

**THE STATE OF KANSAS PUBLIC EMPLOYEES
RETIREMENT SYSTEM SUPPLEMENTAL DEFINED
CONTRIBUTION PLAN**

**RESOLUTION NO. 9362
and
ADOPTION AGREEMENT
City of Topeka Contract No. 50370**

**The City of Topeka, Kansas
[Participating Employer]**

**Administered by:
Kansas Public Employees Retirement System
611 South Kansas Avenue
Suite 100
Topeka, KS 66603
Telephone: 785-296-6166**

RESOLUTION NO. 9362

WHEREAS, the City _____ of Topeka _____, Kansas, (hereinafter referred to as the "Participating Employer") has determined that in, the interest of attracting and retaining qualified employees, it wishes to offer a primary or a supplemental defined contribution plan in accordance with Section 401(a) of the Internal Revenue Code ("Code");

WHEREAS, the Participating Employer has also determined that it wishes to encourage employees' saving for retirement by offering its employees the State of Kansas ("State") Public Employees Deferred Compensation Plan as authorized by K.S.A. 74-49b01, *et seq.*, of the Kansas Statutes Annotated;

WHEREAS, the State's Public Employees Deferred Compensation Plan is intended to be an eligible deferred compensation plan in accordance with Code section 457(b) (the "457 Plan");

WHEREAS, the 457 Plan is administered by Kansas Public Employees Retirement System ("KPERs") Board of Trustees;

WHEREAS, on July 1, 2016, the State authorized KPERs to establish a qualified defined contribution plan under Code section 401(a) for local governmental units of the State to make defined contributions on behalf of their employees;

WHEREAS, accordingly, KPERs has established the KPERs' Supplemental Defined Contribution Plan (the "Plan") in which the local governmental units of the State may participate;

WHEREAS, the Plan is intended to be a qualified, governmental defined contribution plan in accordance with Code sections 401(a) and 414(d);

WHEREAS, the Plan is administered by KPERs;

WHEREAS, the Plan is only available to participating employers who also are participating in the State's 457 Plan;

WHEREAS, the Participating Employer has reviewed the Plan;

WHEREAS, the Participating Employer wishes to participate in the Plan to provide certain benefits to its employees, reduce overall administrative costs of offering a retirement plan to its employees, afford attractive investment opportunities to its employees, and encourage additional retirement savings by its employees;

WHEREAS, the Participating Employer is an Employer as defined in the Plan;

WHEREAS, the Participating Employer has executed an Adoption Agreement for the Plan; and

WHEREAS, the City of Topeka ("Participating Employer") is authorized by law to adopt this Resolution approving the Adoption Agreement on behalf of the Participating Employer;

Therefore, the Participating Employer hereby resolves:

Section 1. The Participating Employer adopts the Plan and Trust Agreement for its Employees.

Section 2. The Participating Employer acknowledges that KPERS, including KPERS' Board of Trustees ("KPERS' Board"), are only responsible for this Plan, the 457 Plan established under K.S.A. 74-49b01, *et seq.* and the defined benefit retirement systems created under K.S.A. 74-4903. However, neither KPERS nor the KPERS Board shall have any responsibility for other employee benefit plans separately maintained and/or established by the Participating Employer. Further, the Participating Employer acknowledges and agrees that it assumes full responsibility for the operation and administration of its obligations under the Plan, in accordance with Section 4(c) of this Resolution, its status as a joint trustee of the Plan and the trust, including, but not limited to, as a party to the Trust Agreement with Wells Fargo Bank, National Association ("Trust Agreement") and any legal obligations thereunder. The participating employer also acknowledges and agrees that neither the State nor KPERS shall incur any liability by reason of this Resolution or the Adoption Agreement which is attached hereto and made a part of this Resolution ("Adoption Agreement");

Section 3. The Participating Employer hereby agrees to and adopts the terms of the Plan and the Adoption Agreement. The Plan and Adoption Agreement set forth the Employees to be covered by the Plan, the benefits to be provided by the Participating Employer under the Plan, and any conditions imposed by the Participating Employer with respect to, but not inconsistent with, the Plan. The Participating Employer reserves the right to amend its elections under the Adoption Agreement, so long as the amendment is not inconsistent with the Plan or applicable federal law including, but not limited to, Code section 401(a), or other applicable law and is approved by KPERS and the Plan's Administrative Service Provider.

