

## ARTICLE IV. - DEFINED CONTRIBUTION PENSION PLAN

### Sec. 24-130. - Establishment of defined contribution plan.

- (a) The city hereby establishes a defined contribution 401(a) plan (hereinafter, the "DC Plan") to benefit the following:
- (1) General employees hired on or after September 7, 2011.
  - (2) General employees that elect to freeze their accrued benefit in the City of Sarasota General Employees' Defined Benefit Pension Plan effective December 28, 2011 and begin participation in the DC Plan for future service in accordance with section 24-96. Employees that begin participation in the DC Plan as described in this subsection shall be immediately vested in the DC Plan.
  - (3) General employees that elect, effective December 28, 2011, to transfer from the General Employees' Defined Benefit Pension Plan the greater of the present value of their accrued benefit or their accumulated contributions to the DC Plan and begin participation in the DC Plan. Employees that transfer from the General Employees' Defined Benefit Pension Plan shall be immediately vested in the DC Plan.

The DC Plan shall be governed by a plan document, which shall be adopted by the city commission by resolution, and which may be amended from time to time.

- (b) The DC Plan is intended to qualify as a Section 401(a) plan of the United States Internal Revenue Code ("IRC"), as such IRC may be amended from time to time. Provisions herein are meant to be read so as to be consistent with the IRC when at all possible. If any provision herein is deemed to be irreconcilably in conflict with the IRC, the IRC shall prevail.
- (c) Participation is mandatory for general employees, as defined herein, hired on or after September 7, 2011, except for Charter officials employed by the city, who may elect not to participate. Participation in the DC Plan shall not be construed to establish or create an employment contract between the participant and the city.

(Ord. No. 11-4967, § 2, 9-6-11; Ord. No. 11-4988, § 3, 12-5-11)

### Sec. 24-131. - Definitions.

The following terms have the meaning set forth herein when used in this article:

*Compensation:* The total annual compensation reported on the participant's W-2 form plus any tax-deferred or tax-exempt items of income, but not including any overtime compensation, car allowance, clothing allowance or other expense allowance, income attributable to use of a city vehicle, or any lump sum payment of annual leave (including but not limited to vacation days, incentive award bonus days and run/walk/swim fitness leave days), sick leave, compensatory time, severance pay, or any other types of leave that may be accrued by the employee and paid in a lump sum.

*General employee:* Any person employed by the city and classified on the personnel records of the city as a full-time employee. The term "general employee" shall not include city commissioners, police officers, firefighters, contract employees, any temporary full-time, temporary part-time, or permanent part-time employees.

*Participant:* All general employees as listed in section 24-130(a) herein.

*Pay period:* A regular accounting period established by the city for measuring and paying compensation earned by participant.

(Ord. No. 11-4967, § 2, 9-6-11; Ord. No. 11-4988, § 3, 12-5-11; Ord. No. 14-5087, § 2, 5-5-14)

Sec. 24-132. - Mandatory and elective deferrals by participants and contributions by city.

- (a) All participants shall be required to contribute six (6) percent of their compensation at each pay period to the DC Plan retirement account as established in section 24-130. The city shall contribute a matching six (6) percent to the participant's DC Plan retirement account and shall make the additional matches described in section 24-132(b) herein if a participant elects to make additional deferrals. Mandatory deferrals shall commence immediately upon the participant becoming a general employee of the city and a participant in the DC Plan. Such deferrals shall be a condition of participant's employment with the city, and participant's agreement shall be evidenced by the participant's acceptance of employment with the city.
- (b) A participant may elect, on a form to be provided by the city auditor and clerk, to make an additional deferral of his or her compensation to a 457(b) deferred compensation plan. In such event, the city shall match one hundred (100) percent of up to the first two (2) percent electively deferred by the Participant, for a total match of eight (8) percent. The elective deferral will commence with the first full pay period following the date the form is properly completed by the participant and accepted by the city auditor and clerk. While the participant's elective deferral shall be deposited into the 457(b) deferred compensation plan, the contributions made by the city shall be deposited into the DC Plan.

(Ord. No. 11-4967, § 2, 9-6-11; Ord. No. 11-4988, § 3, 12-5-11)

Sec. 24-133. - Administration.

