

ARTICLE III. 1998 DEFINED CONTRIBUTION PLAN OF THE GENERAL RETIREMENT SYSTEM.

Sec. 47-3-1. Funds.

The Funds of the Retirement System *1998 Defined Contribution Plan* shall be the *Employee Contribution Account*, the *Employee Rollover Account*, the *Employer Contribution Account*, the *Annuity Savings Account*, and such other accounts as may become necessary from time to time. (Ord. No. 29-01, § 1, 11-30-01)

Sec. 47-3-2. Definitions.

Definitions contained in this Article shall not be construed as amending or repealing existing definitions contained in Section 47-1-21 of this Code unless specified herein. For purposes of this *Article III* only, the following words and phrases shall have the meanings respectively ascribed to them by this Section 47-3-2 of this Code.

Accumulated balance means the total of all accounts maintained on behalf of a Participant, former Participant, or Beneficiary.

Actuarial present value of credited benefits means the present value of pension benefits determined as if the Member had terminated DGRS membership on the measurement date. The calculation of the actuarial present value of benefits shall be based solely on interest and mortality assumptions approved by the Board after consideration of the advice of the System's Actuary.

Administrative Rules of the Plan means the rules and regulations established and adopted from time to time by the Board of Trustees to govern the administration and the operation of this Plan and the Trust.

Annual additions means for each limitation year, which is the calendar year, all employer or employee contributions to the Plan (including after-tax employee contributions but excluding rollover contributions), forfeitures, contributions, allocated to an individual medical account described in Section 415(l)(2) of the Internal Revenue Code and amounts described in Section 419a(d)(2) of the Internal Revenue Code.

Annuity Savings Account means the account established for a Participant with respect to such Participant's interest, in the Plan as a result of the Participant's election to transfer his Annuity Savings Fund balance from the *1973 Defined Benefit/Defined Contribution Plan* to this Plan pursuant to Section 47-3-3 of this Code.

Beneficiary means a person or persons designated by a Participant or former Participant in a writing filled with the Board to receive distribution of the accumulated balance in the event of the death of the Participant or former Participant, subject to the

terms and conditions of Section 47-3-9(b) of this Code.

Coverage group means all elected and appointed officials of the employer as defined in Section 47-3-21 of this Code, all non-union employees as defined in Section 47-1-21 of this Code, as well as any other employees who are members of a bargaining unit represented by a union or association if such union or association has agreed to offer its members the option of belonging to the current *Article II Plan* or the *1998 Defined Contribution Plan* established under this *Article III*.

Defined Contribution Plan Implementation Date means that date after the *1998 Defined Contribution Plan* is established on which the Plan is open for participation by eligible members.

Designated Component Funds means asset allocation funds set up by the Trustee which invests Participant funds, until the Participant elects specific investment funds.

Effective Date of the 1998 Defined Contribution Plan means July 1, 1998, See, *Defined Contribution Plan Implementation Date*.

Employee Contribution Account means the account established for a Participant with respect to such Participant's interest in the Plan resulting from the Participant's contributions made pursuant to Section 47-3-5 of this Code.

Employee Contributions--"Picked Up" by the Employer. Employee contributions are "picked up" by the employer if: (1) the employer specifies that the contributions, although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee, and (2) the employee cannot be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the Plan.

Employee Rollover Account means the account established for a Participant with respect to such Participant's interest in the Plan resulting from transfers from other qualified plans pursuant to Section 47-3-7 of this Code.

Employer, for the purposes of the provisions of this *Article III Plan*, means the City, or any board, commission, or court serving the City, to the extent that both the City through action of its council and the governing authority of such Board, commission, or court, shall mutually agree to include the employees of such Board, commission, or court, in the Coverage Group for this Plan. To the extent that any employees of a Board, commission, or court, are included as members of the Coverage Group for this Plan, all employees of such board, commission, or court, shall be so included. However, only City board members and commissioners who are also employees of the City are eligible to be included in the coverage group of this Plan, unless otherwise specifically provided for by ordinance or resolution adopted by the Council.

Employer Contribution Account means the account established for a Participant with respect to such Participant's interest in the Plan resulting from employer contributions made pursuant to Section 47-3-4 of this Code and from the Participant's election to transfer the actuarial present value of credited benefits of such individual from the *1973 Defined Benefit/Defined Contribution Plan* to this Plan pursuant to Section 47-3-3 of this Code.

Fiduciary means the Board of Trustees or the Fund Financial Investment Trustee.

Financial Investment Trustee means the Trustee approved by the Board of Trustees, or such successor Trustee as selected by that Board, which shall be responsible for the investment, management and control of the assets of the Trust.

Former Participant means an individual who is no longer eligible to be a Participant.

Measurement date means the date of the Member's termination or transfer from the *1973 Defined Benefit Plan* to the *1998 Defined Contribution Plan*.

Participant means an employee who is a member of the coverage group and who has satisfied the requirements of Section 47-3-3 of this Code.

Plan means the *1998 Defined Contribution Plan of the City of Detroit General Retirement System*.

Plan Year means the City's Fiscal Year.

Resignation means, for all purposes in this *Article III*, in the case of an elected or appointed official, resignation from office, or the expiration of the term of office or of the appointment.

Termination of employment means, for all purposes in this *Article III*, in the case of an elected or appointed official, any circumstance which results in separation of the official from the elected or appointed office, whether voluntary or involuntary, including voluntary resignation, expiration of the term of office or of the appointment, involuntary termination of employment or office or forfeiture of office.

Trust means the *City Defined Contribution Retirement Trust* maintained in accordance with the terms of the Trust Agreement, as amended, which constitutes part of this Plan. (Ord. No. 29-01, § 1, 11-30-01)

Sec. 47-3-3. Participation.

