

THE MAYOR AND COUNCIL OF THE CITY OF DALTON  
EMPLOYEES' PENSION PLAN

2008 VERSION AS AMENDED

**SECTION 1  
DEFINITIONS**

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

1.01     Actuarial Equivalent: shall mean one-half of one percent (.005) for each full calendar month during the period being counted. Examples: (1) for early retirement benefits calculated under Section 4.02, the reduction is one-half of one percent (.005) for each full calendar month from the Early Retirement Date to the earliest Normal Retirement Date. (2) For benefits calculated for Participants terminating after one hundred and twenty (120) months and making the election under Section 8.02 (iv), the reduction is one-half of one percent (.005) for each full calendar month from the month of commencement of benefits after the 55th birthday to the Normal Retirement Date.

1.02     Basic Monthly Earnings: shall mean, with respect to any Participant, the total compensation, including any bonus or deferred compensation for past services or performance, paid or accrued by the Employer for a Plan Year divided by the Participant's Months of Service during the Plan Year. Amounts contributed by the Employer to the Plan and contributions by the Employer providing any fringe benefit shall not be considered as compensation. Any bonus or deferred income for past services or performance is not a fringe benefit and is included in total compensation for the Plan Year paid or deferred. Notwithstanding the foregoing, and except as provided below, (i) the total compensation taken into account when calculating the Basic Monthly Earnings shall not (i) exceed the maximum limitation of Code Section 401(a) (17), as adjusted from time to time; (ii) include any lump sum severance paid to a terminated Employee; or (iii) include any lump sum payment that an Employee elects to receive for his/her accrued sick and vacation leave upon a Severance according to an Employer's policies and procedures.

1.03     Beneficiary:     shall mean the person (s) designated by the Participant in accordance with Section 6.03 or its predecessor provision(s) under the Prior Plan, who is or are entitled to receive benefits after the death of a Participant under the terms of the Plan.

1.04     Board:     shall mean the Board of Trustees of the Mayor and Council of the City of Dalton Employees' Pension Plan, established in accordance with Section 10.04.

1.05     City:     shall mean the Mayor and Council of the City of Dalton.

1.06     Code:     shall mean the Internal Revenue Code of 1986, as amended, including any rulings or regulations thereunder.

1.07     Contract:     shall mean, as of the effective date of this Plan and under the Prior Plan, Group Annuity Contract No. 1515 both issued by the Metropolitan Life Insurance Company to the Employer, the Plan or the Board, as amended from time to time, and any other annuity contract or policy of insurance made or entered or substituted for the foregoing by the Board after the effective date of this Plan.

1.08     Contributions:     shall mean the Employer contributions made in accordance with Section 9.01 of the Plan as well as the Participant's contributions made in accordance with Section 9.03 of the Plan.

1.09     Credited Service:     shall mean "Continuous Service" as defined under the terms of the Prior Plan for those Participants who participated in the Prior Plan as of June 30, 1982, expressed in Months of Service. For Periods of Service rendered after June 30, 1982, Credited Service shall mean all Months of Service beginning on or after July 1, 1982, determined as the total Period of Service while the Employee is employed by the Employer. The Credited Service of a rehired Participant shall only include those Months of Service following his or her most recent Severance.

(i) Any Participant who commences participation in this Plan as of January 1, 1988, due to Section 2.04, shall receive Credited Service under the Plan from January 1, 1988 to the Participant's Severance. Such Participant may make an election at the time of his application for participation in the Plan, on such form as the Board may prescribe, to contribute additional Employee contributions each month in order to receive additional Credited Service for the period of time he/she was employed by the Employer but was excluded from participation in the Plan or the Prior Plan due to the maximum Age provisions contained in the Plans prior to the amendment of Section 2.04 allowing such Participant to participate in the Plans. The amount of such monthly contribution shall be five percent (5%) of his or her Basic Monthly Earnings as of January 1, 2008 for each month elected. The period of Credited Service elected may be all or any portion of his Period of Service.

(ii) Any Participant who commences his/her participation in this Plan on the effective date of the amendment to the Plan providing for participation by Eligible Employees of the Northwest Georgia Trade and Convention Center Authority may elect to purchase Credited Service under the Plan back to January 1, 1989 in accordance with the following terms and conditions. Any such Participant shall make such election on such forms as the Board may prescribe and such election form with payment required in the next sentence shall be delivered to the Clerk of the City of Dalton as agent for the Board on or before April 15, 1995, otherwise such election shall expire. Such Participant shall pay into the Plan in consideration for past service credit a sum equal to forty (40%) percent of the estimated actuarial cost of the benefit purchased as determined by the Plan's independent actuaries. No such Participant may elect to purchase Credited Service for any period that he/she was not otherwise eligible to be a Participant in the Plan had the amendment to purchase credit for service with the Northwest Georgia Trade and Convention Center Authority been in effect. The period of Credited Service elected may, however, be for all or any portion of his/her Period of Service back to January 1, 1989.

(iii) Any Eligible Employee of the Dalton-Whitfield Regional Solid Waste Management Authority who had commenced his/her participation in this Plan on or before the effective date of the amendment to the Plan providing participation by Eligible Employees of Dalton-Whitfield Regional Solid Waste Management Authority and who was an Employee of the City of Dalton participating in the Plan on the day immediately preceding the activation of the Dalton-Whitfield Regional Solid Waste Management Authority shall not be deemed to have incurred a Severance under the Plan between his/her employment with the City of Dalton and his/her transfer to the Dalton-Whitfield Regional Solid Waste Management Authority.

(iv) Any Participant who is on a “qualified leave” from employment with the Employer may make a single election to purchase up to 12 months of Credited Service with the Employer for the period of qualified leave, according to the following terms and conditions. Each eligible Participant shall make the election on such forms as the Board may prescribe either during or within 60 days following the period of qualified leave, but in no case later than 14 months following the date the qualified leave began. The completed election form with payment must be delivered to the Human Resources Director on or before expiration of the election period set forth in the preceding sentence, otherwise, the right to elect Credited Service for such qualified leave shall expire. The period elected may be for all or a portion of qualified leave (up to 12 months). The employee will be permitted to pay for the leave purchased through regular payroll deductions over a maximum period of up thirty-six (36) months. “Qualified leave” means any period during which an Employee is on an approved leave of absence pursuant to the Employer’s policies and procedures as a result of (a) receiving workers compensation benefits due to employment with the Employer, (b) paid accrued time off, (c) the Family Medical Leave Act, (d) subject to the provisions of the Uniform Services Employment and Reemployment Act of 1994, or (e) pre-approved personal leave without pay.

1.10 Effective Date: shall mean (a) January 1, 1967 as to the Prior Plan as amended; and (b) July 1, 1982 as to the Plan herein amended and restated.

1.11 Eligible Employee: shall mean any Employee who has satisfied the provisions for participation set forth in Section 2 of this Plan, and who has not incurred a Severance.

1.12    Employee: shall mean, except as specifically provided herein, all persons including the City Clerk employed by an Employer. However, it shall not include the Mayor, Councilmen, Water, Light and Sinking Fund Commissioners, Recreation Commissioners, members of the Dalton Whitfield Regional Solid Waste Management Authority, Public Safety Commissioners, Northwest Georgia Trade & Convention Center Authority Members, nor shall it include any individual who is designated as a consultant or independent contractor by the City or any other Employer.

1.13    Employer: shall mean whichever of the City, the Public Safety Commission, the Water, Light and Sinking Fund Commission, the Recreation Commission of the City of Dalton, the Northwest Georgia Trade and Convention Center Authority, the Dalton-Whitfield Convention Visitors Bureau, or the Dalton-Whitfield Regional Solid Waste Management Authority, a regional solid waste management authority of the City of Dalton and County of Whitfield created jointly by the governing bodies to the Regional Solid Waste Management Authorities Act (O.C.G.A. § 12-8-50 et seq.), exercises direction and control over the Employee at the time of reference.

1.14    Employment Commencement Date: shall mean the date an Employee first performs services for the Employer while classified as a full-time employee under the Employer's policies and procedures, as they may exist from time to time.

1.15    Final Average Earnings: shall mean the average of a Participant's Basic Monthly Earnings during any period of thirty-six (36) consecutive calendar months within the last one hundred and twenty (120) months of Credited Service which produces the highest monthly average.

1.16    Investment Manager: shall mean any person, firm or corporation who is a registered investment adviser under the Investment Adviser's Act of 1940, a bank or an insurance company, and who (a) has the power to manage, acquire, or dispose of Plan assets, and (b) acknowledges in writing his or its fiduciary responsibility to the Plan.

