



City of Marietta

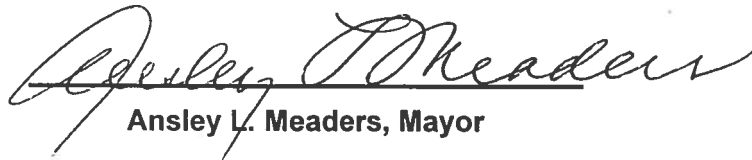
Motion Signature

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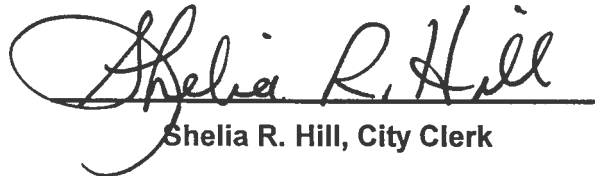
20000780

Motion to approve the Supplemental Pension Plan Document which includes the trust agreement with The Chicago Trust Company.

Date: 6/29/00



Ansley L. Meaders, Mayor



Shelia R. Hill, 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 Nonforfeitability 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. [Signature]*

ATTEST:
[Signature]
ASSIST. SECY