

MEMORANDUM

To: Mayor and City Council

From: Chris Pike, Finance Director

Date: July 14, 2014

Subject: **Discussion of Employee Retirement Plan Admendment**

ITEM DESCRIPTION

Discussion of Employee Retirement Plan Admendment for Plan G36658

BACKGROUND

The City currently maintains three Defined Contribution Plans for employees. One of these plans is the 401 Plan (Supplemental Pension) for employees applied towards retirement. When the plan was established in 2009, Warren Hutmacher was identified as the "Trustee" of the plan. While determining whether a title (e.g. City Manager) could be named as trustee instead of a person, we discovered a trustee is not required for the plan at all. At the same, we needed to clean up one section as it relates to Qualified Domestic Relations Orders (QRDOs); often needed when an employee divorces a spouse. This amendment addresses both of those issues.

RECOMMENDED ACTION

Discussion for approval at a subsequent meeting

ABOUT YOUR PLAN AMENDMENT

CITY OF DUNWOODY
SUPPLEMENTAL PENSION PLAN AND TRUST
G36658
June 10, 2014

Amendment Number 1 to the City of Dunwoody Supplemental Pension Plan and Trust has an effective date of **June 16, 2014**. The terms contained in the amendment will become effective on the later of (i) the stated effective date of the amendment or (ii) the signature date of the amendment.

The amendment includes the following changes:

- Removes the Trustee and Trust provisions.
- Changes the Plan name to City of Dunwoody Supplemental Pension Plan from City of Dunwoody Supplemental Pension Plan and Trust.
- Permits distributions related to Qualified Domestic Relations Orders (QDROs).



American United Life does not render legal advice; therefore, it is very important that you review this amendment carefully with your legal counsel before signing.

**AMENDMENT NUMBER 1
TO THE
CITY OF DUNWOODY
SUPPLEMENTAL PENSION PLAN AND TRUST**

EFFECTIVE DATE: June 16, 2014

The CITY OF DUNWOODY SUPPLEMENTAL PENSION PLAN AND TRUST, originally effective March 1, 2009, and restated in its entirety effective August 1, 2012, is hereby amended as follows:

By deleting Plan Sections 2.20, 2.21, and 2.23 in their entirety.

By deleting Plan Sections 2.12 and 2.16 of Article II in their entirety and by substituting in lieu thereof the following:

- 2.12 **Individual Participant Account** means the account established under Plan Section 4.03. The amount available for distribution to such Participant shall be determined in accordance with the terms of the Pension Contract.
- 2.16 **Plan** means the City of Dunwoody Supplemental Pension Plan as amended from time to time.

By deleting wherever else it appears in the Plan, the Plan name, City of Dunwoody Supplemental Pension Plan and Trust, and by substituting in lieu thereof the following Plan name:

City of Dunwoody Supplemental Pension Plan

By deleting Plan Sections 4.05 and 4.06 of Article IV in their entirety and by substituting in lieu thereof the following:

- 4.05 **Investment of Plan Contributions.** All contributions made by or on behalf of each Participant shall be invested in a Pension Contract(s). The contract or contracts shall be issued by an insurance company to the Employer or other contractholder. Pursuant to Code Section 401(f), a contract issued by an insurance company qualified to do business in a State shall be treated as a qualified trust if the contract would, except for the fact that it is not a trust, constitute a qualified trust under Code Section 401. A variety of investment options may be available under the contract, including, but not limited to, a common, collective or group trust fund, for which an investment manager serves as trustee or investment manager, that is maintained solely for the collective investment of tax-qualified pension or profit sharing plans, individual retirement accounts, and/or funds of or for certain governmental retirement plans, which common, collective or group trust fund is exempt from federal taxation under Code Section 501(a). Such commingling of assets of the Plan with assets of other qualified plans and trusts is specifically authorized. Any assets of the Pension Contract so invested shall be held and invested by the trustee(s) and/or investment manager(s) of such trust fund pursuant to all of the terms and conditions of the trust agreement or declaration of trust establishing the fund, which trust agreement or declaration of trust is hereby incorporated herein by this reference and made an integral part hereof, including without limitation any and all investment powers of the trustee(s) and/or investment manager(s) thereunder. The Employer may appoint one or more qualified investment managers to manage all or a designated portion of the Plan and contract assets.

The assets of the Plan will be valued on the Anniversary Date and such other date or dates deemed necessary by the Employer, which may include any day any transfer agent

appointed by the Employer, or any stock exchange used by such agent, are open for business.

- 4.06 **Plan Expenses.** Any administrative expenses not paid by the Employer may be paid out of Plan assets. (See Plan Section 13.04.)

By adding Plan Section 13.11 to Article XIII as follows:

- 13.11 **Participant Direction of Investment.** The Plan Administrator may consent in writing to allow all Participants to invest or re-invest the assets comprising their Participant's Individual Participant Account. For purposes of this Plan Section, the term Participants includes Participants, Beneficiaries, and alternate payees as described in Plan Section 14.11. If the Plan Administrator consents to Participant direction of investment, the Plan Administrator and each Participant must execute a suitable form, as designated by the Plan Administrator, containing such conditions, limitations and other provisions deemed appropriate before the Plan Administrator will follow any Participant direction with respect to the investment or re-investment of any part of the Participant's Individual Participant Account. The Plan Administrator is not liable for any loss nor for any breach resulting from a Participant's direction of the investment of any part of his Individual Participant Account. The Participant's direction of investment is limited to the investment alternatives made available by the Employer.

By adding Plan Section 14.11 to Article XIV as follows:

- 14.11 **Qualified Domestic Relations Order.** As set forth in Code Section 414(p)(11), a distribution from the Plan shall be treated as a Qualified Domestic Relations Order (QDRO) if it is made in accordance with a domestic relations order. Such domestic relations order must create or recognize the existence of an alternate payee's right to, or assign to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a Participant under the Plan. The benefit payable:
- (A) if not greater than \$1,000, shall be distributed to the alternate payee in a lump sum as soon as practicable following the determination that the domestic relations order is a QDRO.
 - (B) if greater than \$1,000, shall be distributed as elected by the alternate payee to the alternate payee in a lump sum or in a form of benefit otherwise available under the Plan as soon as practicable following the determination that the domestic relations order is a QDRO, provided that the alternate payee has so elected in a written form acceptable to the Plan Administrator.

For purposes of this Plan Section 14.11, the term "alternate payee" shall have the same meaning as that set forth in Code Section 414(p)(8), and the term "domestic relations order" shall have the same meaning as that set forth in code Section 414(p)(1)(B).

Effective April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a QDRO will not fail to be a QDRO solely because the order is issued after, or revises, another domestic relations order or QDRO, or solely because of the time at which the order is issued, including issuance after the annuity starting date of after the Participant's death. A domestic relations order described herein is subject to the same requirements and protections of a QDRO.

By deleting Articles XV and XVI in their entirety.

By deleting wherever else it appears in this Plan, any references to this Plan being Trusted or to a Trustee wherever the terms appear in this Plan.

CITY OF DUNWOODY has caused its name to be signed by its duly authorized officer to evidence adoption of this Plan amendment as of the date designated below.

CITY OF DUNWOODY

By _____

Title _____

Date _____