

PROPOSED ORDINANCE NO. 2018-35

ORDINANCE NO. 5641

**AN ORDINANCE OF THE COMMON COUNCIL OF THE
CITY OF MISHAWAKA, INDIANA, APPROVING THE
PARTICIPATION IN THE STATE OF INDIANA
DEFERRED COMP MATCHING PLAN, ADOPTION
AGREEMENT, AND AMENDMENT 1**

WHEREAS, the City of Mishawaka, Indiana, (hereinafter referred to as the “Participating Employer”) has determined that in the interest of attracting and retaining qualified employees, it wishes to offer a defined contribution plan, funded by employer contributions;

WHEREAS, the Participating Employer has reviewed the State of Indiana Deferred Compensation Matching Plan (“Plan”);

WHEREAS, the Participating Employer wishes to participate in the Plan to provide certain benefits to its employees, reduce overall administrative costs, and afford attractive investment opportunities;

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

WHEREAS, the Mishawaka Common Council (“Governing Body”) is authorized by law, IC 5-10-1.1-7.3, to adopt this ordinance approving the Adoption Agreement on behalf of the Participating Employer;

Therefore, the Governing Body of the Participating Employer hereby resolves:

Section 1. The Participating Employer adopts the Plan and the Trust Agreement (“Trust”) for the Plan for its Employees.

Section 2. The Participating Employer acknowledges that the Deferred Compensation Committee (“Trustees”) are only responsible for the Plan and have no responsibility for other employee benefit plans maintained by the Participating Employer.

Section 3. The Participating Employer hereby adopts the terms of the Adoption Agreement, which is attached hereto and made a part of this ordinance. The Adoption Agreement sets 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 the Internal Revenue Code or other applicable law and is approved by the Trustees of the Plan.

Section 4. The Participating Employer hereby authorizes the Auditor of the State of Indiana (“Administrator”), in conjunction with the Deferred Compensation Committee (“Trustees”), to amend the Plan on its behalf as provided under Section 18.01 of the Plan.

The Trustees and the Administrator will maintain or have maintained on their behalf a record of the Participating Employers, and the Trustees and the Administrator will make reasonable and diligent efforts to ensure that Participating Employers have actually received and are aware of all Plan amendments.

Section 5.

(a) The Participating Employer shall abide by the terms of the Plan and the Trust, including amendments to the Plan and the Trust made by the Trustees of the Plan, all investment, administrative, and other service agreements of the Plan and the Trust, 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 the Administrator of the Plan and any services provided by a Service Manager (as defined in the Plan) as delegated by the Administrator or Trustees. The Participating Employer acknowledges that fees will be imposed with respect to the services provided and that such fees will be charged to the Participants’ Accounts, and not to the Participating Employer.

Section 6.

(a) The Participating Employer may terminate its participation in the Plan, including but not limited to, its contribution requirements, if it takes the following actions:

- (i) A ordinance must be adopted terminating its participation in the Plan.
- (ii) The ordinance must specify when the participation will end.

The Trustees shall determine whether the ordinance 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 Participants will be made in accordance with the Plan.

(b) The Participating Employer acknowledges that the Plan contains provisions for involuntary Plan termination.

Section 7. 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 Participants 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 Participants and their Beneficiaries and for defraying reasonable expenses of the Plan. All amounts of compensation deferred 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 to the Trustees 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. Only the assets attributable to a particular Participating Employer and its Employees are available to pay benefits to those Employees and their Beneficiaries.

Section 8. This ordinance and the Adoption Agreement shall be submitted to the Trustees for their approval. The Trustees shall determine whether the ordinance complies with the Plan, and, if it does, shall provide appropriate forms to the Participating Employer to implement participation in the Plan. The Trustees may refuse to approve an Adoption Agreement by an Employer that does not have state statutory authority to participate in the Plan. The Trustees may also refuse to approve an Adoption Agreement that is ambiguous or that does not comply with the requirements of the Plan. The Governing Body hereby acknowledges that it is responsible to assure that this ordinance and the Adoption Agreement are adopted and executed in accordance with the requirements of applicable law.

Section 9. This Adoption Agreement may be used only in conjunction with the Plan. Failure to properly complete this Adoption Agreement may result in the failure of the Plan to qualify.

Section 10. This ordinance shall be in full force and effect from and after its passage, signing, attestation and legal publication.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this
17th day of December, 2018 at 7:46 o'clock, P.M.

Matt Mammolenti /s/
Matt Mammolenti, Presiding Officer

ATTEST:

Deborah S. Block /s/
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME to the Mayor this 17th day of December, 2018 at 8:23 o'clock,
P.M.