1.17	<u>Month of Service:</u>	shall mean a calendar month during all or part of which the Employee is classified as an active, full-time employee under the policies and procedures of the Employer, as they may exist from time to time. Months of Service shall also include those calendar months during all or part of which the Employee is credited with service with the Employer based on the policies and procedures of the Employer for that period. Months of service shall not include any accrued time for vacation or sick leave that a Participant elects to receive in a lump sum payment upon a Severance according to Employer's policies and procedures for that period.
1.18	<u>Participant:</u>	shall mean an Eligible Employee, or former Eligible Employee who is receiving or is entitled to receive a non-forfeitable benefit under the terms of the Plan or the Prior Plan.
1.19	<u>Participant's Contributions With Interest:</u>	shall mean, as of any date, the total of a Participant's contributions made after the effective date of the Prior Plan plus accumulated compound interest at the rate of three (3%) percent per annum from the last day of the year in which a contribution is made to the date of reference.
1.20	<u>Reserved</u>	
1.21	<u>Pension Benefit:</u>	shall mean, as of a Severance (on or after January 1, 1988), the monthly retirement benefit of the Participant, equal to the product of (a) multiplied by (b), where (a) is fifteen hundredths of a percent (0.15% or .0015) of the Participant's Final Average Earnings, and (b) is the Participant's Credited Service.
1.22	<u>Period of Service:</u>	shall mean a period of service commencing on the Employee's Employment Commencement Date and ending on a Severance.
1.23	<u>Plan(s):</u>	shall mean the "Mayor and Council of the City of Dalton Employees' Pension Plan" as herein amended and restated.
1.24	<u>Plan Actuary:</u>	shall mean an individual who is an enrolled actuary, or shall mean a company having as employees one or more enrolled actuaries, who or which provides actuarial services to the Plan. If the Plan Actuary is a company, such company shall designate, in writing to the Board, the individual enrolled actuary who is responsible for the actuarial services to be provided to the Plan.

1.25	<u>Plan Assets:</u>	shall mean all property of any kind held by the Board at the time of reference pursuant to the provisions of the Plan together with any income accruing thereon.
1.26	<u>Plan Year:</u>	shall mean the twelve-month period ending December 31 <sup>st</sup> each year.
1.27	<u>Prior Benefits:</u>	shall mean the Participant's monthly benefit, determined under the provisions of the Plan as it existed prior to July 1, 1982, including any permanent disability, pension or death benefit.
1.28	<u>Prior Plan:</u>	shall mean the Mayor and Council of the City of Dalton Employees Pension Plan, as in effect on June 30, 1982.
1.29	<u>Retire:</u>	shall mean to have a Severance on or after the date upon which a Participant becomes eligible for a Pension Benefit under Sections 3 or 4 of this Plan.
1.29(a)	<u>Retiree</u>	shall mean a former Eligible Employee who is receiving Pension Benefits.
1.30	<u>Severance:</u>	shall mean the date on which an Employee's employment with the Employer is terminated for any reason, including retirement pursuant to provisions of Sections 3 or 4 of this Plan. The termination of employment of an Employee shall be determined by the Employer according to its policies and procedures, as they may exist from time to time; provided, that Severance shall not result from any period of absence of an Employee who, prior to beginning such leave, obtained a written authorized leave of absence from the Employer, pursuant to an established nondiscriminatory policy, whether occasioned by illness or any other reason. In such event, the Employer shall keep a copy of the prior written authorization in the Employee's personnel file. Severance shall not result from an Employee transferring from one Employer to another Employer, even if the Employee's employment is deemed terminated by the previous Employer for other purposes. Severance shall not occur as provided by the Uniformed Services Employment and Re-Employment Rights Act of 1994 ("USERRA").

## **SECTION 2**

### **ELIGIBILITY AND PARTICIPATION**

## 2.01 Participation of Participants Under Prior Plan

Each Employee in the employ of the Employer on June 30, 1982 who was a Participant in the Prior Plan as of such date, shall continue to participate herein in accordance with the provisions hereof. Former Employees who are Participants and who are receiving or are entitled to receive a non-forfeitable benefit under the terms of the Prior Plan shall receive said Prior Benefit in accordance with the provisions of the Prior Plan.

## 2.02 Eligibility Requirement for Employees Employed Before July 1, 1982

Each Employee in the employ of the Employer on June 30, 1982 shall be eligible to participate in accordance with the eligibility for participation provisions of the Prior Plan.

## 2.03 Eligibility Requirements for Employees Effective July 1, 1982 and Later

(i) Each Employee in the employ of the Employer during the period July 1, 1982 until July 1, 1994 shall be eligible to participate in the Plan in accordance with the eligibility provisions of the Prior Plan as they existed during that period.

(ii) Effective July 1, 1994, each Employee who has completed six (6) Months of Service shall participate in the Plan and shall enter the Plan as a Participant as the first (1<sup>st</sup>) day of the month coincident with or immediately following his/her satisfying such requirement. There shall be no minimum age requirement.

(iii) Each Employee shall make application to the Employer for participation in the Plan and agree to the terms hereof. The making of said application shall apply to a Participant eligible under Sections 2.01 and 2.02 as well as Section 2.03 hereof. In the event any Employee fails to file such application, the Employer may file such application on behalf of such Employee, on a non-discriminatory basis. Upon the acceptance of any benefits under this Plan, such Employee shall automatically be bound by the terms and conditions of this Plan and all amendments hereto.

## 2.04 Participation of Employees Previously Excluded from Participation due to Maximum Age Provisions

Any active Employee as of January 1, 1988, who was excluded from participating in the Plan or the Prior Plan due to attainment of age 50 as of the date he would have otherwise satisfied the eligibility requirements under Sections 2.01, 2.02, or 2.03, shall have the right to commence participation in the Plan as of January 1, 1988 pursuant to Section 1.09(i).

## 2.05 Participation of Persons Entitled to Prior Benefits

Any person who has been a participant in the Prior Plan and who became entitled to Prior

Benefits shall continue to participate in the Plan as a recipient of the Prior Benefits as provided under the Prior Plan.

**2.06 Determination of Eligibility**

The Board shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer, and other sources as acceptable to the Board. Such determination shall be conclusive and binding upon all persons, as long as the same is made in accordance with the terms of the Plan and applicable federal and state statutes, provided such determination shall be subject to review as provided in Section 10.05.

**2.07 Plan Participation Does Not Affect Employer's Right to Discharge**

Participation in the Plan shall not give any Employee the right to be retained in the Employer's employ or to interfere with the right of the Employer to discharge any Employee at any time.

**2.08 Participation with Employment Commencement Date On or After July 1, 2002**

Employees with an Employment Commencement Date, including former Employees re-hired after a Severance, on or after July 1, 2002 shall not be an Eligible Employee and shall not become a Participant for purposes of accruing a Pension Benefit under the Plan for service on and after the date of rehire.

**SECTION 3  
NORMAL RETIREMENT**

Normal Retirement under the Plan is elected by the Participant following his Severance on or after the Normal Retirement Date in Section 3.01. In the event of Normal Retirement, payment of the Pension Benefit shall be governed by the following provisions of this Section and Exhibit A relating to special elections.

**3.01 Normal Retirement Date Defined**

The Normal Retirement Date of a Participant shall, at the election of the Participant, be one of the following:

- (i) the first day of the month coincident with or immediately following the date he attains his 65<sup>th</sup> birthday and completes, at least, sixty (60) months of Credited Service as a Participant in the Plan,
- (ii) the first date of the month coincident with or immediately following the completion of both, at least, three hundred (300) months of Credited Service and attainment of age 55, or

- (iii) the first day of the month coincident with or immediately following the completion of, at least, three hundred and sixty (360) months of Credited Service.

### **3.02 Payment of Pension Benefit**

The Pension Benefit in the event of Normal Retirement shall be payable in advance as soon as administratively possible on or after the first day of the month, with the first payment due on the first day of the month coincident with or immediately following the Participant's Normal Retirement Date, subject to final approval by the Board. The Normal Retirement Pension Benefit shall be paid during the life of the Participant and for a period of one hundred twenty (120) months certain and continuous from the first day of the month following the Participant's Normal Retirement Date. In the event of the Participant's death within a period of one hundred twenty (120) months after his Normal Retirement Date, the same Normal Retirement Pension Benefit shall be payable for the remainder of the one hundred twenty (120) month period to the Participant's Beneficiary. If the deceased Participant shall have a qualifying spouse as defined in Section 6.01 hereof, a monthly survivor benefit payment equal to fifty-five (55%) percent of the Pension Benefit shall be payable to said qualifying spouse during said qualifying spouse's lifetime. This survivor benefit to said qualifying spouse shall be paid in advance on the first day of the month, with the first payment due on the first day of the month coincident with or following the one hundred twenty (120) month period from the deceased Participant's Normal Retirement Date.

## **SECTION 4 EARLY RETIREMENT**

Early Retirement under the Plan is elected by the Participant following his Severance on or after the Early Retirement Date in Section 4.01 and prior to the earliest Normal Retirement Date in Section 3.01. Payment of the Pension Benefit upon Early Retirement shall be governed by the following provisions of this Section.

### **4.01 Early Retirement Date Defined**

The Early Retirement Date of a Participant shall be on the date elected by the Participant following his Severance occurring:

- (i) prior to Participant's earliest Normal Retirement Date, after the Participant has reached his/her 50<sup>th</sup> birthday, and the Participant has at least one hundred eighty (180) months of Credited Service; or
- (ii) prior to Participant's earliest Normal Retirement Date, after the Participant has reached his/her 55<sup>th</sup> birthday, and the Participant has at least one hundred twenty

(120) months of Credited Service.

#### 4.02 Payment of Pension Benefit

The Pension Benefit payable in the event of Early Retirement shall be in the amount and payable as follows:

A monthly benefit equal to the Pension Benefit, reduced by the Actuarial Equivalent that is determined for the period beginning on the Early Retirement Date and ending on the Participant's earliest possible Normal Retirement Date, assuming that such Participant continued employment until such date, but without crediting any Months of Service for benefit accrual or retirement purposes following the Early Retirement Date.

