

## **MUNICIPAL ORDER 24-2023**

**A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A JOINDER AGREEMENT WITH THE KENTUCKY PUBLIC EMPLOYEES' DEFERRED COMPENSATION AUTHORITY CONTINUING THE CITY'S PARTICIPATION IN THE KENTUCKY EMPLOYEES' 457 DEFERRED COMPENSATION PLAN AND THE KENTUCKY PUBLIC EMPLOYEES' 401(K) DEFERRED COMPENSATION PLAN.**

**WHEREAS**, the Kentucky Public Employees' Deferred Compensation Authority ("KDC") is authorized by statute to administer the Kentucky Employees' 457 Deferred Compensation Plan and the Kentucky Public Employees' 401(k) Deferred Compensation Plan, collectively referred to as ("the Plans"); and

**WHEREAS**, the City of Owensboro has participated in the Plans and desires to continue its participation in the Plans; and

**WHEREAS**, in order for the City to continue its participation in the Plans, it must execute the attached Joinder Agreement with KDC.

**NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:**

**Section 1.** That the Mayor be, and he hereby is, authorized and directed to execute the attached Joinder Agreement with KDC.

**Section 2.** That the Mayor, City Manager and appropriate staff members are hereby authorized and directed to execute any and all other agreements, instruments, or documents deemed necessary to the furtherance of the authority outlined herein.

**INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE  
READING**, this the 16th day of May, 2023.

\_\_\_\_\_  
Thomas H. Watson, Mayor

ATTEST:

\_\_\_\_\_  
Beth Davis, City Clerk

**KENTUCKY EMPLOYEES' 457 DEFERRED COMPENSATION PLAN  
and  
KENTUCKY PUBLIC EMPLOYEES' 401(k) DEFERRED COMPENSATION PLAN**

**JOINDER AGREEMENT**

THIS JOINDER AGREEMENT ("Agreement") is executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the KENTUCKY PUBLIC EMPLOYEES' DEFERRED COMPENSATION AUTHORITY (hereinafter "KDC") and City of Owensboro (hereinafter "Participating Employer" or "Employer").

**WITNESSETH:**

WHEREAS, the General Assembly of the Commonwealth of Kentucky has enacted Sections 18A.230 through 18A.275 of the Kentucky Revised Statutes ("KRS") creating the Board of Trustees of KDC (the "Board"); and

WHEREAS, KDC is authorized by such legislation to implement and administer the Kentucky Employees' 457 Deferred Compensation Plan ("457 Plan") and the Kentucky Public Employees' 401(k) Deferred Compensation Plan, which includes the Deemed IRA Program ("401(k) Plan", the 457 Plan and the 401(k) Plan are hereinafter referred to together as the "Plans"); and

WHEREAS, the Board adopted the Kentucky Employees' 457 Deferred Compensation Trust (2012), the Kentucky Public Employees' 401(k) Deferred Compensation Trust and Kentucky Public Employees' Deferred Compensation Authority Deemed IRA Trust (together, the "Trusts") in connection with the Plans to hold and invest assets of the Plans for the exclusive benefit of the Participants of the Plans; and

WHEREAS, Employer is authorized and has, by act of its governing body, elected to participate in the Plans for the benefit of its employees; and

WHEREAS, KDC acts as plan administrator of the Plans; and

WHEREAS, unless otherwise defined herein, capitalized terms shall have their meanings as defined in the Plans, and such terms shall be hereby incorporated by reference.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements contained herein, the parties do agree as follows:

1. APPOINTMENT OF KDC AS AGENT OF EMPLOYER.

(a) Employer has adopted the Plans as a Participating Employer. A copy of the Plans and related Trusts are available upon request. The Plans shall be administered by KDC. Employer appoints KDC, as its agent, to (i) execute Participation Agreements with any Employee of Employer by which he/she becomes a Participant of the Plans; (ii) enroll all Employees in the Plans; and (iii) administer the Plans on behalf of Employer in accordance with the terms of the Plans, KDC procedures and this Agreement. Each Employee shall be eligible for KDC's Deemed IRA Program.

(b) Employer authorizes KDC to perform any and all other acts incidental to the administration of the Plans. It is the intention of this Section 1 to confer upon KDC the authority to perform all administrative acts, in the name of Employer, which Employer is permitted or obligated under the Plans to perform, without regard to whether such act is mandatory or discretionary. Employer agrees to be bound by the terms of the Plans currently in effect and as may be amended.

(c) Employer shall perform those functions which are specifically enumerated in KDC's procedures and shall disclose to KDC such information as may be required for tax law compliance. KDC may rely on such information for all Plan purposes. Employer shall contribute to the Trusts all Employee deferrals within 15 days after payday.

(d) If Employer sponsors any other deferred compensation, 401(k) plan(s) other than the Plans or any tax-sheltered programs, Employer shall have the sole responsibility to maintain compliance with applicable tax provisions with respect to such plans, including, but not limited to, combined contribution limits.

2. ENROLLMENT PROCEDURES, WITHHOLDING AND REPORTING.

(a) Employer adopts, consents to and agrees to act in accordance with the procedures for the enrollment of all Employees, the withholding of deferred amounts, reporting of contributions and distributions, and the remittance of the deferred amounts to the Trusts, and where applicable, taking appropriate corrective measures as determined by KDC for maintaining compliance with Plan terms and the requirements of law. KDC shall not be responsible for the collection of any Contributions to the Plans. Employer shall submit payroll information and deposit contributions through KDC's e-pay system, FAST Pay secure portal, or its equivalent.

(b) Employer agrees to deliver a Participation Agreement to each eligible part-time Employee in accordance with applicable federal tax law and Plan provisions. Any costs, liabilities and expenses resulting from Employer's failure to do so shall be paid by Employer and not KDC.

(c) KDC may direct Employer with respect to such corrective measures to ensure compliance with the Plans and applicable law.

(d) Employer shall update and return the Employer Data Sheet attached hereto. Employer shall also deliver Employer-related information upon request of KDC. Employer represents and warrants to KDC that all such information is complete and accurate.

3. CONFIDENTIALITY. Employer understands and consents to KDC's use and disclosure of any and all information delivered by Employer to KDC to carry out the purposes of this Agreement, including but not limited to, disclosure of information to federal and state agencies with jurisdiction over the Plans or Trusts.

4. COMMUNICATION WITH PARTICIPANTS. Employer agrees that it will not communicate with Employees or Participants concerning KDC or the Plans unless such communication has been approved in advance by KDC.

5. TERM. The term of this Agreement shall be for a period beginning on the date of its execution and ending on the date there are no accounts of Employer's Employees remaining in the Plans. This Agreement replaces and supersedes any Joinder Agreement entered into by the parties prior to the effective date of this Agreement.

6. AMENDMENT. This Agreement may be amended in writing signed by both parties. In addition, KDC may amend this Agreement by delivery of written amendment to the Employer. If Employer does not object in writing to the amendment within 90 days of receipt, this Agreement shall be deemed amended in accordance with such written amendment.

7. APPLICABLE LAW. This Agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement which shall be effective as of the date first written above.

KENTUCKY PUBLIC EMPLOYEES'  
DEFERRED COMPENSATION AUTHORITY

EMPLOYER:

By: \_\_\_\_\_

Title: Executive Director

By: \_\_\_\_\_  
(Authorized Signatory)

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_