



**BENEFITS LAW GROUP, P.K. KEESLER, P.C.**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

December 16, 2013

Internal Revenue Service  
P.O. Box 12192  
Covington, KY 41012-0192

Re: **City of Marietta Supplemental Pension Plan**  
**EIN 58-6000616**  
**Plan No. 003**

Dear Sir or Madam:

The City of Marietta, GA hereby submits an application through the Voluntary Compliance Program along with an application for a determination letter on the qualification of the City of Marietta Supplemental Pension Plan (the "Plan"). This Plan is being filed on-cycle. This is a "non-amender" filing pursuant to Rev. Proc. 2012-13.

The following documents are enclosed in support of this application:

- Form 8951 and compliance fee of \$8,000
- Form 8950
- Appendix C, Part I and Part II, Schedule 2
- Appendix D
- Form 2848
- Current Plan Document
- Prior Plan Documents and Amendments
- Form 8717 and \$2500 user fee
- Form 5300 and applicable attachment
- Form 2848
- Current Plan Document
- Prior Plan Documents and Amendments

Please contact me if you have any questions or need additional information.

Sincerely,

Patricia K. Keesler

Encls.

c: Shannon Barrett

Statement of Amendments

GUST restatement

GUST automatic cash out increased to \$5000

EGTRRA Amendment

EGTRAA Amendment for automatic IRAs and 401(a)(9) regulations

Participation rules for part time, temporary and seasonal employees

Form **8951**

(Rev. January 2013)

Department of the Treasury  
Internal Revenue Service

## Compliance Fee for Application of Voluntary Correction Program (VCP)

Under the Employee Plans Compliance Resolution System (EPCRS)  
▶ Information about Form 8951 and its instructions is at [www.irs.gov/form8951](http://www.irs.gov/form8951).  
▶ Attach to Form 8950.

OMB No. 1545-1673

**For IRS Use Only**

Amount Paid

\$ \_\_\_\_\_

1 Name of plan sponsor (employer if single-employer plan)

City of Marietta, GA

2 Plan sponsor's employer identification number

58-6000616

3 Plan number

003

4 Plan name

City of Marietta Supp Pen Plan

5 Number of plan participants. See instructions to determine this number.

800

6 If you are submitting a check for an additional VCP compliance fee that has been requested by an IRS employee in Voluntary Compliance, check this box  and provide the check amount \$ \_\_\_\_\_ and the VCP Case Number \_\_\_\_\_.

**7 General Compliance Fee Schedule**

Number of Plan Participants	General Compliance Fee Amount
(a) 0-20	<input type="checkbox"/> \$750
(b) 21-50	<input type="checkbox"/> \$1,000
(c) 51-100	<input type="checkbox"/> \$2,500
(d) 101-500	<input type="checkbox"/> \$5,000
(e) 501-1,000	<input checked="" type="checkbox"/> \$8,000
(f) 1,001-5,000	<input type="checkbox"/> \$15,000
(g) 5,001-10,000	<input type="checkbox"/> \$20,000
(h) Over 10,000	<input type="checkbox"/> \$25,000

**8 Exceptions to the General Compliance Fee Schedule. Check all boxes that apply:**

If a VCP submission consists solely of one or more applicable failures checked in 8(a) - (f) (and does not include any other failure), the compliance fee will be the lesser of: (1) the sum of the reduced compliance fee amounts, or (2) the general compliance fee amount (see instructions). If any box in 8(g) - (j) is checked, pay only the corresponding reduced compliance fee amount.

Reduced Compliance Fee Eligibility	Reduced Compliance Fee Amount
(a) VCP submission relates to certain failures involving the late adoption of good faith amendments, interim amendments, or amendments required to implement optional tax law changes, as described in Rev. Proc. 2013-12, section 6.05(3)(a). See Rev. Proc. 2013-12, section 12.03(2).	<input type="checkbox"/> \$375
(b) VCP submission relates to late nonamender failures described in Rev. Proc. 2013-12, section 6.05(2)(a)(ii), and the VCP submission is made within a 1-year period following the expiration of the plan's remedial amendment period for complying with such changes. See Rev. Proc. 2013-12, section 12.03(1).	<input type="checkbox"/> General compliance fee amount from line 7 is reduced by 50%.
(c) VCP submission relates to a failure to comply with Internal Revenue Code (IRC) section 401(a)(9) minimum distribution rules affecting 50 or fewer plan participants. See Rev. Proc. 2013-12, section 12.02(2), for additional rules.	<input type="checkbox"/> \$500
(d) VCP submission relates to a failure of participant loans to comply with IRC section 72(p)(2) rules, provided no more than 25% of plan participants were affected in any year in which the failure occurred. See Rev. Proc. 2013-12, section 12.02(3), for additional rules.	<input type="checkbox"/> General compliance fee amount from line 7 is reduced by 50%.

For Paperwork Reduction Act Notice, see instructions.

Form **8951** (Rev. 1-2013)



**Exceptions to the General Compliance Fee Schedule. Check all boxes that apply, continued**

If a VCP submission consists solely of one or more applicable failures checked in 8(a) - (f) (and does not include any other failure), the compliance fee will be the lesser of: (1) the sum of the reduced compliance fee amounts, or (2) the general compliance fee amount (see instructions). If any box in 8(g) - (j) is checked, pay only the corresponding reduced compliance fee amount.

Reduced Compliance Fee Eligibility	Reduced Compliance Fee Amount
(e) VCP submission relates to a failure to timely adopt an amendment (upon which a favorable determination letter is conditioned) within the applicable remedial amendment period, provided the required amendment is adopted within three months of the expiration of the remedial amendment period for adopting the amendment. See Rev. Proc. 2013-12, sections 6.05(3)(d) and 12.03(3), for additional details and conditions.	<input type="checkbox"/> \$500
(f) VCP submission relates to a failure to timely adopt a written 403(b) plan. The VCP submission must be mailed to the IRS by December 31, 2013. See Rev. Proc. 2013-12, section 12.02(5) for additional details and conditions.	<input type="checkbox"/> General compliance fee amount from line 7 is reduced by 50%.
(g) VCP submission relates to a request for a minor modification of a previously issued compliance statement, and has been mailed within the correction period set forth in the compliance statement. See Rev. Proc. 2013-12, section 10.07(10).	<input type="checkbox"/> Compliance fee amount is the lesser of: 50% of the original compliance fee or \$1,500.
(h) Plan is a SEP, SARSEP, or SIMPLE IRA. See Rev. Proc. 2013-12, section 12.06, for additional rules.	<input type="checkbox"/> \$250
(i) Group submission from an eligible organization, as defined in Rev. Proc. 2013-12, section 10.11(2). See Rev. Proc. 2013-12, section 12.05, for additional rules.	<input type="checkbox"/> Initial fee due with this submission is \$10,000. An additional fee will be requested by the IRS at a later time based on the number of plans in excess of 20 that will be part of the group submission (capped at \$50,000).
(j) Terminating orphan plan, as defined in Rev. Proc. 2013-12, section 5.03. A terminating orphan plan may be granted a waiver of the fee upon request. See instructions and Rev. Proc. 2013-12, sections 11.03(13) and 12.02(4).	<input type="checkbox"/> No compliance fee is due at this time.

**Caution.** In some situations, the compliance fee owed for a VCP submission may be higher than the amounts reflected on pages 1 and 2 of this form. See *Determining the Proper Compliance Fee* in the instructions and in Rev. Proc. 2013-12, section 12.



# Application for Voluntary Correction Program (VCP)

Under the Employee Plans Compliance Resolution System (EPCRS)

OMB No. 1545-1673  
For IRS Use Only

Information about Form 8950 and its instructions is at [www.irs.gov/form8950](http://www.irs.gov/form8950).

Review the attached Procedural Requirements Checklist before mailing this VCP submission to the IRS.

1a Name of plan sponsor (employer if single-employer plan)

City of Marietta, GA

1b Address of plan sponsor (if a P.O. box, see instructions)

205 Lawrence Street

1c City or town

Marietta

1d State

GA

1e ZIP code

30060

1f Foreign country name

1g Foreign province/county

1h Foreign postal code

1i Employer identification number

58-6000616

1j Telephone number

770-794-5567

1k Fax number

770-794-5565

2a Person to contact if more information is needed. (see instructions)

(If a Power of Attorney is attached, check box and do not complete lines 2a through 2g.)

Name

2b Address

2c City or town

2d State

2e ZIP code

2f Telephone number

2g Fax number

If more space is needed for any line items, attach additional sheets of the same size as this form. Identify each additional sheet with the plan sponsor's name and EIN and identify the corresponding line item.

Under penalties of perjury, I declare that I have examined this VCP submission, including Form 8950 and all accompanying documents, and to the best of my knowledge and belief, they and the facts presented in support of this application and submission are true, correct, and complete.

SIGN HERE ▶

  
This application must generally be signed by the owner or an authorized employee of the plan sponsor. For exceptions, see instructions under *Who Must Sign*.

Date ▶

12/9/2013

Type or print name

William F. Brufan, Jr.

Type or print title

City Manager

For Paperwork Reduction Act Notice, see separate instructions.

Form 8950 (1-2013)



**3** Type of VCP submission (see instructions)

Check one:

- VCP regular submission
- VCP anonymous submission
- VCP group submission
- Non-VCP 457(b) submission (as permitted by Revenue Procedure (Rev. Proc.) 2013-12, section 4.09)

**4a** Name of plan (plan name may not exceed 132 characters, including spaces):

City of Marietta Supplemental Pension Plan

**4b** Enter 3-digit plan number (see instructions)

**4d** Enter the dollar value of the plan's assets (see instructions)

**4c** Enter month plan year ends (MM) (see instructions)

**4e** Enter number of participants (see instructions)

**5** Indicate type of plan by entering the corresponding number from the list below:  (Enter only one plan type)

- 01-Profit sharing (not 401(k))
- 02-401(k)
- 14-Stock bonus
- 03-Money purchase
- 06-Target benefit
- 04-Defined benefit (not cash balance or other statutory hybrid)
- 09-Cash balance or other statutory hybrid
- 05-ESOP
- 15-KSOP
- 07-403(b)
- 08-457(b)
- 10-Governmental 414(d) defined benefit
- 20-Governmental 414(d) defined contribution
- 11-SEP
- 12-SARSEP
- 13-SIMPLE IRA
- 16-Group submission defined contribution
- 17-Group submission defined benefit
- 99-Other (see instructions)



Yes No

6   Are all qualification failures and correction methods in this VCP submission being resolved by the use of the Appendix C, Part II schedules in Rev. Proc. 2013-12?

If "Yes," please indicate the specific schedules you are submitting.

- Schedule 1       Schedule 6       Schedule 11
- Schedule 2       Schedule 7       Schedule 12
- Schedule 3       Schedule 8
- Schedule 4       Schedule 9
- Schedule 5       Schedule 10

7a   If you are proposing to correct any section 401(a) qualification failure, does the correction include a retroactive plan amendment (see instructions)?

7b   If 7a is "Yes," have you concurrently submitted a Form 5300 series, Application for Determination for Employee Benefit Plan (see instructions)?

If 7b is "No," attach an explanation as to why such determination letter application was not submitted.

7c If 7a is "Yes," indicate the plan's remedial amendment cycle as determined by Rev. Proc. 2007-44 (or successor) that was in effect as of the date of this VCP submission (see instructions):

Cycle C

8   Has the plan or plan sponsor been party to an abusive tax avoidance transaction (see Rev. Proc. 2013-12, section 4.13(2))?

If "Yes," attach an explanation that provides details of the transaction (see instructions).

9   Does the VCP submission relate to the diversion or misuse of plan assets (see Rev. Proc. 2013-12, section 4.12)?

10   As of the date this VCP submission is mailed to the IRS, is the plan sponsor or the plan under examination, as defined in Rev. Proc. 2013-12, section 5.09? If "Yes," you are ineligible for VCP (see instructions).

11   As of the date this VCP submission is mailed to the IRS, is the plan being considered in an unrelated Form 5300 series determination letter application?

If "Yes," include an attachment indicating the date the application was filed with the IRS and the determination letter application case number.

12   Have you previously filed a Form 5300 series determination letter application for this plan with the IRS that was subsequently closed or withdrawn as a result of a failure to respond to a request for additional information?

If "Yes," attach an explanation (see instructions).



## Procedural Requirements Checklist

You do not have to use this checklist, but it may help prevent delayed IRS processing caused by an incomplete submission.

- 1 Is Form 8951, Compliance Fee for Application for Voluntary Correction Program (VCP) Under the Employee Plans Compliance Resolution System (EPCRS), attached to Form 8950?
- 2 Is the appropriate compliance fee for your submission (and a photocopy of the compliance fee check) attached to Form 8951?
- 3 If appropriate, is Form 2848, Power of Attorney and Declaration of Representative, and/or Form 8821, Tax Information Authorization, attached? For more information, see *Disclosure Request by Taxpayer* in the instructions and Rev. Proc. 2013-4 (or its successor).
- 4 Is the employer identification number (EIN) of the plan sponsor/employer (NOT the trust's EIN, or an individual's SSN) entered on line 1i? See *Line 1i* in the instructions.
- 5 Is the application signed and dated? It generally must be signed by an authorized employee or the owner of the plan sponsor. See *Who Must Sign* in the instructions for situations where the signer may be a different person.
- 6 If you are submitting Appendix C, Part I, Model VCP Compliance Statement or Appendix C, Part II, Schedules, have you used the official versions of these documents that are located at [www.irs.gov/Retirement-Plans/Correcting-Plan-Errors](http://www.irs.gov/Retirement-Plans/Correcting-Plan-Errors)? The format of these documents may not be modified in any way. See Rev. Proc. 2013-12, sections 11.01 and 11.02.
- 7 If you answered "Yes" to line 7a, have you answered lines 7b and 7c and supplied the requested information?
- 8 If you answered "No" to line 7b, have you included a written explanation as requested by line 7b?
- 9 If you answered "Yes" to line 7a, have you included: a separate determination letter application that includes a Form 8717; a Form 5300, 5307, or 5310; a separate check for the user fee; and separate copies of plan documents, amendments, etc., required by the Form 5300 series application instructions? See Rev. Proc. 2013-12, sections 6.05 and 11.04.
- 10 If this is an anonymous VCP submission, have you included a signed statement from the plan sponsor's representative indicating the representative has the legal authorization to make this submission and is willing and able to submit Form 2848 to the IRS upon disclosure of the taxpayer's identity? See instructions and Rev. Proc. 2013-12, sections 10.10 and 11.08.
- 11 If this VCP submission involves an orphan plan, have you included appropriate documentation that establishes that this submission is being made by an eligible party? See instructions and Rev. Proc. 2013-12, sections 5.03 and 11.10.

**NOTE.** If you answered "Yes" to line 6, then items 12 through 19 on this checklist do not apply (as they have been incorporated into Schedules described in Rev. Proc. 2013-12, Appendix C, Part II). All applicable items on each of the Schedules need to be completed, and you must include the enclosure items listed on each applicable Schedule with your VCP submission. The Schedules may be used as part of a Model VCP Submission Compliance Statement described in Rev. Proc. 2013-12, Appendix C, Part I, to resolve certain qualification failures. If you combine the Schedules with the model compliance statement, you must specify in each section of the model compliance statement the Schedules being submitted in that section.



## Procedural Requirements Checklist *(Continued)*

- 12 Have you included an explanation of how and why the described qualification failures arose? Include a description of the applicable administrative procedures for the plan that were in effect at the time the described failures occurred.
- 13 Have you included a complete description for each qualification failure that is to be resolved by this VCP submission? The narrative description should include the years in which the failure occurred and the number of employees affected by each failure.
- 14 Have you included a detailed description of the method for correcting the failures that the plan sponsor has implemented or proposes to implement to correct each failure described in this VCP submission? Each step of the correction method must be described in narrative form and must include specific information needed to support the proposed correction method. See Rev. Proc. 2013-12, section 11.03.
- 15 Have you included a description of the administrative measures that have been or will be implemented to ensure that the qualification failures described in this VCP submission do not recur? See Rev. Proc. 2013-12, section 11.03.
- 16 For failures involving corrective contributions or distributions, have you included an explanation that provides a detailed, narrative description explaining the methodology you have used to determine lost earnings and how this is consistent with EPCRS correction principles? See Rev. Proc. 2013-12, sections 6.02 and 11.03.
- 17 For failures involving corrective contributions or distributions, have you included detailed and specific calculations for each affected employee or a representative sample of affected employees? The sample calculations must be sufficient to demonstrate each aspect of the proposed correction method. See Rev. Proc. 2013-12, section 11.03.
- 18 For failures involving participant loans that do not comply with section 72(p) requirements, have you included:
- An explanation that contains a detailed description of the failure;
  - An explanation that requests income tax reporting relief, and/or a request to report the distribution on Form 1099-R in the year of correction instead of the year of failure;
  - For cases in which income tax reporting relief has been requested, detailed calculations and narrative that describe the correction proposal and demonstrate compliance with the requirements set forth in Rev. Proc. 2013-12, sections 6.07 and 11.03?
- 19 For operational failures that have resulted in certain excise taxes, have you included an explanation requesting a waiver of the excise tax under section 4972, 4973, 4974, or 4979 or additional income tax under section 72(t), as applicable? Where required, have you included detailed explanations supporting the request? See Rev. Proc. 2013-12, section 6.09, for information as to when such waivers are available.
- 20 Have you included an explanation that describes the method(s) that will be used to locate and notify former employees or beneficiaries? If there are no former employees or beneficiaries affected by the failure described in this VCP submission or the proposed method of correction, have you provided an affirmative statement to that effect? See Rev. Proc. 2013-12, section 11.03.
- 21 If the failures described in this VCP submission include a failure related to transferred assets, as defined in Rev. Proc. 2013-12, section 5.01(7), have you included an attachment that describes the related employer transaction, including the date of the employer transaction and the date the assets were transferred to the plan?
- 22 If the failures described in this VCP submission include an operational failure, have you included a copy of the plan document (and adoption agreement, if applicable) or applicable provisions of the plan document, that were in effect during the period of failure? See Rev. Proc. 2013-12, section 11.04.



## Procedural Requirements Checklist (Continued)

- 23 If the failures described in this VCP submission include a non-amender failure other than late interim amendments, have you included a copy of the plan document in effect prior to any of the amendments used to correct the failure(s)? See Rev. Proc. 2013-12, section 11.04.
- 24 If the failures are being corrected by plan amendments or the adoption of a written plan, have you:
- Included copies of the corrective amendments?
  - Submitted corrective documents that were executed by the plan sponsor (if correcting interim amendment failures or a failure to adopt a written 403(b) plan timely)?
  - Included an explanation that identifies the specific plan language that resolves each specified qualification failure described in the VCP submission (including the page and section of the plan document that includes the specific plan language), if a restated plan document is being submitted as evidence of correction?
- 25 If the plan in this VCP submission is a 403(b) plan, has a written attachment been included that contains the following items?
- A statement as to the type of employer (e.g., a tax-exempt organization described in section 501(c)(3)) that is making the VCP submission; and
  - A statement indicating that the plan sponsor has contacted all other entities involved with the plan and has been assured of cooperation to the extent necessary to implement the applicable correction.
- 26 If you wish to receive an acknowledgement letter that the IRS has received your Form 8950 and VCP submission, have you included an Appendix D Acknowledgement Letter with your submission? See Rev. Proc. 2013-12, section 11.11 and Appendix D.
- 27 Have you assembled your submission as described in Rev. Proc. 2013-12, section 11.14? For those submissions with related determination letter applications, have you included separate copies of all necessary plan documents and amendments so that the VCP submission and the determination letter application each has its own copies? See Rev. Proc. 2013-12, section 11.04.
- 28 Is this VCP submission limited to a minor modification to a previously issued compliance statement, as permitted by Rev. Proc. 2013-12, section 10.07(10)?
- If "Yes," have you included the following items?
- An attachment describing the modification;
  - A copy of the original compliance statement;
  - A copy of the original VCP submission;
  - Any other correspondence relating to the issuance of the original compliance statement, if applicable; and
  - An attachment indicating that the modification request is being mailed to the IRS before the end of the correction period specified in the original compliance statement.



**APPENDIX C-PART I  
MODEL VCP SUBMISSION COMPLIANCE STATEMENT**

**Plan Name:** City of Marietta Supplemental Pension Plan **EIN:** 58-6000616 **Plan #:** 003  
(Include the plan name, Applicant's EIN, and plan number on each page of the compliance statement, including attachments.)

**SECTION I. PLAN INFORMATION**

1. APPLICANT'S NAME: City of Marietta
2. APPLICANT'S EIN: 58-6000616 3. PLAN NO.: 003  
(do not use Social Security Number)
4. PLAN NAME: City of Marietta Supplemental Pension Plan

**SECTION II. APPLICANT'S DESCRIPTION OF FAILURES**

Attach additional pages, as needed. Label attachment "SECTION II. APPLICANT'S DESCRIPTION OF FAILURES." List and number each failure separately. If using the Appendix C, Part II Schedules, simply specify the Schedule(s) that are to be part of this compliance statement and attach them to this compliance statement.

Appendix C Part II Schedule 2

**SECTION III. APPLICANT'S DESCRIPTION OF THE PROPOSED METHOD OF CORRECTION**

Attach additional pages, as needed. Label attachment "SECTION III. APPLICANT'S DESCRIPTION OF THE PROPOSED METHOD OF CORRECTION." Describe the correction method applicable to each failure listed in Section II. If using the Appendix C, Part II Schedules, simply specify the Schedule(s) that are to be part of this compliance statement and attach them to this compliance statement.

Appendix C Part II Schedule 2

**SECTION IV. APPLICANT'S PROPOSED PROCEDURES TO LOCATE AND NOTIFY FORMER EMPLOYEES OR BENEFICIARIES**

Attach additional pages, as needed. Label attachment "SECTION IV. APPLICANT'S PROPOSED PROCEDURES TO LOCATE AND NOTIFY FORMER EMPLOYEES OR BENEFICIARIES." Describe the method(s) that will be used to locate and notify former employees and beneficiaries, or provide an affirmative statement that no former employees or beneficiaries were affected by each failure listed in Part II or will be affected by the correction methods described in Section III. See section 6.02(5) (d) of Rev. Proc. 2013-12.

No former employees or beneficiaries were affected by each failure listed in Part II Schedule 2.

Plan Name: City of Marietta Supplemental Pension Plan EIN: 58-6000616 Plan #: 003

**SECTION V. APPLICANT'S PROPOSED REVISION TO ADMINISTRATIVE PROCEDURES**

Attach additional pages, as needed. Label attachment "SECTION V. APPLICANT'S PROPOSED REVISION TO ADMINISTRATIVE PROCEDURES." Please include an explanation of how and why the failures arose and a description of the measures that will be implemented to ensure that the same failures do not occur in the future. If using the Appendix C, Part II Schedules, simply specify the Schedule(s) that are to be part of this compliance statement and attach them to this compliance statement.

Appendix C Part II Schedule 2

**SECTION VI. REQUESTS RELATED TO EXCISE TAXES, ADDITIONAL TAX, AND TAX REPORTING**

The Applicant requests that the Internal Revenue Service ("Service") not pursue the following taxes under the Internal Revenue Code ("Code") (attach supporting rationale as required by section 6.09 of Rev. Proc. 2013-12):

- Excise tax under Code section 4972 with respect to failure(s) #\_\_\_\_\_.
- Excise tax under Code section 4973 with respect to failure(s) #\_\_\_\_\_.
- Excise tax under Code section 4974 with respect to failure(s) #\_\_\_\_\_.
- Excise tax under Code section 4979 with respect to failure(s) #\_\_\_\_\_.
- Imposition of additional tax under Code section 72(t) with respect to failure(s) #\_\_\_\_\_.

The Applicant requests that the Service grant the following with respect to plan loan failures as described in section 6.07 of Rev. Proc. 2013-12:

- With respect to loan(s) described in failure(s) #\_\_\_\_\_, that a deemed distribution corrected pursuant to this VCP submission not be required to be reported on Form 1099-R and that repayments made by such correction not result in the affected participant having additional basis in the plan for purposes of determining the tax treatment of subsequent distributions from the plan.
- With respect to loan(s) described in failure(s) #\_\_\_\_\_, that a deemed distribution be reported on Form 1099-R with respect to affected participant(s) for the year of correction instead of the year of the failure.

Plan Name: City of Marietta Supplemental Pension Plan EIN: 58-6000616 Plan #: 003

**SECTION VII. ENFORCEMENT RESOLUTION (to be completed by IRS only)**

The Applicant will neither attempt to nor otherwise amortize, deduct, or recover from the Service any portion of the compliance fee nor receive any Federal tax benefit on account of payment of such compliance fee.