The Pension Benefit in the event of Early Retirement shall be payable in advance as soon as administratively possible on or after the first day of the month, with the first monthly payment due on the first day of the month coincident with or immediately following the Participant's Early Retirement Date, subject to final approval by the Board. The Early Retirement Pension Benefit shall be paid during the life of the Participant and for a period of one hundred twenty (120) months certain and continuous from the first day of the month following Participant's Early Retirement Date.

In the event of the Participant's death within a period of one hundred twenty (120) months after his Early Retirement Date, the same monthly Early Retirement Pension Benefit shall be payable for the remainder of the one hundred twenty (120) month period to the Participant's Beneficiary. If the deceased Participant shall have a qualifying spouse as defined in Section 6.01 hereof, a monthly survivor benefit payment equal to fifty-five (55%) percent of the Pension Benefit shall be payable to said qualifying spouse during said qualifying spouse's lifetime. This survivor benefit to said qualifying spouse shall be paid in advance on the first day of each month with the first payment due on the first day of the month coincident with or following the one hundred twenty (120) month period from the deceased Participant's Early Retirement Date.

#### 4.03 Early Retirement Not Applicable to Those Electing Under Section A.03

The election for Early Retirement provided in this Section 4 of the Plan shall not be applicable to any Participant making the irrevocable election referred to in Section A.03 hereof.

#### 4.04 Early Retirement after a Severance

A Participant who incurs a Severance while eligible for an Early Retirement and who elects an immediate Early Retirement Date by the end of the third business day following the date of Severance shall be considered to Retire and to have elected an Early Retirement Date on the Participant's date of Severance.

## **SECTION 5** **DEATH BENEFITS**

### **5.01    Designated Participants**

A “designated Participant” for purposes of this Section 5 is a Participant who has met the qualifications to receive a Normal Retirement Pension Benefit under Section 3 or an Early Retirement Pension Benefit under Section 4, but has not elected to begin receiving his Pension Benefit or has not yet had a Severance. Effective September 22, 2020, a “designated Participant” shall also include a Participant who at the time of his or her death did not meet the requirements for a Normal or Early Retirement Pension Benefit, but would otherwise have qualified for a Pension Benefit under Section 8.02 had he survived, as determined at the time of the Participant’s death without regard to whether he had then had a Severance.

### **5.02    Death Benefit**

- (a) In the event of the death of a designated Participant eligible for Early or Normal Retirement Pension Benefits under Section 3 or 4, the designated Participant shall be treated as if he elected to Retire on the day prior to his death. A monthly Pension Benefit, determined either for Normal Retirement or Early Retirement, whichever is applicable, will be paid as follows: (i) the monthly Pension Benefit the Participant would have been entitled to receive (assuming an election was made for a Normal Retirement Date or an Early Retirement Date, whichever is applicable, on the day prior to the Participant’s death) shall be paid to his Beneficiary for a period of one hundred and twenty (120) months certain and continuous; and (ii) if the Beneficiary meets the definition of, and complies with all of the requirements of proof for, a “qualifying spouse” as defined in Section 6.01, then the Beneficiary/qualifying spouse shall be further entitled to a monthly survivor benefit payment at the end of the one hundred and twenty (120) months equal to fifty-five (55%) percent of the monthly Pension Benefit paid under (i) for the life of the qualifying spouse.

The Pension Benefit under this Section 5(a) shall be payable in advance as soon as administratively possible on or after the first day of each month, with the first payment due on the first day of the month coincident with or immediately following the date of death of the Participant. If a Participant designates his qualifying spouse as his Beneficiary, and the qualifying spouse dies prior to the payment of Pension Benefits for one hundred and twenty (120) months, the remaining Pension Benefits to be paid under (i) shall be paid to the contingent Beneficiary pursuant to Section 6.03(i) or the deemed Beneficiary of the Participant pursuant to Section 6.03(ii). The contingent or deemed Beneficiary of the Participant shall not be entitled to any

benefits under (ii) of this subsection (a) after the end of the one hundred twenty (120) months.

(b) Effective September 22, 2020, in the event of the death of a designated Participant who is not eligible to Retire, but is otherwise entitled to a benefit under Section 8.02 at the time of his death (and who has not waived such benefit under Section 8.02(iii)), such Participant shall be deemed to have survived to his normal retirement age under Section 8.02(i) and immediately retired; provided that if the designated Participant had already reached age 65, but not commenced benefit payments, he will be treated as having elected to commence his benefit under Section 8.02(i) on the day prior to his death. A monthly Pension Benefit, determined under Section 8.02(i), will be paid as follows: (i) the monthly Pension Benefit the Participant would have been entitled to receive under Section 8.02(i) shall be paid to his Beneficiary for a period of one hundred and twenty (120) months certain and continuous; and (ii) if the Beneficiary meets the definition of, and complies with all of the requirements of proof for, a “qualifying spouse” as defined in Section 6.01, then the Beneficiary/qualifying spouse shall be further entitled to a monthly survivor benefit payment at the end of the one hundred and twenty (120) months equal to fifty-five (55%) percent of the monthly Pension Benefit paid under (i) for the life of the qualifying spouse.

The Pension Benefit under this Section 5(b) shall be payable in advance as soon as administratively possible on or after the first day of each month, with the first payment due on the first day of the month coincident with or immediately following the Participant’s 65<sup>th</sup> birthday or date of death, if later. If a Participant designates his qualifying spouse as his Beneficiary, and the qualifying spouse dies prior to the payment of Pension Benefits for one hundred and twenty (120) months, the remaining Pension Benefits to be paid under (i) shall be paid to the contingent Beneficiary pursuant to Section 6.03(i) or the deemed Beneficiary of the Participant pursuant to Section 6.03(ii). In addition, if the Participant designates his qualifying spouse as his Beneficiary, the qualifying spouse may elect to commence reduced benefits at the Participant’s earliest retirement age under Section 8.02(iv) commencing as of the first day of the month coincident with or immediately following the Participant’s 55<sup>th</sup> birthday. The contingent or deemed Beneficiary of the Participant shall not be entitled to any benefits under (ii) of this subsection (b) after the end of the one hundred twenty (120) months.

## **SECTION 6** **QUALIFYING SPOUSE DEFINED:** **WHEN QUALIFYING SPOUSE DEEMED BENEFICIARY**

## 6.01 Qualifying Spouse Defined

The term "qualifying spouse" for purposes of this Plan shall mean the surviving spouse of the Participant who has been legally married to the Participant for a period greater than or equal to one (1) year immediately preceding the date of Participant's death. The Board may request proof of marriage from a qualifying spouse, and may determine that an individual who fails to provide such proof is not the qualifying spouse of the Participant.

## 6.02 Qualifying Spouse Deemed Beneficiary Where No Beneficiary Designation Made

If a Participant, with a qualifying spouse, has not made a Beneficiary designation as hereinafter provided in Section 6.03 (i), said qualifying spouse shall be deemed the Participant's Beneficiary for purposes of any benefits under this Plan.

## 6.03 Designation of Beneficiaries

(i) Each Participant may designate one or more Beneficiaries and one or more contingent Beneficiaries to receive the Pension Benefits, if any, which may be payable in the event of his death, pursuant to the provisions of Sections 3.02, 4.02, 5.02 and 8.02. Such designation shall be made in writing by the Participant on a form provided by the Employer. The Participant may change his designations from time to time by filing the proper change of beneficiary form with the Employer, and each properly executed change of Beneficiary form shall revoke all prior designations by the Participant. Any designation of Beneficiary of a spouse of a Participant shall become null and void upon the divorce of the Participant and the designated spouse; the Participant must execute a designation of Beneficiary favoring the former spouse after the divorce in order to name the former spouse as a valid Beneficiary of his Pension Benefit. In the event a Participant has designated a Beneficiary under the Plan Provisions in effect prior to July 1, 1982, but has not designated a Beneficiary pursuant to this Section, the Beneficiary designated under the Contract shall be deemed to be the Beneficiary designated under this Section.

(ii) If the Beneficiary and Contingent Beneficiary designated by the Participant do not survive the Participant, the Board shall direct the payment of any survivor benefit to a "deemed Beneficiary" in the following order: (a) the qualifying spouse of the deceased Participant, if living; otherwise to (b) the legal representative of the estate of the deceased Participant. Effective September 22, 2020, the value of any survivor benefits to be paid to the estate of the Participant shall be paid in an Actuarially Equivalent lump sum.

(iii) In the event of the death of a Beneficiary who survives the Participant and who, at his or her death, is receiving the benefits as described in Section 6.03(i), the remaining benefits payable shall be paid first to any surviving contingent

Beneficiary(ies) designated by the Participant to receive such benefits or, if no contingent Beneficiaries survive the prior Beneficiary, then to (a) the qualifying spouse if living of the deceased Participant, determined as of his date of death; or otherwise, in equal shares to (b) the legal representatives of the estate(s) of the most recent Beneficiary(ies) or contingent Beneficiaries of the Participant. Effective September 22, 2020, the value of any survivor benefits to be paid to the estate of the most recent Beneficiary(ies) or contingent Beneficiaries of the Participant shall be paid in an Actuarially Equivalent lump sum.

(iv) In the event the Board is uncertain as to direction of Benefit payments hereunder, the Board may elect to have a Court of applicable jurisdiction determine to whom payment of Pension Benefits should be made.