- (a) *Election of the Plan; Current DGRS members.*
- (1) Any Member of the DGRS who is also a Member of the Coverage Group and who continues to be a Member of the Coverage Group may become a Participant in the *1998 Defined Contribution Plan* if such individual elects to transfer to the Trust of the Plan, both the *Annuity Savings Fund* balance and the actuarial present value of credited benefits of such individual under the *1973 Defined Benefit/Defined Contribution (Annuity) Plan*. Such irrevocable election must be made within twenty-four months of the implementation date of the *1998 Defined Contribution Plan*. The *Annuity Savings Fund* balance and the actuarial present value of credited benefits of an individual under the *1973 Defined Benefit/Defined Contribution Plan* who elects to make a transfer to this Plan shall be transferred to this Plan on a date which shall in no event be later than one hundred and twenty days after receipt of the individual's written election by the Board; provided, however, that such individual shall become a participant in this Plan as soon as administratively feasible following receipt of the individual's written election by the Board.
- (2) The *actuarial present value of credited benefits* shall be calculated based upon the interest and mortality assumptions utilized at the date of such transfer upon the advice of the System's Actuary for purposes of determining the employer's annual contribution to the *1973 Defined Benefit/Defined Contribution Plan*. The actuarial present value of the Participant's credited benefits under the *1973 Defined Benefit/Defined Contribution Plan* shall be transferred to the Participant's Employer Contribution Account under this Plan and the Participant's Annuity Savings Fund balance under the *1973 Defined Benefit/Defined Contribution Plan* shall be transferred to the Participant's *Annuity Savings Account* under this Plan. After any such transfer to this Plan, the Participant's account balances shall be subject to the vesting schedules set forth in Section 47-3-8.
- (b) *Current DGRS Members; Annual election period.*

Each calendar year following the implementation date of the *1998 Defined Contribution Plan*, the Board of Trustees shall establish at least one election period for that year during which any member of the DGRS who is also a member of the Coverage Group may elect to become a Participant in the *1998 Defined Contribution Plan*; such election must be made within twenty-four (24) months of the implementation date.

(c) *Election of the Plan; Members who separated from City service on or after July 1, 1998 with vested Article II pension rights.*

Any person who separated from City service with vested *Article II* pension rights on or after July 1, 1998, but prior to the implementation of the Plan, may become a participant in this Plan if such individual elects to transfer to the Trust of this Plan, both the *Annuity Savings Fund Balance* on the date of transfer, and the actuarial present value of the *1973 Defined Benefit Plan* credited benefits as of the date of the member's transfer to this Plan, as if such individual were a member of the Coverage Group under (a) above. The Pension Board shall notify each former member of his or her eligibility for the Plan by certified mail. A former member's election to become a Participant in the Plan must be made within six months after verification of the receipt of notice by the former member. Such election shall be irrevocable.

(d) *Election of the Plan; Members who separated from City service on or after July 1, 1998, but prior to the implementation of the Plan, without vested pension rights under Article II.*

Any person who separated from City service on or after July 1, 1998, but prior to the implementation of the Plan, without vested pension rights under *Article II*, may become a Participant in this Plan if such individual elects to transfer to the trust of this Plan, both the *Annuity Savings Fund* balance on the date of transfer and the actuarial present value of the *1973 Defined Benefit Plan* credited benefits, as of the date of the member's transfer to this Plan as if such individual were a member of the Coverage Group under (a) above. The Pension Board shall notify each former member of his or her eligibility for the Plan by certified mail. A former member's election to become a Participant in the Plan must be made within six months after verification of the receipt of notice by the former member. Such election shall be irrevocable.

(e) *Employees hired on or after the date of implementation of the Plan.*

"Election period." A person who becomes or again becomes a member of the Coverage Group on or after the date of the implementation of the *1998 Defined Contribution Plan* may elect to participate in the *1973 Defined Benefit/Defined Contribution (Annuity) Plan* or the *1998 Defined Contribution Plan*. Such election to participate in the *1998 Defined Contribution Plan* may be made at date of hire or during enrollment periods held during the Participant's first two years of employment with the City ("Election Period"). Such election shall be irrevocable.

Participant shall be a member of the *1973 Defined Benefit/Defined Contribution (Annuity) Plan* until or unless an election is made to participate in the *1998 Defined Contribution Plan* during the enrollment period.

Employer and employee contributions made on the Participant's behalf to the *1998 Defined Contribution Plan* shall be invested in the designated component fund(s) until such Participant has chosen the investment vehicles in which his or her contributions will be invested. If no such choice is made within six months after the effective date of the Participant's participation in the *1998 Defined Contribution Plan*, such contributions shall remain invested in the designated component fund(s) until an appropriate change is processed by the member.

(f) *Non-eligibility for participation in the Plan.*

The following individuals shall not be eligible for participation in the Plan:

(1) *Contractual services.*

Individuals whose services are compensated pursuant to a personal services contract or on another contractual or fee basis, and who are not members of the Classified Service¹⁴⁹ or elected or appointed to City positions as provided for in the 1997 Detroit City Charter.

(2) *Insufficient annual hours worked.*

Individuals who are employed in positions normally requiring less than six hundred (600) hours of work *per annum*¹⁵⁰ or any other minimum hour requirement provided by collective bargaining agreements, as appropriate.

(3) *Retirees.*

Individuals who are Retirees of the *City of Detroit General Retirement Article II Pension Plan* who return to employment with the City after a break in service of less than six years. However, vested *Article II* Retirees returning to work after a break of more than six years of service, may enroll in this *Article III Pension Plan* with no loss of *Article II Pension Plan* benefits.

¹⁴⁹ The classified service of the City consists of all employment in the City service except: (1) elected officers; (2) persons holding appointments under the Charter; (3) persons employed to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the City, and (4) others exempted by the Charter, 1997 Detroit City Charter, Section 6-517.

¹⁵⁰ Six hundred (600) hours is the minimum. See, definition of "employee" found in Section 47-1-21.

(4) *Members of other public employee plans.*

Individuals who are members of any other public employee pension or retirement plan adopted by the State of Michigan, other than the Michigan National Guard, or any of its political sub-division,¹⁵¹ unless there is a reciprocity agreement between the City and such entities.