The Service will not pursue the sanction of revoking the tax-favored status of the plan under § 401(a), 403(b), 408(k), or 408(p) of the Internal Revenue Code ("Code") on account of the failure(s) described in this submission. This compliance statement considers only the acceptability of the correction method(s) and the revision(s) of administrative procedures described in the submission and does not express an opinion as to the accuracy or acceptability of any calculations or other materials submitted with the submission. The reliance provided by this compliance statement is limited to the specific failures and years specified and does not provide reliance for any other failure or year. In no event may this compliance statement be relied on for the purpose of concluding that the plan or Plan Sponsor was not a party to an abusive tax avoidance transaction. The compliance statement should not be construed as affecting the rights of any party under any other law, including Title I of the Employee Retirement Income Security Act of 1974.

This compliance statement is conditioned on (1) there being no misstatement or omission of material facts in connection with the submission and (2) the completion of all corrections described in this compliance statement within one hundred fifty (150) days of the date of the compliance statement.

- The Service will treat the failure to adopt interim amendments or amendments for optional law changes, as described in section 6.05(3)(a) of Rev. Proc. 2013-12 as if they had been adopted timely for the purpose of making available the extended remedial amendment period currently set forth in Revenue Procedure 2007-44, 2007-2 C.B. 54, or its successors. However, this compliance statement does not constitute a determination as to whether any such plan amendments, as drafted, comply with the applicable changes in qualification requirements.
- With regard to failure # \_\_\_\_\_ relating to the 403(b) Plan failure to timely adopt a written plan, as required under the final § 403(b) regulations and Notice 2009-3, the Service will treat the written plan as if it had been adopted timely for the purposes of making available the extended remedial amendment period set forth in Announcement 2009-89. However, this compliance statement does not constitute a determination as to whether the written plan, as drafted, complies with the applicable requirements associated with § 403(b) and the final § 403(b) regulations.
- With regard to failure # \_\_\_\_\_ (provided that no modification has been made to either the plan document or adoption agreement of the plan that would otherwise cause the employer to lose reliance on the plan's opinion or advisory letter), the corrective amendment will not cause the plan to lose its status as a Master or Prototype plan or Volume Submitter plan and (provided that no modification has been made that would otherwise affect the employer's eligibility for the six-year remedial amendment cycle) the employer will be allowed to remain within the six-year remedial amendment cycle described in Revenue Procedure 2007-44, 2007-2, on a continuing basis until the expiration of the next six-year remedial amendment cycle as provided in section 18.01 of Rev. Proc. 2007-44, or, if different, the deadline announced by the Service, as provided

City of Marietta Supplemental

Plan Name: Pension Plan

EIN: 58-6000616

Plan #: 003

in section 18.03 of that revenue procedure. In addition, the issuance of this compliance statement constitutes a determination of the effect of the corrective plan amendment on the qualification of the plan, and a subsequent filing of a determination letter request on such amendment will not be required until the expiration of the next six-year remedial amendment cycle.

The Service will not pursue the following on account of the qualification failure(s) described in this submission:

Excise tax under Code section 4972.

Excise tax under Code section 4973.

Excise tax under Code section 4974.

Excise tax under Code section 4979.

With respect to the Overpayment failures described in this submission that were corrected by removing improper distributions from the IRA(s) of the affected participant(s) and returning those distributions to the plan, the Service will not pursue \_\_\_\_\_ % of the 10% additional income tax under Code § 72(t).

With respect to the loan failure(s) described in this submission:

Loan(s) that are corrected in accordance with one of the methods described in section 6.07(2) or 6.07(3) of Rev. Proc. 2013-12: The Service will not require deemed distributions under Code § 72(p) to be reported on Form 1099-R with respect to the participant(s) affected by the failure(s), and repayments made pursuant to the correction of such loan(s) will not result in an affected participant having additional basis in the plan for the purpose of determining the tax treatment of subsequent distributions from the plan to such participant(s).

Loan(s) that are not being corrected in accordance with one of the methods described in section 6.07(2) or 6.07(3) of Rev. Proc. 2013-12: The Service will require deemed distributions under Code § 72(p) to be reported on Form 1099-R with respect to the participant(s) affected by the failure(s). However, the plan will be permitted to report deemed distributions on Form 1099-R in the year of correction, instead of the year of the failure.

Approved:   
Yan Mak

Manager, Employee Plans Voluntary Compliance  
Tax Exempt and Government Entities Division

APR 23 2014

Date: \_\_\_\_\_

**APPENDIX C PART II, SCHEDULE 2**  
**Nonamender Failures (other than those to which Schedule 1 applies) and Failure to**  
**Adopt a 403(b) Plan Timely**

City of Marietta Supplemental Pension Plan  
Plan Name: \_\_\_\_\_ EIN: 58-6000616 Plan #: 003  
(Please include the plan name, Applicant's EIN, and plan number on each page of the submission, including attachments.)

**SECTION I. IDENTIFICATION OF FAILURES**

**A. Qualified Plans:** The plan identified above was not amended to comply with the applicable provisions of the following legislative and regulatory requirements by the applicable deadlines in accordance with § 401(b) and the regulations thereunder:

- The Employee Retirement Income Security Act of 1974 (ERISA)
- The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)
- The Deficit Reduction Act of 1984 (DEFRA)
- The Retirement Equity Act of 1984 (REA)
- The Tax Reform Act of 1986 (TRA '86)
- The Unemployment Compensation Amendments of 1992 (UCA)
- The Omnibus Budget Reconciliation Act of 1993 (OBRA)
- GUST (includes The Uruguay Round Agreements Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998, and the Community Renewal Tax Relief Act of 2000)
- The changes required by the Cumulative List for the plan's last on-cycle year:
  - The changes required by the 2004 Cumulative List (Notice 2004-84, 2004-2 C.B. 1030) for an eligible employer using a pre-approved defined contribution plan who failed to adopt the pre-approved plan by 4/30/10, as required by Announcement 2008-23, 2008-1 C.B. 731.
  - The changes required by the 2005 Cumulative List (Notice 2005-101, 2005-2 C.B. 1219) for Cycle A individually designed plans.
  - The changes required by the 2006 Cumulative List (Notice 2007-3, 2007-1 C.B. 255) for Cycle B individually designed plans, and any eligible employer using a pre-approved defined benefit plan who failed to adopt the pre-approved plan by 4/30/12, as required by Announcement 2010-20, 2010-15 I.R.B. 551.)
  - The changes required by the 2007 Cumulative List (Notice 2007-94, 2007-2 C.B. 1179) for Cycle C individually designed plans.
  - The changes required by the 2008 Cumulative List (Notice 2008-108, 2008-50 I.R.B. 1275) for Cycle D individually designed plans.

Plan Name: City of Marietta Supplemental Pension Plan EIN: 58-6000616 Plan #: 003

The changes required by the 2009 Cumulative List (Notice 2009-98, 2009-52 I.R.B. 974) for Cycle E individually designed plans.

The changes required by the 2010 Cumulative List (Notice 2010-90, 2010-52 I.R.B. 909) for Cycle A individually designed plans.

The changes required by the 2011 Cumulative List (Notice 2011-97, 2011-52 I.R.B. 923) for Cycle B individually designed plans.

The changes required by the 2012 Cumulative List (Notice 2012-76, 2012-52 I.R.B. 775) for Cycle C individually designed plans.

Amendments required as a condition for a favorable determination letter. If this item was selected answer the following questions by checking the applicable boxes:

Is this the sole failure for the VCP submission?  Yes  No

Were the amendments signed within three months of the expiration of the remedial amendment period for adopting the amendments?  Yes  No

Other (specify the legal requirement and applicable Cumulative List):

See attachment.

**B. 403(b) Plans:**

The Plan Sponsor did not timely adopt a written plan as required by the final 403(b) regulations and Notice 2009-3, 2009-2 I.R.B. 250.

**SECTION II. DESCRIPTION OF PROPOSED METHOD OF CORRECTION**

**A. Qualified Plan.** The Plan Sponsor has adopted (or will adopt) amendments that satisfy the requirements of all of the items checked in Section IA of this Appendix C Part II, Schedule 2, retroactively to the effective dates of the specific provisions contained in the amendments. The amendments and restated plan documents (where applicable) are enclosed with this submission.

**B. 403(b) Plan.** Failure to adopt a written plan timely. The Plan Sponsor has adopted a written plan retroactive to the later of the effective date of the final 403(b) regulations or the initial effective date of the plan. A copy of the signed and dated 403(b) plan is enclosed with this submission.

Plan Name: City of Marietta Supplemental Pension Plan EIN: 58-6000616 Plan #: 003

### SECTION III. CHANGE IN ADMINISTRATIVE PROCEDURES

The Plan Sponsor has taken the following step(s) to ensure that the failure(s) will not recur:

The Plan Sponsor has engaged legal counsel to review the plan annually for required changes to document language.

### SECTION IV. ENCLOSURES

In addition to the applicable items listed on the Procedural Requirements Checklist for Form 8950, the Plan Sponsor encloses the following documents, as appropriate, with this submission:

- Copies of all amendments used to correct the failure(s), either as adopted or in proposed form,
- A copy of the plan document in effect prior to any of the amendments used to correct the failure(s),
- A copy of the most recent determination letter issued with respect to the plan (if applicable),
- If required by Section 6.05 of Rev. Proc. 2013-12, a determination letter application (Form 5300, 5307, or 5310 along with Form 8717 and the applicable user fee payment made payable to the U.S. Treasury), or
- For 403(b) plans, a copy of the signed and dated 403(b) Plan document.

**Attachment to Appendix C, Part II Schedule 2  
City of Marietta Supplemental Pension Plan  
EIN: 58-6000616  
Plan #: 003**

**Other Amendments Required:**

EGTRRA Good Faith Amendment

Section 401(a)(17)

Section 401(a)(31)

Definition of eligible retirement plan

After-tax rollovers

Spousal rollovers

Section 402(f)(1) automatic rollovers

Section 415(c) increased limits

Community Renewal Tax Relief Act

Section 401(a)(9) Regulations

Section 415 Regulations

**APPENDIX D  
ACKNOWLEDGEMENT LETTER**

[ Patricia K. Keesler	]	[INSERT NAME AND
[ 945 East Paces Ferry Road	]	ADDRESS OF PLAN
[ Suite 2515	]	SPONSOR OR
[ Atlanta, GA 30326	]	AUTHORIZED REPRESENTATIVE
		AT LEFT]

Applicant's Name: City of Marietta, Georgia

Plan Name: City of Marietta Supplemental Pension Plan  
[insert plan name]

Plan No. 003  
[insert plan number]

Control No.: \_\_\_\_\_  
(to be completed by IRS)

Received Date: \_\_\_\_\_  
(to be completed by IRS)

The Internal Revenue Service, Employee Plans Voluntary Compliance, has received your VCP submission for the above-captioned plan. Your request has been assigned the control number listed above. This number should be referred to in any communication to us concerning your submission. If a determination letter application was included with your VCP submission, any acknowledgement letter issued by the Service with regard to such application will be mailed to you under separate cover.

You will be contacted when the VCP case is assigned to an agent. If you need to inquire about the status of your case prior to that date, please call (626) 927-2011 (not a toll-free number). Please leave a message with the name of the plan, the Control Number, your name, and a phone number where you can be reached.

Thank you.

# Power of Attorney and Declaration of Representative

OMB No. 1545-0150  
**For IRS Use Only**  
 Received by:  
 Name \_\_\_\_\_  
 Telephone \_\_\_\_\_  
 Function \_\_\_\_\_  
 Date        /        /

**Part I Power of Attorney**

*Caution: A separate Form 2848 should be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.*

▶ Type or print. ▶ See the separate instructions.

**1 Taxpayer information.** Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address City of Marietta, GA 205 Lawrence Street  Marietta, GA 30060	Taxpayer identification number(s) 58-6000616  Daytime telephone number      Plan number (if applicable) 770 794 5567                      003
----------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------

hereby appoints the following representative(s) as attorney(s)-in-fact:

**2 Representative(s) must sign and date this form on page 2, Part II.**

Name and address Patricia K Keesler 945 E. Paces Ferry Rd NE #2515 Atlanta, GA 30326 Check if to be sent notices and communications <input checked="" type="checkbox"/>	CAF No. <u>6505-77905R</u> PTIN _____ Telephone No. <u>(404) 995-9592</u> Fax No. <u>404-942-0150</u> Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input checked="" type="checkbox"/>
Name and address  Check if to be sent notices and communications <input type="checkbox"/>	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address  Check if to be sent notices and communications <input type="checkbox"/>	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service for the following matters:

**3 Matters**

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, etc.) (see instructions for line 3)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions for line 3)
Request for determination letter	5300	N/A
Employee Plans Compliance Resolution System	8950	N/A
Plan #003		

**4 Specific use not recorded on Centralized Authorization File (CAF).** If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. **Specific Uses Not Recorded on CAF** ..... ▶

**5 Acts authorized.** Unless otherwise provided below, the representatives generally are authorized to receive and inspect confidential tax information and to perform any and all acts that I can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The representative(s), however, is (are) not authorized to receive or negotiate any amounts paid to the client in connection with this representation (including refunds by either electronic means or paper checks). Additionally, unless the appropriate box(es) below are checked, the representative(s) is (are) not authorized to execute a request for disclosure of tax returns or return information to a third party, substitute another representative or add additional representatives, or sign certain tax returns.

Disclosure to third parties;       Substitute or add representative(s);       Signing a return; \_\_\_\_\_

Other acts authorized: \_\_\_\_\_

(see instructions for more information)

**Exceptions.** An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Treasury Department Circular No. 230 (Circular 230). An enrolled retirement plan agent may only represent taxpayers to the extent provided in section 10.3(e) of Circular 230. A registered tax return preparer may only represent taxpayers to the extent provided in section 10.3(f) of Circular 230. See the line 5 instructions for restrictions on tax matters partners. In most cases, the student practitioner's (level k) authority is limited (for example, they may only practice under the supervision of another practitioner).

List any specific deletions to the acts otherwise authorized in this power of attorney: \_\_\_\_\_

**6 Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here  **YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

**7 Signature of taxpayer.** If a tax matter concerns a year in which a joint return was filed, the husband and wife must each file a separate power of attorney even if the same representative(s) is (are) being appointed. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

**▶ IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED TO THE TAXPAYER.**

Signature:  Date: 1/22/13 Title (if applicable): CITY MANAGER

Print Name: William F. Brufon, Jr. PIN Number:      City of Marietta, GA  
 Print name of taxpayer from line 1 if other than individual

**Part II Declaration of Representative**

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Circular 230 (31 CFR, Part 10), as amended, concerning practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
  - a Attorney - a member in good standing of the bar of the highest court of the jurisdiction shown below.
  - b Certified Public Accountant - duly qualified to practice as a certified public accountant in the jurisdiction shown below.
  - c Enrolled Agent - enrolled as an agent under the requirements of Circular 230.
  - d Officer - a bona fide officer of the taxpayer's organization.
  - e Full-Time Employee - a full-time employee of the taxpayer.
  - f Family Member - a member of the taxpayer's immediate family (for example, spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
  - g Enrolled Actuary - enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
  - h Unenrolled Return Preparer - Your authority to practice before the Internal Revenue Service is limited. You must have been eligible to sign the return under examination and have signed the return. See Notice 2011-6 and Special rules for registered tax return preparers and unenrolled return preparers in the instructions.
  - i Registered Tax Return Preparer—registered as a tax return preparer under the requirements of section 10.4 of Circular 230. Your authority to practice before the Internal Revenue Service is limited. You must have been eligible to sign the return under examination and have signed the return. See Notice 2011-6 and Special rules for registered tax return preparers and unenrolled return preparers in the instructions.
  - k Student Attorney or CPA - receives permission to practice before the IRS by virtue of his/her status as a law, business, or accounting student working in LITC or STCP under section 10.7(d) of Circular 230. See instructions for Part II for additional information and requirements.
  - r Enrolled Retirement Plan Agent - enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

**▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN LINE 2 ABOVE.** See the instructions for Part II.

**Note:** For designations d-f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column. See the instructions for Part II for more information.

Designation - Insert above letter (a-r)	Licensing jurisdiction (state) or other licensing authority (if applicable)	Bar, license, certification, registration, or enrollment number (if applicable). See instructions for Part II for more information	Signature	Date
a	GA	410900	<i>Patricia K. Keen</i>	12-13-2013

# **CITY OF MARIETTA SUPPLEMENTAL PENSION PLAN**

**MP Plan CL2009**

**Restated November 15, 2010**

**Your plan is an important legal document. This sample plan has been prepared based on our understanding of the desired provisions. It may not fit your situation. You should consult with your lawyer on the plan's legal and tax implications. Neither Principal Life Insurance Company nor its agents can be responsible for the legal or tax aspects of the plan nor its appropriateness for your situation. If you wish to change the provisions of this sample plan, you may ask us to prepare new sample wording for you and your lawyer to review.**

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**PLAN EXECUTION**

# INTRODUCTION

The Employer previously established this money purchase pension plan on January 1, 1981.

The Employer is of the opinion that the plan should be changed. It believes that the best means to accomplish these changes is to completely restate the plan's terms, provisions and conditions. The restatement, effective November 15, 2010, is set forth in this document and is substituted in lieu of the prior document with the exception of any good faith compliance amendment and any model amendment. Such amendment(s) shall continue to apply to this restated plan until such provisions are integrated into the plan or such amendment(s) are superseded by another amendment.

The restated plan continues to be for the exclusive benefit of employees of the Employer. All persons covered under the plan on November 14, 2010, shall continue to be covered under the restated plan with no loss of benefits.

It is intended that the plan, as restated, shall qualify as a governmental money purchase pension plan under Section 401(a) of the Internal Revenue Code of 1986, as amended, by meeting the requirements of Code Section 414(d).

This plan includes the statutory, regulatory, and guidance changes specified in the 2009 Cumulative List of Changes in Plan Qualification Requirements (2009 Cumulative List) contained in Internal Revenue Service Notice 2009-98 and the qualification requirements and guidance published before the issuance of such list. The provisions of this plan apply as of the effective date of the restatement unless otherwise specified.

For purposes of the Plan, any provisions mandated by Federal law shall remain in effect only so long as such provisions are currently required. If any such provisions are found to be unconstitutional or unenforceable, are rescinded, or are repealed or become discretionary, those portions of the Plan shall be deleted automatically, rescinded and revoked consistent with such action without any further action of the City Council of the City of Marietta.

# ARTICLE I

## FORMAT AND DEFINITIONS

### SECTION 1.01--FORMAT.

Words and phrases defined in the DEFINITIONS SECTION of Article I shall have that defined meaning when used in this Plan, unless the context clearly indicates otherwise.

These words and phrases have an initial capital letter to aid in identifying them as defined terms.

### SECTION 1.02--DEFINITIONS.

**Account** means, for a Participant or Beneficiary, his share of the Plan Fund.

A Participant's Account shall be reduced by any distribution of his Vested Account. A Participant's Account shall participate in the earnings credited, expenses charged, and any appreciation or depreciation of the Investment Fund. His Account is subject to any minimum guarantees applicable under the Annuity Contract or other investment arrangement and to any expenses associated therewith.

**Active Participant** means an Eligible Employee who is actively participating in the Plan according to the provisions in the ACTIVE PARTICIPANT SECTION of Article II.

**Alternate Payee** means any spouse, former spouse, child, or other dependent of a Participant who is recognized by a qualified domestic relations order as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to such Participant.

**Annuity Contract** means the annuity contract or contracts into which the Trustee or the Employer enters with the Insurer for guaranteed benefits, for the investment of Contributions in separate accounts, and for the payment of benefits under this Plan.

**Annuity Starting Date** means, for a Participant, the first day of the first period for which an amount is payable as an annuity or any other form.

**Beneficiary** means the person or persons named by a Participant to receive any benefits under the Plan when the Participant dies. See the BENEFICIARY SECTION of Article X.

**Code** means the Internal Revenue Code of 1986, as amended.

**Compensation** means, except for purposes of the CONTRIBUTION LIMITATION SECTION of Article III, the total earnings, except as modified in this definition, from the Employer during any specified period.

"Earnings" in this definition means wages, within the meaning of Code Section 3401(a), and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code Sections 6041(d), 6051(a)(3), and 6052. Earnings shall be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in

Code Section 3401(a)(2)). The type of compensation that is reported in the "Wages, Tips and Other Compensation" box on Form W-2 satisfies this definition.

Except as provided herein, Compensation for a specified period is the Compensation actually paid or made available (or if earlier, includible in gross income) during such period.

For Plan Years beginning on or after July 1, 2007, Compensation for a Plan Year shall also include Compensation paid by the later of 2 1/2 months after an Employee's Severance from Employment with the Employer maintaining the Plan or the end of the Plan Year that includes the date of the Employee's Severance from Employment with the Employer maintaining the Plan, if: (i) the payment is regular Compensation for services during the Employee's regular working hours, or Compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a Severance from Employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer or (ii) the payment is for unused accrued bona fide sick, vacation or other leave that the Employee would have been able to use if employment had continued.

Any payments not described above shall not be considered Compensation if paid after Severance from Employment, even if they are paid by the later of 2 1/2 months after the date of Severance from Employment or the end of the Plan Year that includes the date of Severance from Employment.

Back pay, within the meaning of section 1.415(c)-2(g)(8) of the regulations, shall be treated as Compensation for the Plan Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included in this definition.

Compensation paid or made available during a specified period shall include amounts that would otherwise be included in Compensation but for an election under Code Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). Compensation shall also include employee contributions "picked up" by a governmental entity and, pursuant to Code Section 414(h)(2), treated as Employer contributions.

Compensation shall exclude the following:

For appointed Eligible Employees only, Compensation in excess of the maximum salary payable to regular (i.e. non-appointed) employees pursuant to the employee's personal pay plan ordinance

Compensation shall include Differential Wage Payments beginning January 1, 2009.

For Plan Years beginning on or after January 1, 2002, the annual Compensation of each Participant taken into account in determining contributions and allocations for any determination period (the period over which Compensation is determined) shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning with or within such calendar year.

Provided, however, with respect to an eligible Participant, the reduced dollar limitation in the preceding paragraph does not apply to the extent that the amount of Compensation allowed to be taken into account under the Plan is reduced below the amount that was allowed to be taken into account under the Plan as in effect on July 1, 1993. For this purpose, "eligible Participant" means an individual who first became a Participant in the Plan during a Plan Year beginning before the first Yearly Date in 1996.

If a determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction. The numerator of the fraction is the number of months in the short determination period, and the denominator of the fraction is 12.

If Compensation for any prior determination period is taken into account in determining a Participant's contributions or allocations for the current Plan Year, the Compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that determination period. For this purpose, in determining contributions and allocations in Plan Years beginning on or after January 1, 2002, the annual compensation limit in effect for determination periods beginning before that date is \$200,000.

**Compensation** means, for a Leased Employee, Compensation for the services the Leased Employee performs for the Employer, determined in the same manner as the Compensation of Employees who are not Leased Employees, regardless of whether such Compensation is received directly from the Employer or from the leasing organization.

**Contingent Annuitant** means an individual named by the Participant to receive a lifetime benefit after the Participant's death in accordance with a survivorship life annuity.

**Contribution Date** means the date on which Employer Contributions are calculated. Employer Contributions shall be calculated each payroll period as of the last day of the payroll period.

**Contributions** means Employer Contributions as set out in Article III.

**Designated Beneficiary** means the individual who is designated by the Participant (or the Participant's surviving spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated beneficiary under Code Section 401(a)(9) and section 1.401(a)(9)-4 of the regulations.

**Differential Wage Payments** means any payments which are made by an Employer to an individual with respect to any period during which the individual is performing Qualified Military Service while on active duty for a period of more than 30 days, and represents all or a portion of the wages the individual would have received from the Employer if the individual were performing service for the Employer.

**Direct Rollover** means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

**Distributee** means an Employee or former Employee. In addition, the Employee's (or former Employee's) surviving spouse and the Employee's (or former Employee's) spouse or former spouse who is the Alternate Payee under a qualified domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse.

**Eligibility Service** means an Employee's Period of Service. Eligibility Service shall be measured from his Employment Commencement Date to his most recent Severance Date. This Period of Service shall be reduced by any Period of Severance that occurred prior to his most recent Severance Date, unless such Period of Severance is included under the service spanning rule below. This period of Eligibility Service shall be expressed as years (on the basis that 365 days equal one year).

However, Eligibility Service is modified as follows:

Period of Military Duty included:

A Period of Military Duty shall be included as service with the Employer to the extent it has not already been credited.

Period of Severance included (service spanning rule):

A Period of Severance shall be deemed to be a Period of Service under either of the following conditions:

- (a) the Period of Severance immediately follows a period during which an Employee is not absent from work and ends within 12 months; or
- (b) the Period of Severance immediately follows a period during which an Employee is absent from work for any reason other than quitting, being discharged, or retiring (such as a leave of absence or layoff) and ends within 12 months of the date he was first absent.

**Eligible Employee** means any Employee of the Employer excluding the following:

Leased Employee.