## **SECTION 7 RESERVED**

## **SECTION 8 TERMINATION OF EMPLOYMENT BEFORE RETIREMENT**

### **8.01 Termination Prior to 120 Months of Credited Service**

Any Participant whose employment with the Employer terminates prior to his eligibility for Normal Retirement for any reason other than Early Retirement and whose Severance is prior to his completion of one hundred and twenty (120) months of Credited Service with the Employer during his Period of Service shall not be vested in any Pension Benefit hereunder, but shall be vested at all times in and shall be entitled to receive in one (1) lump sum payment the Participant's Contributions with Interest as provided in Section 1.19 hereof. Said lump sum shall be payable within six (6) months of the Board receiving notice of the Severance.

### **8.02 Termination after Completion of 120 Months of Credited Service**

(i) A Participant whose employment with the Employer terminates prior to his Normal Retirement Date for any reason other than Early Retirement and whose Severance is after his completion of at least one hundred and twenty (120) months of Credited Service during his Period of Service, shall be entitled to a Pension Benefit commencing on the first day of the month coincident with or next following the Participant's 65th birthday, provided he is then alive.

(ii) The Pension Benefit to which said Participant shall be entitled under Section

8.02(i) shall be that amount of Pension Benefit as provided in Section 1.21 hereof, which shall be payable as soon as administratively possible following the first day of the month, with the first payment due on the first day of the month coincident with or immediately following the Participant's 65th birthday. The Pension Benefit shall be paid during the life of the Participant and for a period of one hundred twenty (120) months certain and continuous following the Participant's 65th birthday. The Pension Benefit under this Section 8.02 shall not be payable until the Participant files an application for the same and such application is approved by the Board.

In the event of the Participant's death within a period of one hundred twenty (120) months after his 65th birthday, the same Pension Benefit shall be payable for the remainder of the one hundred twenty (120) month period to the Participant's Beneficiary(ies) as provided for under Section 6.03 hereof. Effective for Pension Benefits commencing after September 22, 2020, if the deceased Participant shall have a qualifying spouse as defined in Section 6.01 hereof, a monthly survivor benefit payment equal to fifty-five (55%) percent of the Pension Benefit shall be payable to said qualifying spouse during said qualifying spouse's lifetime. This survivor benefit to said qualifying spouse shall be paid in advance on the first day of each month with the first payment due on the first day of the month coincident with or following the one hundred twenty (120) month period from the deceased Participant's 65<sup>th</sup> birthday.

(iii) Alternatively, a Participant subject to this Section 8.02 may elect, in writing on a form designated by the Board, to waive his right to receive the Pension Benefit provided in Section 8.02(ii) hereof and, instead, to receive in one (1) lump sum payment the Participant's Contributions With Interest as provided in Section 1.19 hereof within six (6) months of the Severance. No Participant who has made the irrevocable election referred to in Section A.03 hereof will be entitled to return of his Participant's Contributions With Interest.

(iv) Alternatively, a Participant subject to this Section 8.02 may elect, in writing on a form designated by the Board, to receive, commencing on the first day of the month coincident with or following his 55th birthday, the following: A monthly benefit equal to the Pension Benefit determined under Section 8.02(ii) above, reduced by the Actuarial Equivalent as provided under Section 1.01 hereof that is determined for the period beginning on the Participant's 55<sup>th</sup> birthday and ending on the Participant's earliest possible Normal Retirement Date, assuming that such Participant continued employment until such date, but without crediting any Months of Service for benefit accrual or retirement purposes following the early termination date.

The Pension Benefit payable under this Section 8.02(iv) shall be payable in advance as soon as administratively possible on or after the first day of the month, with the first monthly payment due on the first day of the month coincident with or

immediately following the Participant's 55th birthday, subject to approval by the Board. Subsequent monthly payments shall be made for a period certain and continuous of one hundred and twenty (120) months from the Participant's 55th birthday.

In the event of the Participant's death either after making his election but before attaining his 55th birthday or within one hundred and twenty (120) months after his 55th birthday, the same monthly benefit shall be payable for the entire or the remainder of the one hundred and twenty (120) month period to the Participant's Beneficiary(ies) as provided in Section 6.03 hereof. Effective for Pension Benefits commencing after September 22, 2020, if the deceased Participant shall have a qualifying spouse as defined in Section 6.01 hereof, a monthly survivor benefit payment equal to fifty-five (55%) percent of the Pension Benefit shall be payable to said qualifying spouse during said qualifying spouse's lifetime. This survivor benefit to said qualifying spouse shall be paid in advance on the first day of each month with the first payment due on the first day of the month coincident with or following the one hundred twenty (120) month period from the deceased Participant's 55th birthday.

## **SECTION 9 CONTRIBUTIONS**

### **9.01 Employer Contributions**

Contributions by the Employer shall be paid to the Board at such times and in such amounts as shall be determined by the Employer, based upon the recommendations of the Board, to provide the benefits under the Plan determined by the application of accepted actuarial methods and assumptions. The method of funding shall be consistent with Plan objectives.

The City shall contribute within a reasonable time following the close of the Plan Year of reference, such sums to the Plan as shall be sufficient to fund the benefits under the Plan determined by the application of accepted actuarial methods and assumptions, and the Board shall certify to the City the amount so determined prior to the close of the Plan Year of reference.

The City is hereby authorized, empowered and directed to levy tax on all taxable property of said City ad valorem and to use such other available funds of the City for the purpose of satisfying its obligations under the Plan.

The Water, Light and Sinking Fund Commission of the City of Dalton is hereby authorized, empowered, and directed to transfer to the City, at the request of the Board, for the benefit of the Plan, such sums as shall be sufficient to fund the benefits of Participants employed by said Commission, and their Beneficiaries, such sums to be determined in accordance with

sound actuarial principles consistently applied. The Board shall certify to said Water, Light and Sinking Fund Commission the amount so determined prior to the close of the Plan Year of reference.

#### 9.02 Actuarial Methods

In establishing the liabilities under the Plan and Contributions thereto, the Board shall require the services of an enrolled actuary who shall use such methods and stated assumptions as will reasonably reflect the cost of the benefits. The Plan assets are to be valued on the basis of any reasonable method of valuation that takes into account the fair market value pursuant to current regulations prescribed by the Secretary of the Treasury as applicable to this Plan. There must be an actuarial valuation of the Plan as frequently as required by applicable Federal and State law but at least once every three (3) years.

#### 9.03 Mandatory Contribution of Participant

Consistent with the requirement of the Prior Plans for a mandatory Employee Contribution on and after March 1, 1973, each Employee who is a Participant in the Plan shall contribute an amount equal to:

- (a) five percent (5%) of his or her Basic Monthly Earnings prior to January 1, 1985;
- (b) four percent (4%) of his or her Basic Monthly earnings on and after January 1, 1985 through December 31, 2007; and
- (b) five percent (5%) of his or her Basic Monthly earnings on and after January 1, 2008.

Each Participant covered under the Prior Plan and each new Participant on and after July 1, 1982, by virtue of his participation in the Plan does hereby instruct and authorize the Employer to deduct from his salary or wages the amount of his mandatory Contributions and to contribute on his behalf said withheld sum to the Plan.

In lieu of said mandatory Contribution any Participant making the irrevocable election referred to in Section A.03 (applicable; only to an employee covered under GA L. 1945 p. 593, as amended) hereof shall contribute to the Plan a total sum of twenty dollars (\$20.00) per month and by virtue of participation does hereby instruct and authorize the Employer to deduct from his salary or wages the amount of his mandatory Contributions and to contribute on his behalf said withheld sum to the Plan.

## **SECTION 10 MANAGEMENT AND ADMINISTRATION**

## 10.01 Named Fiduciary(s)

The City is the Named Fiduciary which has authority to control and manage the operation and administration of the Plan. In exercising said authority, the City acts through its officers, employees, or the Board, as herein provided.

The Investment Manager is a Named Fiduciary selected by the City, with authority to manage and control Plan Assets, as provided in the applicable funding documents and Board direction.

## 10.02 General Fiduciary Duties

- (i) Fiduciaries of the Plan shall discharge their duties under the Plan solely in the interest of the Participants and Beneficiaries and for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan.
- (ii) Fiduciaries shall act with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims.
- (iii) Fiduciaries shall discharge their duties in accordance with the Plan and Contract insofar as such documents are consistent with the Plan.
- (iv) Fiduciaries shall see that no Plan assets are located or held in any place outside the jurisdiction of the United States district courts, except as authorized under regulations applicable to this Plan promulgated by the Secretary of Labor.
- (v) In the course of administration of the Plan, Fiduciaries may delegate such duties and responsibilities to other parties as may be permitted by law. Such delegation, in and of itself, shall not cause the delegates to become fiduciaries under the Plan.
- (vi) Each Fiduciary may rely on information given by other fiduciaries of the Plan or other persons acting on behalf of fiduciaries where it is prudent to do so under the circumstances.
- (vii) Each Fiduciary hereof is responsible for duties and responsibilities which are specifically allocated to him under Section 10.03 and is responsible for no other duties under the Plan.
- (viii) A Fiduciary may serve, upon approval by the Board, in more than one

fiduciary capacity with respect to the Plan.

(ix) A Fiduciary may employ one or more persons to render advice with regard to any responsibility he has under the Plan.