(g) *Simultaneous participation in other plans prohibited.*

On or after the date of implementation of the *1998 Defined Contribution Plan*, a Participant shall not take part in any other retirement plan for simultaneous service rendered to the employer unless otherwise provided for in an applicable collective bargaining agreement. This prohibition does not apply to Deferred Compensation plans established pursuant to Section 457 of the Internal Revenue Code.

(h) *Termination of participation in Plan.*

(1) *Retirement, death, or termination of employment.*

A Participant who retires from active service, is terminated from City employment, dies, or becomes ineligible to participate, shall become a former Participant beginning on the day immediately following the event that caused the ineligibility.

(2) *Termination for reasons other than duty disability; Re-employment.*

Subject to the provisions hereinafter stated in this subpart, if an employee terminates employment and ceases to be a Participant for any reason other than duty disability, any service previously credited to the employee for purposes of vesting shall be disregarded. In the event of re-employment by the City as a member of the Coverage Group, such person shall again become a Participant. If such re-employment occurs within a period of six years from and after the date City employment was terminated, prior service shall be restored for vesting purposes during the period of such re-employment. However, such vesting service shall only apply to employer contributions made on behalf of such employee subsequent to the date of re-employment. Vesting service credited after the employee's re-employment shall not be applied to increase his or her vested percentage in his or her pre-break *Employer Contribution Account*. (Ord. No. 29-01, § 1, 11-30-01; Ord. No. 37-03, § 1, 11-7-03)

¹⁵¹ Printing error - text reads in the singular; should be plural.

Sec. 47-3-4. Employer Contribution Account.

(a) *Basic Employer Contributions.*

The employer shall contribute an amount equal to six percent (6%) of the Participant's compensation to each Participant's *Employer Contribution Account* each pay period. For members on duty disability, the amount contributed shall be equal to six percent (6%) of the Participant's final compensation on the date of disability. For members receiving Workers' Compensation who are not on an approved disability retirement, the amount contributed shall be equal to six percent (6%) of the Participant's base pay. Such contributions shall continue until the Participant would have been eligible to convert to normal retirement benefits under Section 47-2-4 of this Code. City contributions to Participants who are employees of a revenue-supported Division of the City shall be made from the revenues of such Division.

(b) *Matching contributions.*

On behalf of each Participant who makes a basic employee contribution as described in Section 47-3-5(a) of this Code, the employer shall make a matching contribution of one hundred percent of such Participant's basic employee contribution to a maximum of three percent (3%) of compensation contributed to the Plan by the Participant. The matching contribution shall be made in accordance with the rules and procedures established by the Board.

(c) *Periods of absence due to Non-duty Disability.*

The employer shall not make any basic employee contributions for persons on Non-duty Disability.

(d) *Forfeiture.*

Except in the event of retirement under Section 47-3-10(A)(1) of this Code, Duty Disability or death, to the extent a Participant, former Participant or Beneficiary is not vested in any part of his or her *Employer Contribution Account* under Section 47-3-8 of this Code, the right of a Participant, former Participant, or Beneficiary to a distribution of some or all of the *Employer Contribution Account* balance is subject to forfeiture pursuant to the *Public Employee Retirement Benefits Forfeiture Act*, as amended, MCL 38.2701 *et seq.* In the event that any account balances are forfeited, the amounts so forfeited shall be used to offset past or future expenses of the Plan. To the extent that forfeitures exceed the expenses to be settled for a given Plan Year, such excess forfeitures shall be used to offset the City's contribution to the Plan for the Plan Year. To the extent excess forfeitures are available after offsetting the City's contribution for the Plan Year, the Board shall allocate such excess to the Participant Accounts in proportion to the compensation of each Participant for that Plan Year. (Ord. No. 29-01, § 1, 11-30-01; Ord. No. 37-03, § 1,

11-7-03)

Sec. 47-3-5. Employee Contribution Account.

- (a) *Basic employee contributions which are matched by the employer.*

At the time the Participant elects to participate in the 1998 Defined Contribution Plan pursuant to Section 47-3-3(a) or (d), a Participant may elect to make a basic pre-tax contribution of zero, one, two or three percent (0%, 1%, 2%, 3%) of compensation. Such election shall be irrevocable and the basic employee contribution shall be made each year to such participant's *Employee Contribution Account* under the *1998 Defined Contribution Plan*. Subject to the approval of the Internal Revenue Service, basic employee contributions will be made on a pre-tax basis.

- (b) *Additional voluntary employee contributions which are not matched by the employer.*

To the extent permitted by the Internal Revenue Service, the Plan will accept additional pre-tax voluntary contributions from the Participants as follows: at the time the Participant elects to participate in the *1998 Defined Contribution Plan* pursuant to Section 47-3-3(a) or (d), a Participant may elect to make an additional voluntary employee contribution of zero, one, two or three percent (0%, 1%, 2%, 3%) of such Participant's compensation. Such election shall be irrevocable and the additional voluntary employee contribution shall be made each year to such Participant's *Employee Contribution Account* under the *1998 Defined Contribution Plan*. Such additional voluntary contributions shall not be matched by the employer, and are in addition to the basic employee contributions described in Section 47-3-5(a) of this Code.

- (c) *Contributions "picked up" by the employer.*

- (1) Effective as of the adoption and approval of the *1998 Defined Contribution Plan* by City Council or the implementation date, if later, no Participant may elect to receive such Participant's basic employee contributions or additional voluntary employee contributions that have been "picked up" by the employer directly instead of having them paid by the employer to the Participant's *Employee Contribution Account* under the *1998 Defined Contribution Plan*. If a Participant irrevocably elects to have such Participant's basic employee contributions and additional voluntary employee contributions "picked up" by the employer, such employee contributions shall be paid by the employer to the *1998 Defined Contribution Plan* and not paid to the Participant.

(2) *Election to Make After-Tax Contributions.*

A Participant who does not utilize the maximum Participant's contributions, as detailed in Section 47-3-5(a) and (b), "picked up" by the employer, may elect to make employee contributions on an after-tax basis and change his or her contribution percentage in accordance with procedures established by the Board, provided utilizing Sections 47-3-5(a), 47-3-5(b), and 47-3-5(c)(2) does not exceed the three percent (3%) maximums of Sections 47-3-5(a) and 47-3-5(b).