- (a) The city auditor and clerk has the power and authority to administer the plan and promulgate, adopt, amend or revoke internal management procedures which are consistent with the plan and which are necessary to implement and maintain the plan. With the approval of the city commission and consistent with the city's procurement procedures, the city auditor and clerk may contract with individuals or corporations to administer the plan (a "third party administrator") and to perform any duties hereunder to the extent allowed by federal, state and local law.
- (b) An employee retirement account committee is hereby established to provide oversight of the plan. The committee shall have the following powers and duties:
  - (1) Establish a "fiduciary review cycle" (e.g. quarterly/semi-annually) to meet and review the "state of the plan" based on the most recent ending period (typically the end of the preceding calendar quarter).
  - (2) Adopt the investment policy statement (IPS) for the plan and review the IPS on an annual basis to determine whether any modifications need to be made. The IPS shall include criteria for the evaluation of plan investments, shall define the plan's asset allocation policy and shall determine the communication procedures for those involved in the plan and its administration.
  - (3) Review investment data and competitiveness of the investments/funds offered under the plan over specified periods versus an appropriate "peer group" and index.
  - (4) Review and benchmark the investment/fund expenses to peer group averages (by category or style).
  - (5) Review plan participation by number of accounts and total assets invested/held within the plan, including a breakdown of assets invested by each fund (utilization).
  - (6) Review the plan's default investment for participants who do not choose to direct their own investments and monitor the total number of "defaulted" plan participants and assets.
  - (7) Review the plan's investment "watch list" and take appropriate action based on updated/current data and determine whether to keep fund(s) on the plan menu or to replace.

- (8) Monitor fees and expenses of the plan at least annually to ensure that expenses and fees are reasonable and if not, determine whether to reduce fees or increase services.
  - (9) Oversee and review an employee communication, services and education program regarding the plan.
  - (10) Document all evaluation and investment decisions. The city shall retain qualified consultants to assist the committee in performing the above-listed functions and to provide the committee with adequate and appropriate information to make prudent decisions. The committee shall only be required to analyze the information provided to it and shall not be responsible for independent verification of such information. The committee does not have the responsibility to predict or to assure returns on plan investments. The committee shall not be responsible for the day to day operation of the defined contribution 401(a) plan, including, but not limited to such matters as receipt of contributions, crediting account participants for contributions, disbursements and signing checks.
- (c) The membership of the employee retirement account committee shall include the city auditor and clerk, who shall serve as secretary; the director of financial administration, who shall serve as treasurer; two (2) individuals appointed by the city commission and one (1) individual appointed by a majority of the other four (4) committee members. Preferential consideration for the fifth committee member should be given to a participant of the plan. The committee members appointed by the city commission shall preferably have trust banking or investment management experience and shall serve for a period of three (3) years unless sooner replaced by the city commission, at whose pleasure they serve. The fifth committee member shall serve for a period of three (3) years unless sooner replaced by the other four (4) members. The appointed committee members may succeed themselves as committee members.

(Ord. No. 11-4967, § 2, 9-6-11; Ord. No. 11-4988, § 3, 12-5-11; Ord. No. 12-5020, § 1, 10-15-12)

Sec. 24-134. - Participants' accounts.

*Defined contribution accounts.* The city, through the third party administrator, shall assist each participant in the establishment of a defined contribution account, which shall be the basis for any distributions payable herein. Each participant's defined contribution account shall be credited with the amount of any mandatory contributions of the participant, as well as with matched contributions provided by the city; however, distribution of city contributions are subject to the limitations set forth in this article. As referred to in section 24-132(b) a participant's elective deferral shall be deposited into the 457(b) deferred compensation plan.

- (1) All general employees hired on or after September 7, 2011 shall become vested in the DC Plan upon their fifth anniversary of service. City contributions to a participant's defined contribution account shall be available to the participant for investment purposes, but shall not be available to the participant for distribution, until the participant is vested.
- (2) All general employees hired prior to September 7, 2011 that elected to become participants of the DC Plan as provided in section 24-130(a)(2) or 24-130(a)(3) shall be immediately vested in the DC Plan. City contributions shall be available to the participant for investment purposes and distribution.

(Ord. No. 11-4967, § 2, 9-6-11; Ord. No. 11-4988, § 3, 12-5-11)

Sec. 24-135. - Distribution of accounts.