(x) A Fiduciary may not cause the assets of the Plan to be used for or diverted to purposes other than for the exclusive benefit of Participants and Beneficiaries prior to the satisfaction of all liabilities for benefits under the Plan except to the extent permitted under Code section 401(a) (2), nor may it cause the Plan to engage in a prohibited transaction within the meaning of Code section 503(b) or any successor provisions thereto.

#### 10.03 Allocation of Fiduciary Responsibilities

The Fiduciaries of the Plan shall have the powers and duties as specified herein, and shall be responsible for no other powers and duties under the Plan.

(i) The City: The City is responsible for naming the Certified Public Accountant, appointing the appointed members of the Board, administering the Plan through the Board, establishing a funding policy for the Plan, as herein provided, and making Contributions under the Plan pursuant to Section 9.01.

(ii) The Investment Manager: The Investment Manager shall have the duties and responsibilities set forth in any Contract and/or in any other agreements with the Board or the City concerning the Plan.

(iii) Payments: The Chairman of the Board or his/her designee shall sign all vouchers for the disbursements of the fund, and his/her written order shall fully protect the Board treasurer in the payment of the same. The Chairman of the Board and the Mayor must sign all vouchers to transfer funds between accounts held by fund asset manager(s). A majority of the Board shall control on all questions. The Chief Financial Officer shall be appointed to act as ex-officio treasurer of the Board, and the City shall obtain a bond in the amount of \$500,000 for the Chief Financial Officer to cover his/her activities in connection with monies or Plan Assets.

#### 10.04 Board

There is hereby established, to serve without pay, a Board of Trustees whose duty it shall be to manage the Plan Assets and perform other duties as provided herein.

(i) The Board of Trustees shall be composed of three appointed trustees (the "appointed trustees") and four elected trustees (the "elected trustees"). The appointed trustees shall consist of:

(a) the Mayor;  
(b) the Chairman of the Water, Light and Sinking Fund Commission; and  
(c) the Chairman of the Finance Committee of the Mayor and the Council of the City of Dalton.

(ii) The elected trustees shall consist of:

- (a) One trustee who is either a Participant Employee in, or a Retiree of, the Police or Fire Departments;
- (b) One trustee who is either a Participant Employee in, or a Retiree of, the Water, Light and Sinking Fund Commission;
- (c) One trustee from all other Participant Employees or Retirees;
- (d) One Retiree trustee at large elected by all Participant Employees and all Retirees.

(iii) The elected trustee from each of the above described groups in subsection (ii) shall be selected, at an election held within such group, other than the Retiree trustee at large, by secret ballot in which every Participant Employee and Retiree of such group shall be entitled to vote. The Participant Employee or Retiree receiving the plurality of votes cast, as determined by the respective Employer (or the City as to the Retiree trustee at large), in any such election shall become the elected trustee from such group. The Retiree trustee at large shall be elected by all Participant Employees and all Retirees. The Retiree receiving the plurality of votes cast, as determined by the City, shall become the elected Retiree trustee at large.

(iv) Terms for Elected Trustees.

(a) Trustees are elected for two-year terms which begin on January 1 of the year immediately following his or her election.

(b) It is intended that the terms of the terms of the trustees are staggered to ensure that the Board will not consist of all newly elected trustees during any term. In order to achieve staggered terms the following appointment provisions were applied on a one time basis only for the trustees elected in 2007 for terms in 2008 and 2009:

(1) All of the trustees elected in 2007 to serve as Board Members for the term years 2008 and 2009 served the two-year term to which they were elected, however, the Board extended the term of two of the four trustees elected in 2007 by one additional year so that two elected trustees serve a one time only term of three years. The two elected trustees who shall had their term extended by the Board for an additional year (or until 2010) were determined in the sole discretion of the Board.

(2) All subsequent trustees elected thereafter are appointed for terms of two (4) years in the even or odd year determined as a result of the application of subsection (1) above.

(v) A meeting for election of an elected trustee shall be held for each group permitted to elect such trustee within one hundred eighty (180) days of the expiration of such elected trustee's term and the members of the group entitled to vote thereon shall be given at least five days notice of said meeting.

(vi) An elected trustee may be re-elected to the Board and there shall be no limitation on the number of terms which may be served by any person as an elected trustee of the Board. An elected trustee may be removed upon petition for removal and election of a successor, as follows: Upon a petition signed by at least 51% of the Participants of the group from which the elected trustee was elected calling for removal of their representative on the Board and for an election of a Participant to serve the unexpired term of such representative, an election shall be duly held, as soon as practicable, in the same manner as the office was previously filled. All persons qualified to vote at any meeting called for removal of any such elected trustee shall be notified by the Human Resources Office at least five (5) days prior to the date set for said meeting. The removal of such original elected trustee shall be effective upon the election of his successor in the manner described in the preceding paragraph. An election shall be held, in the manner hereinbefore described, at the expiration of the term of each elected trustee, for the purpose of electing his successor. If a vacancy occurs in the offices of elected trustees, the vacancy shall be filled for the unexpired term within 30 days and in the same manner as the office was previously filled; provided, however, that during such vacancy, the action of the remaining members of the Board shall be binding with respect to all business which they may transact. Should an elected trustee be retired under this Act or cease to be in the employ of the Employer, his office shall be declared vacant.

#### 10.05 Right to Appeal from Act or Decision of Board

Any Participant who is dissatisfied with the action of the Board shall have the right of appeal to the Superior Court of Whitfield County, Georgia, by writ of certiorari, within 30 days from the date of such action of the Board, but said Participant shall bear all of his expenses of appeal from the action of the Board.

#### 10.06 Time and Place for Meetings of Board

The Board shall make all rules as to the time and place of meetings and for the payment of said funds to those entitled to receive the same. It shall within the month of January of each Plan Year organize by electing a chairman, a vice-chairman who shall serve when the chairman is absent, and a secretary.

## 10.07 Powers of the Board

The Board, in administering the Plan, shall have the following powers:

- (i) To purchase and continue one or more annuity contracts whether group or otherwise for the benefit of Participants.
- (ii) To employ agents, employees, or experts to assist said Board in carrying out the provisions of this Plan, including, but not limited to, an agent or agents to advise and make recommendations concerning the investment of funds, the Plan Actuary and Investment Advisors; and to pay reasonable compensation for such services, which compensation shall be paid from income or corpus of the Plan Assets or, at the election of the City of Dalton, from City funds.
- (iii) Without limiting the generality of the following Section 10.07 (iv) hereof, the Plan Assets may be invested in obligations issued by or on behalf of the United States or the State of Georgia and its political subdivisions.
- (iv) The Board shall have full power to invest or reinvest the Plan Assets in any kind of property, or undivided interests therein, which the Board shall deem proper (including, by way of illustration but not of limitation, real estate, stocks, bonds, mortgages, debentures, common trust funds, insurance contracts payable to the Board for the benefit of the Plan, shares or interests in investment companies, funds or (trust)) and may hold funds uninvested during any period of unsettled financial conditions, to continue the Plan Assets invested in any property received or acquired by the Board without obligation to sell all or any part thereof because not of a type or quality or constituting a diversification considered proper or wise for trust investments; to make sales of any investment without advertisements and without the necessity of obtaining an order of Court; to grant options to purchase, and to sell, convey, assign, or exchange any trust property in such manner and upon such terms as the Board shall deem proper; to lease trust property for any time, even extending beyond the term of any trust hereunder; to insure, improve, repair, alter, partition, subdivide, grant easements, or dedicate any property comprising a part of the Plan Assets and to erect or raze improvements thereon; to settle, compound, or abandon all claims and demands in favor of or against the Plan Assets; to consent to the reorganization, consolidation, or readjustment of the finances of any corporation; to vote in person or issue proxies to others to borrow money and to mortgage or pledge any trust property for any purpose deemed proper by the Board; to delegate powers, discretionary or otherwise, for any purpose to one or more nominees or agents; to hold or register any property in the Board's own name or in the name of a nominee, without disclosure of any fiduciary relationship.

Said funds and investments may also be, from time to time, turned over to and placed in the custody of any bank or trust company which is, at the time of reference, serving

as fiscal agent or expert for said City.

(v) To generally contract in matters relevant to effectuating and achieving its purposes of this Plan.

(vi) To receive and pay out Plan Assets in accordance with the provisions of this Plan or to contract for similar services.

(vii) To make actuarial studies and pay the cost thereof.

(viii) To make rules and regulations as may be necessary to the effective administration of the Plan.

(ix) To make final determination of eligibility and amount of benefits payable to a Participant.

(x) To interpret Plan language, to resolve all ambiguities and questions regarding the operation of the Plan, and to establish such policies and procedures as may be required for the administration of the Plan, each to be accomplished in the Board's sole and absolute discretion

#### **10.08 Continuing Education of Trustees**

Each appointed or elected trustee first appointed or elected on or after July 1, 2019, must complete a minimum of eight (8) hours of education applicable to his or her fiduciary obligations under the public retirement system as required by Georgia Code Ann. § 47-1-17 (2019). If a trustee fails to complete this education requirement within fourteen (14) months, he or she shall be removed from the Board.

Each appointed or elected trustee appointed or elected prior to July 1, 2019, or who has served one or more years as a trustee shall complete a minimum of twelve (12) hours of continuing education every two (2) years in areas applicable to his or her fiduciary obligations under the public retirement system as required by Georgia Code Ann. § 47-1-17 (2019). If such trustee fails to meet this requirement within twenty-six (26) months, he or she shall be removed from the Board.