(d) *Conversion of unused leave; Post-tax basis.*

(1) *Vacation time.*

In accordance with the rules and procedures established by the Board, a Participant who at the end of a Plan Year has accrued, but not used, an amount of vacation time, may make an irrevocable election to convert the value of some or all of such vacation time, in an amount not to exceed fifteen vacation days, as an additional contribution to such Participant's *Annuity Savings Account* on an after-tax basis. The value of such additional contribution shall be one-half of the number of vacation hours converted multiplied by the hourly rate of pay applicable on each September thirtieth or such other date as approved by the Board.

(2) *Sick time.*

In accordance with rules and procedures established by the Board, a Participant who is one hundred percent (100%) vested in the *Employer Contribution Account* pursuant to Section 47-3-8(b) of this Code, who has accrued but not used an amount of sick time, and who ceases to be a Participant on or after the effective date of the Plan due to retirement or resignation, may make an irrevocable election to convert the value of some or all of such employee's unused accrued sick time as an additional contribution to such Participant's *Annuity Savings Account* on an after-tax basis. The value of such additional contribution shall be the value of one half the number of sick time hours converted, using both current and reserve banks, by the hourly rate of pay applicable on the effective date of retirement or resignation. (Ord. No. 29-01, § 1, 11-30-01; Ord. No. 37-03, § 1, 11-7-03)

Sec. 47-3-6. Maximum additions.

(a) Notwithstanding anything contained herein to the contrary, total annual additions for a Participant in any calendar year, shall not exceed the limits set forth in Section 415 of the Internal Revenue Code and regulations thereunder, the terms of which are specifically incorporated herein by reference. For the purpose of complying with Section 415 of the Internal Revenue Code, compensation shall have the same meaning

as set forth in Section 415(c)(3)¹⁵² of that Code.

(b) Notwithstanding the foregoing, otherwise permissible annual additions under this Plan may be reduced to the extent necessary as permitted by United States Department of Treasury Regulations, to prevent disqualification of the Plan under Section 415 of the Internal Revenue Code. (Ord. No. 29-01, § 1, 11-30-01)

Sec. 47-3-7. 1998 Defined Contribution Plan; Employee Rollover Account.

A Participant may transfer to his or her *Employee Rollover Account*, an "eligible rollover distribution," as defined in Section 402(c)(4)¹⁵³ of the Internal Revenue Code, provided the transfer is made in accordance with Section 402(c)(5)(c)¹⁵⁴ of the Internal Revenue Code and applicable regulation. *Employee Rollover Accounts* are not considered "annual additions" within the meaning of Section 47-3-2(3) of this Code. (Ord. No. 29-01, § 1, 11-30-01)

Sec. 47-3-8. 1998 Defined Contribution Plan; Vesting.

All account balances are subject to the following vesting schedules:

(a) *Employee Contribution Account.*

A Participant shall always be one hundred percent (100% vested in such Participant's *Employee Contribution Account*.

¹⁵² The term "participant's compensation" means the compensation of the participant from the employer for the year, 26 USC 415(c)(3)(A).

¹⁵³ The term "eligible rollover distribution" means any portion of which may be excluded from gross income under subsection (a)(5) of this section [rollover amounts -- beneficiaries of an exempt employees' Trust] or subsection (a)(4) of section 403 [rollover amounts -- beneficiaries of a qualified annuity Plan] if transferred to an eligible retirement Plan in accordance with the requirements of such subsection." 26 USC 402(c)(4).

¹⁵⁴ 26 USC 402(c)(5)(C).

(b) *Employer Contribution Account.*

A Participant shall be vested in the balance of such Participant's *Employer Contribution Account* as follows:

Years of Service	Percentage vested
Less than two	0%
At least two, but Less than four	50%
Four or more	100%

Service for vesting purposes shall include prior service under the *1973 Defined Benefit/Defined Contribution (Annuity) Plan* of the *DGRS*.

(c) *Employee Rollover Account.*

A Participant shall always be one hundred percent vested in the balance of such Participant's *Employee Rollover Account*.

(d) *Annuity Savings Account.*

A Participant shall always be one hundred percent (100%) vested in the balance of such Participant's *Annuity Savings Account*. (Ord. No. 29-01, § 1, 11-30-01)

Sec. 47-3-9. Participant-directed Investments.

(a) *Participant-directed Investments; Type.*

Each Participant and former Participant may direct the investment of such Participant's or former Participant's account balances in specific types of investments made available by the Board. Such investments shall include:

Short term securities, fixed income securities, equity securities, and any other investment category the Board considers appropriate.

(b) *Participant-directed Investments; Annual Review.*

Each Participant, former Participant, and, following the death of a Participant or former Participant, the Beneficiary of such Participant or former Participant, to the extent allowed by law, shall be given the opportunity, at least annually, to:

- (1) Elect to direct the investment of such Participants, former Participant's, or Beneficiary's account balances;

- (2) Change the investment allocation; or
- (3) Cease to direct the investments.

All such elections shall be in accordance with procedures promulgated by the Board. The account balances of any Participant, former Participant, or Beneficiary who elects not to direct the investment of such account balances, shall be invested in the designated component fund(s). If the law does not allow a Beneficiary, following the death of a Participant or former Participant, to direct the Participant's or former Participant's account balances, then the account balances shall be liquidated and paid to the Beneficiary.

(c) *Participant-directed investments; Income.*

The income earned on each Participant's investments shall be credited directly to such Participant's account or accounts, except as provided in Section 47-3-12(g) of this Code.