Deborah S. Block /s/
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this 17th day of, December, 2018 at 8:24 o'clock, P.M.

David A. Wood /s/
David A. Wood, Mayor

**THE STATE OF INDIANA DEFERRED
COMPENSATION MATCHING PLAN
ADOPTION AGREEMENT**

ADMINISTRATOR

Auditor of the State of Indiana
200 West Washington Street
State House Suite 240
Indianapolis, Indiana 46204
Telephone: (317) 233-3300
Facsimile: (317) 233-2794

PARTICIPATING EMPLOYER

Name: City of Mishawaka

GOVERNING BODY

Name: City of Mishawaka Common Council
Address: 600 E. 3rd Street, Mishawaka, IN 46544
Phone: 574-258-1616
Facsimile: 574-258-1628
E-mail: dblock@mishawaka.in.gov

Person Authorized to receive Official Notices from
the Plan or Administrator and to access account and
Plan information: Rebecca S. Miller

DISCLOSURE OF OTHER 401(a) PLAN(S)

This Participating Employer ☐ does or ☒ does not have an existing defined contribution plan(s). If the Participating Employer does have one or more defined contribution plans, the Governing Body must provide the plan name and name of the provider and such other information requested by the Administrator.

Section I. Types of Employer Contributions Under the Plan. The Participating Employer shall provide the following types of contributions to Eligible Employees under this Plan (check all that apply):

- ☒ Matching Contributions.
- ☐ Non-Matching Contributions.

Section II. Eligibility Requirements. Only Employees as defined in the Plan may be covered by the Adoption Agreement. Independent contractors may not participate in the Plan. Subject to other conditions in the Plan and this Adoption Agreement, the Participating Employer may designate which categories of employees are eligible to participate in the Plan. The Employer shall provide the Trustees with the name, address, Social Security Number, and date of birth for each Eligible Employee, as defined by the Adoption Agreement. A Participating Employer may also establish a waiting period before an Eligible Employee may become a Participant in the Plan. For purposes of determining a period of service, any period of time during which an individual is considered employed by the Participating Employer (including sick leave, personal leave, vacation leave, and paid time off) shall be included in the period of service calculation).

A. Eligibility For Matching Contributions

1. Eligible Classes of Employees (check one)

- ☐ All Employees.
- ☒ All Employees with the following exclusions (select all that apply):
 - ☐ Elected or appointed officials
 - ☒ Employees who are not covered by the Participating Employer's defined benefit retirement plan(s)
 - ☐ Other (must specify): _____

If "Other" is selected, the exclusion must be described in a manner that is definitely determinable and that does not allow for Participating Employer discretion.

2. Waiting Period - The Employer hereby elects the following (elect "no waiting period" or one of the waiting period options below):

- ☒ **No waiting period.** An Eligible Employee may become a Participant for matching contributions immediately upon meeting the eligibility conditions of the Plan.
- ☐ Matching contributions will be made only after satisfying a waiting period described under one of the following options (check one):

☐ **Minimum Period of Service (if checked, please complete all items below):**

The waiting period for participation in the Plan shall be _____ (not to exceed 12 months) of service, calculated from the commencement of the Eligible Employee's employment with the Employer.

Eligible Employees who are employed on the date the plan is adopted ☐ will be ☐ will not be given credit for prior service as an Employee for purposes of satisfying the waiting period.

Separate periods of service ☐ will be ☐ will not be added together to determine whether the waiting period has been satisfied.

☐ **Minimum Period of Contributions to the Deferred Compensation Plan (if checked, please complete all items below):**

The waiting period for participation in the Plan shall be _____ (not to exceed 12 months) from the date the Eligible Employee first makes contributions to the Deferred Compensation Plan. An eligible employee ☐ will ☐ will not be required to continuously make contributions throughout the waiting period in order to be eligible for matching contributions.

Eligible Employees who are employed on the date the plan is adopted ☐ will be ☐ will not be given credit for prior periods of time they were making contributions to a 457(b) Plan for purposes of satisfying the waiting period.

After initially meeting the waiting period, any interruption of employee contributions to the Deferred Compensation Plan ☐ will ☐ will not require the employee to meet another waiting period to qualify for matching contributions.

Separate periods of service in which deferrals are made as an Eligible Employee ☐ will ☐ will not be added together to determine if the waiting period has been satisfied.

B. Eligibility For Non-Matching Contributions

1. Eligible Classes of Employees (check one)

☐ All Employees.