Applicable education shall include education and training in the following areas:

(i) Laws applicable to public retirement systems, which may include federal and state laws applicable to specific public retirement systems, laws applicable to public retirement systems trustees, the applicable common law duties of trustees listed in Title 53 of the Georgia Code, and laws related to open meetings and open records;

(ii) Roles, duties, and responsibilities of public retirement system trustees;

- (iii) Ethics and conflicts of interest;
- (iv) Governance, administration, and funding of public retirement systems;
- (v) Investments; investment management, portfolios, and strategies; and measurements of performance; and
- (vi) Audit and actuarial principles and methods related to public retirement systems.

Applicable education may include:

- (i) Seminars, conferences, or schools sponsored by educational institutions or professional organizations;
- (ii) Online continuing education coursework;
- (iii) Continuing education received at any public retirement system meeting; or
- (iv) Any other continuing education approved by the public retirement system.

## **SECTION 11 AMENDMENT OF PLAN**

The governing authority of the City of Dalton, Georgia shall have the exclusive power to amend, terminate, merge or modify the Plan only by an ordinance properly approved by the City, and not by course of conduct. However, no such amendment or modification (except such amendment or modification as is required to qualify or maintain qualification of the Plan under the appropriate sections of the Internal Revenue Code, Department of Labor regulation or other applicable Federal or State law) shall make it possible for any part of the assets of the Plan (other than assets as required to pay taxes, administrative expenses, or other items to be charges on the Plan) to be used for or diverted to purposes other than for the exclusive benefit of Participants and Beneficiaries prior to the satisfaction of all liabilities for benefits under the Plan with respect to such person. The Participants shall not have any contractual rights, under state law, to any particular benefits or procedures as the City's right to amend, terminate, merge or modify is absolute and subject only to the limitations as provided herein.

## **SECTION 12 MISCELLANEOUS**

### **12.01 Forms**

All consents, elections, applications, and designations required or permitted under the Plan must be made on forms prescribed and furnished by the Board or the Investment Manager, if required.

#### **12.02 Proof of Survival of Benefit Claimant**

Where a retirement benefit is contingent upon the survival of any person, evidence of such person's survival must be furnished to the Board and the Investment Manager, if required, by personal Endorsement by such person of the check drawn for said payment, or other evidence satisfactory to the Board or Investment Manager, if required.

#### **12.03 Effect of Misstated Facts**

If it is found that the date of birth or sex of a Participant or Beneficiary has been misstated or that the length of service, Credited Service, compensation, or date of employment of a Participant has been misstated, the amount of payments with respect to such Participant or Beneficiary shall be the amount which would have been payable if such fact or facts had not been misstated, and in no case shall any person be entitled to receive any greater benefit than that which would have been payable on the basis of the true facts. Overpayment shall be charged against, and underpayments shall be added to, any payments accruing to a Participant or Beneficiary made in accordance with actuarial determination.

#### **12.04 Construction**

In the construction of this Plan, the masculine shall include the feminine and singular the plural in all cases where such meanings would be appropriate. The Plan shall be construed and enforced according to the laws of the State of Georgia, and in accordance with any applicable federal statutes and regulations.

#### **12.05 Limitations of Assignment - QDRO**

No Participant or Beneficiary shall have a right to assign, transfer, hypothecate, encumber, commute, or anticipate his interest in any payment under the Plan, and such payments shall not in any way be subject to any legal processes to levy upon or attach the same for payment of any claim against any Participant or Beneficiary. Notwithstanding the above the Plan shall give proper recognition to a qualified domestic relations order as provided in the Code.

#### **12.06 Obligations of Employer**

Nothing contained in the Plan shall be deemed to give any Employee of the Employer or any Participant the right to be retained in the service of the Employer, or to interfere with the right of the Employer to discharge any Employee or Participant at any time, without regard to the effect which such discharge shall have upon his rights, if any, under the Plan.

## 12.07 Payments to Incompetents

If the Board and/or the Investment Manager shall receive evidence satisfactory to it that (i) a Participant or Beneficiary entitled to receive any benefits under the Plan is physically or mentally incompetent to receive such benefit and to give a valid release therefor, and (ii) another person or institution is then maintaining or has custody of such Participant or Beneficiary, and (iii) no guardian, committee, or other representative of the estate of such Participant or Beneficiary shall have been duly appointed, the benefit otherwise payable to such Participant or Beneficiary may be paid to such other person or institution, and the release of such other person or institution shall be a valid and complete discharge for the payment of such benefit.

## 12.08 Custody of Any Funds in Investment Manager

Any assets of the Plan held by the Investment Manager will be held for use in accordance with provisions of the Plan and Contract, and no part thereof shall be used for or diverted to purposes other than for the exclusive benefit of Participants and Beneficiaries prior to the satisfaction of all liabilities for benefits under the Plan with respect to such persons. No Participant or Beneficiary, or any other person, shall have any interest in or right to any part of the assets of the Plan, except as, and to extent expressly provided in the Plan and Contract.

## 12.09 Discrimination

The Employer, through the Board, shall administer the Plan in a uniform and consistent manner with respect to all Participants, and shall not permit discrimination in favor of officers or highly compensated Employees.

## 12.10 Forfeitures

Forfeitures arising from any cause whatsoever under this Plan shall not be applied to increase the benefits any Participant would otherwise receive under the Plan at any time prior to the termination of the Plan or the complete discontinuance of Employer contributions hereunder; forfeitures shall be applied to reduce the Employer's contributions under the Plan in the then current or subsequent years.

## 12.11 Disappearance of Participant or Beneficiary

In the event that any Participant or Beneficiary receiving or entitled to receive benefits under the Plan should disappear and fail to respond within 60 days to a written notice sent by the Board by registered or certified mail, informing him of his entitlement to receive benefits under the Plan, the Board may pay such benefits or any portion thereof, which the Board determines to be appropriate, to Beneficiary of Participant as defined in Section 6.03 hereof until such Participant or Beneficiary is located or until such benefits are paid in full,

whichever event shall first occur.

If the Board has received no request for payment of such benefits from the Participant or Beneficiary and has made no such payments within the applicable period of limitation of actions after the same became payable, then the benefits under the Plan shall be payable pursuant to the direction of a court of applicable jurisdiction.

## 12.12 Compliance with Applicable Laws

- (i) The Employer, through the Board, shall interpret and administer the Plan in such manner that the Plan shall remain in compliance with Sections 401(a) and 501(a) of the Internal Revenue Code, of 1986, as amended, and all other applicable Federal or State laws, regulations, and rulings, as a qualified "governmental" Plan.
- (ii) Anything herein to the contrary notwithstanding, the annual retirement benefit payable under this Plan to a Participant shall not exceed the Actuarial Equivalent of a straight life annuity equal to \$160,000 or such other maximum permitted under Code Section 415(b)(1)(A) (hereinafter referred to as the "Dollar Limit"), effective as the effective date of such other maximum. Such limits shall be adjusted as prescribed by this Section. The limitation year for purposes of this Section shall be the calendar year.

The above referenced Dollar Limit will be adjusted annually for cost of living increases in accordance with Section 415(d) of the Code.

In no event shall the provisions above limit a Participant to a maximum allowable annual benefit, payable under any form of payment, of less than \$1,000 for each year of Service up to a maximum of \$10,000 provided such Participant never participated in a defined contribution plan maintained by the Employer (other than the contributory portion of a defined benefit plan) and his total annual benefit payable from all defined benefit plans of the Employer does not exceed \$10,000.

For purposes of applying the limitations described in the first paragraph of this section, "Compensation" means a Participant's total earnings including, but not limited to, overtime, bonuses and commissions and any other form of compensation required for inclusion under Section 415(b)(3) of the Code. Notwithstanding anything to the contrary, "Compensation" for purposes of this Section shall include any before-tax contributions under any plan or arrangement maintained by an Employer under Sections 125, 401(k), 402(h), 403(b) or 457(b) of the Code.

Except in the case of a qualified participant as defined in Section 415(b)(2)(H) of the Code (e.g., certain Police and Firefighters with 15 years of service as defined therein), if such retirement income commences before a Participant's attainment of age 62, the maximum annual limit shall be the Actuarial Equivalent of the dollar

limitation payable at such Participant's attainment of age 62. However, the interest factor may not be less than 5%. The adjustment provided for in the preceding sentences shall be made in such manner as the Secretary of the Treasury may prescribe which is consistent with the reduction for old age insurance benefits commencing before the attainment of age 62 under the Social Security Act. The reduction under this paragraph shall not reduce the limitation below (i) \$75,000 if the benefit begins at or after age 55, or (ii) if the benefit begins before age 55, the Actuarial Equivalent of the \$75,000 limitation for age 55.

If such retirement income commences after a Participant's attainment of age 65, the maximum annual limit shall be the Actuarial Equivalent of the dollar limitation payable at such Participant's attainment of age 65. However, the interest factor may not exceed 5%.

For a Participant with less than 10 years of participation in this Plan, the maximum annual dollar limit shall be multiplied by the ratio of the Participant's years of Plan participation to the number 10, provided such dollar limit is not reduced to an amount less than one-tenth by such limitation.