(d) *Expensives;¹⁵⁵ Forfeitures.*

In the event that any account balances are forfeited under Section 47-3-4(d) of this Code, the amounts so forfeited shall be used to offset past or future expenses of the Plan incurred during that Plan Year. Such expenses shall be settled in the following order: administrative, investment, legal, accounting, actuarial, and then all others as determined by the Board. To the extent that forfeitures exceed the expenses to be settled for a given Plan Year, such excess forfeitures shall be used to offset the City's contribution to the Plan for that Plan Year. To the extent excess forfeitures are available after offsetting the City's contribution for that Plan Year, the Board shall allocate such excess to the participant accounts in proportion to the compensation of each Participant for the Plan Year. The employer shall cover the cost of all expenditures which exceed forfeitures. (Ord. No. 29-01, § 1, 11-30-01)

Sec. 47-3-10. Benefits.

(a) *Eligibility for Benefits.*

(1) *Retirement.*

In the event of the Participant's retirement under Section 47-2-4(a), (b), or (c) of this Code, the eligible former Participant shall be paid the total balance of the Participant's accounts in accordance with Section 47-3-10(c) of this Code.

¹⁵⁵ Printing error; should read "expenses."

(2) *Death.*

In the event of a Participant's death, the Beneficiary of the Participant shall be paid the total balance of each of the Participant's accounts in accordance with Section 47-3-10(c) of this Code. Designation of a Participant's or former Participant's Beneficiary shall be made in accordance with Section 47-3-10(b) of this Code. Upon death, the deceased former Participant shall be one hundred percent (100%) vested in the balance of all of his or her accounts.

(3) *Duty disability; Eligibility.*

Upon the written application of a Participant or of the Participant's Department Head, a Participant who becomes totally incapacitated for duty in the employe of the City, shall be retired by the Board; provided that such incapacity is found by the Board to be the natural and approximate result of the actual performance of duty, without willful negligence on the Participant's part; and provided further, that the Board Medical Director, after a medical examination of such Participant, certifies in writing to the Board that such Participant is mentally or physically totally incapacitated from further performance of duty to the City, and that such Participant should be retired. Upon such Duty Disability Retirement, such former Participant shall be one hundred percent (100%) vested in the balance of all of the former Participant's accounts.

(4) *Duty Disability; Benefits.*

In the event of the Duty Disability of a Participant, the eligible former Participant shall be paid the total balance of each of his or her accounts in accordance with Section 47-3-10(c) of this Code.

(5) *Non-duty Disability; Eligibility.*

Upon the written application of a Participant or of the Participant's Department Head, a Participant who becomes totally and permanently incapacitated, as the result of causes not occurring in the actual performance of duty to the City, may be retired by the Board, provided that the Medical Director, after a medical examination of such Participant, certifies in writing that such Participant is mentally or physically incapacitated for further performance of duty to the City, and such incapacity is likely to be permanent and that such Participant should be retired.

(6) *Non-duty Disability; Benefits.*

In the event of the Non-duty Disability of a Participant, the eligible former Participant shall be paid the vested portion of each of his or her accounts in accordance with Section 47-3-10(c) of this Code.

(7) *Other termination.*

If a Participant's employment is terminated for any reason other than the Participant's retirement under Section 47-3-10(a)(1) of this Code, duty disability, or death, the Participant shall immediately become a former Participant and shall be entitled to receive the vested portion of each of such Participant's accounts. A Participant's vested portion of such Participant's accounts shall be determined in accordance with the provisions of Section 47-3-8 of this Code. Payments under this Section shall be made in accordance with Section 47-3-10(c) of this code.

(8) *Forfeiture.*

Any Participant who terminates employment for reasons other than retirement under Section 47-3-10(a)(1) of this Code, duty disability or death, shall forfeit the non-vested portion of such Participant's *Employer contribution Account*, if any. Such forfeiture shall become effective upon the Participant's termination of employment with the employer, other than by retirement, duty disability, or death.

(b) *Designation of Beneficiary.*

(1) *Participant's spouse, if any.*

For the purpose of receiving survivor benefits under this Plan, the Beneficiary of a Participant or former Participant shall be the Participant's or former Participant's spouse, subject to Section 47-3-10(b)(2) of this Code.

(2) *Non-spousal Beneficiary; Designation.*

A Participant or former Participant may designate a Non-spousal Beneficiary on a form satisfactory to the Board.

(3) *Revocation of Designation.*

A Participant may revoke a previous designation of Beneficiary or change the designation of a Beneficiary at any time, by filing written change of Beneficiary on a form satisfactory to the Board.

(4) *Absence of Valid Designation of Beneficiary.*

If a valid designation of Beneficiary pursuant to Section 47-3-10(b) of this Code is not on file, the Board shall direct the Trustee to distribute the vested portion of the accumulated balance in a lump sum to the surviving spouse of the deceased Participant or former Participant, if any, or, if none survives the Participant, to the estate of the deceased Participant or former Participant.

(c) *Payment of benefits.*

(1) *Method of Distribution.*

A former Participant or Beneficiary may elect one or a combination of several of the following methods of distribution of the vested portion of such Participant's accumulated balance:

- a. A lump sum distribution to the recipient; or
- b. A lump sum direct rollover to another qualified pension Plan, or to an Individual Retirement Account or Annuity (IRA); or
- c. The purchase of an annuity from the Investment Trustee or another qualified annuity provider, the form of which shall be selected by the former Participant or Beneficiary, or required under the terms of an order issued pursuant to *The Eligible Domestic Relations Order Act*, MCL 38.1701 *et seq.*
- d. Regular installments over a period certain.
- e. No distribution, in which case the accumulated balance shall remain in the Plan until distributed at the election of the Participant pursuant to Section 47-3-10(c)(2) below to the extent allowed by Federal Law.¹⁵⁶

(2) *Commencement of Payment of Benefits.*¹⁵⁷

All benefit payments under the Plan shall be made, or shall commence to be made, as soon as is practicable after written election by the Participant

¹⁵⁶ See, 26 USC 401(a)(9).

¹⁵⁷ Source: 26 USC 401(a)(9)(C)(i)(ii).

designating the time and method of distribution following entitlement thereto.