☐ All Employees with the following exclusions (select all that apply):

- ☐ Elected or appointed officials
- ☐ Employees who are not covered by the Participating Employer's defined benefit retirement plan(s)
- ☐ Other (must specify): _____

If "Other" is selected, the exclusion must be described in a manner that is definitely determinable and that does not allow for Participating Employer discretion.

2. Waiting Period - The Employer hereby elects the following (elect "no waiting period" or one of the waiting period options below):

- ☐ **No waiting period.** An Eligible Employee may become a Participant for non-matching contributions immediately upon meeting the eligibility conditions of the Plan.

- ☐ Non-matching contributions will be made only after satisfying a waiting period described under one of the following options (check one):

- ☐ **Minimum Period of Service (if checked, please complete all items below):**

The waiting period for participation in the Plan shall be _____ (not to exceed 12 months) of service, calculated from the commencement of the Eligible Employee's employment with the Employer.

Eligible Employees who are employed on the date the plan is adopted ☐ will be ☐ will not be given credit for prior service as an Employee for purposes of satisfying the waiting period.

Separate periods of service ☐ will be ☐ will not be added together to determine whether the waiting period has been satisfied.

- ☐ **Minimum Period of Contributions to the Deferred Compensation Plan (if checked, please all complete items below)**

The waiting period for participation in the Plan shall be _____ (not to exceed 12 months) from the date the Eligible Employee first makes contributions to the Deferred Compensation Plan.

Eligible Employees who are employed on the date the plan is adopted ☐ will be ☐ will not be given credit for prior contributions made to a prior 457(b) Plan for purposes of satisfying the waiting period.

After initially meeting the waiting period, any interruption of employee contributions to the Deferred Compensation Plan ☐ will ☐ will not require the employee to meet another waiting period to qualify for matching contributions.

Separate periods of service in which deferrals are made as an Eligible Employee ☐ will ☐ will not be added together to determine if the waiting period has been satisfied.

Section III. Amount of Employer Contributions. A Participating Employer may make Matching Contributions and/or Non-Matching Contributions, pursuant to a definite, pre-determined formula, as specified below. Matching Contributions and Non-Matching Contributions that are tied to Payroll Periods (as defined in this Adoption Agreement) must be remitted to the Administrator no later than 15 business days after the Payroll Period. Annual Contributions must be remitted to the Administrator no later than 15 days after the end of the Plan Year.

A Participating Employer may impose conditions on the receipt of Matching and Non-Matching Contributions – such as the requirement to be employed as of a particular date, the requirement to have made employee contributions for a specified period of time or any other objectively determinable requirement.

For purposes of computing matching or non-matching contributions, “Compensation” is subject to the limits imposed by Internal Revenue Code 401(a)(17).

The Participating Employer hereby elects to make contributions as follows:

A. Matching Contributions.

1. Matching Contribution Amount (check one)

- ☐ **Flat Dollar Match:** For each Payroll Period in which the Participant contributed at least \$_____ (\$15 to \$25) to the Deferred Compensation Plan, the Participating Employer will contribute a flat dollar amount as shown below (complete as applicable; amount may not result in a zero flat dollar match):

\$_____ per weekly Payroll Period
\$_____ per bi-weekly Payroll Period
\$_____ per semi-monthly Payroll Period
\$_____ per monthly Payroll Period

The amount of the matching contribution ☐ is ☐ is not subject to a maximum cap as elected in Item 2 below.

- X **Percentage Match:** For each Payroll Period in which the Participant contributed to the Deferred Compensation Plan, the Employer will

contribute 100 % (insert percentage; may not be zero) of the dollar amount contributed to the Deferred Compensation Plan. **(For example, if an Employer elects a 50% match, then for every \$10 the Participant contributes to the Deferred Compensation Plan, the Employer will contribute \$5 to this Plan).**

The amount of the matching contribution X is ☐ is not subject to a maximum cap as elected in Item 2 below.

2. Maximum Matching Contribution (if a matching contribution cap is elected in item 1 above, check one of the following):

- ☐ **Flat Dollar Cap** - In no event will Matching Contributions made on behalf of a Participant exceed a flat dollar amount equal to (may not result in zero dollar amount):

\$ _____ per weekly Payroll Period
\$ _____ per bi-weekly Payroll Period
\$ _____ per semi-monthly Payroll Period
\$ _____ per monthly Payroll Period
\$ _____ per Plan Year

- X **Cap Equal to Percentage of Total Compensation:** In no event will Matching Contributions made on behalf of a Participant exceed 1 % (may not be zero) of the Participant's Compensation X per Payroll Period ☐ per Plan Year.