The above limits are intended to limit the benefits under this Plan to the extent required under Section 415(b) of the Code but not to limit them more than is required, and shall be interpreted or deemed modified as necessary to meet this objective.

(iii) Notwithstanding any other provision of this Plan, all distributions provided for herein shall meet the requirements of Code section 401(a)(9). To the extent that the form of benefits otherwise provided under this Plan would otherwise violate the limitations of Code section 401(a)(9), it shall be converted into a form of benefits which has the maximum length of payout permitted under Code section 401(a)(9), which is the Actuarial Equivalent of the form otherwise payable.

(iv) Notwithstanding any other provision of this Plan, any Participant who receives an eligible rollover distribution from this Plan may elect to have such distribution rolled directly over to any other qualified plan or individual retirement account or annuity specified by the Participant which permits such direct rollovers. In addition, for Plan Years beginning after 2006, a rollover distribution from the Plan made on behalf of a deceased Participant to a Beneficiary may be made to an inherited individual retirement account.

(v) The annualized Basic Monthly Earnings of a Participant may not exceed the limits of Section 401(a)(17) of the Code, as adjusted from time to time.

## 12.13 Return of Plan Assets to the Employer

The assets of the Plan shall be held for the exclusive purposes of providing benefits to Participants and Beneficiaries, and shall never inure to the benefit of the Employer, except...

Where the Employer Contribution was made by a mistake of fact, such Contribution shall be returned to the Employer within one year after the payment of the contribution;

Upon payment of any Contribution to the Board, except as above provided, the Employer's right, title and interest therein shall cease and terminate and no part of the corpus or income of the Plan shall ever revert to the Employer except as provided by law.

#### **12.14 Merger**

In the event of any merger or consolidation of the Plan with any other plan, or the transfer of assets or liabilities by the Plan to another plan, each Participant must receive (assuming that the Plan then terminated) a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit such Participant would have been entitled to receive immediately before the merger, consolidation, or transfer (assuming that the Pan had then terminated).

#### **12.15 Claims Procedures**

(i) **Initial Stage:** In the event the Board denies a claim for benefits under the Plan submitted by a Participant or Beneficiary, hereinafter referred to as Claimant, the Board shall provide adequate notice in writing to the Claimant, within a reasonable time after the receipts of the claim, setting forth, in a manner calculated to be understood by the claimant, the following:

- (a) specific reason(s) for the denial;
- (b) specific reference (s) to Plan provisions on which the denial is based;
- (c) a description of any materials or information necessary to perfect the claim and why they are necessary;
- (d) an explanation of the review procedure of the Plan.

(ii) **Appellate Stage:** A claimant shall have 60 days to appeal a denial of a claim for benefits to the Board. A claimant or his duly authorized representative must request an appeal in writing to the Board, and shall be allowed to review pertinent documents and submit issues and comments in writing.

The Board shall afford the claimant a full and fair review of his claim for benefits and shall make a decision on review as promptly as possible, but in no event later than 60 days following the written request for review.

The decision on review shall be in writing and shall include specific reasons for the decision and specific references to Plan provisions on which the decision is based,

and shall be written in a manner calculated to be understood by the Claimant.

**12.16 No Pension Benefit Payable Before Termination of Employment; Pension to Cease if Again Placed on Payroll**

(i) No benefit, sum or amount may be distributed to any Participant from the Plan prior to his Severance. Notwithstanding the foregoing, nothing in this Section 12.16 shall prohibit a Participant from receiving any benefits designated to him/her as a Beneficiary of another Participant of this Plan.

(ii) Any person receiving a Pension Benefit under this Plan and who shall be re-employed by an Employer hereunder shall cease to receive any monthly Pension Benefit to which he is otherwise entitled during any period of re-employment by the Employer, unless such entitlement occurred because the Participant was a Beneficiary of another Participant under the Plan. Upon termination of such reemployment, the monthly Pension Benefit to which the Participant is entitled shall resume.

**12.17 Reserved**

**12.18 Power to Adopt Salary Schedules**

Each Employer is hereby authorized and empowered as part of its adoption of schedules of wage and salary payments, to provide for contractual agreements for the payment of deferred wages and salaries to persons employed by said Employers or under their authority.

**12.19 Severability**

If any provision of this Plan or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this Plan which can be given effect without the invalid provision or application and, to the end, the provisions of this Plan are severable.

**12.20 Repeal of Permanent Disability and Death Benefit under Prior Plan**

Any Participant under the Prior Plan who dies or becomes permanently disabled as defined in Section 10 of said Prior Plan (GA L. 1974, p. 2744, as amended) on or before July 1, 1982, shall be entitled to the benefit provided in said Section 10 of the Prior Plan. The death and permanent disability benefits provided in said Section 10 of the Prior Plan are repealed as to any Participant dying or becoming permanently disabled on and after July 1, 1982.

**EXHIBIT A**  
**SPECIAL NORMAL RETIREMENT ELECTIONS**

**A.03 Election of Fixed Monthly Benefit Under Prior Plan**

A Participant who has made the irrevocable election or prior to retirement elects under Section 6(b) and (c) of the Prior Plan (GA L. 1974, p. 2744, as amended) the fixed monthly retirement benefit of one hundred (\$100) dollars per month payable during the Participant's life upon the Participant attaining age 65 or completing twenty-five (25) years of continuous service, shall be entitled only to said elected benefit and Section 3.01, 3.02, and A.03 hereof are not applicable to said electing Participant. The irrevocable election provided in the foregoing paragraph shall be made on a form prescribed by the Board and only those Participants under the Prior Plan covered under the pension provisions of Ga. L. 1945, p. 593, as amended, are eligible to make such election.

**A.04 Special Normal Retirement Benefits for Certain Public Works Employees**

Each "eligible Participant" (as such term is defined below for purposes of this Section A.04) may apply to the City, on or before September 22, 2008, to Retire and receive the Normal Retirement benefit defined in this Section A.04. An "eligible Participant" means any Participant who as of September 30, 2008 (i) is an employee of the Public Works Department; (ii) applied to participate in the "Early Retirement Plan" for Public Works employees established in 2008 (the "ERP"); and (iii) and was determined by the City to be eligible to be a participant in the ERP eligible for Normal Retirement, taking into consideration the enhanced service benefit and/or enhanced age benefit provided under this Section and credited service for any accrued but unused vacation and sick leave up to the amount authorized pursuant to the resolution by the Mayor and Council dated March 3, 1997, with an effective date of April 1, 1997. Each eligible Participant whose application for special Normal Retirement benefits is approved by the City and who meets the criteria established by the City for such special benefits shall be an "approved Participant". The enhanced service benefit provides the approved Participant with the minimum number of months of Credited Service that would allow the approved Participant to meet the requirements for Normal Retirement up to a maximum of twenty four (24) months. The enhanced age benefit deems the age of the approved Participant to be increased by the minimum number of months required for the approved Participant to reach the age requirement for Normal Retirement benefits up to a maximum of twenty four (24) months. An approved Participant eligible for the special Normal Retirement benefit under this Section A.04 may divide the twenty four (24) months enhanced benefit between Credited Service and age, subject to the limits in the preceding two sentences. The application by an eligible Participant to receive a Normal Retirement benefit under this Section A.04 must be made pursuant to the application procedures and requirements established by the Board. An approved Participant electing the special Normal Retirement benefit must Retire on or

before October 20, 2008, as determined by the City. The Normal Retirement benefit of an approved Participant retiring under this Section A.04 shall be equal to his or her Pension Benefit, which shall be determined after taking into account the enhanced service and/or age elected by the approved Participant.

#### A.05 Special Normal Retirement Benefits for Certain Recreation Department Employees

Each “eligible Participant” (as such term is defined below for purposes of this Section A.05) may apply to the City, on or before December 30, 2008, to Retire and receive the Normal Retirement benefit defined in this Section A.05. An “eligible Participant” means any Participant who as of December 30, 2008 (i) is an employee of the Recreation Department; (ii) applied to participate in the “Early Retirement Plan” for Recreation Department employees established in 2008 (the “ERP”); and (iii) was determined by the City to be eligible to be a participant in the ERP eligible for Normal Retirement, taking into consideration the enhanced service benefit and/or enhanced age benefit provided under this Section and credited service for any accrued but unused vacation and sick leave up to the amount authorized pursuant to the resolution by the Mayor and Council dated March 3, 1997, with an effective date of April 1, 1997, if the eligible Participant requests credited service for any accrued but unused vacation and sick leave. Each eligible Participant whose application for special Normal Retirement benefits is approved by the City and who meets the criteria established by the City for such special benefits shall be an “approved Participant”. The enhanced service benefit provides the approved Participant with the minimum number of months of Credited Service that would allow the approved Participant to meet the requirements for Normal Retirement up to a maximum of twenty four (24) months. The enhanced age benefit deems the age of the approved Participant to be increased by the minimum number of months required for the approved Participant to reach the age requirement for Normal Retirement benefits up to a maximum of twenty four (24) months. An approved Participant eligible for the special Normal Retirement benefit under this Section A.05 may divide the twenty four (24) months enhanced benefit between Credited Service and age, subject to the limits in the preceding two sentences. The application by an eligible Participant to receive a Normal Retirement benefit under this Section A.05 must be made pursuant to the application procedures and requirements established by the Board. An approved Participant electing the special Normal Retirement benefit must Retire on or before December 30, 2008, as determined by the City. The Normal Retirement benefit of an approved Participant retiring under this Section A.05 shall be equal to his or her Pension Benefit, which shall be determined after taking into account the enhanced service and/or age elected by the approved Participant.