(3) *Required Distribution; Lifetime of the Participant or Beneficiary.*

In accordance with Section 401(a)(9) of the Internal Revenue Code the entire interest of each Participant shall be distributed to such Participant over the lifetime of the Participant or Beneficiary, beginning no later than the later of the April first of the calendar year following (1) the calendar year in which the employee attains age seventy and one-half or (2) the calendar year in which the employee retires.¹⁵⁸

(4) *Upon the Death of the Participant.*

Upon the death of the Participant, the following restrictions shall apply to the distribution of the Participant's interest under the Plan:

- a. If the Participant dies after starting to receive benefits but before the Participant's entire interest under the Plan has been distributed, the remaining portion of such interest must be distributed at least as rapidly as under the method of distribution selected by the Participant in effect at the date of the Participant's death.
- b. If the Participant dies before receiving any of his or her interest under the Plan, the entire interest shall be distributed to the Participant's beneficiary by December thirty-first of the calendar year in which the fifth anniversary of the Participant's death falls, with the following exceptions:
 1. If any portion of such interest is payable to or for the benefit of a designated Beneficiary, such portion shall be distributed in accordance with applicable treasury regulations over a period not extending beyond the life expectancy of such Beneficiary. The payments to such Beneficiary shall begin not later than December thirty-first of the calendar year after the calendar year of such Participant's death.
 2. If the Participant's surviving spouse is the designated Beneficiary, payments to such spouse shall begin not later than December Thirty-first of the calendar year in which the

¹⁵⁸ Title 26, Section 401(a)(9)(C) defines the "required beginning date" for purposes of distributions as the later of (1) the calendar year in which the employee attains age 70- 1/2, or the (2) calendar year in which the employee retires.

Participant would have attained age seventy and one-half or by the date specified in 1 above, whichever is later. If such surviving spouse dies before payments have begun to be made to such spouse, then payments to the person or persons entitled to the same shall be subject to the distribution restrictions under this subparagraph b which would have applied had the spouse been an unmarried Participant.

3. The amount required to be distributed under 1 and 2 above for each calendar year beginning with the distribution for the first calendar year for which a minimum distribution is required must be at least equal to the quotient obtained by dividing the participant's interest in the Plan by the life expectancy of the Beneficiary. The Participant's interest in the Plan for purposes of this paragraph 3 shall be the Participant's account balance as of the last valuation date in the calendar year immediately preceding the first calendar year for which the distribution is required, adjusted as provided in treasury regulations for allocations of contributions, forfeitures and distributions, if any, after such valuation date.
 4. For purposes of subparagraphs 1 and 3 above, life expectancy shall be computed by use of the return multiples included in Tables V and VI of Section 1.72-9 of the Federal Income Tax Regulations. For purposes of subparagraphs 1 and 3 above, the life expectancy of the Participant's spouse may be recalculated annually. The life expectancy of a Beneficiary other than the Participant's spouse may not be recalculated.
- c. Subject to applicable regulations, for purposes of a and b above, any amount paid to a child of the Participant shall be treated as if it had been paid to the surviving spouse of the Participant if such amount will become payable to the surviving spouse upon such child reaching the age of majority or other designated event permitted under applicable Treasury Regulations.
 - d. If, prior to January 1, 1984, such Participant had made a valid, unrevoked, written designation pursuant to Section 242(b) of the *Tax Equity and Fiscal Responsibility Act of 1982* as in effect prior to amendments made by the *Tax Reform Act of 1984*, then distributions to such Participant and his or her Beneficiary shall be made according to such designation.
 - e. Subject to subparagraph d above, all distributions under the Plan shall be made in accordance with Section 401(a)(9) of the Internal

Revenue Code and the regulations thereunder, including but not limited to regulations Section 1.401(a)(9)-2.

- f. With respect to distributions under Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirement of Section 401(a)(9) of the Internal Revenue Code in accordance with the Regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This Section f shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service. (Ord. No. 29-01, § 1, 11-30-01)

Sec. 47-3-11. Plan Administration.

(a) *Powers and Duties.*

The Board shall administer the Plan and shall have such powers and duties as may be necessary to discharge the responsibilities of the Board, including, but not limited to, the following:

- (1) To construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner, and time of payments of any benefits hereunder;
- (2) To prescribe procedures to be followed by Participants, former Participants, and Beneficiaries filing, applications for benefits;
- (3) To distribute information explaining the Plan, in such manner as it deems appropriate;
- (4) To receive from the employer and Participants, such information as shall be necessary for the proper administration of the Plan;
- (5) To prepare a written annual report with respect to the administration of the Plan;
- (6) To appoint or employ individuals to assist in the administration of the Plan and any other agents the Board deems advisable.

(b) *Limitation on Powers.*

The Board shall have no power to add to, subtract from, or modify, any of the terms of the Plan, or to change or add to any benefits provided by the Plan, or to waive, or fail

to apply any requirements of eligibility for a benefit under the Plan. This Section 47-3-11(b) does not apply to the Administrative Board of Trustee's Administrative Rules and Regulations promulgated pursuant to Section 47-1-11 of this Code.

(c) *Denial of claims; Hearing by Board; Written decision.*

(1) Any Participant, former Participant, or Beneficiary who has been denied a benefit by a decision of the Board shall be entitled to request that the Board give further consideration to his or her claim, by filing a written request with the Board within sixty days after notice of denial by the Board, together with a written statement of the reasons why the claimant believes such claim should be allowed.

(2) The Board shall then conduct a hearing at which the claimant may be represented by an attorney or any other representative of the claimant's choosing, and at which the claimant shall have an opportunity to submit written and oral evidence and arguments in support of the claimant's claim. At the hearing, or prior thereto upon five business days written notice to the Board, the claimant or other claimant's representative shall have an opportunity to review all documents in the possession of the Board which are pertinent to the claim at issue and its disallowance.

(3) A final decision as to the allowance of the claim shall be made by the Board within sixty days of the close of the hearing, unless there has been an extension due to special circumstances, provided that the delay and the special circumstances causing it, are explained to the claimant. The Board's decision shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based.

(4) By resolution, the Board may designate a person or persons to serve as a hearing officer for the hearing of claims filed under Section 47-3-10(a)(3) of this Code. The Hearing Officer shall make written findings and a recommended disposition of such claims to the Board.

