

ORDINANCE NO.: 6836

AN ORDINANCE

**AMENDING** Code Section 4-12-2-020, Exhibit A, Supplemental Pension Plan document to comply with Section 401(a)(31)(B) of the Internal Revenue Code as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and to comply with the Internal Revenue Service required plan language as to calculation of minimum distributions to participants aged 70 1/2.

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**NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MARIETTA, GEORGIA:**

**Section 1:** That Exhibit A of City Code Section 4-12-2-020, known as the Supplemental Pension Plan is amended as follows:

1.

Section 6.02(c), a sub-section under Section 6.02, Termination for Other Reasons, is hereby amended by adding the following new paragraph at the end thereof:

“If (i) the recipient of any mandatory distribution pursuant to this Section 6.02(c) is a Participant, (ii) the amount of such distribution is more than \$1,000, and (iii) the Participant does not affirmatively elect to receive the distribution directly or to have such distribution paid directly to an Eligible Retirement Plan pursuant to Section 6.12, Explanation of Certain Rollover Distributions, then the Pension Board will pay the distribution in a direct rollover to an individual retirement plan designated by the Pension Board.”

2.

Effective January 1, 2004, a new Article XIII, **MINIMUM DISTRIBUTION RULES BEGINNING JANUARY 1, 2004**, shall be added to the Plan to read as follows:

**ARTICLE XIII**

**MINIMUM DISTRIBUTION RULES BEGINNING JANUARY 1, 2004**

13.1 Effective Date.

The provisions of this Article 13 shall take precedence over those in Section 6.6(b)-(h) for purposes of determining Required Minimum Distributions for calendar years beginning on and after January 1, 2004, but not for distributions made in 2004 that are attributable to 2003.

- 13.2. **Precedence.** The requirements of this Article 13 will take precedence over any inconsistent provisions of the Plan. Under no circumstances, however, shall the rules stated in this Article be deemed to provide distribution rights to Participants or their Beneficiaries that are more expansive or greater than the distribution rights stated elsewhere in this Plan (such as a later beginning date for distributions or a longer payout period for distributions). For example, distributions under this Article may only be made in a form that is provided pursuant to Section 6.4. In addition, if the Plan requires distributions to commence to Participants or a Beneficiary before age 70 ½, such distributions must commence by the date specified elsewhere in this Plan and may not be delayed to age 70-1/2.
- 13.3 **Treasury Regulations Incorporated.** All distributions required under this Article 13 will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.
- 13.4 **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date, as defined in Section 6.6(a).
- 13.5 **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
- (a) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, then distributions to the Surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.
  - (b) If the Participant's Surviving Spouse is not the Participant's sole Designated Beneficiary, then distributions to the designated Beneficiary(-ies), including the Surviving Spouse, will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (c) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (d) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary and the Surviving Spouse dies after the Participant but before distributions to the Surviving Spouse begin, this Section 13.5, other than Section 13.5(a), will apply as if the Surviving Spouse were the Participant.
  - (e) For purposes of this Section 13.5 and Section 13.8, Required Minimum Distributions After Participant's Death, unless Section 13.5(d) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 13.5(d) applies, distributions are considered to begin on the date

distributions are required to begin to the Surviving Spouse under Section 13.5(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's Surviving Spouse before the date distributions are required to begin to the Surviving Spouse under Section 13.5(a)), the date distributions are considered to begin is the date distributions actually commence.

13.6 **Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year, distributions will be made in accordance with Sections 13.7 (Required Minimum Distributions During Participant's Lifetime) and 13.8 (Required Minimum Distributions After Participant's Death). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations.

13.7 **Required Minimum Distributions During Participant's Lifetime.**

(a) **Amount of Required Minimum Distribution For Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

- (i) the quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or
- (ii) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's Surviving Spouse, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and Surviving Spouse's attained ages as of the Participant's and Spouse's birthdays in the Distribution Calendar Year.

(b) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.** Required Minimum Distributions will be determined under this Article 13 beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

13.8 **Required Minimum Distributions After Participant's Death.**

(a) **Death On or After Date Distributions Begin.**

- (i) *Participant Survived by Designated Beneficiary.* If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution

Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows:

- (A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
  - (B) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the Surviving Spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the Surviving Spouse's age as of the Spouse's birthday in that year. For Distribution Calendar Years after the year of the Surviving Spouse's death, the remaining life expectancy of the Surviving Spouse is calculated using the age of the Surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.
  - (C) If the Participant's Surviving Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (ii) *No Designated Beneficiary.* If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (b) Death Before Date Distributions Begin.
- (i) *Participant Survived by Designated Beneficiary.* If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the remaining life expectancy of the Participant's Designated Beneficiary, determined as provided in Section 13.8(a) (Death On or After Date Distributions Begin).

- (ii) *No Designated Beneficiary.* If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, and the Surviving Spouse dies before distributions are required to begin to the Surviving Spouse under Section 13.5(a), this Section (c) will apply as if the Surviving Spouse were the Participant.

### 13.9 Definitions and Special Rules.

The following definitions and special rules shall apply to this Article 13 notwithstanding anything to the contrary contained elsewhere in this Plan.

- (a) Designated Beneficiary shall mean the individual who is the Participant's Beneficiary pursuant to the definition of Beneficiary in Article 1 of the Plan *and* is the Designated Beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations, notwithstanding that this individual may differ from the definition of Beneficiary otherwise applicable under the Plan.
- (b) Distribution Calendar Year shall mean a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 13.5 (Death of Participant Before Distributions Begin). The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.
- (c) Life expectancy. Life expectancy shall be determined by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.
- (d) Participant's Account Balance shall mean the Account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account balance as of dates in the valuation calendar year after the valuation date and decreased by

distributions made in the valuation calendar year after the valuation date. The Account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

3.

Except as amended herein, the Plan shall continue in full force and effect.

**Section 2:** It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses, phrases and words are severable, and if any section, paragraph, clause, phrase or word of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, clauses, phrases or words of this Ordinance.

**Section 3:** All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

**Section 4:** This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

DATE: July 13, 2005

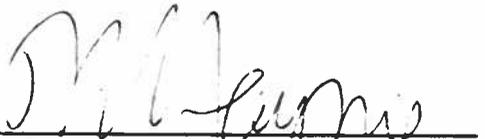
APPROVED: \_\_\_\_\_

  
William B. Dunaway, Mayor

ATTEST: \_\_\_\_\_

  
Shelia R. Hill, City Clerk

APPROVED AS TO FORM: \_\_\_\_\_

  
Douglas R. Haynie, City Attorney