#### A.06 Special Normal Retirement Benefits for Certain Administrative Employees

Each “eligible Participant” (as such term is defined below for purposes of this Section A.06) may apply to the City, on or before December 30, 2008, to Retire and receive the Normal Retirement benefit defined in this Section A.06. An “eligible Participant” means any Participant who as of December 30, 2008 (i) is an administrative employee of the city

finance, human resources, clerk or administration departments; (ii) applied to participate in the “Early Retirement Plan” for the city finance, human resources, clerk or administration departments established in 2008 (the “ERP”); and (iii) and was determined by the City to eligible to be a participant in the ERP eligible for Normal Retirement, taking into consideration the enhanced service benefit and/or enhanced age benefit provided under this Section and credited service for any accrued but unused vacation and sick leave up to the amount authorized pursuant to the resolution by the Mayor and Council dated March 3, 1997, with an effective date of April 1, 1997. Each eligible Participant whose application for special Normal Retirement benefits is approved by the City and who meets the criteria established by the City for such special benefits shall be an “approved Participant”. The enhanced service benefit provides the approved Participant with the minimum number of months of Credited Service that would allow the approved Participant to meet the requirements for Normal Retirement up to a maximum of twenty four (24) months. The enhanced age benefit deems the age of the approved Participant to be increased by the minimum number of months required for the approved Participant to reach the age requirement for Normal Retirement benefits up to a maximum of twenty four (24) months. An approved Participant eligible for the special Normal Retirement benefit under this Section A.06 may divide the twenty four (24) months enhanced benefit between Credited Service and age, subject to the limits in the preceding two sentences. The application by an eligible Participant to receive a Normal Retirement benefit under this Section A.06 must be made pursuant to the application procedures and requirements established by the Board. An approved Participant electing the special Normal Retirement benefit must Retire on or before December 30, 2008, as determined by the City. The Normal Retirement benefit of an approved Participant retiring under this Section A.06 shall be equal to his or her Pension Benefit, which shall be determined after taking into account the enhanced service and/or age elected by the approved Participant.

**EXHIBIT B**  
**SPECIAL EARLY RETIREMENT ELECTIONS**

**B.04 Special Early Retirement Benefits for Certain Public Works Employees**

Each “eligible Participant” (as such term is defined below for purposes of this Section B.04) may apply to the City, on or before September 22, 2008, to Retire and receive the Early Retirement benefit defined in this Section B.04. An “eligible Participant” means any Participant who as of September 30, 2008 (i) is an employee of the Public Works Department; (ii) applied to participate in the “Early Retirement Plan” for Public Works employees established in 2008 (the “ERP”); and (iii) was determined by the City to be eligible to be a participant in the ERP eligible for Early Retirement, taking into consideration the enhanced service benefit and/or enhanced age benefit provided under this Section, and credited service for any accrued but unused vacation and sick leave up to the amount authorized pursuant to the resolution by the Mayor and Council dated March 3, 1997, with an effective date of April 1, 1997. Each eligible Participant whose application for Early Retirement is approved by the City and who is approved meets the criteria established by the City for such special benefits shall be an “approved Participant”. The enhanced service benefit provides the approved Participant with up to an additional twenty four (24) months of Credited Service under the Plan. The enhanced age benefit deems the age of the approved Participant to be increased by up to twenty four (24) months. An approved Participant electing the special Early Retirement benefit under this Section B.04 may divide the twenty four (24) months enhanced benefit between Credited Service and age, as long as an Early Retirement criterion is met. The application by an eligible Participant to receive an Early Retirement benefit under this Section B.04 must be made pursuant to the application procedures and requirements established by the Board. An approved Participant electing the special Early Retirement benefit must Retire on or before October 20, 2008, as determined by the City. The Early Retirement benefit of an approved Participant retiring under this Section B.04 shall be equal to his or her Pension Benefit, which shall be determined after taking into account the enhanced service and/or age elected by the approved Participant.

**B.05 Special Early Retirement Benefits for Certain Recreation Department Employees**

Each “eligible Participant” (as such term is defined below for purposes of this Section B.05) may apply to the City, on or before December 30, 2008, to Retire and receive the Early Retirement benefit defined in this Section B.05. An “eligible Participant” means any Participant who as of December 30, 2008 (i) is an employee of the Recreation Department; (ii) applied to participate in the “Early Retirement Plan” for Recreation Department employees established in 2008 (the “ERP”); and (iii) was determined by the City to be eligible to be a participant in the ERP eligible for Early Retirement, taking into consideration the enhanced service benefit and/or enhanced age benefit provided under this Section, and credited service for any accrued but unused vacation and sick leave up to the amount authorized pursuant to the resolution by the Mayor and Council dated March 3, 1997, with an

effective date of April 1, 1997, if the eligible Participant requests credited service for any accrued but unused vacation and sick leave. Each eligible Participant whose application for Early Retirement is approved by the City and who is approved meets the criteria established by the City for such special benefits shall be an “approved Participant”. The enhanced service benefit provides the approved Participant with up to an additional twenty four (24) months of Credited Service under the Plan. The enhanced age benefit deems the age of the approved Participant to be increased by up to twenty four (24) months. An approved Participant electing the special Early Retirement benefit under this Section B.05 may divide the twenty four (24) months enhanced benefit between Credited Service and age, as long as an Early Retirement criterion is met. The application by an eligible Participant to receive an Early Retirement benefit under this Section B.05 must be made pursuant to the application procedures and requirements established by the Board. An approved Participant electing the special Early Retirement benefit must Retire on or before December 30, 2008, as determined by the City. The Early Retirement benefit of an approved Participant retiring under this Section B.05 shall be equal to his or her Pension Benefit, which shall be determined after taking into account the enhanced service and/or age elected by the approved Participant.

#### **B.06 Special Early Retirement Benefits for Certain Administrative Employees**

Each “eligible Participant” (as such term is defined below for purposes of this Section B.06) may apply to the City, on or before December 30, 2008, to Retire and receive the Early Retirement benefit defined in this Section B.06. An “eligible Participant” means any Participant who as of December 30, 2008 (i) is an administrative employee of the city finance, human resources, clerk or administration departments; (ii) applied to participate in the “Early Retirement Plan” for administrative employees of the city finance, human resources, clerk or administration departments established in 2008 (the “ERP”); and (iii) was determined by the City to be eligible to be a participant in the ERP eligible for Early Retirement, taking into consideration the enhanced service benefit and/or enhanced age benefit provided under this Section, and credited service for any accrued but unused vacation and sick leave up to the amount authorized pursuant to the resolution by the Mayor and Council dated March 3, 1997, with an effective date of April 1, 1997. Each eligible Participant whose application for Early Retirement is approved by the City and who is approved meets the criteria established by the City for such special benefits shall be an “approved Participant”. The enhanced service benefit provides the approved Participant with up to an additional twenty four (24) months of Credited Service under the Plan. The enhanced age benefit deems the age of the approved Participant to be increased by up to twenty four (24) months. An approved Participant electing the special Early Retirement benefit under this Section B.06 may divide the twenty four (24) months enhanced benefit between Credited Service and age, as long as an Early Retirement criterion is met. The application by an eligible Participant to receive an Early Retirement benefit under this Section B.06 must be made pursuant to the application procedures and requirements established by the Board. An approved Participant electing the special Early Retirement benefit must Retire on or before December 30, 2008, as determined by the City. The Early Retirement benefit of an approved Participant retiring under this Section B.06 shall be equal

to his or her Pension Benefit, which shall be determined after taking into account the enhanced service and/or age elected by the approved Participant.

**B.07 Special Early Retirement Benefits for Certain Building Inspection Department Employees**

Each “eligible Participant” (as such term is defined below for purposes of this Section B.07) may apply to the City, on or before September 7, 2009, to Retire and receive the Early Retirement benefit defined in this Section B.07. An “eligible Participant” means any Participant who as of September 7, 2009 (i) is an employee of the Building Inspection Department; (ii) applied for Early Retirement as a result of the termination of their employment by the City due to the elimination of the Building Inspection Department; and (iii) was determined by the City to be eligible for Early Retirement, taking into consideration the enhanced service benefit and/or enhanced age benefit provided under this Section, and credited service for any accrued but unused vacation and sick leave up to the amount authorized pursuant to the resolution by the Mayor and Council dated March 3, 1997, with an effective date of April 1, 1997, if the eligible Participant requests credited service for any accrued but unused vacation and sick leave. Each eligible Participant whose application for Early Retirement is approved by the City and who is approved meets the criteria established by the City for such special benefits shall be an “approved Participant”. The enhanced benefit provides the approved Participant with a total of an additional twenty four (24) months of (i) Credited Service ; or (ii) enhanced age benefit; or (iii) a combination of Credited Service and enhanced age. The application by an eligible Participant to receive an Early Retirement benefit under this Section B.07 must be made pursuant to the application procedures and requirements established by the Board. An approved Participant electing the special Early Retirement benefit must Retire on or before September 7, 2009, as determined by the City. The Early Retirement benefit of an approved Participant retiring under this Section B.07 shall be equal to his or her Pension Benefit, which shall be determined after taking into account the enhanced service and/or age elected by the approved Participant.