An Employee considered by the Employer to be an independent contractor, or the employee of an independent contractor, who is later determined by the Internal Revenue Service to be an Employee.

An Employee employed as an elected official, judge or solicitor

An Employee employed on a contract basis.

Employed as a part-time Employee with an Employment Commencement Date prior to January 1, 2000.

**Eligible Retirement Plan** means an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), for taxable years beginning on or after January 1, 2008, an individual retirement plan described in Code Section 408A(b) subject to any limitations described in Code Section 408A(c), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), or a qualified plan described in Code Section 401(a), that accepts the Distributee's Eligible Rollover Distribution. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the Alternate Payee under a qualified domestic relations order, as defined in Code Section 414(p).

**Eligible Rollover Distribution** means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's Designated Beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); (iii) any hardship distribution; (iv) the portion of any other distribution(s) that is not includible

in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and (v) any other distribution(s) that is reasonably expected to total less than \$200 during a year.

A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to (i) an individual retirement account or individual retirement annuity described in Code Section 408(a) or (b); (ii) for taxable years beginning on or after January 1, 2007, a qualified plan (defined contribution or defined benefit) or an annuity contract described in Code Section 403(b) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or (iii) for taxable years beginning on or after January 1, 2008, an individual retirement plan described in Code Section 408A(b) subject to any limitations in Code Section 408A(c) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

**Employee** means an individual who is employed by the Employer or any other employer required to be aggregated with the Employer under Code Sections 414(b), (c), (m), or (o).

Beginning January 1, 2009, the term Employee shall include any individual receiving Differential Wage Payments.

The term Employee shall also include any Leased Employee deemed to be an employee of any employer described in the preceding paragraphs as provided in Code Section 414(n) or (o).

**Employer** means, except for purposes of the CONTRIBUTION LIMITATION SECTION of Article III, City of Marietta, a municipal corporation, and the City of Marietta Board of Lights and Waterworks, a municipal utility.

**Employer Contributions** means contributions made by the Employer. See the EMPLOYER CONTRIBUTIONS SECTION of Article III.

**Employment Commencement Date** means the date an Employee first performs an hour of service.

**Entry Date** means the date an Employee first enters the Plan as an Active Participant. See the ACTIVE PARTICIPANT SECTION of Article II.

**Inactive Participant** means a former Active Participant who has an Account. See the INACTIVE PARTICIPANT SECTION of Article II.

**Insurer** means Principal Life Insurance Company or the insurance company or companies named by (i) the Employer or (ii) the Trustee in its discretion or as directed under the Trust Agreement.

**Investment Fund** means the total of Plan assets, excluding the guaranteed benefit policy portion of any Annuity Contract. All or a portion of these assets may be held under, or invested pursuant to, the terms of a Trust Agreement.

The Investment Fund shall be valued at current fair market value as of the Valuation Date. The valuation shall take into consideration investment earnings credited, expenses charged, payments made, and changes in the values of the assets held in the Investment Fund.

The Investment Fund shall be allocated at all times to Participants, except as otherwise expressly provided in the Plan. The Account of a Participant shall be credited with its share of the gains and losses of the Investment Fund. That part of a Participant's Account invested in a funding arrangement that establishes one or more accounts or investment vehicles for such Participant thereunder shall be credited with the gain or loss from such accounts or investment vehicles. The part of a Participant's Account that is invested in other funding arrangements shall be credited with a proportionate share of the gain or loss of such investments. The share shall be determined by multiplying the gain or loss of the investment by the ratio of the part of the Participant's Account invested in such funding arrangement to the total of the Investment Fund invested in such funding arrangement.

**Investment Manager** means any fiduciary (other than a trustee)

- (a) who has the power to manage, acquire, or dispose of any assets of the Plan;
- (b) who (i) is registered as an investment adviser under the Investment Advisers Act of 1940; (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act, is registered as an investment adviser under the laws of the state (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time it last filed the registration form most recently filed by it with such state in order to maintain its registration under the laws of such state, also filed a copy of such form with the Secretary of Labor, (iii) is a bank, as defined in that Act; or (iv) is an insurance company qualified to perform services described in subparagraph (a) above under the laws of more than one state; and
- (c) who has acknowledged in writing being a fiduciary with respect to the Plan.

**Late Retirement Date** means the first day of any month that is after a Participant's Normal Retirement Date and on which retirement benefits begin. If a Participant continues to work for the Employer after his Normal Retirement Date, his Late Retirement Date shall be the earliest first day of the month on or after the date he has a Severance from Employment. A later Retirement Date may apply if the Participant so elects. See the WHEN BENEFITS START SECTION of Article V.

**Leased Employee** means any person (other than an employee of the recipient) who, pursuant to an agreement between the recipient and any other person ("leasing organization"), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient. Contributions or benefits provided by the leasing organization to a Leased Employee, which are attributable to service performed for the recipient employer, shall be treated as provided by the recipient employer.

A Leased Employee shall not be considered an employee of the recipient if:

- (a) such employee is covered by a money purchase pension plan providing (i) a nonintegrated employer contribution rate of at least 10 percent of compensation, as defined in Code Section 415(c)(3), (ii) immediate participation, and (iii) full and immediate vesting, and
- (b) Leased Employees do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

**Normal Form** means a single lump sum payment.

**Normal Retirement Date** means the earliest first day of the month on or after the date the Participant reaches his 65th birthday. Unless otherwise provided in this Plan, a Participant's retirement benefits shall begin on his Normal Retirement Date if he has had a Severance from Employment on such date and has a Vested Account.

**Parental Absence** means an Employee's absence from work:

- (a) by reason of pregnancy of the Employee,
- (b) by reason of birth of a child of the Employee,
- (c) by reason of the placement of a child with the Employee in connection with adoption of such child by such Employee, or
- (d) for purposes of caring for such child for a period beginning immediately following such birth or placement.

**Participant** means either an Active Participant or an Inactive Participant.

**Payroll Period Compensation** means, on any given date, the Employee's Compensation for the latest payroll period ending on or before the given date.

**Pension Board** means the Pension Board of the City of Marietta. The Pension Board shall act on behalf of the Employer as Plan Administrator, to administer the Plan as provided in Article IX.

**Period of Military Duty** means, for an Employee

- (a) who served as a member of the armed forces of the United States, and
- (b) who was reemployed by the Employer at a time when the Employee had a right to reemployment in accordance with seniority rights as protected under Chapter 43 of Title 38 of the U.S. Code,

the period of time from the date the Employee was first absent from active work for the Employer because of such military duty to the date the Employee was reemployed.

**Period of Service** means a period of time beginning on an Employee's Employment Commencement Date or Reemployment Commencement Date (whichever applies) and ending on his Severance Date.

**Period of Severance** means a period of time beginning on an Employee's Severance Date and ending on the date he again performs an hour of service.

A one-year Period of Severance means a Period of Severance of 12 consecutive months.

Solely for purposes of determining whether a one-year Period of Severance has occurred for eligibility or vesting purposes, the consecutive 12-month period beginning on the first anniversary of the first date of a Parental Absence shall not be a one-year Period of Severance.

**Plan** means the pension plan of the Employer set forth in this document, including any later amendments to it.

**Plan Administrator** means the Pension Board.

**Plan Fund** means the total of the Investment Fund and the guaranteed benefit policy portion of any Annuity Contract. The Investment Fund shall be valued as stated in its definition. The guaranteed benefit policy portion of any Annuity Contract shall be determined in accordance with the terms of the Annuity Contract and, to the extent that such Annuity Contract allocates contract values to Participants, allocated to Participants in accordance with its terms. The total value of all amounts held under the Plan Fund shall equal the value of the aggregate Participants' Accounts under the Plan.

**Plan Year** means a period beginning on a Yearly Date and ending on the day before the next Yearly Date.

**Qualified Military Service** means any service in the uniformed services (as defined in Chapter 43 of Title 38 of the U.S. Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

**Reemployment Commencement Date** means the date an Employee first performs an hour of service following a Period of Severance.

**Reentry Date** means the date a former Active Participant reenters the Plan. See the ACTIVE PARTICIPANT SECTION of Article II.

**Retirement Date** means the date a retirement benefit will begin and is a Participant's Normal or Late Retirement Date, as the case may be.

**Severance Date** means the earlier of:

- (a) the date on which an Employee quits, retires, dies, or is discharged, or
- (b) the first anniversary of the date an Employee begins a one-year absence from service (with or without pay). This absence may be the result of any combination of vacation, holiday, sickness, disability, leave of absence, or layoff.

Solely to determine whether a one-year Period of Severance has occurred for eligibility or vesting purposes for an Employee who is absent from service beyond the first anniversary of the first day of a Parental Absence, Severance Date is the second anniversary of the first day of the Parental Absence. The period between the first and second anniversaries of the first day of the Parental Absence is not a Period of Service and is not a Period of Severance.

**Severance from Employment** means, except for purposes of the CONTRIBUTION LIMITATION SECTION of Article III, an Employee's termination of employment that may result from retirement, death, disability, voluntary or involuntary termination, unauthorized absence, or by failure to return to active employment with the Employer by the date on which an authorized Leave of Absence expires.

An Employee has a Severance from Employment when the Employee ceases to be an Employee of the Employer maintaining the Plan. An Employee does not have a Severance from Employment if, in connection with the change of employment, the Employee's new employer maintains such plan with respect to the Employee. For example, a new employer maintains a plan with respect to an Employee by continuing or assuming sponsorship of the Plan or by accepting a transfer of plan assets and liabilities (within the meaning of Section 414(l)) with respect to the Employee.

**Trust Agreement** means an agreement or agreements of trust between the Employer and Trustee established for the purpose of holding and distributing the Trust Fund under the provisions of the Plan. The Trust Agreement may provide for the investment of all or any portion of the Trust Fund in the Annuity Contract or any other investment arrangement.

**Trust Fund** means the total funds held under an applicable Trust Agreement. The term Trust Fund when used within a Trust Agreement shall mean only the funds held under that Trust Agreement.

**Trustee** means the party or parties named in the applicable Trust Agreement.

**Valuation Date** means the date on which the value of the assets of the Investment Fund is determined. The value of each Account that is maintained under this Plan shall be determined on the Valuation Date. In each Plan Year, the Valuation Date shall be the each business day.

**Vested Account** means the vested part of a Participant's Account. The Participant's Vested Account is equal to his Account.

**Yearly Date** means January 1, 1981, and the same day of each following year.

## **ARTICLE II**

### **PARTICIPATION**

#### **SECTION 2.01--ACTIVE PARTICIPANT.**

(a) An Employee who is a regular full time Employee shall first become an Active Participant (begin active participation in the Plan) on the first day of the payroll period on or after the date he is an Eligible Employee and has met the eligibility requirement set forth below. This date is his Entry Date.

(1) He has completed one year of Eligibility Service before his Entry Date.

An Employee who is a part-time or temporary part-time Employee shall first become an Active Participant (begin active participation in the Plan) on the first day of the payroll period on or after the date he is an Eligible Employee. This date is his Entry Date.

Each Employee who was an Active Participant on November 14, 2010, shall continue to be an Active Participant if he is still an Eligible Employee on November 15, 2010, and his Entry Date shall not change.

(b) A former Participant who is reemployed by the Employer after a Severance from Employment shall again become an Active Participant (resume active participation in the Plan) on the Entry Date he again becomes an Eligible Employee and again completes the eligibility requirements in (a) above. This date is his Reentry Date.

(c) An Inactive Participant shall again become an Active Participant (resume active participation in the Plan) on the date he again becomes an Eligible Employee. This date is his Reentry Date.

Upon again becoming an Active Participant, he shall cease to be an Inactive Participant.

There shall be no duplication of benefits for a Participant because of more than one period as an Active Participant.

#### **SECTION 2.02--INACTIVE PARTICIPANT.**

An Active Participant shall become an Inactive Participant (stop accruing benefits) on the earlier of the following:

- (a) the date he ceases to be an Eligible Employee, or
- (b) the effective date of complete termination of the Plan under Article VIII.

An Employee or former Employee who was an Inactive Participant on November 14, 2010, shall continue to be an Inactive Participant on November 15, 2010. Eligibility for any benefits payable to the Participant or on his behalf and the amount of the benefits shall be determined according to the provisions of the prior document, unless otherwise stated in this document or any subsequent documents.

An Inactive Participant who ceases to be an Eligible Employees does not have a Severance of Employment shall not be entitled to a distribution until he or she has a Severance of Employment or complete termination of the Plan.

### **SECTION 2.03--CESSATION OF PARTICIPATION.**

A Participant shall cease to be a Participant on the date he is no longer an Eligible Employee and his Account is zero.

## ARTICLE III

### CONTRIBUTIONS

#### SECTION 3.01--EMPLOYER CONTRIBUTIONS.

The Employer shall make Employer Contributions for each person who meets the requirements of this section. A person meets the requirements of this section if he was an Active Participant at any time since the last Contribution Date.

If an Employee is a regular full time Employee, the amount of the Employer Contribution for each eligible person shall be calculated as of the Contribution Date and shall be equal to 6.13% of the Participant's Payroll Period Compensation.

If an Employee is a part-time or temporary part-time Employee, the amount of the Employer Contribution for each eligible person shall be calculated as of the Contribution Date and shall be equal to 7.5% of the Participant's Payroll Period Compensation.

Employer Contributions are 100% vested when made.

To determine the amount of Employer Contributions for a Participant who is a Leased Employee, contributions provided by the leasing organization that are attributable to services such Leased Employee performs for the Employer shall be treated as provided by the Employer. Those contributions shall not be duplicated under this Plan.

The Employer Contribution calculated above for each person shall be credited to his Account when made.

A portion of the Plan assets resulting from Employer Contributions (but not more than the original amount of those Contributions) may be returned if the Employer Contributions are made because of a mistake of fact. The amount involved must be returned to the Employer within one year after the date the Employer Contributions are made by mistake of fact. Except as provided under this paragraph and in Article VIII, the assets of the Plan shall never be used for the benefit of the Employer and are held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and for defraying reasonable expenses of administering the Plan.

#### SECTION 3.02--CONTRIBUTION LIMITATION.

Contributions to the Plan shall be limited in accordance with Code Section 415 and the regulations thereunder. The limitations of this section shall apply to Limitation Years beginning on or after July 1, 2007, except as otherwise provided herein.

- (a) Definitions. For the purpose of determining the contribution limitation set forth in this section, the following terms are defined.

**Annual Additions** means the sum of the following amounts credited to a Participant's account for the Limitation Year:

- (1) employer contributions (permitted in this Plan);
- (2) employee contributions (not permitted in this Plan); and
- (3) forfeitures (not permitted in this Plan).

Annual Additions to a defined contribution plan, as defined in section 1.415(c)-1(a)(2)(i) of the regulations, shall also include the following:

- (4) mandatory employee contributions, as defined in Code Section 411(c)(2)(C) and section 1.411(c)-1(c)(4) of the regulations, to a defined benefit plan;
- (5) contributions allocated to any individual medical benefit account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer;
- (6) amounts attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer; and
- (7) annual additions under an annuity contract described in Code Section 403(b).

**Compensation** means wages, within the meaning of Code Section 3401(a), and all other payments of compensation to an employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the employee a written statement under Code Sections 6041(d), 6051(a)(3), and 6052. Compensation shall be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)). The type of compensation that is reported in the "Wages, Tips and Other Compensation" box on Form W-2 satisfies this definition.

Except as provided herein, Compensation for a Limitation Year is the Compensation actually paid or made available (or if earlier, includible in gross income) during such Limitation Year.

For Limitation Years beginning on or after July 1, 2007, Compensation for a Limitation Year shall also include Compensation paid by the later of 2 1/2 months after an employee's Severance from Employment with the Employer maintaining the plan or the end of the Limitation Year that includes the date of the employee's Severance from Employment with the Employer maintaining the plan, if: (i) the payment is regular Compensation for services during the employee's regular working hours, or Compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a Severance from Employment, the payments would have been paid to the employee while the employee continued in employment with the Employer or (ii) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

Any payments not described above shall not be considered Compensation if paid after Severance from Employment, even if they are paid by the later of 2 1/2 months after the date of Severance from Employment or the end of the Limitation Year that includes the date of Severance from Employment.

Beginning January 1, 2009, Compensation shall include Differential Wage Payments.

Back pay, within the meaning of section 1.415(c)-2(g)(8) of the regulations, shall be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included in this definition.

Compensation paid or made available during such Limitation Year shall include amounts that would otherwise be included in Compensation but for an election under Code Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

Compensation shall not include amounts paid as Compensation to a nonresident alien, as defined in Code Section 7701(b)(1)(B), who is not a Participant in the Plan to the extent the Compensation is excludible from gross income and is not effectively connected with the conduct of a trade or business within the United States.

**Defined Contribution Dollar Limitation** means, effective for Limitation Years beginning after December 31, 2001, \$40,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a Participant's Annual Additions for a Limitation Year cannot exceed the currently applicable dollar limitation (as in effect before the January 1 adjustment) prior to January 1. However, after a January 1 adjustment is made, Annual Additions for the entire Limitation Year are permitted to reflect the dollar limitation as adjusted on January 1.

**Employer** means the employer that adopts this Plan, and all members of a controlled group of corporations (as defined in Code Section 414(b) as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Code Section 415(h)), or affiliated service groups (as defined in Code Section 414(m)) of which the adopting employer is a part, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o).

**Limitation Year** means the consecutive 12-month period ending on the last day of each Plan Year, including corresponding consecutive 12-month periods before January 1, 1981. If the Limitation Year is other than the calendar year, execution of this Plan (or any amendment to this Plan changing the Limitation Year) constitutes the Employer's adoption of a written resolution electing the Limitation Year. If the Limitation Year is amended to a different consecutive 12-month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

**Maximum Annual Addition** means, for Limitation Years beginning on or after January 1, 2002, the Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year. This amount shall not exceed the lesser of:

- (1) The Defined Contribution Dollar Limitation, or
- (2) 100 percent of the Participant's Compensation for the Limitation Year.

A Participant's Compensation for a Limitation Year shall not include Compensation in excess of the limitation under Code Section 401(a)(17) that is in effect for the calendar year in which the Limitation Year begins.

The compensation limitation referred to in (2) shall not apply to an individual medical benefit account (as defined in Code Section 415(l)); or a post-retirement medical benefits account for a key employee (as defined in Code Section 419A(d)(1)).

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different consecutive 12-month period, the Maximum Annual Addition will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

$$\frac{\text{Number of months (including any fractional parts of a month)} \\ \text{in the short Limitation Year}}{12}$$

If the Plan is terminated as of a date other than the last day of the Limitation Year, the Plan is treated as if the Plan was amended to change the Limitation Year and create a short Limitation Year ending on the date the Plan is terminated.

If a short Limitation Year is created, the limitation under Code Section 401(a)(17) shall be prorated in the same manner as the Defined Contribution Dollar Limitation.

**Predecessor Employer** means, with respect to a Participant, a former employer if the Employer maintains a plan that provides a benefit which the Participant accrued while performing services for the former employer. Predecessor Employer also means, with respect to a Participant, a former entity that antedates the Employer if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

**Severance from Employment** means an employee has ceased to be an employee of the Employer maintaining the plan. An employee does not have a Severance from Employment if, in connection with a change of employment, the employee's new employer maintains the plan with respect to the employee.

- (b) If the Participant does not participate in another defined contribution plan, as defined in section 1.415(c)-1(a)(2)(i) of the regulations (without regard to whether the plan(s) have been terminated) maintained by the Employer, the amount of Annual Additions that may be credited to the Participant's Account for any Limitation Year shall not exceed the lesser of the Maximum Annual Addition or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Annual Addition, the amount contributed or allocated shall be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Annual Addition.
- (c) If, in addition to this Plan, the Participant is covered under another defined contribution plan, as defined in section 1.415(c)-1(a)(2)(i) of the regulations, (without regard to whether the plan(s) have been terminated) maintained by the Employer that provides an Annual Addition during any Limitation Year, the Annual Additions that may be credited to a Participant's Account under this Plan for any such Limitation Year will not exceed the Maximum Annual Addition, reduced by the Annual Additions credited to a Participant's Account under the other defined contribution plan(s) for the same Limitation Year. If the Annual Additions with respect to the Participant under the other defined contribution plan(s) maintained by the Employer are less than the Maximum Annual Addition, and the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual

Additions under all such plans and funds for the Limitation Year will equal the Maximum Annual Addition. If the Annual Additions with respect to the Participant under the other defined contribution plan(s) in the aggregate are equal to or greater than the Maximum Annual Addition, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

(d) The limitation of this section shall be determined and applied taking into account the rules in subparagraph (e) below.

(e) Other Rules

- (1) Aggregating Plans. For purposes of applying the limitations of this section for a Limitation Year, all defined contribution plans (as defined in section 1.415(c)-1(a)(2)(i) of the regulations and without regard to whether the plan(s) have been terminated) ever maintained by the Employer and all defined contribution plans of a Predecessor Employer (in the Limitation Year in which such Predecessor Employer is created) under which a Participant receives Annual Additions are treated as one defined contribution plan.
- (2) Break-up of Affiliated Employers. The Annual Additions under a formerly affiliated plan (as defined in section 1.415(f)-1(b)(2)(ii) of the regulations) of the Employer are taken into account for purposes of applying the limitations of this section for the Limitation Year in which the cessation of affiliation took place.
- (3) Previously Unaggregated Plans. The limitations of this section are not exceeded for the first Limitation Year in which two or more existing plans, which previously were not required to be aggregated pursuant to section 1.415(f) of the regulations, are aggregated, provided that no Annual Additions are credited to a Participant after the date on which the plans are required to be aggregated if the Annual Additions already credited to the Participant in the existing plans equal or exceed the Maximum Annual Addition.
- (4) Aggregation with Multiemployer Plan. If the Employer maintains a multiemployer plan, as defined in Code Section 414(f), and the multiemployer plan so provides, only the Annual Additions under the multiemployer plan that are provided by the Employer shall be treated as Annual Additions provided under a plan maintained by the Employer for purposes of this section.

## **ARTICLE IV**

### **INVESTMENT OF CONTRIBUTIONS**

#### **SECTION 4.01--INVESTMENT OF CONTRIBUTIONS.**

The handling of Contributions and Plan assets is governed by the provisions of the Trust Agreement and any other relevant document, such as an Annuity Contract (for the purposes of this paragraph alone, the Trust Agreement and such other documents will each be referred to as a "document" or collectively as the "documents"), duly entered into by or with regard to the Plan that govern such matters. To the extent permitted by the documents, the parties named below shall direct the Contributions for investment in any of the investment options or investment vehicles available to the Plan under or through the documents, and may request the transfer of amounts resulting from those Contributions between such investment options and investment vehicles. A Participant may not direct the investment of all or any portion of his Account in collectibles. Collectibles mean any work of art, rug or antique, metal or gem, stamp or coin, alcoholic beverage, or other tangible personal property specified by the Secretary of the Treasury. However, for tax years beginning after December 31, 1997, certain coins and bullion as provided in Code Section 408(m)(3) shall not be considered collectibles. To the extent that a Participant who has the ability to provide investment direction fails to give timely investment direction, the amount for which no investment direction is in place shall be invested in such investment options and investment vehicles as provided in the service and expense agreement or such other documents duly entered into by or with regard to the Plan that govern such matters. If the Employer has investment direction, the Contributions shall be invested ratably in the investment options and investment vehicles available to the Plan under or through the documents. The Employer shall have investment direction for amounts that have not been allocated to Participants. To the extent an investment is no longer available, the Employer may require that amounts currently held in such investment be reinvested in other investments.

- (a) **Employer Contributions:** The Participant shall direct the investment of Employer Contributions and transfer of amounts resulting from those Contributions.

However, the Plan Administrator may delegate to the Investment Manager investment direction for Contributions and amounts which the Participant has not provided direction.

All Contributions are forwarded by the Employer to (i) the Trustee to be deposited in the Trust Fund or otherwise invested by the Trustee in accordance with the relevant documents; or (ii) the Insurer to be deposited under the Annuity Contract, as applicable.

## **ARTICLE V**

### **BENEFITS**

#### **SECTION 5.01--RETIREMENT BENEFITS.**

On a Participant's Retirement Date, 100% of his Account shall be distributed to him according to the distribution of benefits provisions of Article VI and the provisions of the SMALL AMOUNTS SECTION of Article X.

#### **SECTION 5.02--DEATH BENEFITS.**

If a Participant dies before his Annuity Starting Date, 100% of his Account shall be distributed according to the distribution of benefits provisions of Article VI and the provisions of the SMALL AMOUNTS SECTION of Article X.

#### **SECTION 5.03--VESTED BENEFITS.**

If an Inactive Participant's Vested Account is not payable under the SMALL AMOUNTS SECTION of Article X, he may elect, but is not required, to receive a distribution of any part of his Vested Account after he has a Severance from Employment. A distribution under this paragraph shall be a retirement benefit and shall be distributed to the Participant according to the distribution of benefits provisions of Article VI.