3. Additional Allocation Conditions. In order to receive a matching contribution, each Eligible Employee must satisfy the following additional conditions (conditions must be objectively determinable):

_____.

B. Non-Matching Contributions.

1. Non-Matching Contribution Amount (check one):

- ☐ **Annual Contributions:** An annual contribution each Plan Year of \$ _____ or _____ % of Compensation per Eligible Employee Participant (may not result in total contribution of zero).
- ☐ **Special One-Time Contribution:** A one-time contribution of \$ _____ or _____ % of Compensation per Eligible Employee (may not result in total contribution of zero) to be made as of the following date: _____.
- ☐ **Per Payroll Period Contribution:** _____ % (may not be zero) of Compensation per Payroll Period or a flat dollar amount per Payroll

Period as shown below (complete as applicable; amount may not result in a zero flat dollar amount):

\$_____ per weekly Payroll Period
\$_____ per bi-weekly Payroll Period
\$_____ per semi-monthly Payroll Period
\$_____ per monthly Payroll Period

2. **Additional Allocation Conditions.** In order to receive a non-matching contribution, each Eligible Employee must satisfy the following additional conditions (conditions must be objectively determinable): _____

Conditions for Annual Contribution: _____

Conditions for Special One-Time Contribution: _____

Conditions for Per Payroll Period Contribution: _____

Section IV. Payroll Period. The payroll period of the Participating Employer is:

- ☐ Weekly
☒ Bi-Weekly
☐ Semi-Monthly
☐ Monthly

Section V. Modification and Termination of the Adoption Agreement. If a Participating Employer desires to amend any of its elections contained in this Adoption Agreement, the Governing Body by official action must adopt an amendment of the Adoption Agreement or a new Adoption Agreement must be adopted and forwarded to the Trustees for approval. The amendment of the new Adoption Agreement is not effective until approved by the Trustees and other procedures required by the Plan have been implemented. The Administrator shall inform the Participating Employer of any amendments made to the Plan.

Adoption Agreement may be terminated only in accordance with the Plan. The Administrator shall inform the Participating Employer of the discontinuance or abandonment of the Plan.

Effective Date. This Plan will be effective for this Employer as of the later of (1) the first day of the Plan Year (January 1) in which this Adoption Agreement is executed by the Employer; or (2) _____, 20____.

EXECUTION BY EMPLOYER

The foregoing Adoption Agreement is hereby adopted and approved on the ____ day of _____, 20__.

Signed:_____

Printed Name:_____

Title:_____

Date of Signature:_____

NOTICE TO EMPLOYER

This Adoption Agreement may only be used in conjunction with The State of Indiana Deferred Compensation Matching Plan.

The failure to properly complete this Adoption Agreement or to, operate and maintain the Plan and Trust in accordance with the terms of the completed Adoption Agreement, Master Plan Document, and Trust may result in disqualification of the Plan under the Code. Inquiries regarding the adoption of the Plan, the meaning of Plan provisions, or the effect of the IRS advisory letter should be directed to the Administrator. The Administrator is the Auditor of the State of Indiana, with its primary business offices located at: 200 West Washington Street, State House Suite 240, Indianapolis, Indiana 46204. The business telephone number is: (317) 233-3300. The primary person to contact is: _____.

TRUSTEES APPROVAL

The Adoption Agreement is approved by the Board of Trustees of the State of Indiana Deferred Compensation Matching Plan. Contributions shall first be remitted as follows:

- ☐ within 15 business days after the Payroll Period ending _____, 20__.
- ☐ other (must specify): _____.

Dated: _____

By: _____

Title: _____
on behalf of the Board of Trustees

**State of Indiana Deferred Compensation Matching Plan Amendment
City of Mishawaka**

Amendment 1

Pursuant to Section III.A.2 of the State of Indiana Deferred Compensation Matching Plan Adoption Agreement, for purposes of calculating the cap on an employer contribution, only the participant's "base salary" will be considered.

EXECUTION BY EMPLOYER

The foregoing Adoption Agreement is hereby adopted and approved on the ____ day of _____, 20__.

Signed: _____

Printed Name: _____

Title: _____

Date of Signature: _____

TRUSTEES APPROVAL

The Adoption Agreement is approved by the Board of Trustees of the State of Indiana Deferred Compensation Matching Plan. Contributions shall first be remitted as follows:

- ☐ within 15 business days after the Payroll Period ending _____, 20__.
- ☐ other (must specify): _____.

Dated: _____

By: _____

Title: _____
on behalf of the Board of Trustees