Section 4.

- (a) The Participating Employer shall abide by the terms of the Plan and the Trust Agreement, including amendments to the Plan and the Trust Agreement, all investment, administrative, and other service agreements of the Plan and the Trust Agreement, and all applicable provisions of the Internal Revenue Code and other applicable law.
- (b) The Participating Employer accepts the administrative services to be provided by KPERS and any services provided by the Plan's Administrative Service Provider in accordance with the Trust Agreement. The Participating Employer acknowledges that fees will be imposed with respect to the services provided and that such fees may be deducted from the Members' accounts.
- (c) The Participating Employer shall be a joint trustee with KPERS under the Trust Agreement.

- (d) The Participating Employer shall indemnify and hold harmless KPERS from and against any claims and/or damages arising from, or related to any actions taken by or information reported by the Participating Employer to either KPERS or the Administrative Services Provider, including, but not limited to, actions or information regarding the employment status and/or termination of an Employee.
- (e) The Participating Employer shall allow KPERS and/or the Administrative Services Provider reasonable access to Employees to assist with enrollment and/or retirement planning counseling.

Section 5.

- (a) The Participating Employer may terminate its participation in the Plan, if it takes the following actions:
 - (i) A resolution must be adopted terminating its participation in the Plan.
 - (ii) The resolution must specify when the participation will end.

KPERS shall determine whether the resolution complies with the Plan, and all applicable federal and state laws, shall determine an appropriate effective date, and shall provide appropriate forms to terminate ongoing participation. However, distributions under the Plan of existing accounts to Members will be made in accordance with the Plan.

- (b) The Participating Employer acknowledges that the Board may involuntarily terminate the Plan.
- (c) The Participating Employer acknowledges and agrees that it shall be responsible to fund any accrued liabilities under the Plan in the event of either: i) its voluntary termination of participation in the Plan, or ii) the involuntary termination of the Plan by KPERS.

Section 6. The Participating Employer acknowledges that all assets held in connection with the Plan, including all contributions to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Members and their Beneficiaries under the Plan. No part of the assets and income of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Members and their Beneficiaries and for defraying reasonable expenses of the Plan. All contributions made pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights held as part of the Plan, shall be transferred pursuant to the Trust Agreement to be held, managed, invested and distributed as part of the Trust Fund in accordance with the provisions of the Plan. All contributions to the Plan must be transferred by the Participating Employer to the Trust Fund. All benefits under the Plan shall be distributed solely from the Trust Fund pursuant to the Plan.

Section 7. This Resolution and the Adoption Agreement shall be submitted to KPERS for its approval. KPERS shall determine whether the Resolution complies with the Plan, and, if it does, shall provide appropriate forms to the Participating Employer to implement participation in the Plan. KPERS may refuse to approve an Adoption Agreement by an Employer that does not have state statutory authority to participate in the Plan. The Participating Employer hereby acknowledges that it is responsible to assure that this Resolution and the Adoption Agreement are adopted and executed in accordance with the requirements of applicable law.

Adopted by the Participating Employer on _____, _____, in accordance with applicable law.

By: _____
Signature

Michael A. Padilla, Mayor

Name and Title

Attest: _____

Date: _____

[Participating Employer should assure that all applicable law is followed in the adoption and execution of this resolution.]