(d) *Public Meeting.*

The Board shall conduct a public meeting of Participants, Beneficiaries, and former Participants, at least once each Plan Year and shall meet at such additional time as it deems necessary. (Ord. No. 29-01, § 1, 11-30-01)

Sec. 47-3-12. Participant Loan Program.

(a) *Participant Loan Program established.*

Any loans granted or renewed shall be made pursuant to a Participant Loan Program which shall conform with the requirements of Section 72(p) of the Internal Revenue Code. Such loan program shall be established in writing by the Board of Trustees, and must include, but need not be limited to, the following:

- (1) The identity of the administrator of the Participant Loan Program;
- (2) A procedure for applying for loans; the amount of loan that will be approved or denied, limitations, if any, on the types and amounts of loans offered;
- (3) The procedures under the Program for determining a reasonable rate of interest; and
- (4) The events constituting default and the steps that will be taken to preserve Plan assets.

(b) *Amendment of Loan Program.*

- (1) This Loan Program shall be contained in a separate written document which, when properly executed, shall be incorporated by reference and made a part of the Plan. Such Participant Loan Program may be modified or amended by action of the Board, in writing, without the necessity of amending the Plan or this ordinance. The Board shall communicate any such modification or amendments, in writing, to all participants.
- (2) All collective bargaining agreements which accept the terms of this ordinance are specifically agreeing to be subject to the Board's power to modify or amend the Participant Loan Program from time to time, including during the effective term of the applicable labor agreement, and no such modification or amendment shall be deemed a violation of said labor agreement and no grievance or other form of action shall be effective to overturn or alter the Board's decision.

(c) *Eligibility.*

Loans shall be made only to Participants, former Participants, spouses of Participants, and Beneficiaries are not eligible to receive any loans from the Plan. Subject to rules and procedures established by the Board, a Participant who has been in the Plan for twelve months or more is eligible to apply for a loan from this Plan.

(d) *Amount of Loan.*

A Participant who has satisfied applicable rules and procedures may borrow from the Participant's accounts an amount which does not exceed fifty percent (50%) of the Participant's vested accumulated balance, or fifty thousand dollars (\$50,000.00) reduced by the excess; if any, of (1) the highest outstanding balance of loans from the Trust during the one-year period ending on the day before the date on which the loan is made, or (2) the outstanding balance of loans from the Trust on the date on which the loan is made, whichever is less. The minimum loan amount shall be one thousand dollars (\$1,000.00).

(e) *Terms and Conditions.*

In addition to such rules and procedures as established by the Board, all loans shall comply with the following terms and conditions:

- (1) Loan applications shall be in writing.
- (2) Loans shall be repaid by equal payroll deductions over a period not to exceed five years, or if the loan is for the purpose of buying a principal residence, a period not to exceed ten years. In no case shall the amount of the payroll deduction be less than twenty dollars (\$20.00) for any two week period;
- (3) Each loan shall be made against the assignment of the Participant's entire right, title and interest in and to the Trust, supported by the Participant's collateral promissory note for the amount of the loan, including interest, payable to the order of the Trustee;
- (4) *Each loan shall bear interest at a rate determined by the Board.* The Board shall not discriminate among Participants in its determination of interest rates on loans. Loans initiated at different times may bear different interest rates if, in the opinion of the Board, the difference in rates is supported by a change in market interest rates. The loan interest rate shall bear a reasonable relationship to market rates for secured loans of a similar duration.
- (5) Loan repayments shall be suspended under this Plan as permitted by Section 414(u)(4) of the Internal Revenue Code. A Participant who has an outstanding loan balance from the Plan who is absent from employment with the employer, and who has satisfied the requirements of 26 USC 414(a),¹⁵⁹ of the Internal Revenue Code shall

¹⁵⁹ Special rules relating to veterans' preemployment rights under USERRA.

not be required to make loan repayments to the fund during said periods of absence.

(f) *Renewal of Loan.*

Any loans granted or renewed shall be made pursuant to the Participant Loan Program and Section 72(p) of the Internal Revenue Code and the regulations thereunder.

(g) *Loan Balance.*

A Participant's outstanding loan balance shall be considered a directed investment by the Participant and interest payments shall be credited to the Participant's account balance and shall not be part of net investment income nor part of the Participant's account balance for the purpose of allocation of net investment income under Section 47-3-9(c) of this Code.

(h) *Distributions.*

No distribution shall be made to a Participant, former Participant, or Beneficiary until all loan balances drawn on the applicable vested accumulated balance and applicable accrued interest have been liquidated.

Sec. 47-3-13. Trust Fund.

(a) *Establishment of Trust Fund; Selection of Financial Investment Trustee.*

The Board shall establish a Trust Fund by a Trust Agreement with a Financial Investment Trustee to carry out the purposes of the Plan.

(b) *Financial Investment Trustee.*

The Financial Investment Trustee shall be the Trustee selected by the Administrative Board of Trustees, or such successor Financial Investment Trustee as selected by the Administrative Board of Trustees.

(1) *Employer and participant contributions to the Financial Investment Trustee.*

All contributions by the employer, and any contributions by participants, shall be paid to the Financial Investment Trustee of the Fund.

(2) *Financial Investment Trustee; Investment of funds.*

The fund(s) shall be invested in such investments as are permissible under state law for governmental Plans, made available by the Administrative Board of Trustees, and as specified by the Participant, former Participant for¹⁶⁰ Beneficiary.

(3) *Duties of the Financial Investment Trustee.*

The Trustee shall have the powers, rights and duties as specified in the Trust Agreement with the Board, in addition to those specified elsewhere in the Plan or prescribed by law. The Trustee shall receive the contributions to the fund and, subject to the directed investments of Participants, shall hold, invest and reinvest fund assets, and shall distribute fund assets plus any earnings thereon, pursuant to the provisions of the Plan and of the Trust Agreement with the Administrative Board of Trustees. The Financial Investment Trustee shall determine all questions relating to accounting and to the financial position of the fund and the shares and interest of the Participants in accordance with information supplied by the employer and the Board, and, in general, shall discharge all of the duties and functions imposed by the terms of the Plan, either expressly or by implication.