A Participant may not elect to receive a distribution under the provisions of this section after he again becomes an Employee until he subsequently has a Severance from Employment and meets the requirements of this section.

If an Inactive Participant does not receive an earlier distribution, upon his Retirement Date or death, his Vested Account shall be distributed according to the provisions of the RETIREMENT BENEFITS SECTION or the DEATH BENEFITS SECTION of this article.

#### **SECTION 5.04--WHEN BENEFITS START.**

The Participant may elect to have benefits begin after the later of his Normal Retirement Date or the date he has a Severance from Employment, subject to the following provisions of this section. The Participant shall make the election in writing. Such election must be made before his distributions begin. The Participant shall not elect a date for beginning benefits or a form of distribution that would result in a benefit payable when he dies which would be more than incidental within the meaning of governmental regulations.

Benefits shall begin by the Participant's Required Beginning Date, as defined in the DEFINITIONS SECTION of Article VII.

#### **SECTION 5.05--DISTRIBUTIONS UNDER QUALIFIED DOMESTIC RELATIONS ORDERS.**

The Plan specifically permits distributions to an Alternate Payee under a qualified domestic relations order as defined in Code Section 414(p), at any time, irrespective of whether the Participant has attained his earliest retirement age, as defined in Code Section 414(p), under the Plan. A distribution to an Alternate

Payee before the Participant has attained his earliest retirement age is available only if the order specifies that distribution shall be made prior to the earliest retirement age or allows the Alternate Payee to elect a distribution prior to the earliest retirement age.

Nothing in this section shall permit a Participant to receive a distribution at a time otherwise not permitted under the Plan nor shall it permit the Alternate Payee to receive a form of payment not permitted under the Plan.

The benefit payable to an Alternate Payee shall be subject to the provisions of the SMALL AMOUNTS SECTION of Article X if the value of the benefit does not exceed \$5,000.

The Plan shall make payments or distributions required under this section by separate benefit checks or other separate distribution to the Alternate Payee(s).

## ARTICLE VI

### DISTRIBUTION OF BENEFITS

#### SECTION 6.01--AUTOMATIC FORMS OF DISTRIBUTION.

Unless an optional form of benefit is selected pursuant to an election within the election period (see the ELECTION PROCEDURES SECTION of this article), the automatic form of benefit payable to or on behalf of a Participant is determined as follows:

- (a) **Retirement Benefits.** The automatic form of retirement benefit for a Participant who does not die before his Annuity Starting Date shall be the Normal Form.
- (b) **Death Benefits.** The automatic form of death benefit for a Participant who dies before his Annuity Starting Date shall be a single sum payment to the Participant's Beneficiary.

#### SECTION 6.02--OPTIONAL FORMS OF DISTRIBUTION.

- (a) **Retirement Benefits.** The optional forms of retirement benefit shall be the following: (i) a straight life annuity; (ii) single life annuities with certain periods of 5, 10, or 15 years; (iii) a single life annuity with installment refund; (iv) survivorship life annuities with installment refund and survivorship percentages of 50%, 66 2/3%, 75%, or 100%; (v) fixed period annuities for any period of whole months that is not less than 60; (vi) a fixed period installment option; and (vii) a fixed payment installment option.

The fixed period installment option is an optional form of benefit under which the Participant elects to receive substantially equal annual payments over a fixed period of whole years. The annual payment may be paid in annual, semi-annual, quarterly, or monthly installments as elected by the Participant. The Participant may elect to receive additional payments.

The fixed payment installment option is an optional form of benefit under which the Participant elects to receive a specified dollar amount each year. The annual payment may be paid in annual, semi-annual, quarterly, or monthly installments as elected by the Participant. The Participant may elect to receive additional payments.

Under the installment options the amount payable in the Participant's first Distribution Calendar Year, as defined in the DEFINITIONS SECTION of Article VII, must satisfy the minimum distribution requirements of Article VII for such year. Distributions for later Distribution Calendar Years must satisfy the minimum distribution requirements of Article VII for such years. If the Participant's Annuity Starting Date does not occur until his second Distribution Calendar Year, the amount payable for such year must satisfy the minimum distribution requirements of Article VII for both the first and second Distribution Calendar Years.

Election of an optional form is subject to the election provisions of the ELECTION PROCEDURES SECTION of this article and the distribution requirements of Article VII.

Any annuity contract distributed shall be nontransferable.

- (b) **Death Benefits.** The optional forms of death benefit are a single sum payment and any other form that is an optional form of retirement benefit.

Election of an optional form is subject to the election provisions of the ELECTION PROCEDURES SECTION of this article and the distribution requirements of Article VII.

### **SECTION 6.03--ELECTION PROCEDURES.**

The Participant or Beneficiary shall make any election under this section in writing. The Plan Administrator may require such individual to complete and sign any necessary documents as to the provisions to be made. Any election permitted under (a) and (b) below shall be subject to the election provisions of (c) below.

- (a) Retirement Benefits. A Participant may elect his Beneficiary or Contingent Annuitant and may elect to have retirement benefits distributed under any of the optional forms of retirement benefit available in the OPTIONAL FORMS OF DISTRIBUTION SECTION of this article.
- (b) Death Benefits. A Participant may elect his Beneficiary and may elect to have death benefits distributed under any of the optional forms of death benefit available in the OPTIONAL FORMS OF DISTRIBUTION SECTION of this article.

If the Participant has not elected an optional form of distribution for the death benefit payable to his Beneficiary, the Beneficiary may, for his own benefit, elect the form of distribution, in like manner as a Participant.

- (c) Election. The Participant or Beneficiary may make an election at any time during the election period. The Participant or Beneficiary may revoke the election made (or make a new election) at any time and any number of times during the election period.
  - (1) Election Period for Retirement Benefits. A Participant may make an election as to retirement benefits at any time before the Annuity Starting Date.
  - (2) Election Period for Death Benefits. A Participant may make an election as to death benefits at any time before he dies. The Beneficiary's election period begins on the date the Participant dies and ends on the date benefits begin.

A Participant's Account under the Plan shall be forfeited, reduced or limited in the manner and to the extent provided under O.C.G.A. Section 47-1-21 through Sections 47-1-25, if convicted of a public employment, drug related or other covered crime.

## ARTICLE VII

### REQUIRED MINIMUM DISTRIBUTIONS

#### SECTION 7.01--APPLICATION.

The optional forms of distribution are only those provided in Article VI. An optional form of distribution shall not be permitted unless it meets the requirements of this article. The timing of any distribution must meet the requirements of this article.

#### SECTION 7.02--DEFINITIONS.

For purposes of this article, the following terms are defined:

**Distribution Calendar Year** means 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 (b)(2) of the REQUIRED MINIMUM DISTRIBUTIONS SECTION of this article. 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.

**Life Expectancy** means life expectancy as computed by use of the Single Life Table in Q&A-1 in section 1.401(a)(9)-9 of the regulations.

**Participant's Account Balance** means 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 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.

**Required Beginning Date** means, for a Participant, April 1 of the calendar year following the later of the calendar year in which he attains age 70 1/2 or the calendar year in which he retires.

#### SECTION 7.03--REQUIRED MINIMUM DISTRIBUTIONS.

(a) General Rules.

- (1) The requirements of this article shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this article apply to calendar years beginning after December 31, 2002.

- (2) All distributions required under this article shall be determined and made in accordance with the regulations under Code Section 401(a)(9), including the incidental death benefit requirement in Code Section 401(a)(9)(G), and the regulations thereunder.

(b) Time and Manner of Distribution.

- (1) 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.
- (2) 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:
- (i) 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, except to the extent that an election is made to receive distributions in accordance with the 5-year rule under (e) below. Under the 5-year rule, the Participant's entire interest will be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (ii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, except to the extent that an election is made to receive distributions in accordance with the 5-year rule under (e) below. Under the 5-year rule, the Participant's entire interest will be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (iii) 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.
  - (iv) 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 are required to begin, this (b)(2), other than (b)(2)(i), will apply as if the surviving spouse were the Participant.

For purposes of this (b)(2) and (d) below, unless (b)(2)(iv) above applies, distributions are considered to begin on the Participant's Required Beginning Date. If (b)(2)(iv) above applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under (b)(2)(i) above. 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 (b)(2)(i) above), the date distributions are considered to begin is the date distributions actually commence.

- (3) **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 (c) and (d) below. 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 Code Section 401(a)(9) and the regulations thereunder.
- (c) **Required Minimum Distributions During Participant's Lifetime.**
- (1) **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 Q&A-2 in section 1.401(a)(9)-9 of the 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 spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Q&A-3 in section 1.401(a)(9)-9 of the regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.
- (2) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.** Required minimum distributions will be determined under this (c) beginning with the first Distribution Calendar Year and continuing up to, and including, the Distribution Calendar Year that includes the Participant's date of death.
- (d) **Required Minimum Distributions After Participant's Death.**
- (1) **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.

(2) 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 (d)(1) above, except to the extent that an election is made to receive distributions in accordance with the 5-year rule under (e) below. Under the 5-year rule, the Participant's entire interest will be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(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.

(iii) 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 (b)(2)(i) above, this (d)(2) will apply as if the surviving spouse were the Participant.

(e) Election of 5-year Rule. Participants or Beneficiaries may elect on an individual basis whether the 5-year rule in (b)(2) and (d)(2) above applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which the distribution would be required to begin under (b)(2) above if no such election is made, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death.

(f) Notwithstanding any provisions of the Plan to the contrary, a Participant who would have been required to receive required minimum distributions for 2009 but for the enactment of section Code Section

401(a)(9)(H) will not receive those distributions for 2009 unless the Participant chooses to receive such distributions. Participants described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence. In addition, any 2009 required minimum distributions will be treated as eligible rollover distributions.

#### **SECTION 7.04--TEFRA SECTION 242(b)(2) ELECTIONS.**

- (a) Notwithstanding the other requirements of this article, distribution on behalf of any Participant who has made a designation under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a section 242(b)(2) election) may be made in accordance with all of the following requirements (regardless of when such distribution commences):
- (1) The distribution by the Plan is one that would not have disqualified such Plan under Code Section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.
  - (2) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.
  - (3) Such designation was in writing, was signed by the Participant or the Beneficiary, and was made before January 1, 1984.
  - (4) The Participant had accrued a benefit under the Plan as of December 31, 1983.
  - (5) The method of distribution designated by the Participant or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the Beneficiaries of the Participant listed in order of priority.
- (b) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.
- (c) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in (a)(1) and (5) above.
- (d) If a designation is revoked, any subsequent distribution must satisfy the requirements of Code Section 401(a)(9) and the regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code Section 401(a)(9) and the regulations thereunder, but for the section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which

distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

- (e) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Q&A-14 and Q&A-15 in section 1.401(a)(9)-8 of the regulations shall apply.

#### **SECTION 7.05--TRANSITION RULES.**

To the extent the Plan was effective before 2003, required minimum distributions were made pursuant to the TEFRA SECTION 242(b)(2) ELECTIONS SECTION of this article and (a) and (b) below:

- (a) 2000 and Before. Required minimum distributions for calendar years after 1984 and before 2001 were made in accordance with Code Section 401(a)(9) and the proposed regulations thereunder published in the Federal Register on July 27, 1987 (the 1987 Proposed Regulations).
- (b) 2001 and 2002. Required minimum distributions for calendar years 2001 and 2002 were made pursuant to the proposed regulations under Code Section 401(a)(9) published in the Federal Register on January 17, 2001 (the 2001 Proposed Regulations). Distributions were made in 2001 under the 1987 Proposed Regulations prior to June 14, 2001, and the special transition rule in Announcement 2001-82, 2001-2 C.B. 123, applied.

## **ARTICLE VIII**

### **TERMINATION OF THE PLAN**

The Employer expects to continue the Plan indefinitely but reserves the right to terminate the Plan in whole or in part at any time upon giving written notice to all parties concerned.

The Account of each Participant shall be 100% vested and nonforfeitable as of the effective date of complete termination of the Plan. The Account of each Participant who is included in the group of Participants deemed to be affected by the partial termination of the Plan shall be 100% vested and nonforfeitable as of the effective date of the partial termination of the Plan. The Participant's Vested Account shall continue to participate in the earnings credited, expenses charged, and any appreciation or depreciation of the Investment Fund until his Vested Account is distributed.

A Participant's Vested Account may be distributed to the Participant after the effective date of the complete termination of the Plan. A distribution under this article shall be a retirement benefit and shall be distributed to the Participant according to the provisions of Article VI. However, the fixed period and fixed payment installment options shall not be available.

If a Participant or Beneficiary is receiving payments under the fixed period or fixed payment installment option, the Vested Account shall be paid to such person in a single sum.

The Participant's entire Vested Account shall be paid in a single sum to the Participant as of the effective date of complete termination of the Plan if the Participant's Vested Account is \$5,000 or less. This is a small amounts payment. The small amounts payment is in full settlement of all benefits otherwise payable.

Upon complete termination of the Plan, no more Employees shall become Participants and no more Contributions shall be made.

The assets of this Plan shall not be paid to the Employer at any time, except that, after the satisfaction of all liabilities under the Plan, any assets remaining may be paid to the Employer. The payment may not be made if it would contravene any provision of law.

## **ARTICLE IX**

### **ADMINISTRATION OF THE PLAN**

#### **SECTION 9.01--ADMINISTRATION.**

Subject to the provisions of this article, the Plan Administrator has complete control of the administration of the Plan. The Plan Administrator has all the powers necessary for it to properly carry out its administrative duties. Not in limitation, but in amplification of the foregoing, the Plan Administrator has complete discretion to construe or interpret the provisions of the Plan, including ambiguous provisions, if any, and to determine all questions that may arise under the Plan, including all questions relating to the eligibility of Employees to participate in the Plan and the amount of benefit to which any Participant, Beneficiary, or Contingent Annuitant may become entitled. The Plan Administrator's decisions upon all matters within the scope of its authority shall be final.

Unless otherwise set out in the Plan or Annuity Contract, the Plan Administrator may delegate recordkeeping and other duties which are necessary to assist it with the administration of the Plan to any person or firm which agrees to accept such duties. The Plan Administrator shall be entitled to rely upon all tables, valuations, certificates and reports furnished by the consultant or actuary appointed by the Plan Administrator and upon all opinions given by any counsel selected or approved by the Plan Administrator.

The Plan Administrator shall receive all claims for benefits by Participants, former Participants, Beneficiaries, and Contingent Annuitants. The Plan Administrator shall determine all facts necessary to establish the right of any claimant to benefits and the amount of those benefits under the provisions of the Plan. The Plan Administrator may establish rules and procedures to be followed by claimants in filing claims for benefits, in furnishing and verifying proofs necessary to determine age, and in any other matters required to administer the Plan.

#### **SECTION 9.02--EXPENSES.**

Expenses of the Plan, to the extent that the Employer does not pay such expenses, may be paid out of the assets of the Plan provided that such payment is consistent with any law to which the Plan is subject. Such expenses include, but are not limited to, expenses for recordkeeping and other administrative services; fees and expenses of the Trustee or Annuity Contract; expenses for investment education service; and direct costs that the Employer incurs with respect to the Plan. Expenses that relate solely to a specific Participant or Alternate Payee may be assessed against such Participant or Alternate Payee as provided in the service and expense agreement or such other documents duly entered into by or with regard to the Plan that govern such matters.

#### **SECTION 9.03--RECORDS.**

All acts and determinations of the Plan Administrator shall be duly recorded. All these records, together with other documents necessary for the administration of the Plan, shall be preserved in the Plan Administrator's custody.

Writing (handwriting, typing, printing), photostating, photographing, microfilming, magnetic impulse, mechanical or electrical recording, or other forms of data compilation shall be acceptable means of keeping records.

## **SECTION 9.04--DELEGATION OF AUTHORITY.**

All or any part of the administrative duties and responsibilities under this article may be delegated by the Plan Administrator to a retirement committee. The duties and responsibilities of the retirement committee shall be set out in a separate written agreement.

## **SECTION 9.05--EXERCISE OF DISCRETIONARY AUTHORITY.**

The Employer, Plan Administrator, and any other person or entity who has authority with respect to the management, administration, or investment of the Plan may exercise that authority in its/his full discretion, subject only to the duties imposed under any law to which the Plan is subject. This discretionary authority includes, but is not limited to, the authority to make any and all factual determinations and interpret all terms and provisions of the Plan documents relevant to the issue under consideration. The exercise of authority will be binding upon all persons; will be given deference in all courts of law to the greatest extent allowed under law; and will not be overturned or set aside by any court of law unless found to be arbitrary and capricious or made in bad faith.

## **SECTION 9.06--TRANSACTION PROCESSING.**

Transactions (including, but not limited to, investment directions, trades, loans, and distributions) shall be processed as soon as administratively practicable after proper directions are received from the Participant or other parties. No guarantee is made by the Plan, Plan Administrator, Trustee, Insurer, or Employer that such transactions will be processed on a daily or other basis, and no guarantee is made in any respect regarding the processing time of such transactions.

Notwithstanding any other provision of the Plan, the Employer, the Plan Administrator, or the Trustee reserves the right to not value an investment option on any given Valuation Date for any reason deemed appropriate by the Employer, the Plan Administrator, or the Trustee.

Administrative practicality will be determined by legitimate business factors (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider) and in no event will be deemed to be less than 14 days. The processing date of a transaction shall be binding for all purposes of the Plan and considered the applicable Valuation Date for any transaction.

## **ARTICLE X**

### **GENERAL PROVISIONS**

#### **SECTION 10.01--AMENDMENTS.**

The Employer may amend this Plan at any time by written amendment approved by the governing authority of the Employer, including any remedial retroactive changes (within the time specified by Internal Revenue Service regulations), to comply with any law or regulation issued by any governmental agency to which the Plan is subject. The Employer may correct obvious and unambiguous typographical errors and cross references that merely correct a reference but that do not in any way change the original intended meaning of the provisions.

An amendment may not allow reversion or diversion of Plan assets to the Employer at any time, except as may be required to comply with any law or regulation issued by any governmental agency to which the Plan is subject.

#### **SECTION 10.02--DIRECT ROLLOVERS.**

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. A Designated Beneficiary of a Participant who is not the surviving spouse of the Participant may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of a distribution, that would be an Eligible Rollover Distribution if the Designated Beneficiary were a Distributee, paid in a Direct Rollover to an individual retirement plan described in Code Section 402(c)(8)(B)(i) or (ii) established for the purposes of receiving the distribution on behalf of the Designated Beneficiary. If such Direct Rollover is made: (i) such Direct Rollover shall be treated as an Eligible Rollover Distribution; (ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of Code Section 408(d)(3)(C)); and (iii) Code Section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan. For this purpose, certain trusts shall be treated as a Designated Beneficiary as provided in Code Section 402(c)(11)(B).

In the event of a mandatory distribution of an Eligible Rollover Distribution greater than \$1,000 in accordance with the SMALL AMOUNTS SECTION of this article (or which is a small amounts payment under Article VIII at complete termination of the Plan), if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover or to receive the distribution directly, the Plan Administrator will authorize the payment of the distribution in a Direct Rollover to an individual retirement plan designated by the Plan Administrator.

In the event of any other Eligible Rollover Distribution to a Distributee in accordance with the SMALL AMOUNTS SECTION of this article (or which is a small amounts payment under Article VIII at complete termination of the Plan), if the Distributee does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover or to receive the distribution directly, the Plan Administrator will authorize the payment of the distribution to the Distributee.

#### **SECTION 10.03--PROVISIONS RELATING TO THE INSURER AND OTHER PARTIES.**

The obligations of an Insurer shall be governed solely by the provisions of the Annuity Contract. The Insurer shall not be required to perform any act not provided in or contrary to the provisions of the Annuity

Contract. Each Annuity Contract when purchased shall comply with the Plan. See the CONSTRUCTION SECTION of this article.

Any issuer or distributor of investment contracts or securities is governed solely by the terms of its policies, written investment contract, prospectuses, security instruments, and any other written agreements entered into with the Trustee with regard to such investment contracts or securities.

Such Insurer, issuer or distributor is not a party to the Plan, nor bound in any way by the Plan provisions. Such parties shall not be required to look to the terms of this Plan, nor to determine whether the Employer, the Plan Administrator, or the Trustee have the authority to act in any particular manner or to make any contract or agreement.

Until notice of any amendment or termination of this Plan or a change in Trustee has been received by the Insurer at its home office or an issuer or distributor at their principal address, they are and shall be fully protected in assuming that the Plan has not been amended or terminated and in dealing with any party acting as Trustee according to the latest information which they have received at their home office or principal address.

#### **SECTION 10.04--EMPLOYMENT STATUS.**

Nothing contained in this Plan gives an Employee the right to be retained in the Employer's employ or to interfere with the Employer's right to discharge any Employee.

#### **SECTION 10.05--RIGHTS TO PLAN ASSETS.**

An Employee shall not have any right to or interest in any assets of the Plan upon termination of employment or otherwise except as specifically provided under this Plan, and then only to the extent of the benefits payable to such Employee according to the Plan provisions.

Any final payment or distribution to a Participant or his legal representative or to any Beneficiaries or Contingent Annuitant of such Participant under the Plan provisions shall be in full satisfaction of all claims against the Plan, the Plan Administrator, the Insurer, the Trustee, and the Employer arising under or by virtue of the Plan.

#### **SECTION 10.06--BENEFICIARY.**

Each Participant may name a Beneficiary to receive any death benefit (other than any income payable to a Contingent Annuitant) that may arise out of his participation in the Plan. The Participant may change his Beneficiary from time to time. The Participant's Beneficiary designation and any change of Beneficiary shall be subject to the provisions of the ELECTION PROCEDURES SECTION of Article VI.

It is the responsibility of the Participant to give written notice to the Plan Administrator of the name of the Beneficiary on a form furnished for that purpose. The Plan Administrator shall maintain records of Beneficiary designations for Participants before their Retirement Dates. However, the Plan Administrator may delegate to another party the responsibility of maintaining records of Beneficiary designations. In that event, the written designations made by Participants shall be filed with such other party. If a party other than the Insurer maintains the records of Beneficiary designations and a Participant dies before his Retirement Date, such other party shall certify to the Insurer the Beneficiary designation on its records for the Participant.

If there is no Beneficiary named or surviving when a Participant dies, the Participant's Beneficiary shall be the Participant's surviving spouse, or where there is no surviving spouse, the executor or administrator of the Participant's estate.

#### **SECTION 10.07--CONSTRUCTION.**

The validity of the Plan or any of its provisions is determined under and construed according to Federal law and, to the extent permissible, according to the laws of the state in which the Employer has its principal office. In case any provision of this Plan is held illegal or invalid for any reason, such determination shall not affect the remaining provisions of this Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had never been included.

In the event of any conflict between the provisions of the Plan and the terms of any Annuity Contract issued hereunder, the provisions of the Plan control.

#### **SECTION 10.08--LEGAL ACTIONS.**

No person employed by the Employer; no Participant, former Participant, or their Beneficiaries; nor any other person having or claiming to have an interest in the Plan is entitled to any notice of process. A final judgment entered in any such action or proceeding shall be binding and conclusive on all persons having or claiming to have an interest in the Plan.

#### **SECTION 10.09--SMALL AMOUNTS.**

If the Vested Account of a Participant is \$5,000 or less, his entire Vested Account shall be paid in a single sum as of the earliest of his Retirement Date, the date he dies, or the date he has a Severance from Employment for any other reason (the date the Employer provides notice to the record keeper of the Plan of such event, if later). This is a small amounts payment.

If a small amounts payment is made as of the date the Participant dies, the small amounts payment shall be made to the Participant's Beneficiary. If a small amounts payment is made while the Participant is living, the small amounts payment shall be made to the Participant. The small amounts payment is in full settlement of all benefits otherwise payable.

No other small amounts payments shall be made.

#### **SECTION 10.10--WORD USAGE.**

The masculine gender, where used in this Plan, shall include the feminine gender and the singular words, where used in this Plan, shall include the plural, unless the context indicates otherwise.

The words "in writing" and "written," where used in this Plan, shall include any other forms, such as voice response or other electronic system, as permitted by any governmental agency to which the Plan is subject.

#### **SECTION 10.11--MILITARY SERVICE.**

Notwithstanding any provision of this Plan to the contrary, the Plan shall provide contributions, benefits, and service credit with respect to Qualified Military Service in accordance with Code Section 414(u).

Beginning January 1, 2007, a Participant who dies on or after January 1, 2007 while performing Qualified Military Service is treated as having resumed and then terminated employment on account of death, in accordance with Code Section 401(a)(37) and any subsequent guidance. The survivors of such Participant are entitled to any additional benefits provided under the Plan on account of death of the Participant. (There are no additional benefits provided under this Plan on account of death of the Participant. In addition, no Employer Contribution is provided for the period of Qualified Military Service immediately preceding the death of the Participant.)

