

ORDINANCE NO.: 6483

## AN ORDINANCE

## AMENDING

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

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

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

1.

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

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

2.

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

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

3

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

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

4.

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

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

5.

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

- “(1) \$40,000 or
- (2) 100 percent of such Participant's Compensation.”

6.

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

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

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

7.

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

8.

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

**Section 2:** That City Code Section 4-12-4-010, Exhibit A of Ordinance 4022, known as the "4022 Pension Plan" be amended as follows:

1.

Section 4-12-4-010, Exhibit A of Ordinance 4022, Article II-Definitions, Subsection 25, the definition of "Earnings" shall be amended by adding the following at the end thereof:

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

Effective January 1, 2001, Earnings shall be increased by the amount by which the Participant's Earnings is reduced by salary reduction or similar arrangement under Section 132(f)(4) of the Code (*i.e.*, a qualified transportation fringe benefit program). This increase also shall apply to the definition of "Compensation" in Section 14.05."

2.

Section 4-12-4-010, Exhibit A of Ordinance 4022, Article V, Section 3, Delayed retirement benefit, shall be amended by adding the following at the end thereof:

"The following rules shall apply for purposes of determining the required minimum distribution to Participants and Designated Beneficiaries (as defined below) for calendar years beginning on and after January 1, 2003 even if, in the case of a Designated Beneficiary, the Participant died before 2003.

(a) *Required Distribution.* Nothing in this section shall be deemed to extend any death benefit or permit any Beneficiary designation or payment form not otherwise provided or permitted under this Plan. This Section 3 shall, instead, be deemed to limit and modify any provision of this Plan to the extent that such limitation or modification is necessary to ensure that the Plan complies with this Section 3, Code Section 401(a)(9) and the Regulations thereunder.

The entire interest of each Participant in this Plan will be distributed, beginning not later than the Required Beginning Date described above, over the life of such Participant or over the lives of such Participant and his or her Designated Beneficiary, or over a period not extending beyond the life expectancy of such Participant or the life expectancy of such Participant and his or her Designated Beneficiary.

(b) *Death of Participant After Distribution has Begun.* If distribution of a Participant's interest has begun in accordance with the paragraph (a) above (i.e., distributions on or after the Required Beginning Date), and if the Participant dies before his or her entire interest has been distributed to him, then the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under paragraph (a) as of the date of the Participant's death.

(c) *Death of Participant Before Distribution has Begun.* If a Participant dies before distribution of the Participant's interest has begun in accordance with paragraph (a) above (i.e., no distributions have been made on or after the Required Beginning Date), the entire interest of the Participant must be paid over whichever of the following periods is applicable:

- (i) If one or more Designated Beneficiary is not the Participant's Spouse, the distribution period shall be the Designated Beneficiary's remaining life expectancy.
- (ii) If the sole Designated Beneficiary is the Participant's Spouse, the distribution period shall be the Spouse's remaining life expectancy.
- (iii) If there is no Designated Beneficiary, the entire benefit (if any is payable) shall be distributed by the end of the calendar year that includes the fifth anniversary of the Participant's death.

Distributions under paragraph (c)(i)-(iii) above shall commence as follows:

- (x) Distributions under (c)(i) (i.e., distribution to a non-Spouse Designated Beneficiary) shall begin on or before the end of the calendar year that begins immediately after the calendar year in which the Participant died.
- (y) Distributions under (c)(ii) (i.e., distribution to a Spousal Designated Beneficiary) shall begin on or before the later of the end of the calendar year immediately following the calendar year in which the Participant died and the end of the calendar year in which the Participant would have attained age 70 1/2.

(d) *Form of Distribution.* Any distribution payable under this Section 3 may be paid in any optional form of benefit that is available under the Plan, provided that all consent and eligibility requirements under the Plan are satisfied. Any annuity form of distribution payable under this Plan, however, must satisfy the following requirements:

- (i) The distribution must be in the form of a periodic annuity for the Participant's life, or for the joint life expectancy of the Participant and Designated Beneficiary or over a period certain that does not exceed the maximum length of the period certain determined under the Regulations.
- (ii) The interval between payments must be uniform over the entire distribution period and must not exceed one year.
- (iii) If payments have commenced over a period certain, the period certain may not be changed.
- (iv) Distributions in the form of a life annuity must satisfy the minimum distribution incidental benefit (MDIB) requirement of Code Section 401(a)(9)(G) and Treasury Regulation 1.401(a)(9)-6T, A-2, or any successor regulation thereto.
- (v) All payments, either in the form of a life annuity or over a period certain must either be non-increasing or increase only in accordance with the rules set forth in Treasury Regulation 1.401(a)(9)-6T, A-1.

For purposes of this Section 3, references to a life annuity shall include an annuity for the joint life expectancy of the Participant and the Designated Beneficiary.

(e) *Incidental Death Benefit Requirement.* Any optional form of benefit elected by the Participant or Designated Beneficiary must comply with the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G). This rule insures that the retirement benefits payable under the Plan are more than incidental.

(f) *Pension Board's Discretion.* The Pension Board for the City shall have the sole authority and full discretion to apply the provisions of this Section 3 to any benefit option elected by the Participant or Designated Beneficiary. The Plan Administrator may, for example, modify a Participant's selection of an optional form of benefit to satisfy the incidental death benefit requirement by requiring, at its discretion, that the Participant select another form of benefit or another contingent annuitant, or by modifying the form of benefit so that it complies with the applicable rules.