(4) *Financial Investment Trustee expenses.*

The reasonable expenses of the Financial Investment Trustee relating to the fund, including such compensation for the Financial Investment Trustee as may be agreed to in writing by the Board and the Financial Investment Trustee, shall be paid to the Financial Investment Trustee and shall be deducted from the fund. Such expenses shall include training of prospective Plan Participants, whether conducted by the Financial Investment Trustee or a third party on its behalf.

(5) *Accounting.*

At the request of the employer or the Administrative Board of Trustees, the Financial Investment Trustee shall prepare and submit an accounting of the fund as of any date specified, but the Financial Investment Trustee shall not be required to render accounting more frequently than monthly during any Plan Year. The Financial Investment Trustee shall prepare and render to the employer, the

¹⁶⁰ Printer's error - "for" should be "or."

Administrative Board of Trustees, and Council an accounting of the total fund as of the last day of each Plan Year. The Financial Investment Trustee shall not be required to render an accounting of the total fund to individual participants but only to the employer and Board, which may submit reports of the fund to the participants from time to time, provided, however, that the Financial Investment Trustee shall render periodic reports to each participant on all of his or her individual accounts and shall provide copies of such reports to the Board.

(c) *Taxes.*

After reasonable notice to the Board, any taxes assessed against the fund or any of its assets, including income, property, transfer, and other taxes, shall be paid by the Financial Investment Trustee and deducted from the fund. Whenever possible, these amounts shall be paid from forfeiture funds.

(d) *Limitation of liability to assets of fund.*

Except as required under applicable law, the benefits of the Plan shall be only such as can be provided by the assets of the fund, and there shall be no further liability or obligation on the part of the Board or the employer after its mandated contributions have been once paid to make any contributions or payments to establish or maintain the Plan, whether in the event of termination of the Plan or otherwise. No liability for the payment of benefits under the Plan shall be imposed on the Board or the employer. (Ord. No. 29-01, § 1, 11-30-01)

Sec. 47-3-14. Miscellaneous.

(a) **Amendments; Termination.**

Subject to the Terms of the Collective Bargaining Agreements, the City reserves the right to amend this *Article III* and this Plan at any time. Such amendments may include termination of the Plan; provided, however, that no such amendment or termination shall deprive any Participant, former Participant or Beneficiary of any then vested benefit under the Plan. The City shall make no amendment or amendments to the Plan and this ordinance which causes any part of the Trust fund to be used for, or diverted to, any purpose other than the exclusive benefit of Participants, former Participants or their Beneficiaries; provided, that the City may make any amendment necessary, with or without retroactive effect, to comply with applicable federal law. Any amendment of the Plan which alters any terms of this *Article III* requires an amendment of this ordinance approved by the Council.

(b) *Non-guarantee of employment.*

Nothing contained in the Plan or this ordinance shall be construed as a contract of employment between the employer and any employee, or as a right of any employee to be continued in the employment of the employer, or as a limitation of the right of the employer to discharge any of its employees, with or without cause.

(c) *No right to trust assets.*

No Participant, former Participant or Beneficiary shall have any right to, or interest in, any assets of the Trust Fund upon termination of employment or otherwise, except as provided under this Plan, as amended, and then only to the extent of the benefits payable under the Plan to such Participant, former Participant, or Beneficiary out of, the assets of the Trust Fund. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust Fund and the fiduciary shall not be liable therefore in any manner.

(d) *Non-forfeitability of benefits.*

Subject only to the specific provisions of this ordinance, nothing shall be deemed to divest a Participant, former Participant, or Beneficiary, of the right to the non-forfeitable benefit which such Participant, former Participant, or Beneficiary, becomes entitled to in accordance with the provisions of this ordinance.

(e) *Non-alienation of benefits.*

Except as otherwise provided in this subsection, the right of a person to an accumulated balance or any other benefit from the Plan is unassignable and is not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or other process of law. The right of a person to an accumulated balance or any other benefit from the Plan is subject to award by a court pursuant to MCL 552.18,¹⁶¹ and to any other order of a court pertaining to alimony or child support. The right of a person to an accumulated balance or other benefit from the Plan is subject to an order issued pursuant to the *Eligible Domestic Relations Order Act*, MCL 38.1701 et seq.

(f) *Right of set-off.*

The Plan has the right of set-off to recover any overpayment made by the Plan and to satisfy any claim arising from embezzlement or fraud committed in their capacity as an employee of the employer by a Participant, former Participant, Beneficiary, or other person

¹⁶¹ MCL 552.18(2) provides that unvested retirement benefits may be considered as part of the marital estate.

who has a claim to an accumulated balance or any other benefit under this Plan.

(g) *Collective bargaining agreements; Conflict.*

This ordinance shall not modify any provision of a collective bargaining agreement. In the event of a conflict between this ordinance and a collective bargaining agreement, the agreement shall control.

(h) *Collective bargaining agreements; Acceptance of ordinance terms.*

All collective bargaining agreements which accept the terms of this ordinance are specifically agreeing to be subject to the Board's power to modify or amend the administrative rules and procedures governing this *Article III Plan* from time to time, including during the effective term of the applicable labor agreement, and no such modification or amendment shall be deemed a violation of said labor agreement and no grievance or other form of action shall be effective to overturn or alter the Board's decision.

(i) *Enforcement against any act or practice which violates state law, the 1997 Detroit City Charter, the 1984 Detroit City Code or the terms of this Plan.*

A civil action may be brought by:

- (1) A Plan Participant who is or may become eligible to receive a benefit;
- (2) A Beneficiary, who is or may become eligible to receive a benefit;
- (3) A Plan fiduciary, including a Trustee;
- (4) The Finance Director, on behalf of the City as Plan sponsor. (Ord. No. 29-01, § 1, 11-30-01)

Secs. 47-3-15--47-3-20. Reserved.