#### **SECTION 10.12—GOVERNING LAW.**

The Plan shall be governed by the laws of the State of Georgia to the extent applicable, and to the extent not applicable, by federal law.

#### **SECTION 10.13—NON-ALIENATION OF BENEFITS.**

Except with respect to federal income tax withholding, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a Spouse or former spouse or for any other relative of the Employee, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void.

By executing this Plan, the Employer acknowledges having counseled to the extent necessary with selected legal and tax advisors regarding the Plan's legal and tax implications.

Executed this 4th day of March, 2011.

CITY OF MARIETTA, A MUNICIPAL CORPORATION, AND  
CITY OF MARIETTA BOARD OF LIGHTS AND  
WATERWORKS, A MUNICIPAL UTILITY

By: R. Steve Turley, Jr.

\_\_\_\_\_  
Mayor

By: Mark Anderson

\_\_\_\_\_  
Chair, Pension Board

ATTEST:

By:

Stephanie Guy

\_\_\_\_\_  
City Clerk

CONTRACT/AGREEMENT No. 1956A  
CITY OF MARIETTA, GA.  
RECORDS

**CITY OF MARIETTA  
SUPPLEMENTAL PENSION PLAN**

Amended and Restated Effective as of January 1, 1989

CITY OF MARIETTA  
SUPPLEMENTAL PENSION PLAN

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## ARTICLE I

### PURPOSE

Effective as of January 1, 1981, the City of Marietta, Georgia (the "Employer"), adopted the City of Marietta Supplemental Pension Plan (the "Plan") for the benefit of its eligible employees. Effective January 1, 1989 (the "Effective Date"), the Plan is hereby amended and restated, although certain provisions of the Plan as set forth herein may be effective earlier or later than the Effective Date, in which case the Plan shall so specify.

The Plan is intended to be a money purchase pension plan within the meaning of Treas. Reg. §1.401-1(b)(1)(i) and is intended to meet the applicable requirements of Sections 401(a), 414(h) and 501(a) of the Internal Revenue Code of 1986, as amended (the "Code").

## ARTICLE II

### DEFINITIONS

Certain terms of this Plan have defined meanings that are set forth in this Article and shall govern unless the context in which they are used clearly indicates that some other meaning is intended.

Account means, with respect to a Participant or Beneficiary, the amount of money or other property in the Trust Fund, evidenced by the last balance posted to the account established for such individual. The Trustee shall establish and maintain separate subaccounts for each such individual, for recordkeeping purposes only. "Account" shall refer to the aggregate of all separate subaccounts or to individual, separate subaccounts, as may be appropriate in context.

Active Participant means, for any Plan Year (or any portion thereof), any Eligible Employee who, pursuant to the terms of Article III, has been admitted to, and not removed from, active participation in the Plan since the last date his employment commenced or recommenced.

Affiliate means the Employer and any company, person or organization that is a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Code) as the Employer; is a trade or business, whether or not incorporated, that controls, is controlled by or is under common control (within the meaning of Code Section 414(c)) with the Employer; is a member of an affiliated service group (as defined in Code Section 414(m)) that includes the Employer; or is required to be aggregated with the Employer pursuant to regulations promulgated under Code Section 414(o). For purposes of Code Section 415 and Section 5.3 of the Plan, "Affiliate" as defined in this Section shall be deemed to include corporations that would be Affiliates if the phrase "more than 50 percent" were substituted for the phrase "at least 80 percent" in each place the latter appears in Code Section 1563(a)(1).

Annual Addition means the sum of the amounts described in Section 5.3(d).

Beneficiary means the person(s) designated in accordance with Section 7.3 to receive any death benefits that may be payable under the Plan upon the death of a Participant.

City Council means the City Council of Marietta.

Code means the Internal Revenue Code of 1986, as amended, and any succeeding federal tax provisions.

Compensation means all of a Participant's wages from the Employer, as defined in Code Section 3401(a) for purposes of income tax withholding at the source (that is, income reportable on IRS Form W-2), but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)). Compensation shall include before-tax or salary deferral contributions made under Code Sections 125, 402(g)(3) or 457 to the Plan or other plans, on behalf of a Participant for such Plan Year. On a plan year-by-plan year basis, the Pension Board may elect, for testing purposes (but not for purposes of calculating Contributions) to use any definition of "Compensation" that satisfies Code Section 415(c)(3) and the regulations promulgated thereunder.

"Compensation" shall be determined under the following rules:

- (i) Effective for Plan Years beginning on and after January 1, 1996, the Plan shall not take into account more than \$150,000 in Compensation for any Participant for such Plan Year, as such amount is adjusted by the Commissioner of the Internal Revenue Service in accordance with Code Section 401(a)(17)(B). If a Plan Year consists of fewer than 12 months, the limit shall be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. This \$150,000 limit on Compensation shall not apply to any individual who first became a Participant in the Plan prior to January 1, 1996, to the extent that the application of the limitation would reduce the amount of Compensation that is allowed to be taken into account under the Plan below the amount that was allowed to be taken into account under the Plan as in effect on July 1, 1993.
- (ii) Solely for the Plan Year beginning January 1, 1996, the limit described in (i) above applies to the combined Compensation of the Participant and any family member aggregated with the Participant (i.e., the Participant's spouse or a lineal descendant under age 19). If, for such a Plan Year, the combined Compensation of the Employee and such family members who are Participants entitled to an allocation for that Plan Year exceeds the \$150,000 (or adjusted) limitation, "Compensation" for each such Participant, for purposes of the contribution and allocation provisions of this Plan, means his Adjusted Compensation. Adjusted Compensation is the amount that bears the same ratio to the \$150,000 (or adjusted) limitation as the affected

Participant's Compensation (without regard to the limitation) bears to the combined Compensation of all the affected Participants in the family unit.

- (iii) For Participants who are appointed Eligible Employees, Compensation for Contribution allocation purposes shall not include any Compensation in excess of the maximum salary payable to regular (i.e., non-appointed) Employees pursuant to the Employer's personnel pay plan ordinance.

Contributions means, individually or collectively, the Employer Contributions under the Plan.

Effective Date means the effective date of this amended and restated Plan document, January 1, 1989. As noted in the Preamble, however, certain provisions of this Plan are effective earlier or later than the Effective Date. Provisions effective earlier than the Effective Date shall be deemed to amend the Prior Plan to the extent necessary to conform to the intent of the provision. Provisions that are effective after the Effective Date (e.g., the designation of the Trustee in Article VIII, which is effective July 1, 2000) shall be deemed to have been governed, before the effective date of that provision, by the terms of the Prior Plan or other relevant documentation in effect before the effective date of said provision.

Eligible Employee means any person who is classified, on the records of the Employer, as a regular full-time Employee of the Employer, including appointed Employees. Effective as of January 1, 2000, Eligible Employee shall include regular part-time and temporary part-time Employees who are hired on and after January 1, 2000. Notwithstanding the foregoing, Eligible Employee shall exclude:

- (i) effective January 1, 1981, elected officials, judges and solicitors;
- (ii) any individual who is an Employee solely by means of being a "leased employee" under Section 414(n)(2) of the Code;
- (iii) Employees hired on a contract basis;
- (iv) any person who is initially classified by the Employer as an independent contractor for purposes of withholding and payment of employment taxes, even if such person is later determined, whether by the Employer or otherwise, to be a common law employee of the Employer.

Eligible Retirement Plan means a defined contribution plan, the terms of which permit the acceptance of rollover distributions and which is either (a) an individual retirement account described in Code Section 408(a), (b) an individual retirement annuity described in Code Section 408(b) (other than an endowment contract), (c) a qualified trust described in Code Section 401(a) and exempt from taxation under Code Section 501(a), or (d) an annuity plan described in Code

Section 403(a). In the case of a distribution to the Spouse, Eligible Retirement Plan means the Plan described in either clause (a) or (b) hereof.

Eligible Rollover Distribution means any distribution on or after January 1, 1993, to an Eligible Employee of all or any portion of the balance to his credit in a qualified trust (including any distribution to a Participant of all or any portion of his Account); provided an Eligible Employee's "Eligible Rollover Distribution" shall not include (a) any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually, (i) for the life of the employee and his beneficiary, or (ii) for a specified period of 10 years or more, (b) any distribution to the extent such distribution is required under Code Section 401(a)(9), and (c) the portion of any distribution that is not includable in gross income of the employee.

Employee means any individual who is employed by the Employer (including elected or appointed officials) and shall include leased employees of the Employer within the meaning of Code Section 414(n). Notwithstanding the foregoing, if leased employees constitute 20 percent or less of the Employer's non-highly compensated work force within the meaning of Code Section 414(n)(5)(C)(ii), the term "Employee" shall not include those leased employees covered by a plan described in Code Section 414(n)(5)(B).

Employer means the City of Marietta, a Georgia governmental entity.

Employer Contributions mean the contributions made by the Employer behalf of Participants under the terms of the Plan pursuant to Section 4.1.

Employer Contribution Account means the separate subaccount established and maintained on behalf of a Participant or his Beneficiary to reflect his interest in the Trust Fund attributable to Employer Contributions and any earnings or losses thereon.

Employment Date means the date on which the Employee first performs an Hour of Service for the Employer.

Entry Date means the first day of the payroll period that begins after the Eligible Employee satisfies the requirements of Section 3.1.

Former Participant means a Participant whose employment with the Employer has terminated but who has an Account balance under the Plan that has not been paid in full and who, therefore, is continuing to participate in the allocation of earnings or losses under the Trust.

Hour of Service means each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer.

Investment Committee means the committee which shall act on behalf of the Employer with respect to making and effecting investment decisions, as provided in Article VIII. Unless the Employer specifies otherwise, the Pension Board or its delegates shall serve as the Investment Committee.

Investment Fund or Funds means those funds identified and established by the Investment Committee from time to time pursuant to the terms of Sections 8.2 and 8.3.

Leave of Absence means an excused leave of absence granted to an Employee by the Employer in accordance with applicable federal or state law. Among other things, Leave of Absence shall be granted to an Employee:

- (i) who leaves the service of the Employer, voluntarily or involuntarily, to enter the Armed Forces of the United States; provided, the Employee is legally entitled to reemployment under the veteran's reemployment rights provisions as codified at 38 USC §2021, et seq., its predecessors and successors; and provided further that the Employee applies for and reenters service with the Employer within the time, in the manner and under the conditions prescribed by law; and
- (ii) under such other circumstances as the Pension Board shall determine are fair, reasonable and equitable as applied uniformly among Employees under similar circumstances.

Limitation Year means the Plan Year, which shall be the "limitation year" for purposes of Code Section 415 and the regulations promulgated thereunder.

Normal Retirement Age means age 65.

Normal Retirement Date means the first day of the month coincident with or next following the date a Participant attains Normal Retirement Age.

Participant means any person who has been admitted to, and has not been removed from, participation in the Plan pursuant to the provisions of Article III. "Participant" shall include Active Participants and Former Participants who have an Account under the Plan.

Pension Board means the Pension Board of the City of Marietta. The Pension Board shall act on behalf of the Employer to administer the Plan as provided in Article IX. The Pension Board shall be the Plan Administrator, as that term is defined in Code Section 414(g); provided, the Employer may act in lieu of the Pension Board as it deems appropriate or desirable.

Plan means the City of Marietta Supplemental Pension Plan as contained herein and all amendments thereto. The Plan is intended to be a money purchase plan qualified under the applicable provisions of Code Section 401(a).

Plan Year means the calendar year.

Prior Plan means the City of Marietta Supplemental Pension Plan as adopted effective as of January 1, 1981, and as in effect before this amendment and restatement.

Spouse or Surviving Spouse means, with respect to a Participant, the person who is treated as married to such Participant under the laws of the state in which the Participant resides. The determination of a Participant's Spouse or Surviving Spouse shall be made as of the earlier of the date as of which benefit payments from the Plan to such Participant are made or commence (as applicable) or the date of such Participant's death.

Terminate or Termination of Employment means an Employee's termination of employment that may result from retirement, death, disability, voluntary or involuntary termination, unauthorized absence, or by failure to return to active employment with the Employer by the date on which an authorized Leave of Absence expires.

Trust Fund means the total amount of cash and other property held by the Trustee (or its nominee) at any time under the Trust Agreement with the Trustee.

Trustee(s) means The Chicago Trust Company.

Trust(s) or Trust Agreement means the agreement set forth in Article VIII of this Plan, between the Employer and the Trustee governing the creation of the Trust Fund.

Valuation Date means, effective July 1, 2000, each business day. Before July 1, 2000, Valuation Date has the meaning set forth in the Prior Plan.

Year of Service means a period of twelve (12) continuous months during which an individual is an Employee and does not experience a Termination of Employment. An Employee may not complete a Year of Service before the day preceding the first anniversary of his Employment Date.

## ARTICLE III

### PARTICIPATION AND SERVICE

#### 3.1 Participation.

- (a) Regular Full-time Employees. Each Eligible Employee who is a regular full-time Employee shall become a Participant in this Plan effective upon the first Entry Date after he has been credited with a Year of Service.
- (b) Other Eligible Employees. Effective January 1, 2000, each Eligible Employee who is not a regular full-time Employee (i.e., a part-time Employee or a temporary full-time Employee) shall be eligible to participate in the Plan immediately upon his Employment Date.
- (c) Former Participants. Except for the continuing participation in earnings and losses of the Account of a Former Participant, participation in the Plan shall cease upon (i) Termination of Employment with the Employer, or (ii) the Participant's failure to qualify as an Eligible Employee.

#### 3.2 Reemployment.

If an Eligible Employee is reemployed by the Employer after a Termination of Employment, he shall be treated as a new hire, and shall not receive credit for his prior period of employment for purposes of Section 3.1, unless required by law (as, for example, in the case of a reemployed veteran, as described in Section 4.3, or an Eligible Employee who returns from leave pursuant to the Family Medical Leave Act).

#### 3.3 Transfers.

- (a) Transfer to an Ineligible Class. If a Participant is transferred to an ineligible class of employment, his participation under the Plan shall be suspended; provided, however, that during the period of his employment in such ineligible position: (a) he shall continue to participate in allocations of earnings and losses pursuant to Section 5.2(b); (b) his Employer Account shall receive no Employer Contributions; and (c) the applicable provisions of Articles V, VI and VII shall continue to apply. A transferred Participant shall not be entitled to a distribution until he is no longer an Employee.
- (b) Transfer to an Eligible Class. If an Employee is transferred to an eligible class of employment, his service as an ineligible Employee shall count towards the Year of Service requirement (if applicable) under Section 3.1(a).

3.4 Omission of Eligible Employee.

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is omitted erroneously and discovery of such omission is not made until after a contribution by the Employer has been made and allocated for such year, the Employer shall make a subsequent contribution with respect to the omitted Eligible Employee in the amount which the said Employer would have contributed with respect to him had he not been omitted.

3.5 Inclusion of Ineligible Employee.

If, in any Plan Year, any person who should not have been included as a Participant in the Plan is included erroneously, and discovery of such incorrect inclusion is not made until after a contribution by the Employer has been made and allocated for such year, the Employer shall not be entitled to recover the contribution made with respect to the ineligible person. In such event, the amount contributed with respect to the ineligible person shall be used to reduce the subsequent Employer Contributions.

## ARTICLE IV

### CONTRIBUTIONS

#### 4.1 Employer Contributions.

- (a) Formula for Determining Employer Contribution for Regular Full-Time Employees. For each pay period, the Employer shall contribute on behalf of each Participant who is a regular, full-time Employee 6.13% of such Participant's Compensation paid or accrued for the pay period.
- (b) Formula for Determining Employer Contribution for Participants who are not Regular Full-Time Employees. Effective as of January 1, 2000, for each pay period, the Employer shall contribute on behalf of each Participant who is not a regular, full-time Employee 7.5% of such Participant's Compensation paid or accrued for the pay period.
- (c) Failure to Make Contribution for a Plan Year. If the Employer, for any reason, fails to make a contribution as provided herein, such deficiency shall be corrected in subsequent pay periods. Any such contribution shall be paid by the Employer to the Trust and shall equal the amount of the deficiency plus interest at a reasonable rate from the date the contribution was due until the date the deficiency was corrected. All contributions by the Employer shall be made in cash or cash equivalents.

#### 4.2 Timing of Contribution.

The Employer shall pay to the Trustee all Employer Contributions as soon as possible following each payroll period and in no event later than the time prescribed by law.

#### 4.3 Reemployed Veterans.

- (a) To the extent and in the manner required under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), the Employer shall make any Employer Contributions required to be made under USERRA on behalf of any Participant who is absent from employment for service in the uniformed services and returns to employment with the Employer, based on the contribution rates in effect for the Plan Year(s) in which the Employee was in qualified military service.
- (b) Any Employee who returns to employment with the Employer following a period of qualified military service shall, for purposes of this Section, be treated as receiving Compensation equal to the Compensation the Employee would have received during such period if the Employee were not in qualified military service, determined based on the rate of pay the Employee would have received but for the absence; provided,

however if the Compensation the Employee would have received during such period is not reasonably certain, Compensation for this purpose shall equal the Employee's average Compensation during the 12 months immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

- (c) Any contributions made pursuant to subsection (a) above are not subject to the limits under Code Section 415 in the Plan Year(s) in which made; rather, such contributions are subject to such limits in the Plan Year(s) to which the contributions relate as determined according to the Employee's election under subsection (a).

4.4 Form of Contributions.

All contributions shall be paid to the Trustee in the form of cash or cash equivalents.

4.5 Circumstances Permitting Return of Employer Contributions.

A contribution to the Plan and Trust by the Employer that was made by a mistake of fact shall be returned to the Employer. Any such contribution shall be returned within one year after the mistaken payment of the contribution. The amount of the contribution that may be returned to the Employer is the excess of (i) the amount contributed over (ii) the amount that would have been contributed had there not occurred a mistake of fact. Earnings attributable to the excess contribution may not be returned to the Employer, but losses attributable thereto must reduce the amount to be so returned.

## ARTICLE V

### ALLOCATIONS TO PARTICIPANTS' ACCOUNTS

#### 5.1 Individual Accounts.

To the extent appropriate, the Pension Board (or the Trustee at the direction of the Pension Board) shall establish and maintain, on behalf of each Participant or Beneficiary, an Account which shall be divided into segregated subaccounts. The subaccounts shall include the Employer Contribution Account, and such other subaccounts as the Pension Board shall deem appropriate or helpful. Each Account shall be credited with Contributions or transfers allocated to such Account and generally shall be credited with earnings and losses on investments derived from the assets of such Accounts. Each Account of a Participant or Beneficiary shall be maintained until the value thereof has been distributed to or on behalf of such person.

#### 5.2 Allocations.

The Accounts of Participants, Former Participants and Beneficiaries shall be adjusted, subject to the provisions of Sections 5.3, 5.4 and 5.5, in accordance with the following:

- (a) Employer Contributions. As of each payroll period, the Employer shall provide the Pension Board or its designee with all information required to make a proper allocation of the Employer Contributions for that period. As soon as practicable after the date of receipt by the Pension Board or its designee of such information, the Pension Board shall allocate the Employer Contributions to each Participant's Employer Contribution Account in accordance with Sections 4.2 and 4.3.
- (b) Income. As of each Valuation Date, any earnings or losses (net appreciation or net depreciation) shall be allocated to each Participant's Account. Each segregated Account maintained on behalf of a Participant shall be credited or charged with its separate earnings and losses.

#### 5.3 Code Section 415 Limitations on Maximum Contributions.

- (a) General Limit on Annual Additions. In no event shall the Annual Addition to a Participant's Account, for any Limitation Year, under the Plan and any other Defined Contribution Plan (as defined below) maintained by an Affiliate, exceed the lesser of:
  - (1) \$30,000 (or, for Plan Years beginning before January 1, 1995, ¼ of the dollar limitation in effect under Section 415(b)(1)(A) of the Code, if such amount is greater than \$30,000) or

- (2) 25 percent of such Participant's Compensation.

For Plan Years beginning before January 1, 1989, the Code Section 415 limitations that apply to governmental plans shall be deemed to have been incorporated by reference into the Plan.

- (b) Combined Plan Limitation. For Plan Years beginning prior to January 1, 2000, if an Employee is a Participant in the Plan and any one or more Defined Benefit Plans (as defined below) maintained by the Employer or an Affiliate, the sum of his Defined Benefit Plan Fraction and his Defined Contribution Plan Fraction, as set forth in subsections 5.3(d)(4) and (6), respectively, shall not exceed 1.0 for any Limitation Year. (For purposes of this subsection, any adjustments in the definition of "Compensation" permitted by the Internal Revenue Service for purposes of determining this combined limit are included herein by reference.) If any corrective adjustment in any Participant's benefits is required to comply with this subsection, such adjustment shall be made exclusively under the Defined Benefit Plans maintained by the Employer. If an Employee is a Participant in the Plan and any one or more other Defined Contribution Plans maintained by the Employer or an Affiliate and a corrective adjustment in such Participant's benefits is required to comply with this subsection, such adjustment shall be made under the Plan.
- (c) Correction of Excess Annual Additions. If, as a reasonable error in estimating a Participant's Compensation or such other occurrences as the Internal Revenue Service permits, the Annual Addition made on behalf of a Participant exceeds the limitations set forth in this Section, the excess amount shall be held in a suspense account and shall be applied to reduce permissible Employer Contributions in each successive year until such amount is fully allocated; provided, so long as any suspense account is maintained pursuant to this Section: (A) no Employer Contributions shall be made to the Plan that would be precluded by this Section; (B) investment gains and losses shall not be allocated to such suspense account; and (C) amounts in the suspense account shall be allocated in the same manner as Employer Contributions, until such suspense account is exhausted.
- (d) Special Definitions Applicable to Code Section 415 Limitations.
- (1) Annual Addition. For purposes of this Section, the term "Annual Addition" for any Participant means the sum for any Limitation Year of:
- (A) contributions made by the Employer or an Affiliate on behalf of the Participant under all Defined Contribution Plans;

- (B) contributions made by the Participant under all Defined Contribution Plans of the Employer or Affiliate (excluding rollover contributions as defined in Code Sections 402(a)(5), 403(a)(4), 403(b)(8), 408(d)(3) and 414(h) and contributions of previously distributed benefits that result in such a Plan's restoration of previously forfeited benefits pursuant to Treasury Regulations §1.411(a)-7(d));
  - (C) forfeitures allocated to the Participant under all Defined Contribution Plans of the Employer or an Affiliate; and
  - (D) amounts allocated for the benefit of the Participant to an individual medical account established under a pension or annuity plan maintained by the Employer or an Affiliate, as described in Code Section 415(l).
- (2) Compensation. For purposes of this Section, "Compensation" shall have the same meaning as in Article 2, but for Plan Years beginning before December 31, 1997, Compensation shall *exclude* compensation that is not includable in the Participant's IRS Form W-2 (Box 1) by reason of Code Section 125 or 457.
- (3) Defined Benefit Plan. The term "Defined Benefit Plan" means any qualified retirement plan maintained by an Affiliate that is not a Defined Contribution Plan.
- (4) Defined Benefit Plan Fraction. The term "Defined Benefit Plan Fraction" means, with respect to a Participant for any Limitation Year, a fraction, the numerator of which is his projected annual benefit under all Defined Benefit Plans maintained by an Affiliate, as determined as of the close of the Limitation Year, and the denominator of which is the lesser of:
- (A) 125 percent of the dollar limitation in effect for such year under Code Section 415(b)(1)(A); or
  - (B) 140 percent of his average compensation for his highest three consecutive plan years of participation in such Defined Benefit Plans.

In appropriate cases, the Defined Benefit Plan Fraction will be adjusted to reflect applicable transition rules provided by the Code and the regulations thereunder.

- (5) Defined Contribution Plan. The term "Defined Contribution Plan" means any qualified retirement plan maintained by an Affiliate that provides for an

individual account for each Participant and for benefits based solely on the amount contributed to the Participant's account and any income, expenses, gains, losses and forfeitures of accounts of other Participants, which may be allocated to such Participant's account.

- (6) Defined Contribution Plan Fraction. The term "Defined Contribution Plan Fraction" means, with respect to a Participant for any Limitation Year, a fraction, the numerator of which is the sum of the Annual Additions to his Accounts in this Plan and to his accounts in any other Defined Contribution Plans required to be aggregated with this Plan under Code Section 415(h), as of the close of the Limitation Year, and the denominator of which is the sum of the lesser of the following amounts determined separately for the current Limitation Year and for each prior Limitation Year in which the Participant was employed by an Affiliate:
- (A) 125 percent of the dollar limitation in effect under Code Section 415(c)(1)(A) as of the last day of such Limitation Year; or
  - (B) 35 percent of the Participant's Compensation from all Affiliates for the Limitation Year.

In appropriate cases, the Defined Contribution Plan Fraction will be adjusted to reflect applicable transition rules provided by the Code and regulations thereunder.