**THE STATE OF KANSAS PUBLIC EMPLOYEES
RETIREMENT SYSTEM SUPPLEMENTAL
DEFINED CONTRIBUTION PLAN
ADOPTION AGREEMENT**

ADMINISTRATOR

Kansas Public Employees Retirement System ("KPERS")
611 South Kansas Avenue
Suite 100
Topeka, KS 66603
Telephone: 785-296-6166

PARTICIPATING EMPLOYER

Name: City of Topeka

Taxpayer Identification Number ("TIN"): 48-6028701

Address: 215 SE 7th St., Rm. 170, Topeka, KS 66603

Phone: 785-368-2580

Facsimile: 785-368-3605

E-mail: sharvel@topeka.org

Person Authorized to receive Official Notices from the Plan or KPERS Jacque Russell

Title: HR Director

Address: 215 SE 7th St., Rm. 170, Topeka, KS 66603

Phone: 785-368-3764

E-mail: jrussell@topeka.org

The Participating Employer is required to update this contact information with KPERS and the Administrative Services Provider if there are any changes related to either the Authorized Representative or his/her contact information.

TYPE OF ADOPTION

This Adoption Agreement is for the purpose of the Participating Employer to participate in the KPERS' Supplemental Defined Contribution Plan (the "Plan") as follows (**check one**):

☒ **Initial Adoption**

This is a new adoption by the Participating Employer for its Employees and the effective date shall be December 15, 2022. The Participating Employer's adoption of this Plan does not replace or restate an existing qualified defined contribution plan.

☐ **Restatement of Pre-existing Plan**

This is an amendment and restatement of another defined contribution plan of the Participating Employer the effective date of which shall be _____. This agreement is intended to replace and serve as an amendment and restatement of the Participating Employer's pre-existing plan, which became effective on _____. The Participating Employer understands that it is the Participating Employer's responsibility to ensure that the pre-existing plan meet all applicable state and federal requirements.

☐ **Amended Adoption**

This is an amendment of an existing Adoption Agreement (reference number _____, if applicable) and the Effective Date shall be the first day of _____, _____. **Note:** Any amended Adoption Agreement shall not be effective unless it has been accepted and approved by KPERS.

☐ This is an amendment to change one or more of the Participating Employer's contribution design elections an Adoption Agreement between the Participating Employer and KPERS.

☐ This is to separate Employees from an existing division participating in the Plan into a new division, and the effective date shall be the first day of _____, _____.

☐ This is to merge the following divisions currently participating in the Plan into the following division or group: _____.

☐ **Participating Employer Disclosures**

☒ This is a new defined contribution plan adopted by the Participating Employer for its Employees. This plan does not replace or restate an existing defined contribution plan.

☐ This is an amendment and restatement of another defined contribution plan of the Participating Employer the effective date of which shall be _____. This agreement is intended to replace and serve as an amendment and restatement of the Participating Employer's pre-existing plan, which became effective on _____. The Participating Employer understands that it is the Participating Employer's responsibility to ensure that the pre-existing plan meet all applicable state and federal requirements.

- ☐ This is an amendment of the Adoption Agreement to this Plan previously adopted by the Participating Employer (**please specify type below**):
- ☐ This is an amendment to change one or more of the contribution design elections in the Adoption Agreement.
- ☐ This is an amendment to add a new department or a new class of Eligible Employees.
- ☐ This is an amendment to discontinue participation in the Plan by one or more departments or classes of Employees.
- ☐ Other (**please specify**): _____

DISCLOSURE OF OTHER QUALIFIED DEFINED CONTRIBUTION PLAN(S)

The Participating Employer ☐ does or ☒ does not have an existing, qualified defined contribution plan. If the Participating Employer does have one or more defined contribution plans, the Participating Employer must provide the plan name and the name of the plan provider below, and all such other relevant information requested by KPERS and/or the Administrative Service Provider.

Plan Name(s) _____

Plan Provider(s) _____

This is ☐ or is not ☒ the only retirement plan for the Employees of the Participating Employer. **Note:** If so, is this Plan intended to be a qualified Social Security Replacement Plan for the Participating Employer? ☐ Yes or ☐ No

VERY IMPORTANT: All eligible plans of a Participating Employer must be aggregated for purposes of compliance with certain requirements under the Internal Revenue Code ("Code"). **Thus, if a Participating Employer has more than one defined contribution plan, the Participating Employer is responsible for ensuring that all of its aggregated plans comply with applicable Code requirements.**

PLAN YEAR

For purposes of this Plan, Plan Year is the twelve month period ending on December 31.