- (a) Distributions shall be made to a participant or the participant's beneficiary when the participant ends his or her employment with the city. Upon ending his or her employment with the city, a participant may elect to transfer the account balance to another eligible plan and choose when such distribution

or transfer occurs provided the timing of the distribution complies with the Internal Revenue Code (IRC), this article, and the plan document.

- (b) Notwithstanding the above, a participant's retirement benefits shall be distributed or must begin to be distributed not later than April 1 of the calendar year following the later of (i) the calendar year in which the participant attains age seventy and one-half (70½); or (ii) the calendar year in which the participant retires.
- (c) Should a participant die before he or she has received the retirement benefits, the balance of the participant's defined contribution 401(a) retirement account shall be paid to a participant's beneficiary in accordance with the provisions of the DC Plan.
- (d) All or a portion of a participant's defined contribution 401(a) retirement account may be distributed in the event of a qualified domestic relations order, as set forth in the plan document.

(Ord. No. 11-4967, § 2, 9-6-11; Ord. No. 11-4988, § 3, 12-5-11)

Sec. 24-136. - Designation of beneficiary; election of method of distribution.

A participant shall designate a beneficiary or beneficiaries to receive benefits, and elect methods of distribution, in accordance with the provisions of the plan.

(Ord. No. 11-4967, § 2, 9-6-11; Ord. No. 11-4988, § 3, 12-5-11)

Sec. 24-137. - Miscellaneous.

- (a) The benefits, proceeds or payments provided under the DC Plan cannot be sold, assigned, pledged, commuted, transferred or otherwise conveyed by any participant or beneficiary. Any attempt to assign or transfer shall not be recognized and shall impose no liability upon the city.
- (b) Except as otherwise required by law, any defined contribution 401(a) retirement account balances shall be not subject to attachment, garnishment or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the participant or otherwise.
- (c) This DC Plan may accept transfers from another eligible plan in accordance with this article, the plan document, and the IRC. Such transfers are not subject to a required match by the city and shall not affect vesting schedules as set forth herein.

(Ord. No. 11-4967, § 2, 9-6-11; Ord. No. 11-4988, § 3, 12-5-11)

Sec. 24-138. - Amendment or termination of DC Plan.

In the event the DC Plan is terminated, each participant shall be deemed to have withdrawn from the DC Plan as of the date of such termination and all contributions to the DC Plan shall cease. The DC Plan will otherwise continue in effect until all defined contribution 401(a) retirement accounts have been distributed in accordance with the DC Plan.

(Ord. No. 11-4967, § 2, 9-6-11; Ord. No. 11-4988, § 3, 12-5-11)

**Editor's note**— Ord. No. 11-4988, § 3, adopted Dec. 5, 2011, amended § 24-138 title to read as herein set out. Former § 24-138 title pertained to amendment or termination of plan.

Sec. 24-139. - Forfeiture of pension.

- (a) Any participant who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this DC Plan, except for the return of accumulated participant contributions as of the date of termination. Specified offenses are as follows:
- (1) The committing, aiding or abetting of an embezzlement of public funds;
  - (2) The committing, aiding or abetting of any theft by a public officer or employee from an employer;
  - (3) Bribery in connection with the employment of a public officer or employee;
  - (4) Any felony specified in F.S. ch. 838;
  - (5) The committing of an impeachable offense;
  - (6) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency for which he acts or in which he is employed of the right to receive the faithful performance of his duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his public officer or employment position; or
  - (7) The committing on or after October 1, 2008, of any felony defined in F.S. § 800.04, against a victim younger than sixteen (16) years of age, or any felony defined in F.S. ch. 794, against a victim younger than eighteen (18) years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.
- (b) *Conviction* shall be defined as follows: An adjudication of guilt by a court of competent jurisdiction, a plea of guilty or nolo contendere, or a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation.
- (c) *Court* shall be defined as follows: Any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense.
- (d) Prior to forfeiture, the employee retirement account committee shall hold a hearing on which notice shall be given to the participant whose benefits are being considered for forfeiture. The participant shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the participant shall be afforded a full opportunity to present his case against forfeiture.
- (e) Any former participant who has received benefits from the plan in excess of his accumulated contributions after the participant's rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his accumulated contributions. The employee retirement account committee may implement all legal action necessary to recover such funds.

(Ord. No. 11-4988, § 4, 12-5-11)

Secs. 24-140—24-150. - Reserved.