- (e) Compliance with Code Section 415. The limitations in this Section are intended to comply with the provisions of Code Section 415 so that the maximum benefits permitted under plans of the Affiliates shall be exactly equal to the maximum amounts allowed under Code Section 415 and the regulations promulgated thereunder. If there is any discrepancy between the provisions of this Section and the provisions of Code Section 415 and the regulations promulgated thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of the Code.

#### 5.4 Construction of Limitations and Requirements.

The descriptions of the limitations and requirements set forth in this Article are intended to serve as statements of the minimum legal requirements necessary for the Plan to remain qualified under the applicable terms of the Code. The Employer does not desire or intend, and the terms of this Article shall not be construed, to impose any more restrictions on the operation of the Plan than required by law. Therefore, the terms of this Article and any related terms and definitions in the Plan shall be interpreted and operated in a manner that imposes the least restrictions on the Plan. For example, if use of a more liberal definition of

"Compensation" is permissible at any time under the law, then the more liberal provisions may be applied as if such provisions were included in the Plan.

5.5 Notice to Participants of Account Balances.

At least once each calendar quarter, the Pension Board shall cause a written statement of a Participant's Account balance to be distributed to the Participant.

5.6 Good Faith Valuation Binding.

In determining the value of the Trust Fund and the Accounts, the Trustee and the Pension Board shall exercise their best judgment, and all such determinations of value (in the absence of bad faith) shall be binding upon all Participants and Beneficiaries.

5.7 Errors and Omissions in Accounts.

If an error or omission is discovered in the Account of a Participant or Beneficiary, the Pension Board shall cause appropriate, equitable adjustments to be made as soon as practical.

## ARTICLE VI

### RETIREMENT/TERMINATION BENEFITS

#### 6.1 Retirement.

If a Participant's employment with the Employer is terminated at or after his Normal Retirement Date, he is entitled to receive one hundred percent (100%) of his Account credited as of his Normal Retirement Date. However, a Participant may postpone the termination of his employment with the Employer to a later date, in which event the participation of such Participant in the Plan shall continue until his actual retirement date.

#### 6.2 Termination for Other Reasons.

- (a) If a Participant's employment with the Employer is terminated before his Normal Retirement Date for any reason other than death, he is entitled to receive the value of his Account as of the date that the Pension Board or its designee processes his distribution request.
- (b) All Participants shall at all times be fully vested in their Employer Contribution Account.

#### 6.3 Benefit Payments.

- (a) Application for Benefits. Before payment of any benefit hereunder, the Pension Board shall require that the Participant or Beneficiary, as the case may be, make an application for such benefit and submit the application to the Pension Board or its designee in such form and manner as it shall uniformly prescribe.
- (b) Effect of Payment. Any payment made in accordance with the provisions of the Plan to a Participant or Beneficiary, or to his legal representative, shall, to the extent of the method of computation as well as the amount thereof, constitute full satisfaction of claims hereunder against the Trustee, the Pension Board and the Employer, any of whom may require such Participant, Beneficiary or legal representative, as a condition precedent to such payment, to execute a receipt and release therefor.

#### 6.4 Normal Payment Forms.

Except as otherwise provided herein, a benefit described in this Article VI shall be paid on one lump sum payment. A Participant or Beneficiary may, however, elect instead to have his benefit paid in monthly, quarterly or annual installments in the dollar amount specified by the Participant or Beneficiary when payments begin. In addition, a Participant or Beneficiary may elect, before benefit payments have commenced, to have any portion of his

Account paid in an immediate single lump sum, with the rest to be paid in a later lump sum or in the installments described above.

6.5 Assets Distributed.

Any distribution to a Participant or his Beneficiary shall be made in the form of cash. Cash distributions shall be paid directly from the Trust Fund.

6.6 Time of Payment.

- (a) Required Beginning Date. Except as provided below, benefits payable to a Participant under this Section shall be distributed, or shall commence to be distributed, as soon as administratively feasible after the date the benefits are requested by the Participant following such Participant's Termination of Employment for any reason other than death.

Notwithstanding the foregoing, the Participant's benefit payments shall commence no later than the Participant's Required Beginning Date. The Required Beginning Date is the later of April 1 following the calendar year (i) in which the Participant attains age 70 ½, or (ii) in which the Participant has a Termination of Employment.

All distributions under this Plan shall be made in accordance with Code Section 401(a)(9), the regulations promulgated under Code Section 401(a)(9) and any other provisions reflecting the requirements of Code Section 401(a)(9) and prescribed by the Internal Revenue Service, including the minimum distribution incidental benefit requirements of Section 1.401(a)(9)-2 of the proposed Treasury regulations.

Prior to January 1, 1997, the Required Beginning Date was April 1 following the calendar year in which the Participant attained age 70 ½, regardless of whether the Participant had then experienced a Termination of Employment. In-service distributions to any active Participant who was in pay status on January 1, 1997, on account of his having attained age 70 ½ prior to that date were discontinued.

- (b) Amount of Required Distribution. Each Participant's benefit shall be distributed, beginning not later than the Required Beginning Date, over a period that does not exceed the life of such Participant or over the lives of such Participant and his Beneficiary (or over a period not extending beyond the life expectancy of such Participant or the joint life expectancy of such Participant and his Beneficiary). A Participant must, however, elect a distribution in one of the forms described in Section 6.4, and may not elect a distribution in the form of an annuity.
- (c) Death of Participant After Distribution has Begun. If distribution of a Participant's interest has begun in accordance with paragraph (a) above (i.e., distributions on or after the Required Beginning Date), and if the Participant dies before his entire

interest has been distributed to him, then the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under paragraph (a) as of the date of the Participant's death.

- (d) Death of Participant Before Distribution has Begun. If a Participant dies before distribution of the Participant's interest has begun in accordance with paragraph (a) above (i.e., no distributions have been made on or after the Required Beginning Date), the entire interest of the Participant must be distributed within 5 years after the Participant's death unless:
- (i) any portion of the Participant's interest is payable to or for the benefit of his Beneficiary;
  - (ii) such portion will be distributed over the life of the Beneficiary (or over a period not extending beyond the life expectancy of the Beneficiary); and
  - (iii) such distributions begin not later than one year after the date of the Participant's death or such later date as may be prescribed in Treasury Regulations.

If the conditions stated in clauses (i), (ii) and (iii) are met, then the portion referred to in clause (i) shall be treated as distributed on the date on which distributions begin. If the Beneficiary referred to in clause (i) above is the Participant's Spouse, then the date on which the distributions are required to begin under clause (iii) above shall not be earlier than the date on which the Participant would have attained age 70 ½, and if the Spouse dies before distributions to such Spouse begin, this paragraph shall be applied as if the Spouse were the Participant.

#### 6.7 Nonalienation of Benefits.

Except with respect to federal income tax withholding, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a Spouse or former spouse or for any other relative of the Employee, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The honoring of a court-issued domestic relations order approved by the Pension Board does not violate this Section.

6.8 Forfeiture of Benefits.

Notwithstanding any other provision to the contrary, a Participant's Employer Contribution Account under the Plan shall be forfeited in the manner and to the extent provided under O.C.G.A. Section 47-1-21 through Sections 47-1-24, if convicted of a public employment, drug related or other covered crime.

6.9 Unclaimed Benefits.

In the event a Participant becomes entitled to benefits under the Plan other than death benefits and the Pension Board is unable to locate such Participant (after sending a letter, return receipt requested, to the Participant's last known address, and after such further diligent efforts as the Pension Board in its sole discretion deems appropriate) within one year from the date upon which he becomes so entitled, the Pension Board shall direct that such benefits be paid to the person(s) who have been designated as the Participant's Beneficiary or, if none, who have been designated as the Beneficiary by operation of the Plan; and, provided further, if the distribution is payable upon termination of the Plan, the Pension Board shall not be required to wait until the end of such 1-year period. If neither the Participant nor his Beneficiary can be located and all of them fail to claim such benefits by the end of the fifth Plan Year following the Plan Year in which such Participant becomes entitled to such benefits, then the full Account of the Participant shall be deemed abandoned and treated as a Forfeiture; provided, in the event such Participant or Beneficiary is located or makes a claim subsequent to the allocation of the abandoned Account but prior to the expiration of the time within which any such person's claim to the Account would expire under appropriate state law, then the amount of the abandoned Account (unadjusted for any investment gains or losses from the time of abandonment) shall be restored (from abandoned Accounts, Trust earnings or Contributions made by the Employer) to such Participant or Beneficiary, as appropriate; and, provided further, the Pension Board, in its sole discretion, may delay the deemed date of abandonment of any such Account for a period longer than the prescribed five Plan Years if it believes that it is in the best interest of the Plan to do so.

6.10 Maintenance of Account.

Upon the occurrence of circumstances that entitle a Participant or his Beneficiary to benefit payments under the Plan, the amount from which benefits are payable to or with respect to him, computed in accordance with the provisions of the Plan, may be retained in the Trust Fund as such Participant's Account. Any such Account shall benefit proportionately from any earnings of the Trust Fund and any appreciation in the value of its assets and shall suffer the detriment of any losses or depreciation in the value of the Trust assets. The Account balance shall be distributed to the Participant or his Beneficiary at such time and in such manner as provided in the Plan.

6.11 Claims.

- (a) Procedure. Claims for benefits under the Plan shall be approved by the Pension Board or its designee.
  
- (b) Review Procedure. Any Participant or Beneficiary who has been denied a benefit, or his duly authorized representative, shall be entitled, upon request to the Pension Board, to appeal the denial of his claim. To do so, the claimant must obtain a form from the Pension Board on which to request further consideration of his position. The claimant, or his duly authorized representative, may review pertinent documents related to the Plan and in the Pension Board's possession in order to prepare the appeal. The form containing the request for review, together with a written statement of the claimant's position, must be filed with the Pension Board no later than 60 days after receipt of the written notification of denial of a claim. The Pension Board's decision shall be made within 120 days following the filing of the request for review and shall be communicated in writing to the claimant. If unfavorable, the notice of decision shall explain the reason or reasons for denial and indicate the provisions of the Plan or other documents used to arrive at the decision.

6.12 Explanation of Certain Rollover Distributions.

Within a reasonable period of time (as defined for purposes of Code Section 402(f)) before making an Eligible Rollover Distribution from the Plan to a Participant or Beneficiary, the Pension Board shall provide such Participant or Beneficiary with a written explanation of (i) the provisions under which the distributee may have the distribution directly transferred to another Eligible Retirement Plan, (ii) the provisions which require the withholding of tax on the distribution if it is not directly transferred to another Eligible Retirement Plan, (iii) the provisions under which the distribution will not be subject to tax if transferred to an Eligible Retirement Plan within 60 days after the date on which the distributee receives the distribution, and (iv) such other terms and provisions as may be required under Code Section 402(f) and the regulations promulgated thereunder.

## ARTICLE VII

### DEATH BENEFITS

#### 7.1 Death.

- (a) Distribution Options. If the termination of employment of a Participant is caused by his death, or if a Former Participant dies before he receives a distribution of his Account, his death benefit shall be equal to one hundred percent (100%) of his Account credited as of the Valuation Date coincident with or next following his date of death, and the Beneficiary is entitled to receive the entire amount in his Account to be paid in any form available to a Participant under Section 6.4.
- (b) Proof of Death. The Pension Board may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the Account of a deceased Participant or a deceased Former Participant as the Pension Board may deem desirable. The Pension Board's determination of death and of the right of any person to receive payment shall be conclusive.

Payment of benefits due under this Section shall be made in accordance with the provisions of this Article VII.

#### 7.2 Commencement of Survivor Benefits.

Distributions to a Beneficiary shall begin as soon as administratively feasible after the date the benefits are requested by the Beneficiary, but no later than the date specified under Section 6.6.

#### 7.3 Beneficiary Designation.

- (a) General. In accordance with the terms of this Section, Participants shall designate and from time to time may redesignate their Beneficiary or Beneficiaries in such form and manner as the Pension Board may determine. A Participant shall be deemed to have named his Surviving Spouse, if any, as his sole Beneficiary unless the Participant designates another Beneficiary in the manner specified by the Pension Board.
- (b) No Designation or Designee Dead or Missing. In the event that:
  - (i) a Participant dies without designating a Beneficiary;

- (ii) the Beneficiary designated by a Participant is not surviving when a payment is to be made to such person under the Plan, and no contingent Beneficiary has been designated; or
- (iii) the Beneficiary designated by a Participant cannot be located by the Pension Board within one year after the date benefits are to commence to such person;

then, in any of such events, the Beneficiary of such Participant with respect to any benefits that remain payable under the Plan shall be the Participant's Surviving Spouse, if any, and if not, then the estate of the Participant.

#### 7.4 Distribution for Minor Beneficiary.

In the event a distribution is to be made to a minor, then the Pension Board may, in the Pension Board's sole discretion, direct that such distribution be paid to the legal guardian, or if none, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains his residence, or to the custodian for such Beneficiary under the Uniform Gift to Minors Act or similar statute, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the legal guardian or parent of a minor Beneficiary shall fully discharge the Trustee, Employer and Plan from further liability on account thereof.

## ARTICLE VIII

### TRUST FUND

#### 8.1 Establishment of Trust Fund.

All Contributions are to be paid over to the Trustee to be held in the Trust Fund and invested in accordance with the terms of the Plan and the Trust Agreement that is incorporated herein and made a part hereof. The Trustee shall be responsible for the property received by it as Trustee, but shall not be responsible for the administration of the Plan or for those assets of the Plan that have not been delivered to and accepted by the Trustee. The Trustee shall have no duty or obligation to determine the adequacy of the Trust Fund or whether contributions received by it comply with the provisions of the Plan or with any resolution of the Pension Board or the City Council or to enforce the collection from the Employer of any contribution to the Trust. In addition to the Trust Fund established under this Article VIII, the Employer may establish other Trust Funds with other Trustees, provided that the terms of such other trusts are set forth in separate documents.

#### 8.2 Investment Funds.

- (a) Named Investment Funds. In accordance with instructions from the Investment Committee and the terms of the Plan, the Trustee shall establish Investment Funds for the investment of Contributions and Accounts. Such Investment Funds may be established, modified or eliminated from time to time without necessity of amendment to the Plan and shall have the investment objectives prescribed by the Investment Committee. The Trustee shall have no discretion with respect to the investment of Plan assets but shall be limited to implementing the directions provided by the Employer, any Investment Manager described in Section 8.6, or, subject to Section 8.3, a Participant. The Trustee shall have no responsibility for the selection of Investment Funds or for the investment of Accounts under the Plan and shall not render investment advice to any person in connection with the selection of such options. The Employer shall be responsible for the investment of the entire Trust Fund, except for any portion of the Trust Fund assigned to an Investment Manager as provided in Section 8.6.
- (b) Reinvestment of Cash Earnings. Any investment earnings received in the form of cash with respect to any Investment Fund (in excess of the amounts necessary to pay Plan or Trust expenses) shall be reinvested in such Investment Fund.

### 8.3 Participant Direction of Investments.

Each Participant or Beneficiary generally may direct the manner in which his Accounts shall be invested in and among the Investment Funds; provided, such investment directions shall be made in accordance with the following terms:

- (a) Investment of Account. As of each day, Contributions, plus earnings (or losses) thereon, will be transferred to the Investment Funds in the proportion designated by such Participant pursuant to his most recent election, as described below. If the Participant does not make an investment election, his contributions shall be allocated to the investment fund determined by the Investment Committee as the "default" fund.

In addition, effective as of each day following his Entry Date into the Plan, each Participant (or Beneficiary) may elect, the percentage of his Account that will be invested in each Investment Fund. Each such election shall remain in effect until changed by such Participant or Beneficiary. In the event an individual fails to make an election for his Accounts pursuant to the terms of this subsection or if an investment election is incomplete or insufficient in some manner, the Accounts will continue to be invested in the same manner provided under the terms of the most recent election affecting such Accounts.

The Trustee shall be entitled to rely fully on the instructions of a Participant made by voice recognition or other electronic means of transmission as if the same were provided in writing by the Employer, and shall not be liable for any loss or other liability, resulting from such direction (or lack of direction) of the investment of any part of the Plan assets.

- (b) Conditions Applicable to Elections. Allocations of investments in the various Investment Funds, as described in subsection (a) hereof, shall be made in whole percentages as directed by the Participant or Beneficiary. The Pension Board and Investment Committees shall have complete discretion to adopt and revise procedures to be followed in making such investment elections. Such procedures may include, but are not limited to, the format of the election forms, use of interactive telephone system, the deadline for filing elections and the effective date of such elections; provided, elections must be permitted at least once every three months. Any procedures adopted by the Pension Board and Investment Committees that are inconsistent with the deadlines specified in this Section shall supersede such provisions of this Section without the necessity of a Plan amendment.
- (c) Trustee Responsibility.

The Trustee shall have no duty to verify directions from the Participant or a

Beneficiary, provided that such directions are provided in the manner directed by the Pension Board.

The Trustee may delegate the duty to execute Participant or Beneficiary instructions to any fiduciary or nonfiduciary agent.

(d) Participant or Beneficiary Representation.

Each Participant or Beneficiary who directs the investment of his Account pursuant to this Section 8.3 shall be required to execute a representation and release in the form prescribed by the Pension Board, to the effect that the Participant or Beneficiary understands that he is responsible for the allocation of his Account among the Investment Funds, and relieving the Employer from liability for loss on the investments that are incurred as a result of his investment allocations.

8.4 Expenses.

The Employer shall pay all expenses in the administration of the Plan, including compensation to the Trustee as agreed upon between the Employer and the Trustee, to the extent not paid out of the Trust. Nothing herein, however, shall be deemed to prohibit the Employer from directing that the Employer pay administrative expenses out of the Trust. Notwithstanding the foregoing, expenses incurred in connection with the sale, investment and reinvestment of the Trust Fund (such as brokerage, postage, express and insurance charges and transfer taxes) shall be paid from the Trust Fund.

8.5 Appointment of Investment Manager.

(a) Investment Advisor. The Investment Committee may appoint any one or more individuals or entities to serve as an Investment Advisor to the Committee. Such Investment Advisor would aid the Investment Committee in the selection of Investment Funds.

(b) Investment Manager. The Investment Committee may appoint any one or more individuals or entities to serve as the Investment Manager or Managers of the entire Trust or of all or any designated portion of a particular Investment Fund or Investment Funds. The appointment of the Investment Manager shall be effective upon the Trustee's receipt of a copy of an appropriate Investment Committee resolution (or such later effective date as may be contained therein), and the appointment shall continue in effect until receipt by the Trustee of a copy of an Investment Committee resolution removing or accepting the resignation of the Investment Manager (or such later effective date as may be specified therein). If an Investment Manager is appointed, the Investment Manager shall have the power to manage, acquire and dispose of any and all assets of the Trust Fund, as the case may

be, that have been placed under its control, except to the extent that such power is reserved to the Trustee by the Employer. If an Investment Manager is appointed, the Trustee shall be relieved of any and all liability for the acts or omissions of the Investment Manager, and the Trustee shall not be under any obligation to invest or otherwise manage any assets which are subject to the management of the Investment Manager.

#### 8.6 Standard of Care.

- (a) Prudence. The Employer, the Trustee and any Investment Manager appointed pursuant to Section 8.6, and any other fiduciaries with respect to the Plan or Trust shall discharge their duties thereunder solely in the interest of Participants and beneficiaries, for the exclusive purpose of providing their benefits and defraying reasonable expenses of Plan and Trust administration, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
- (b) Trustee may Rely. The Trustee shall be fully protected in acting upon any instrument, certificate, paper or electronic data transmission believed by it to be genuine and either signed or presented by the proper person or persons, or by authorized electronic data transmission. Further, the Trustee shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing or electronic data transmission, but may accept the same as conclusive evidence of the truth and accuracy of the statement therein contained.

#### 8.7 Trustee Powers.

Subject to the direction of the Employer, Investment Manager or Participants in the manner described in this Article 8, the Trustee shall have the following powers, rights and duties in addition to those provided elsewhere in this agreement, the Plan or by law but only to the extent such powers, rights and duties are consistent with the guidelines, investment objectives and restrictions of the Investment Funds and Investment Accounts:

- (i) To invest and reinvest part or all of the balance of the Trust Fund in stocks, bonds, notes, mortgages, mutual fund shares (including but not limited to those offered by the Trustee or an affiliate) or other property of any kind, real or personal, including, at the approval of the Employer, units of collective investment trusts (including but not limited to those offered by the Trustee or an affiliate) and one or more group annuity, deposit administration or separate account contracts issued by a legal reserve life insurance company; to the extent assets are investment in a collective investment trust, the declaration of trust creating such collective investment trust is hereby adopted as a part of this agreement. Specifically, the following Declarations of Trust,

as hereafter amended, are adopted as part of this Agreement:

- (A) The Declaration of Trust executed by Chicago Title and Trust Company on January 17, 1968, establishing "Chicago Title and Trust Company Investment Trust for the Employee Benefit Plans;"
- (B) The Declaration of Trust executed by Chicago Title and Trust Company on April 24, 1985, establishing "Chicago Title and Trust Company Stated Principal Value Investment Trust for Employee Benefit Plans;"
- (C) The Declaration of Trust executed by The Chicago Trust Company on June 18, 1996, establishing "The Chicago Trust Company Stable Value Investment Trust for Employee Benefit Plans."

The adoption of the above-referenced Declarations of Trust does *not*, in and of itself, cause referenced collective trusts to constitute Investment Funds described in Article 8.

- (ii) To acquire and become the policyholder under group annuity contracts issued by a legal reserve life insurance company; and to manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term (although commencing in the future or extending beyond the term of this Trust) and otherwise deal with all property, real or personal, in such way, for such considerations, and on such terms and conditions as the Trustee is empowered.
- (iii) To retain in cash such amounts as the Trustee considers advisable and as are permitted by applicable law; to deposit cash in any depository without liability for interest and, without limiting the generality of the foregoing, to invest cash in savings accounts or time certificates of deposit bearing a reasonable rate of interest.
- (iv) To make any payment or distribution from the Trust Fund as directed by the Employer or its designee without inquiring as to whether a payee or distributee is entitled thereto or as to whether it is proper, and the Trustee shall not be liable for a payment or distribution that is not proper under the terms of the Plan or this agreement; to notify the Employer as appropriate if a payment or distribution is returned to the Trustee, upon which return the Trustee shall have no obligation to search for or ascertain the whereabouts of a payee or distributee.
- (v) To the extent permitted by law, to borrow from anyone, with the Employer's approval, such sum or sums from time to time as the Trustee considers desirable to carry out this Trust, and to mortgage or pledge all or part of the Trust Fund as

security.

- (vi) To retain any funds or property subject to any dispute without liability for interest and to decline to make payment or delivery thereof until final adjudication by a court of competent jurisdiction or until an appropriate release is obtained.
- (vii) To begin, maintain or defend any litigation necessary in connection with the administration of the Plan or this Trust, except that, unless otherwise required by law, the Trustee shall not be obliged or required to do so unless indemnified to the Trustee's satisfaction.
- (viii) To compromise, contest, arbitrate or abandon claims or demands.
- (ix) To give proxies to vote stocks and other voting securities, to join in or oppose (alone or jointly with others) voting trusts, mergers, consolidations, foreclosures, reorganizations, liquidations, or other changes in the financial structure of any corporation, and to exercise or sell stock subscription or conversion rights.
- (x) To hold securities or other property in the name of a nominee, in a depository, or in any other way, with or without disclosing the trust relationship.
- (xi) To report to the Employer annually on or after the close of the Plan Year, or as soon thereafter as practicable, or at such other times as the Employer may request, the then net worth of the Trust Fund (that is, the fair market value of all assets comprising the Trust Fund, less liabilities, if any, other than liabilities to persons entitled to benefits under the Plan) determined on the basis of such evidence, data or information as the Trustee considers pertinent and reliable.
- (xii) To furnish to the Employer an annual account or an account for such other period as the Employer may specify or as may be required under this agreement or the Plan, showing all investments, receipts, disbursements, and other transactions involving the Trust during the accounting period, and also showing the assets of the Trust Fund held at the end of the period, which, to the extent permitted by law, shall be conclusive on all persons, including the Employer, except as to any act or transaction as to which the Employer files with the Trustee written exceptions or objections within one hundred eighty days after receipt of the account.
- (xiii) To pay any estate, inheritance, income or other tax, charge or assessment attributable to any benefit payable under the Plan out of such benefit after giving the Employer notice as far in advance as practicable; to defer making payment of any such tax, charge or assessment if it is indemnified to its satisfaction in the premises; and to require before making any payment such release or other

document from any lawful taxing authority and such indemnity from the intended payee as the Trustee considers necessary for its protection.

