least 3 but less than 4	30%	70%
at least 4 but less than 5	40%	60%
at least 5 but less than 6	50%	50%
at least 6 but less than 7	60%	40%
at least 7 but less than 8	70%	30%
at least 8 but less than 9	80%	20%
at least 9 but less than 10	90%	10%
10 or more	100%	0%

Option B

<u>Years of Service</u>	<u>Vested Percentage</u>	<u>Forfeited Percentage</u>
Less than 3	0%	100%
at least 3 but less than 4	20%	80%
at least 4 but less than 5	40%	60%
at least 5 but less than 6	60%	40%
at least 6 but less than 7	80%	20%
7 or more	100%	0%

Option C

<u>Years of Service</u>	<u>Vested Percentage</u>	<u>Forfeited Percentage</u>
less than 5	0%	100%
at least 5 but less than 6	50%	50%
at least 6 but less than 7	60%	40%
at least 7 but less than 8	70%	30%
at least 8 but less than 9	80%	20%
at least 9 but less than 10	90%	10%
10 or more	100%	0%

Option D

<u>Years of Service</u>	<u>Vested Percentage</u>	<u>Forfeited Percentage</u>
Immediate 100% Vesting	100%	0%

Option E

The Schedule indicated below (the sum of the Vested Percentage and Forfeited Percentage at each Year of Service must equal 100%) the vesting schedule must be at least as favorable as one of the safe harbor pre-ERISA schedules. The safe harbor vesting schedules are:

- a. 15-year cliff vesting schedule: The plan provides that a participant is fully vested after 15 years of creditable service (service can be based on years of employment, years of participation, or other creditable years of service).
- b. 20-year graded vesting schedule: The plan provides that a participant is fully vested based on a graded vesting schedule of 5 to 20 years of creditable service (service can be based on years of employment, years of participation, or other creditable years of service).
- c. 20-year cliff vesting schedule for qualified public safety employees: The plan provides that a participant is fully vested after 20 years of creditable service (service can be based on years of employment, years of participation, or other creditable years of service). This safe harbor would be available only with respect to the vesting schedule applicable to a group in which substantially all of the participants are qualified public safety employees (within the meaning of Section 72(t)(10)(B)).

<u>Years of Service</u>	<u>Vested Percentage</u>	<u>Forfeited Percentage</u>
less than 10	0%	100%
10 or more	100%	0%

Option F

To comply with the Internal Revenue Service Regulations promulgated pursuant to the Code Section 3121(b)(7)(F), Participants who are part-time, seasonal or temporary Employees will have immediate vesting.

(If this Option F is elected, one of the other Options above must also be elected for Participants who are not part-time, seasonal or temporary Employees).

11. Participant Loans.

- Participant loans shall be offered pursuant to Section 6.14 of the Plan; provided that the maximum loan amount shall be 40% of the Participant's vested Account balance (rather than 50%) and there shall not be more than two loans (rather than one loan) outstanding at any time with respect to a Participant.
- Participant loans shall not be offered.

12. Direct Transfer to Other Retirement Plan.

- Direct transfer of a Participant's accounts to another defined contribution plan sponsored by the Employer is not permitted.
- The Accounts of any Participant who (i) is 100% vested in his Accounts in this Plan; (ii) has ceased to be eligible for participation in this Plan; and (iii) who becomes eligible for participation in another defined contribution retirement plan sponsored by the Employer (the "Other Retirement Plan"), shall be directly transferred to the Other Retirement Plan as soon as practicable after the Plan Administrator provides written direction to the Trustee to such effect in a form acceptable to the Trustee.

13. Valuation Date. Except with respect to any Special Valuation Date determined in accordance with Section 5.10, the Valuation Date for the Plan shall be:

- Monthly: Midnight on the last work day of the calendar month.
- Weekly: Midnight on the last work day of the calendar week.
- Daily: Beginning effective on the first date reasonably available to the Oklahoma Municipal Retirement Fund, on each business day of the Plan Year for which Plan assets are valued on an established market.

14. Determination of Vesting for City Attorney.

Any Participant in the position of City Attorney for the City of Muskogee as of August 18, 2015, shall receive 100% immediate vesting in the Plan.

15. Determination of Vesting for Interim City Attorney.

Any Participant in the position of Interim City Attorney for the City of Muskogee as of January 1, 2016, shall receive 100% immediate vesting in the Plan.

16. Determination of Vesting for City Clerk.

Any Participant in the position of City Clerk for the City of Muskogee as of March 25, 2017, shall receive 100% immediate vesting in the Plan.

17. The Employer has consulted with and been advised by its attorney concerning the meaning of the provisions of the Plan and the effect of entry into the Plan.

IN WITNESS WHEREOF the **City of Muskogee** has caused its corporate seal to be affixed hereto and this instrument to be duly executed in its name and behalf by its duly authorized officers this _____ day of _____, _____.

City of Muskogee

By: _____

Attest:

Title: _____

Title: _____

(SEAL)

18. The foregoing Joinder Agreement is hereby approved by the Oklahoma Municipal Retirement Fund this _____ day of _____, _____.

OKLAHOMA MUNICIPAL RETIREMENT FUND

By: _____

Attest:

Title: _____

Secretary

(SEAL)

Required Disclosures. This Joinder Agreement is to be used only with the Oklahoma Municipal Retirement Fund Master Defined Contribution Plan. Failure to properly complete this Joinder Agreement may result in failure of the Plan to qualify under Code Section 401(a). In accordance with IRS Rev. Proc. 2011-49, the Volume Submitter Practitioner who has obtained Internal Revenue Service approval of the Oklahoma Municipal Retirement Fund Master Defined Contribution Plan has authority under the Plan document to amend the Plan on behalf of adopting employers for certain changes in the Code, regulations, revenue rulings, other statements published by the Internal Revenue Service, including model, sample or other required good faith amendments. The Volume Submitter Practitioner will inform adopting employers of any such amendments or of the discontinuance or abandonment of the volume submitter plan document. The name, address and telephone number of the Volume Submitter Practitioner are: McAfee & Taft A Professional Corporation, 211 N. Robinson, Oklahoma City, OK 73102, telephone (405) 552-2231. Any inquiries by the adopting employer regarding the adoption of the Plan, the meaning of Plan provisions, or the effect of the Internal Revenue Service advisory letter on the volume submitter plan may be directed to the Volume Submitter Practitioner.