PAYROLL PERIOD

The payroll period of the Participating Employer is:

- | | | | |
|-------------------------------------|-----------------------------|--------------------------|--------------|
| <input type="checkbox"/> | Weekly | <input type="checkbox"/> | Semi-Monthly |
| <input checked="" type="checkbox"/> | Bi-Weekly | <input type="checkbox"/> | Monthly |
| <input type="checkbox"/> | Other (must specify): _____ | | |

Contributions for an Eligible Employee with respect to a payroll period in a calendar month shall only be made if the Eligible Employee has entered into a Deferral Agreement for the State of Kansas Public Employees Deferred Compensation Plan before the beginning of such month where such deferrals are required as a condition for a matching contribution.

EMPLOYEE PARTICIPATION

☒ **Employee Participation**

The Employer shall provide KPERS with the name, address, Social Security Number, and date of birth for each Eligible Employee, as well as any other information requested by KPERS for purposes of this Plan.

☐ **Eligible Employees**

The following Employees of the Participating Employer shall participate in the KPERS Supplemental Defined Contribution Plan:

- ☐ All Employees
- ☐ Only Employees who are Participants in the State of Kansas Public Employees Deferred Compensation Plan ("457 Plan")
- ☒ Other (please specify by division or group): _____
Executive level positions as determined by the City.

NORMAL RETIREMENT AGE

Normal Retirement Age (presumed to be age 62 unless otherwise specified) _____

If an Employee is still employed with the Participating Employer at the age specified here, their entire employer contribution balance will become 100% vested regardless of years of service.

VESTING

Vesting (Check one):

- ☒ Immediate
- ☐ Cliff Vesting (fully vested after below number years of service)
☐ 1 year ☐ 2 years ☐ 3 years ☐ 4 years ☐ 5 years

- ☐ Grade Vesting
- _____ % after 1 year of service
_____ % after 2 years of service
_____ % after 3 years of service (min 25%)
_____ % after 4 years of service (min 50%)
_____ % after 5 years of service (min 75%)
_____ % after 6 years of service (min 100%)

- ☐ Other graded vesting schedule (**please specify**): _____

Vesting will be credited using (check one):

- ☐ Elapsed time method – Members will be credited with one vesting year for each 12 months of continuous employment from the date of hire.
- ☐ Hours reported method – Members will be credited with one vesting year for each calendar year in which _____ hours are worked
- ☐ Other (**please specify**): _____

In the event of disability or death, a Member's (or his/her Beneficiary's) entire account in the Plan shall be 100% vested, to the extent that the balance of such account has not previously been vested or forfeited.

- ☐ This is an amendment and restatement of another defined contribution plan of the Participating Employer that is intended to replace and serve as an amendment and restatement of the Participating Employer's pre-existing plan, and therefore, prior service with the pre-existing plan will apply for vesting purposes.

CONTRIBUTIONS

Employer Contributions

a. Calculation and Contribution Frequency

☐ Weekly ☒ Bi-Weekly ☐ Monthly

b. Employer contribution structure (subject to limitations of Section 415(c) of the Internal Revenue Code)

☒ Percentage: Employer contributions will be 10 % of the Employee's Compensation

☐ Dollar: Employer contributions will be \$ per payroll period/per month/per year.

☐ Matching: The Employer contributions will match the Employee's pre-tax and Roth contributions to the 457 Plan (up to the amount of \$ per payroll period/per month/per year or % of Compensation)

☐ Flat: The Employer will contribute the amount of \$ per payroll period/per month/per year or % of Compensation on behalf of the Employee (if the Employee contributes at least \$ to the KPERS 457 plan in a calendar year)

Employee Contributions

Employees of the Participating Employer ☐ shall ☒ shall not contribute to the Plan

If Employees of the Participating Employer are required to contribute to the Plan, the mandatory employee contribution shall be % of compensation. **Note:** Additional forms and/or information may be required by KPERS. If Employees shall be required to make contributions to the Plan, such contributions shall be picked-up in accordance with K.S.A. 74-4919(2).

If there will be Employee Contributions in the Plan, Employees are fully vested in their individual contributions.