- (xiv) To maintain records and accounts reflecting all receipts and disbursements under this agreement and such other records and accounts as the Employer may specify, all of which shall be open to the inspection of the Employer at all reasonable times, and may be audited from time to time by anyone named by the Employer.
- (xv) To employ agents, attorneys, accountants or other persons (who also may be employed by the Employer) and to delegate to them such powers as the Trustee considers desirable (except that the Trustee may not delegate its responsibilities as to the management or control of the assets of the Trust Fund to the extent such responsibilities are specified in this Trust Agreement), provided that such delegation, and the acceptance thereof, by such agents, attorneys, accountants or to other persons, shall be in writing; and, to the extent permitted by law, the Trustee shall be protected in acting or refraining from acting on the advice of persons so employed without court action.
- (xvi) To appoint a bank, trust company, or broker or dealer registered under the Securities Exchange Act of 1934 to act as custodian with respect to any portion of the Trust Fund; and a custodian so appointed shall have custody of such assets as are deposited with it and as custodian such rights, powers and duties with respect thereto as shall be agreed upon from time to time by the Trustee and such custodian.
- (xvii) To furnish the Employer with such information in the Trustee's possession as the Employer may need for tax or other purposes.
- (xviii) To perform any and all other acts which in the Trustee's judgment are appropriate for the proper management, investment and distribution of the Trust Fund.

#### 8.8 Trust Accounting.

For purposes of determining the value of assets in the Trust, the Trustee shall value such assets in accordance with the Trustee's procedures for determining fair market value as of any date for which such valuation or accounting is required.

#### 8.9 Limit of Trustee's Responsibility.

No power, duty or responsibility is imposed upon the Trustee under the Plan, except as set forth in this agreement. Until they determine or are advised to the contrary, the Trustee may assume that this Plan is qualified under Section 401(a), and that the Trust is entitled to tax exemption under Section 501(a), of the Internal Revenue Code.

- 8.10 Indemnification. To the extent permitted by law, the Trustee shall not be liable for any act done or omitted to be done in good faith and in accordance with this Article 8 of the Plan. The Trustee shall be indemnified and saved harmless by the Employer (to the extent not indemnified or saved harmless under any liability insurance or other indemnification arrangement with respect to the Plan or this Trust) from and against any and all liability or claim of liability to which they may be subjected by reason of any act done or omitted to be done in good faith and in accordance with this Article 8 in connection with the administration of this Trust or the investment of the Trust Fund, or good faith compliance with any directions given in accordance with the provisions of the Plan or this Trust by an Investment Manager, the Employer, or any person duly authorized by the Employer, or a Participant or Beneficiary, or by reason of its failure to take any action with respect to any assets of the Trust Fund that are subject to investment direction from the Employer, an Investment Manager, or a Participant or Beneficiary, in the absence of proper directions from same, including without limitation all expenses reasonably incurred in its defense if the Employer fails to provide such defense through mutually acceptable counsel after having been requested to do so in writing. The Trustee will not be liable or responsible for delays or errors by acts of God or by reason of circumstances beyond its control, including without limitation acts of civil or military authority, national emergencies, labor difficulties, insurrection, war, riots, or failure or unavailability of transportation, communication or power supply, fire, flood or other catastrophe, extreme market volatility or trading volumes, to the extent permitted by applicable law.
- 8.11 Resignation or Removal of Trustee. The Trustee may resign at any time by giving sixty (60) days' advance written notice to the Employer, which advance notice may be waived by the Employer upon the appointment of a Successor Trustee. The Employer may remove a Trustee by advance written notice to the Trustee.
- 8.12 Duties of Resigning or Removed Trustee and of Successor Trustee. A Trustee that resigns or is removed shall furnish promptly to the employers and the successor Trustee an account of its administration of the Trust from the date of its last account.

Each successor Trustee shall succeed to the title to the Trust Fund vested in its predecessor without the signing or filing of any instrument, but each predecessor Trustee shall execute all documents and do all acts necessary to vest such title of record in the successor Trustee. Each successor Trustee shall have all the powers conferred by this agreement as if originally named Trustee. No successor Trustee shall be personally liable for any act or failure to act of a predecessor Trustee.

## ARTICLE IX

### ADMINISTRATION

#### 9.1 Delegation of Authority by the Pension Board.

In addition to those powers set forth elsewhere in the Plan, the Pension Board may appoint such agents, who need not be members of such Pension Board, as it may deem necessary for the effective performance of its duties and may delegate to such agents such powers and duties, whether ministerial or discretionary, as the Pension Board may deem expedient or appropriate.

To the extent that the costs for such assistants and advisers are not paid by the Employer, they shall be paid at the direction of the Pension Board from the Trust Fund as an expense of the Trust Fund.

The Pension Board shall be entitled to rely upon all certificates and reports made by an accountant, attorney or other professional adviser selected pursuant to this Section; the Pension Board shall be fully protected in respect to any action taken or suffered by them in good faith in reliance upon the advice or opinion of any such accountant, attorney or other professional adviser; and any action so taken or suffered shall be conclusive upon each of them and upon all other persons interested in the Plan.

#### 9.2 Powers and Responsibility.

The Pension Board shall have complete control of the administration of the Plan hereunder, with all powers necessary to enable it properly to carry out its duties as set forth in the Plan and the Trust Agreement. The Pension Board shall have the following duties and responsibilities:

- (i) to construe the Plan and to determine all questions that shall arise thereunder;
- (ii) to select and/or remove all service providers to the Plan including the Trustee, recordkeeper, broker and investment advisor, or to recommend such service providers to the City Council;
- (iii) to decide all questions relating to the eligibility of Employees to participate in the Plan;
- (iv) to determine the benefits of the Plan to which any Participant or Beneficiary may be entitled;
- (v) to maintain and retain records relating to Participants and Beneficiaries;

- (vi) to prepare and furnish to Participants all information required under state or federal law or provisions of the Plan to be furnished to them;
- (vii) to prepare and furnish to the recordkeeper and/or Trustee sufficient employee data and the amount of Contributions received from all sources so that the recordkeeper and/or Trustee may maintain separate accounts for Participants and Beneficiaries and make required payments of benefits;
- (viii) to prepare and file or publish with all other appropriate government officials all reports and other information required under law to be so filed or published;
- (ix) to provide directions to the Trustee with respect to methods of benefit payment and all other matters where called for in the Plan or requested by the Trustee;
- (x) to engage assistants and professional advisers;
- (xi) to provide procedures for determination of claims for benefits; and
- (xii) to delegate any or all of these responsibilities.

### 9.3 Records of Pension Board.

- (a) Any notice, direction, order, request, certification or instruction of the Pension Board to the Trustee shall be in writing and shall be signed by a member of the Pension Board. The Trustee and every other person shall be entitled to rely conclusively upon any and all such notices, directions, orders, requests, certifications and instructions received from the Pension Board and reasonably believed to be properly executed, and shall act in accordance therewith.
- (b) All acts and determinations of the Pension Board shall be duly recorded by its Secretary or under his supervision, and all such records, together with such other documents as may be necessary for the administration of the Plan, shall be preserved in the custody of such Secretary.

### 9.4 Reporting and Disclosure.

The Pension Board shall keep all individual and group records relating to Participants and Beneficiaries and all other records necessary for the proper operation of the Plan. Such records shall be made available to each Participant and Beneficiary for examination during normal business hours except that a Participant or Beneficiary shall examine only such records as pertain exclusively to the examining Participant or Beneficiary and the Plan and Trust Agreement. The Pension Board shall prepare and shall file as required by law or

regulation all reports, forms, documents and other items required by the Code and every other relevant statute, each as amended, and all regulations thereunder. This provision shall not be construed as imposing upon the Pension Board the responsibility or authority for the preparation, preservation, publication or filing of any document required to be prepared, preserved or filed by the Trustee to whom such responsibilities are delegated by law or by the Plan.

9.5 Construction of the Plan.

The Pension Board shall take such steps as are considered necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error. The Pension Board shall interpret the Plan and shall determine the questions arising in the administration, interpretation and application of the Plan. The Pension Board shall endeavor to act, whether by general rules or by particular decisions, so as not to discriminate in favor of or against any person and so as to treat all persons in similar circumstances uniformly. The Pension Board shall correct any defect, reconcile any inconsistency or supply any omission with respect to the Plan.

9.6 Investment Committee.

- (a) The Investment Committee may be named to act on behalf of the Pension Board to establish and carry out a funding policy consistent with the Plan objectives and with the requirements of any applicable law. Such policy shall be in writing and shall have due regard for the liquidity needs of the Trust. Such funding policy shall also state the general investment objectives of the Trust and the philosophy upon which maintenance of the Plan is based.
- (b) The Pension Board shall determine the membership of the Investment Committee, and the members shall serve at the pleasure of the Pension Board or until their resignation.
- (c) The Investment Committee also shall carry out the Pension Board's responsibility and authority as follows, to the extent delegated thereto by the Pension Board:
  - (i) To appoint one or more persons to serve as investment manager or investment advisors with respect to all or part of the Plan assets;
  - (ii) To allocate the responsibility and authority being carried out by the Investment Committee among the members of the Committee;
  - (iii) To take any action appropriate to assure that the Plan assets are invested for the exclusive purpose of providing benefits to Participants and their

Beneficiaries in accordance with the Plan and defraying reasonable expenses of administering the Plan, subject to the requirements of any applicable law; and

- (iv) To employ one or more persons to render advice with respect to any responsibility or authority being carried out by the Investment Committee. To the extent that the costs for such assistants and advisers are not paid by the Employer, they shall be paid at the direction of the Pension Board from the Trust Fund as an expense of the Trust Fund.

9.7 Direction of Trustee.

The Pension Board shall have the power to provide the Trustee with general investment policy guidelines and directions to assist the Trustee respecting investments made in compliance with, and pursuant to, the terms of the Plan.

## ARTICLE X

### ALLOCATION OF AUTHORITY AND RESPONSIBILITIES

#### 10.1 General Responsibilities.

The City Council are fiduciaries with respect to the Plan and, as Plan sponsor, have the following authority and responsibilities:

- (a) To appoint the Trustee, the Pension Board and the recordkeeper, and to monitor each of their performances;
- (b) To communicate such information to the Trustee, the Pension Board and the recordkeeper as each needs for the proper performance of its duties;
- (c) To provide channels and mechanisms through which the Pension Board, the recordkeeper and/or the Trustee can communicate with Participants and Beneficiaries;
- (d) To delegate responsibilities to officers, employees or to other individuals, all of whom shall serve at the pleasure of the Employer;
- (e) To perform such duties as are imposed by law or by regulation; and
- (f) To serve as Plan Administrator in the absence of an appointed Pension Board.

In the event any of the areas of authority and responsibilities of the Employer overlap with that of any other Plan fiduciary, the Employer shall coordinate with such other fiduciaries the execution of such authority and responsibilities; provided, the decision of the Employer with respect to such authority and responsibilities ultimately shall be controlling.

#### 10.2 Pension Board.

The Pension Board shall have the authority and responsibilities imposed by Article IX hereof. With respect to said authority and responsibilities, the Pension Board shall be a fiduciary, and as such, shall have no authority or responsibilities other than as granted in the Plan or as imposed as a matter of law.

#### 10.3 Investment Committee.

The Investment Committee, if any is appointed, shall be a fiduciary with respect to its authority and responsibilities, as imposed by Article IX. The Investment Committee shall have no authority or responsibilities other than those granted in the Plan and the Trust.

10.4 Trustee.

To the extent provided in the Trust Agreement, the Trustee shall be a fiduciary with respect to investment of Trust Fund assets and shall have the powers and duties set forth in the Trust Agreement.

10.5 Recordkeeper.

The recordkeeper shall have the responsibility of maintaining the Plan's records and such further responsibilities and duties as set forth in a written agreement between the Employer and the recordkeeper.

10.6 Limitations on Obligations of Fiduciaries.

No fiduciary shall have authority or responsibility to deal with matters other than as delegated to it under the Plan, under the Trust Agreement or by operation of law. A fiduciary shall not in any event be liable for breach of fiduciary responsibility or obligation by another fiduciary if the responsibility or authority for the act or omission deemed to be a breach was not within the scope of such fiduciary's authority or delegated responsibility.

10.7 Delegation.

Fiduciaries shall have the power to delegate specific fiduciary responsibilities (other than Trustee responsibilities). Such delegations may be to officers or employees of the Employer or to other persons, all of whom shall serve at the pleasure of the fiduciary making such delegation and, if full-time employees of the Employer, without compensation. Any such person may resign by delivering a written resignation to the delegating fiduciary. Vacancies created by any reason may be filled by the appropriate fiduciary or the assigned responsibilities may be reabsorbed or redelegated by the fiduciary.

10.8 Multiple Fiduciary Roles.

Any person may hold more than one position of fiduciary responsibility and shall be liable for each such responsibility separately.

10.9 ERISA Standard. The Employer and the Pension Board may look to the standards of fiduciary conduct prescribed by ERISA and the common law of trusts for general guidance with respect to their responsibilities.

## ARTICLE XI

### MISCELLANEOUS

#### 11.1 No Guarantee of Employment.

Nothing contained in this Plan 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.

#### 11.2 Rights to Assets.

No Employee or Beneficiary shall have any right to, or interest in, any assets of the Plan upon termination of his employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Plan. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Plan and none of the fiduciaries shall be liable therefor in any manner.

#### 11.3 Nonforfeatability of Benefits.

Subject only to the specific provisions of this Plan, nothing shall be deemed to divest a Participant of his right to the nonforfeitable benefit to which he becomes entitled in accordance with the provisions of this Plan.

#### 11.4 Governing Law.

The Plan shall be governed by the laws of the State of Georgia and the ordinances of the City of Marietta to the extent applicable, and to the extent not applicable, by federal law.

#### 11.5 Construction.

The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender, unless the context clearly indicates to the contrary. The words "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Plan and not to any particular provision or Section. Article and Section headings are included for convenience of reference and are not intended to add to, or subtract from, the terms of the Plan.

11.6 Action by the Employer.

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter, it shall be done and performed by a duly authorized individual.

11.7 Uniformity.

All provisions of the Plan shall be interpreted and applied in a uniform and nondiscriminatory manner.

## ARTICLE XII

### AMENDMENT, TERMINATION AND ADOPTION

#### 12.1 Amendment.

The provisions of the Plan may be amended at any time and from time to time by written amendment approved by the City Council; provided:

- (i) No amendment shall increase the duties or liabilities of the Trustee without the consent of the Trustee;
- (ii) No amendment shall impair the contract rights of any Eligible Employee; and
- (iii) No amendment shall be made which would divert any of the assets of the Trust Fund to any purpose other than the exclusive benefit of Participants and Beneficiaries, except that the Plan and Trust Agreement may be amended retroactively and to affect the Accounts of Participants and Beneficiaries if necessary to cause the Plan and Trust to be qualified under the Code.

#### 12.2 Termination.

- (a) Right to Terminate. The Employer expects the Plan to be continued indefinitely, but it reserves the right to terminate the Plan or to completely discontinue Contributions to the Plan at any time by action of the City Council. In either event, the Pension Board, Investment Committee, each Affiliate and the Trustee shall be promptly advised of such decision in writing.
- (b) Management Upon Complete Termination. Upon termination of the Plan, the Pension Board, in its sole discretion, shall instruct the Trustee either (i) to continue to manage and administer the assets of the Trust for the benefit of the Participants and their Beneficiaries pursuant to the terms and provisions of the Trust Agreement, or (ii) if there is no successor plan or no benefits subject to the restrictions in said Section, to pay over to each Participant or Beneficiary the value of his interest in a single sum and to thereupon dissolve the Trust.
- (c) Dissolution of Trust. In the event that the Pension Board decides to dissolve the Trust, as soon as practicable following the termination of the Plan or the Pension Board's decision, whichever is later, the assets under the Plan shall be converted to cash or other distributable assets, to the extent necessary to effect a complete distribution of the Trust assets as described herein. Following completion of the conversion, on a date selected by the Pension Board, each individual with an Account under the Plan on such date shall receive a distribution of the total amount then

amount then credited to his Account. The amount of cash and other property distributable to each such individual shall be determined as of the date of distribution. In the case of a termination distribution as provided herein, the Pension Board may direct the Trustee to take any action dealing with unclaimed benefits, except that it shall not be necessary to hold funds for any period of time stated in such Section. Within the expense limitations set forth in the Plan, the Pension Board may direct the Trustee to use assets of the Trust Fund to pay any due and accrued expenses and liabilities of the Trust and any expenses involved in termination of the Plan.

IN WITNESS WHEREOF, the Employer has caused this Plan to be effective January 1, 1989, executed as of this 29 day of June, 2000, in its name, by and through the City of Marietta Mayor and Council.

Attest: (SEAL)

CITY OF MARIETTA

By: *Shelia R. Hill*  
City Clerk

By: *Perley P. Meaders*  
Title: Mayor

THE CHICAGO TRUST COMPANY  
AS TRUSTEE

By: *[Signature]*  
Its: *S. V. P.*

*ATTEST:*  
*[Signature]*  
*ASST. SECY*

ORDINANCE NO.: 6483

**AN ORDINANCE**

**AMENDING**

Code Section 4-12-2-020 (Supplemental Pension Plan) Code Section 4-12-4-010, Exhibit A (Ordinance 4022) and Code Section 4-12-6-10, Exhibit B (Ordinance 4532) to update and modify the City's pension plans to comply with federal law, specifically, the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).

---

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

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

1.

The definition of Compensation in Article 2 shall be amended as of January 1, 2002, by adding the following at the end of sub-paragraph (i):

“Effective for Plan Years beginning on and after January 1, 2002, the \$150,000 amount described in this paragraph, as adjusted by the Commissioner, shall be increased to \$200,000, as adjusted by the Commissioner. For future Plan Years, any change to the limitation imposed by Code Section 401(a)(17)(B) shall be deemed to be automatically incorporated into this Plan without the necessity of an amendment to that effect.”

2.

The definition of Compensation in Article 2 shall be amended as of January 1, 2001, by adding a new sub-paragraph (iv) thereto, to read as follows:

“(iv) Effective January 1, 2001, Compensation shall be increased by the amount by which the Participant's Compensation is reduced by salary reduction or similar arrangement under Section 132(f)(4) of the Code (*i.e.*, a qualified transportation fringe benefit program).”

3

The definition of Eligible Retirement Plan in Article 2 shall be restated as of January 1, 2002, to read as follows:

**“Eligible Retirement Plan.** An Eligible Retirement Plan is (i) an individual retirement account described in Section 408(a) of the Code, (ii) an individual retirement annuity described in Section 408(b) of the Code, (iii) an annuity plan described in Section 403(a) of the Code, (iv) a qualified trust described in Section 401(a) of the Code, (v) an annuity contract described in Code Section 403(b), and (vi) an eligible plan under Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state agrees to separately account for amounts transferred into such plan from this Plan. An Eligible Retirement Plan must agree to accept the distributee's Eligible Rollover Distribution before an Eligible Rollover Distribution may be transferred from this Plan to such Eligible Retirement Plan. This definition also shall apply in the case of an Eligible Rollover Distribution to the Participant's surviving Spouse.”

4.

The definition of **Eligible Rollover Distribution** in Article 2 shall be amended as of January 1, 2002, by adding the following at the end thereof:

“Notwithstanding anything contained herein to the contrary, the portion of a distribution that is not includible in the gross income of the distributee because it represents a return of a Participant's after-tax contributions to the Plan (if any) shall constitute an Eligible Rollover Distribution, but such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of the distribution that is includible in gross income and the portion that is not so includible.”

5.

Section 5.3(a)(1) and (2), sub-sections under Section 5.3(a), **General Limit on Annual Additions**, shall be amended and restated as of January 1, 2002, to read as follows:

“(1) \$40,000 or

(2) 100 percent of such Participant's Compensation.”

6.

Section 6.6(c)-(d), sub-paragraphs under Section 6.6, **Time of Payment**, shall be restated, and new sub-paragraphs shall be added thereto, as of January 1, 2003, to apply to distributions required to be made for calendar years beginning on and after January 1, 2003 (but not for distributions made in 2003 that are attributable to 2002) to read as follows:

- “(c) Death of Participant After Distribution has Begun.** If distribution of a Participant's interest has begun in accordance with paragraph (a) above (i.e., distributions on or after the Required Beginning Date), and if the Participant dies before his entire interest has been distributed to him, then, beginning with the calendar year after the calendar year in which the Participant died, the remaining portion of such interest will be distributed either:
- (i) If the Participant has a Beneficiary as of the date of his death (or such later date as is permissible under Regulations), over the longer of (x) the remaining life expectancy of the Beneficiary; or (y) the remaining life expectancy of the Participant; or
  - (ii) If the Participant does not have a Beneficiary as of the date of his death (or such later date as is permissible under Regulations), over the remaining life expectancy of the Participant.
- (d) Death of Participant Before Distribution has Begun.** If a Participant dies before distribution of the Participant's interest has begun in accordance with paragraph (a) above (i.e., no distributions have been made on or after the Required Beginning Date), the entire interest of the Participant must be paid over whichever of the following periods is applicable:
- (i) If one or more Beneficiary is not the Participant's Spouse, the distribution period shall be the Beneficiary's remaining life expectancy.
  - (ii) If the sole Beneficiary is the Participant's Spouse, the distribution period shall be the Spouse's remaining life expectancy.
  - (iii) If there is no designated Beneficiary, the entire Account shall be distributed within 5 years after the Participant's death.
- (e) Commencement of Distribution.** Distributions under Section 6.6(d) above shall commence as follows:
- (i) Distributions under 6.6(d)(i) (i.e., distribution to a non-Spouse Beneficiary) shall begin on or before the end of the calendar year that begins immediately after the calendar year in which the Participant died.
  - (ii) Distributions under Section 6.6(d)(ii) (i.e., distribution to a Spousal Beneficiary) shall begin on or before the later of (x) the end of the calendar year immediately following the calendar year in which the Participant died and (y) the end of the calendar year in which the Participant would have attained age 70 1/2.

- (f) Form of Distribution. Any distribution payable under this Section 6.6 may be paid in any optional form of benefit that is available under the Plan, provided that all consent requirements under the Plan are satisfied.
- (g) 2003 Treasury Regulations. Notwithstanding anything to the contrary herein, distributions under the Plan will comply with Treasury Regulations issued under Code Section 401(a)(9) and any other provisions reflecting Code Section 401(a)(9), including the final regulations first effective as of January 1, 2003 (the "2003 Regulations").
- (h) Definition of Beneficiary. The terms "Beneficiary" and "Spouse" as used in this Section 6.6 shall be determined in accordance with the 2003 Regulations, notwithstanding that these definitions may be different from those set forth in Article 2."

7.

Section 10.01(c), a sub-section under Article 10, Maximum Benefits, shall be amended as of January 1, 2002, to replace the reference therein to "\$30,000" with "\$40,000."

8.

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

**Section 4:** 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 5:** All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

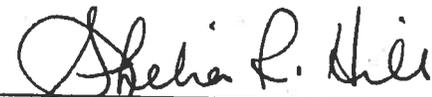
**Section 6:** This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

DATE: February 12, 2003

APPROVED:

  
William B. Dunaway, Mayor

ATTEST:

  
Shelia R. Hill, City Clerk

APPROVED AS TO FORM:

  
Douglas R. Haynie, City Attorney



**City of Marietta**  
**Motion Signature**

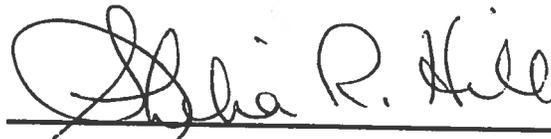
205 Lawrence Street  
Post Office Box 609  
Marietta, Georgia 30061

20011453

**Motion to amend the Supplemental Pension Plan by adoption of Amendment Number One providing for automatic disbursement of inactive accounts under \$5,000.**

**Date: 12/12/2001**

  
\_\_\_\_\_  
**Ansley L. Meaders, Mayor**

  
\_\_\_\_\_  
**Shelia R. Hill, City Clerk**

**AMENDMENT NUMBER ONE  
TO THE  
CITY OF MARIETTA  
SUPPLEMENTAL PENSION PLAN**

The City of Marietta, Georgia (the "City") adopted the City of Marietta Supplemental Pension Plan (the "Plan") effective as of January 1, 1981. The Plan was last amended and restated June 29, 2000 and effective as of January 1, 1989.

The City, acting through the City Council, has determined that the Plan should be amended to provide for the automatic distribution of small accounts upon a Participant's Termination of Employment or death, and hereby adopts this amendment to the Plan, effective as of the dates set forth below.

1.

Section 6.02, Termination for Other Reasons, shall be amended effective as of December 12, 2001, adding a new sub-section (c) thereto, to read as follows:

- "(c) Notwithstanding anything contained herein to the contrary, the Pension Board shall distribute any Account that does not, at the time of the Participant's Termination of Employment, exceed \$5,000. Such Account shall be distributed as soon as administratively feasible after the Participant's Termination of Employment, but not later than ninety (90) days after the end of the Plan Year in which occurred the Participant's Termination of Employment. However, if the Employer rehires a Participant prior to the date of distribution, no distribution shall be made under this Section 6.02(c). A distribution under this Section 6.02(c) shall be made only in a single lump sum, and not in installments or any other optional form of payment otherwise available under the Plan, and shall be made notwithstanding the Participant's failure to request or consent to the distribution."

2..

Section 7.2, Commencement of Survivor Benefits, shall be restated effective as of December 12, 2001, to read as follows:

- "(a) Account Exceeds \$5,000. If the value of the distributions to a Beneficiary exceed \$5,000, and the distributions have not commenced before the Participant's death, distribution shall begin as soon as administratively feasible after the date that benefits are requested by the Beneficiary, but no later than the date specified under Section 6.6. If distributions have commenced before the Participant's death in a form other than a lump sum, the Beneficiary shall continue to receive benefits in the same form as the Participant was receiving them, commencing as soon as administratively feasible after the Participant's death.

- (b) Account is Less Than or Equal to \$5,000. If the value of the Account payable to a Beneficiary is less than or equal to \$5,000, and distributions to the Participant did not begin before the Participant's death, the Pension Board shall distribute the Account in a single lump sum as soon as administratively feasible after the Participant's Termination of Employment, but not later than ninety (90) days after the end of the Plan Year in which the Participant's death occurred. This distribution shall be made notwithstanding the Beneficiary's failure to request or consent to the distribution."

**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.

---

**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.

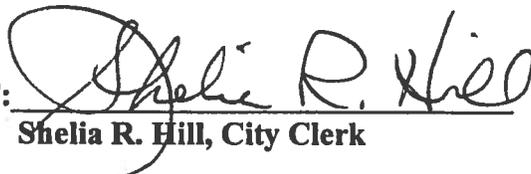
**Section 4:** This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

DATE: July 13, 2005

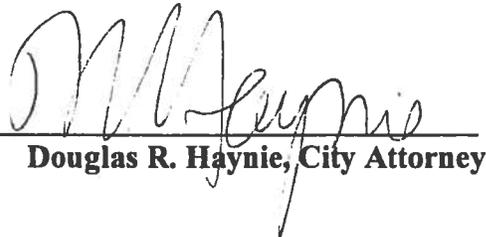
APPROVED: \_\_\_\_\_

  
William B. Dunaway, Mayor

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

  
Shelia R. Hill, City Clerk

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

  
Douglas R. Haynie, City Attorney

## User Fee for Employee Plan Determination Letter Request

▶ **Attach to determination letter application.**  
 ▶ **For the latest information about this form, go to [www.irs.gov/form8717](http://www.irs.gov/form8717).**

For IRS Use Only

OMB No. 1545-1772

Amount paid \_\_\_\_\_

**1** Name of plan sponsor (employer if single-employer plan)

City of Marietta, GA

**2** Sponsor's employer identification number

58-6000616

**3** Plan number

003

**4** Plan name

City of Marietta Supplemental Pension Plan

**Caution.** If you qualify for the exemption from user fees for small business employers, complete only the certification below (see the instructions on page 2 for details). For all other applications, leave the certification blank and check the appropriate box in column B of line 5.

### Certification

I certify that the application for a determination letter on the qualified status of the plan listed above meets the conditions for exemption from user fees described in section 7528(b)(2)(B) of the Internal Revenue Code.

Sign Here ▶ \_\_\_\_\_ Date ▶ \_\_\_\_\_

Type or print name and title ▶ \_\_\_\_\_

	Fee Schedule	
	A	B no Demo 5 and no Demo 6:
<b>5a Form 5300:</b>		<input checked="" type="checkbox"/> \$ 2,500
<b>b Form 5307:</b>		<input type="checkbox"/> \$ 300
<b>c Form 5310:</b>		<input type="checkbox"/> \$ 2,000
<b>d</b>		
<b>e Multiple employer plans (Form 5300):</b>		
<b>(1)</b> 2 to 10 Forms 5300 submitted . . . . .	<input type="checkbox"/>	<b>(1)</b> \$ 3,000
<b>(2)</b> 11 to 99 Forms 5300 submitted . . . . .	<input type="checkbox"/>	<b>(2)</b> \$ 3,000
<b>(3)</b> 100 to 499 Forms 5300 submitted . . . . .	<input type="checkbox"/>	<b>(3)</b> \$15,000
<b>(4)</b> Over 499 Forms 5300 submitted . . . . .	<input type="checkbox"/>	<b>(4)</b> \$15,000
<b>f Multiple employer plans (Form 5310):</b>		
<b>(1)</b> 2 to 10 employers maintaining the plan . . . . .	<input type="checkbox"/>	<b>(1)</b> \$ 3,000
<b>(2)</b> 11 to 99 employers maintaining the plan . . . . .	<input type="checkbox"/>	<b>(2)</b> \$ 3,000
<b>(3)</b> 100 to 499 employers maintaining the plan . . . . .	<input type="checkbox"/>	<b>(3)</b> \$15,000
<b>(4)</b> Over 499 employers maintaining the plan . . . . .	<input type="checkbox"/>	<b>(4)</b> \$15,000
<b>g Reserved</b>		
<b>(1a)</b>		
<b>(1b)</b>		
<b>(2a)</b>		
<b>(2b)</b>		
<b>(3)</b>		
<b>(4)</b>		
<b>h Reserved</b>		
<b>(1a)</b>		
<b>(1b)</b>		
<b>(2)</b>		
<b>(3)</b>		
<b>(4a)</b>		
<b>(4b)</b>		
<b>(5)</b>		
<b>(6)</b>		
<b>(7)</b>		
<b>i Form 5316 (Group trusts) . . . . .</b>		<input type="checkbox"/> \$ 1,000

Attach Check or Money Order Here



# Application for Determination for Employee Benefit Plan

OMB No. 1545-0197

See separate instructions.

Review the Procedural Requirements Checklist before submitting this application. For Internal Use Only

**1a** Number Assigned under Section 6.19 of Revenue Procedure 2008-6  -

**1b** Name of plan sponsor (employer if single-employer plan)

**1c** Address of plan sponsor (if a P.O. Box, see instructions)   
**1d** City  **1e** State  **1f** Zip Code

**1g** Country

**1h** Employer identification number (EIN)  **1i** Telephone number  **1j** Fax number  **1k** Employer's tax year ends

**2a** Person to contact if more information is needed. (See instructions.)  
(If a Power of Attorney is attached, check box, and do not complete this line.)   
Contact person's name

**2b** Contact person's address   
**2c** City  **2d** State  **2e** Zip Code   
**2f** Telephone number   
**2g** Fax number

If more space is needed for any item, attach additional sheets the same size as this form. Identify each additional sheet with the plan sponsor's name and EIN and identify each item.

Under penalties of perjury, I declare that I have examined this application, including accompanying statements and schedules, and to the best of my knowledge and belief, it is true, correct, and complete.

**SIGN HERE** ▶  **Date** ▶

**Type or print name**  **Type or print title**



3a Determination requested for (enter applicable number in box) (See instructions.)

- 1 - Initial qualification
- 2 - Request after initial qualification
- 3 - Affiliated Service Group (ASG) status (IRC section 414(m))
- 4 - Leased employee status (IRC section 414(n))
- 5 - Partial termination
- 6 - Termination of collectively bargained multi-employer or multiple-employer plan covered by PBGC insurance

b (i) If line 3a is 1, enter the effective date of the plan

(ii) If line 3a is 1, enter the date the plan was signed

(iii) If line 3a is 2, enter the effective date of the restatement

c If line 3a is 5, enter the effective date of the partial termination

d If line 3a is 6, enter the effective date of termination

e Enter number of amendments included

f Enter the date the amendment(s) were signed (If more than 4, see instructions)

(i)  (ii)  (iii)  (iv)

g Enter the date the amendment(s) were effective (If more than 4, see instructions)

(i)  (ii)  (iii)  (iv)

Yes No

h   Has the plan received a determination letter?

If "No," submit copies of all prior plan(s) and/or adoption agreement(s) and/or amendments. (See instructions.)

i If 3h is "Yes," enter the date of the latest letter

j Enter the number of amendments since the last determination letter.

k   Was this plan a prior adopter of a pre-approved plan? (See instructions.)

l If line 3k is "Yes," enter the Serial Number.

m   If line 3k is "Yes," was the sponsor authorized to adopt amendments?

n   Have interested parties been given the required notification of this application? (See instructions.)

o   Does the plan have a cash or deferred arrangement (section 401(k) or 414(x))?

p   Does the plan have matching contributions (section 401(m))?



3 (continued)

Yes No

- q   Does the plan have after-tax employee voluntary contributions (section 401(m))?
- r   Does the plan benefit noncollectively bargained employees or are more than 2% of the employees who are covered under a collectively bargaining agreement professional employees? See Regulations section 1.410(b)-6(d).
- s   Does the plan utilize the permitted disparity rules of section 401(l) when allocating contributions or benefits?
- t   Is the plan being filed "on-cycle" pursuant to Section 13 of Revenue Procedures 2007-44?

If "Yes," indicate the cycle the plan is being submitted in

If "No," skip to question v.

Enter the applicable number in the box to indicate the reason the plan was submitted in the cycle listed above.

- 1 - Last digit of the EIN.
- 2 - Multiple employer plan.
- 3 - Government plan including governmental multiple employer plan.
- 4 - Multi-employer plan.
- 5 - Pre-approved plan filing in the 2-year Remedial Amendment Cycle window (including special ASG leased employee or partial termination) rulings.
- 6 - Cycle changing event (enter date and attach explanation of cycle changing event).

u   Is the EIN of the parent company, jointly trusted single employer collective bargained plan (if the plan sponsor is the Joint Board of Trustees include the EIN of the Form 5500), or centralized organization (include the EIN of the centralized organization if that organization handles the administration and operations of the plan) being used? (See instructions.)

(1) If line 3u is "Yes," enter the EIN of parent, Joint Board of Trustees, or centralized organization.

v   If 3t is "No," are you requesting priority considerations as specified in Section 14.02 of Revenue Procedure 2007-44?

If "Yes," indicate the cycle the plan is being submitted in

Enter the applicable number in the box for the reason the plan was submitted in the cycle listed above.

- 1 - New plan exception.
- 2 - Urgent business need.
- 3 - Cycle changing event (date and explanation of cycle changing event).

w   Is this plan an offset arrangement with any other plan? (If "Yes," attach a separate statement providing the name, EIN, the plan provision, and type of the other plan including plan sections that is part of the arrangement.) (See instructions.)



4a Name of plan (If plan name exceeds 70 characters, including spaces, see instructions):

City of Marietta Supplemental Pension Plan

- b Enter 3-digit plan number (See instructions.)
- c Enter the month on which the plan year ends
- d Enter plan's original effective date
- e Enter number of participants (See instructions.)

5 Indicate type of plan by entering the number from the list below:

- |                                       |                                  |                                          |                                            |
|---------------------------------------|----------------------------------|------------------------------------------|--------------------------------------------|
| <input checked="" type="checkbox"/> 2 | 1 - profit sharing and/or 401(k) | 4 - defined benefit but not cash balance | 7 - non-leveraged ESOP (See instructions.) |
|                                       | 2 - money purchase               | 5 - cash balance (See instructions.)     | 8 - stock bonus                            |
|                                       | 3 - target benefit               | 6 - leveraged ESOP                       | 9 - safe harbor 401(k)                     |

If this plan contains any ESOP provisions, do not use 1 or 2, use 6 or 7, as applicable.

Yes No

- 6a  Yes  No Is the employer a member of an affiliated service group (ASG)?
- b  Yes  No Is the employer a member of a controlled group of corporations or a group of trades or businesses under common control? If 6a and/or 6b is "Yes," see instructions.
- c  Yes  No Were elections made to use "Cycle A" per Section 9 of Revenue Procedure 2007-44? (See instructions.)
- 7a  Yes  No Is this a governmental plan? Date of last legislative session.
- b  Yes  No If line 7a is "Yes," is the plan a state level plan?
- c  Yes  No Is this a nonelecting church plan?
- d  Yes  No Is this a collectively bargained plan? (See Regulations section 1.410(b)-9)
- e  Yes  No Is this a section 412(e)(3) plan?
- f  Yes  No Has this plan been involved in a merger which was not considered in a prior favorable determination letter?
- g  Yes  No Has the plan been amended or restated to change the type of plan?
- h  Yes  No Is this a multiple employer plan?

If line 7h is "Yes," enter the total number of participating employers.

i If line 7h is "Yes," enter the number of participating employers currently being submitted.



7 (continued)

j (i) If line 7h is "Yes," enter the EIN of the employer submitting the lead plan. (ii) If line 7h is "Yes," enter the plan number of the lead plan. k   Is this a multi-employer plan as described in section 414(f)?l   Is this a request for a ruling under section 401(h) or section 420?m   Is this considered a foreign plan or is the trust a foreign trust?

If 7f, 7g, 7h, 7i, 7k, 7l, or 7m is "Yes," see instructions.

8a 

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

 Do you maintain any other qualified plan(s) under section 401(a)? If "Yes," attach required statement per instructions. If "No," skip to line 8d.b   Do you maintain another plan of the same type (for example, both this plan and the other plan are defined contribution plans or both are defined benefit plans) that covers non-key employees who are also covered under this plan?

If "Yes," when the plan is top-heavy, do the non-key employees covered under both plans receive the required top-heavy minimum contribution or benefit under (see instructions):

  (1) This plan?  (2) The other plan?c   If this is a defined contribution plan, do you maintain a defined benefit plan (or if this is a defined benefit plan, do you maintain a defined contribution plan) that covers non-key employees who are also covered under this plan?

If "Yes," when the plan is top-heavy, do the non-key employees covered under both plans receive (see instructions):

  (1) The top-heavy minimum benefit under the defined benefit plan?  (2) At least a 5% minimum contribution under the defined contribution plan?  (3) The minimum benefit offset by benefits provided by the defined contribution plan?  (4) Benefits under both plans that, using a comparability analysis, are at least equal to the minimum benefit?d   Does the plan prevent the possibility that the section 415 limitations will be exceeded for any employee who is (or was) a participant in this plan and any other plan of the employer?

**9 General Eligibility Requirements**

a Check all that apply:

- (1)  All employees
- (2)  Hourly rate employees
- (3)  Salaried employees
- (4)  Other: (Specify in box below)

See attachment

b  1 Minimum years of service required to participate. If no minimum, check

c  Minimum age required to participate. If no minimum, check

**10 Vesting** Indicate the regular (non-top heavy) vesting provisions of the plan by entering the letter from the list below:

- a - Full and immediate
- c - Full vesting after 3 years of service
- e - 2 to 6 year graded vesting
- b - Full vesting after 2 years of service
- d - Full vesting after 5 years of service
- f - 3 to 7 year graded vesting
- g - Other

**11 Benefits and Requirements for Benefits**

a For defined benefit plans - Method for determining accrued benefit:

(1) Benefit Formula at early retirement age is

(2) Benefit Formula at normal retirement age is

(3) Normal form of retirement benefit is

b For defined contribution plans - Employer contributions:

(1) Profit Sharing or stock bonus plan contributions are determined under (check box):

- A definite formula
- A discretionary formula
- Both

(2) Matching contributions are determined under, check box:

- A definite formula
- A discretionary formula
- Both



11b (continued)

(3) Money purchase plan - Enter rate of contribution 6.13

(4) Target benefit plan - State target benefit formula

Indicate the plan section where the allocation/benefit formula is located in the plan document.

3.01

12 Miscellaneous

a 

N/A	Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

 Does any amendment to the plan reduce or eliminate any section 411(d)(6) protected benefit including an amendment adopted after September 6, 2000, to eliminate the joint and survivor annuity form of benefit? (See Instructions.)

b 

	Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

 Are trust earnings and losses allocated on the basis of account balances in a defined contribution plan? If "No," attach a statement explaining how they are allocated.

c Is this plan or trust currently under examination or is any issue related to this plan or trust currently pending before the:

- |     |                                     |                                     |                                                                                                                                                   |
|-----|-------------------------------------|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
|     | Yes                                 | No                                  |                                                                                                                                                   |
| (1) | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Internal Revenue Service,                                                                                                                         |
| (2) | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Department of Labor,                                                                                                                              |
| (3) | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Pension Benefit Guaranty Corporation,                                                                                                             |
| (4) | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Voluntary Compliance Resolution Program of the Employee Plans Compliance Resolution System (EPCRS), or Employee Benefits Security Administration, |
| (5) | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Any Court?                                                                                                                                        |

If "Yes," attach a statement explaining the issues involved and the contact person's name (IRS Agent, DOL Investigator, etc.) and telephone number.

**Determination request regarding the ratio percentage test. A determination regarding the average benefit test may be requested by attaching Schedule Q (Form 5300), Elective Determination Requests. See instructions.**

13 

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>

 Is this a request for a determination regarding the ratio percentage test of Regulations section 1.410(b)-2(b)(2) or a request for a determination regarding one of the special requirements of Regulations section 1.410(b)-2(b)(5), (6), or (7)?

If "Yes," complete only lines 13a through 13n for a ratio percentage test determination or complete only line 13o for a determination regarding one of the special requirements. If "No," skip to line 14.

a 

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

 Is this plan disaggregated into two or more separate plans that are not section 401(k), 401(m), or profit sharing plans? If "Yes," see the instructions and attach separate schedules for each disaggregated portion.

b 

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

 Does the employer receive services from any leased employees as defined in section 414(n)?



13 (continued)

c Coverage date (MMDDYYYY). See instructions for inserting date. . . . .

d Total number of employees (include self-employed individuals) (employer-wide) . . . . .

e Statutory and regulatory exclusions under this plan (do not count an employee more than once):

(1) Number of employees excluded because of minimum age or years of service required. . . . .

(2) Number of employees excluded because of inclusion in a collective bargaining unit . . . . .

(3) Number of employees excluded because they terminated employment with less than 501 hours of service and were not employed on the last day of plan year . . . . .

(4) Number of employees excluded because employed by other qualified separate lines of business (QSLOBs) . . . . .

(5) Number of employees excluded because they were nonresident aliens with no earned income from sources within the United States . . . . .

f Total statutory and regulatory exclusions (add lines 13e(1) through 13e(5)). . . . .

g Nonexcludable employees (subtract line 13f from line 13d) . . . . .

h Number of nonexcludable employees on line 13g who are highly compensated employees (HCEs) . . . . .

i Number of nonexcludable HCEs on line 13h benefiting under the plan . . . . .

j Number of nonexcludable employees who are nonhighly compensated employees (NHCEs) (subtract line 13h from line 13g) . . . . .

k Number of nonexcludable NHCEs on line 13j benefiting under the plan . . . . .

l Ratio percentage (see instructions). . . . .

m Enter the ratio percentage for the following, if applicable:

(1) Section 401(k) part of the plan . . . . .

(2) Section 401(m) part of the plan . . . . .



13 (continued)

- Yes No
- n   Are the results on line 13l or 13m based on the aggregated coverage of more than one plan? If "Yes," attach a statement listing the names, plan numbers, EINs, and benefit/allocation formula of the other plans. **All on-cycle individually designed aggregated plans should be filed concurrently.**
- o If the plan satisfied coverage using one of the special requirements of Regulations section 1.410(b)-2(b)(5), (6), or (7), enter the letter from the list below that identifies the special rule.
- A = 1.410(b)-2(b)(5) - No NHCEs employed  
 B = 1.410(b)-2(b)(6) - No HCEs benefit  
 C = 1.410(b)-2(b)(7) - Collectively bargained only

**Determination request regarding the nondiscrimination design-based safe harbors of section 401(a)(4). See instructions.**

- Yes No
- 14   Is this a request for a determination regarding a design-based safe harbor under section 401(a)(4)? If "Yes," complete a-d.

**Note. Section 401(k) and/or section 401(m) plans that do not contain a provision for discretionary contributions should not complete this line.**

**Design-based nondiscrimination safe harbors:**

- a   Does the plan provide for disparity in contributions or benefits that is intended to meet the permitted disparity requirements of section 401(l)? If "Yes," answer line 14b. Otherwise, skip to line 14c.
- b   Do the provisions of the plan ensure that the overall permitted disparity limits will not be exceeded?
- c Enter the letter ("A" - "G") from the list below that identifies the safe harbor intended to be satisfied.
- A = 1.401(a)(4)-2(b)(2) defined contribution (DC) plan with uniform allocation formula  
 B = 1.401(a)(4)-3(b)(3) unit credit defined benefit (DB) plan  
 C = 1.401(a)(4)-3(b)(4)(i)(C)(1) unit credit DB fractional rule plan  
 D = 1.401(a)(4)-3(b)(4)(i)(C)(2) flat benefit DB plan  
 E = 1.401(a)(4)-3(b)(5) insurance contract plan  
 F = 1.401(a)(4)-8(b)(3) target benefit plan  
 G = 1.401(a)(4)-8(c)(3)(iii)(B) cash balance plan

- d List the plan section(s) that satisfy the safe harbor (including, if applicable, the permitted disparity requirements):



## Procedural Requirements Checklist

Use this list to ensure that your submitted package is complete. Failure to supply the appropriate information may result in a delay in the processing of the application.

1.  Is Form 8717, User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request, attached to your submission?
2.  Is the appropriate user fee for your submission attached to Form 8717?
3.  If appropriate, is Form 2848, Power of Attorney and Declaration of Representative, Form 8821, Tax Information Authorization, or a privately designed authorization attached? (For more information, see the Disclosure Request by Taxpayer in the instructions and Rev. Proc. 2011-4, 2011-1 I.R.B. 123.)
4.  Is a copy of your plan's latest determination letter, if any, attached?
5.  Have you included a copy of the plan, trust, and all amendments since your last determination letter?
6.  Is the EIN of the plan sponsor/employer (NOT the trust's EIN) entered on line 1h?
7.  Does line 4d provide the plan's original effective date?
8.  Is the application signed and dated? (Stamped signatures are not acceptable; see Rev. Proc. 2011-4.)
9.  Have interested parties been given the required notification of this application? Make sure line 3n is completed. (See **instructions.**)
10.  If you are requesting a determination for an Affiliated Service Group Status, have you included the information requested in the instructions?
11.  If you answered "Yes" to line(s) 6a and/or 6b, have you included the information requested in the instructions?
12.  **For Multiple Employer Plans:** Have you included the required information as specified in the instructions under *Specific Plans-Additional Requirements*?
13.  **For Partial Termination Requests:** Have you included the required information as specified in the instructions under *Type of Determination Letter Requested, Partial Termination*?
14.  If you answered "Yes" to line 8a, have you included the requested information?
15.  If lines 13 and 14 are "No," and you are requesting additional determinations, are Schedule Q (Form 5300) and the applicable demonstrations attached? (See **instructions for Schedule Q.**)
 

<input type="checkbox"/> Demo 1	<input type="checkbox"/> Demo 5	<input type="checkbox"/> Demo 8	<input type="checkbox"/> Demo 11
<input type="checkbox"/> Demo 3	<input type="checkbox"/> Demo 6	<input type="checkbox"/> Demo 9	
<input type="checkbox"/> Demo 4	<input type="checkbox"/> Demo 7	<input type="checkbox"/> Demo 10	



**Procedural Requirements Checklist (continued)**

- 16.  **For Employee Stock Ownership Plans (ESOP):** Have you attached Form 5309, Application for Determination of Employee Stock Ownership Plan, to your submission?
- 17.  **For Pension Benefit Guaranty Corporation Terminations (PBGC):** Have you included the required information as specified in the instructions under *Type of Determination Letter Requested*?
- 18.  Have you included the signed and dated Form 8905, Certification of Intent To Adopt a Pre-approved Plan, if applicable?



**City of Marietta Supplemental Pension Plan**  
**EIN#: 58-6000616**  
**Plan #003**  
**Attachment to Form 5300**

**Plan Amendments –Item 3(f) and (g)**

Signed: 06292000  
Effective: 01011989

Signed: 12122001  
Effective: 12122001

Signed: 02122003  
Effective: 01012002

Signed: 07132005  
Effective: 01012004

Signed: 03042011  
Effective: 11152010

**Other Qualified Plans – Item 8a**

Name of Plan: Consolidated Retirement Plan for Employees of City of Marietta GA (Plan 4532)

Type of Plan: Defined Benefit Plan

Form of Plan: Individually designed

Plan No: 002

This Plan is being filed for a favorable determination letter in Cycle C ending 01/31/2014.

**General Eligibility Requirements – Item 9a(4)**

Regular Full time Employees (including appointed Employees)

Part-time and Temporary Employees hired on and after 01/01/2000

Excludes: Leased Employees, Judges, elected officials, solicitors, contract employees, independent contractors.

**Employer Contributions to Money Purchase Plan – Item 11b(3)**

6.13% for Full time employees

7.5% for Part time and temporary employees.