ROLLOVER

Rollovers from qualified plans to this Plan ☒ are ☐ are not permitted.

COMPENSATION

Compensation for purposes of the Plan shall be as defined by K.S.A. 74-4902(9).

Compensation Paid After Severance From Employment – Certain post-severance payments may be included in Compensation for purposes of computing contributions under the Plan, but only if these amounts are paid no later than 2½ months after severance from employment or, if later, the end of the calendar year that includes a Member's severance from employment, and only if it is a payment that, absent a severance from employment, would have been paid to the Member while the Member continued in employment with the Participating Employer. The Participating Employer makes the following election with respect to including post-severance payments in Compensation (Note: if the following is not completed, no post-severance payments will be included in Compensation by default):

- ☐ No post-severance payments will be included in Compensation for purposes of computing deferrals under the Plan (if this box is checked, skip to "Modification of the Terms of the Adoption Agreement" below).
- ☒ For purposes of calculating contributions under the Plan, the following post-severance payments will be included in Compensation, as long as: 1) they are paid no later than 2½ months after severance from employment or, if later, the end of the calendar year that includes the Member's severance from employment; and 2) absent a severance from employment, they would have been paid to the Member while the Member continued in employment with the Participating Employer (check all that apply):
- ☒ regular compensation paid after severance from employment for services rendered prior to severance during the Member's regular working hours
- ☐ compensation paid after severance from employment for services rendered prior to severance outside the Member's regular work hours (such as overtime or shift differential), commissions, bonuses, or other similar payments
- ☐ post-severance payments for unused accrued bona fide sick, vacation or other leave, but only if the Member would have been able to use the leave if employment had continued
- ☐ Other: _____
- _____
- _____

MODIFICATION OF THE TERMS OF THE ADOPTION AGREEMENT

If a Participating Employer desires to amend any of its elections contained in this Adoption Agreement, the Participating Employer by official action must adopt a new Adoption Agreement and forward it to KPERS for approval. The new Adoption Agreement is not effective until approved by KPERS and other procedures required by the Plan have been implemented.

TERMINATION OF THE ADOPTION AGREEMENT

This Adoption Agreement may be terminated only in accordance with the Plan.

KPERS IS THE PLAN ADMINISTRATOR

The Participating Employer hereby agrees to the provisions of the KPERS Supplemental Defined Contribution Plan Adoption Agreement and appoints KPERS as the Plan Administrator pursuant to the terms and conditions of the KPERS Supplemental Defined Contribution Plan.

ENFORCEMENT

The Participating Employer acknowledges that contributions must be submitted to KPERS in accordance with the Plan and K.S.A. 74-4920(16). The Participating Employer acknowledges that any late or missed contributions will be required to be made up, including applicable interest. In accordance with the Internal Revenue Code, should the Participating Employer fail to make its required contribution(s) when due, KPERS shall implement applicable interest charges in accordance with K.S.A. 16-204(a), and may result in KPERS deducting such amounts from any other moneys payable to such Participating Employer by any department or agency in the State of Kansas.

EXECUTION BY PARTICIPATING EMPLOYER

The foregoing Adoption Agreement is hereby adopted and approved on the _____ day of _____, _____, by the _____.

Signed: _____

Printed Name: _____

Title: _____

Date of Signature: _____

KPERS' APPROVAL

The Adoption Agreement is approved by KPERS. Contributions shall first be remitted under this Adoption Agreement as follows:

- ☐ Within 15 business days after the Payroll Period ending _____, _____.
- ☒ Other (must specify) The City will make a catch-up contribution, within 15 business days following the pay date of the first pay period ending after the effective date of this agreement, in the amount equal to 10% of the City Manager's pay from his first day of employment (9/14/22). Then, regular contributions as outlined in this agreement will be made within 15 business days after each pay date.
- ☐ In the case of an amendment to an existing Adoption Agreement, contributions shall continue on the existing schedule unless new employee classes are added, in which case contributions for such new employee classes shall first be remitted on _____.

Dated: _____

By: _____

Title: _____
on behalf of KPERS