(g) *Definitions.* The following definitions shall apply to this Section 3, notwithstanding anything contained herein to the contrary.

- (i) Designated Beneficiary. The term "Designated Beneficiary" shall be determined in accordance with the definition of "Beneficiary" in the Regulations, notwithstanding that this definition may be different from that set forth elsewhere in this Plan, provided that any individual who is a Designated Beneficiary must also be a Beneficiary (but not necessarily all of the Beneficiaries) as defined in this Plan. Each Beneficiary, as defined in the Plan, however, need not be a Designated Beneficiary in the event, for example, that a Beneficiary disclaims his interest under this Plan.
- (ii) Spouse. "Spouse" shall mean "Spouse" as defined in the Regulations. Nothing in this Section 3 shall be deemed, however, to extend any death benefit or permit any Beneficiary designation or payment form not otherwise provided or permitted under this Plan.
- (iii) Regulations. "Regulations" shall refer to the Treasury Regulations (including temporary Regulations) promulgated under Code Section 401(a)(9), as set forth in Treasury Regulations 1.401(a)(9)-1 through 1.401(a)(9)-6T, and any additional guidance issued by the IRS in the form of revenue rulings, notices and other guidance published in the Internal Revenue Bulletin or any successor thereto."

**Section 3:** That City Code Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Pension Plan," shall be amended as follows:

1.

Article II, Section 8, the definition of "Earnings" in Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan," shall be amended by adding the following at the end thereof:

"Effective for Plan Years beginning on and after January 1, 2002, the \$150,000, amount described in this paragraph, as adjusted by the Commissioner, shall be increased to \$200,000, as adjusted by the Commissioner. For future Plan Years, any change to the

limitation imposed by Code Section 401(a)(17)(B) shall be deemed to be automatically incorporated into this Plan without the necessity of an amendment to that effect.

Effective January 1, 2001, Earnings shall be increased by the amount by which the Participant's Earnings is reduced by salary reduction or similar arrangement under Section 132(f)(4) of the Code (*i.e.*, a qualified transportation fringe benefit program). This increase also shall apply to the definition of "Compensation" in Section 8.05."

2.

Article V, Section 7, **Eligibility for a late retirement benefit**, in Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan," shall be amended by adding the following at the end thereof:

"The following rules shall apply for purposes of determining the required minimum distribution to Participants and Designated Beneficiaries (as defined below) for calendar years beginning on and after January 1, 2003 even if, in the case of a Designated Beneficiary, the Participant died before 2003.

(a) *Required Distribution.* Nothing in this section shall be deemed to extend any death benefit or permit any Beneficiary designation or payment form not otherwise provided or permitted under this Plan. This Section 7 shall, instead, be deemed to limit and modify any provision of this Plan to the extent that such limitation or modification is necessary to ensure that the Plan complies with this Section 7, Code Section 401(a)(9) and the Regulations thereunder.

The entire interest of each Participant in this Plan will be distributed, beginning not later than the Required Beginning Date described above, over the life of such Participant or over the lives of such Participant and his or her Designated Beneficiary, or over a period not extending beyond the life expectancy of such Participant or the life expectancy of such Participant and his or her Designated Beneficiary.

(b) *Death of Participant After Distribution has Begun.* If distribution of a Participant's interest has begun in accordance with the paragraph (a) above (*i.e.*, distributions on or after the Required Beginning Date), and if the Participant dies before his or her entire interest has been distributed to him, then the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under paragraph (a) as of the date of the Participant's death.

(c) *Death of Participant Before Distribution has Begun.* If a Participant dies before distribution of the Participant's interest has begun in accordance with paragraph (a) above (*i.e.*, no distributions have been made on or after the Required Beginning Date), the entire interest of the Participant must be paid over whichever of the following periods is applicable:



- (i) If one or more Designated Beneficiary is not the Participant's Spouse, the distribution period shall be the Designated Beneficiary's remaining life expectancy.
- (ii) If the sole Designated Beneficiary is the Participant's Spouse, the distribution period shall be the Spouse's remaining life expectancy.
- (iii) If there is no Designated Beneficiary, the entire benefit (if any is payable) shall be distributed by the end of the calendar year that includes the fifth anniversary of the Participant's death.

Distributions under paragraph (c)(i)-(iii) above shall commence as follows:

- (x) Distributions under (c)(i) (i.e., distribution to a non-Spouse Designated Beneficiary) shall begin on or before the end of the calendar year that begins immediately after the calendar year in which the Participant died.
- (y) Distributions under (c)(ii) (i.e., distribution to a Spousal Designated Beneficiary) shall begin on or before the later of the end of the calendar year immediately following the calendar year in which the Participant died and the end of the calendar year in which the Participant would have attained age 70 1/2.

(d) *Form of Distribution.* Any distribution payable under this Section 7 may be paid in any optional form of benefit that is available under the Plan, provided that all consent and eligibility requirements under the Plan are satisfied. Any annuity form of distribution payable under this Plan, however, must satisfy the following requirements:

- (i) The distribution must be in the form of a periodic annuity for the Participant's life, or for the joint life expectancy of the Participant and Designated Beneficiary or over a period certain that does not exceed the maximum length of the period certain determined under the Regulations.
- (ii) The interval between payments must be uniform over the entire distribution period and must not exceed one year.
- (iii) If payments have commenced over a period certain, the period certain may not be changed.
- (iv) Distributions in the form of a life annuity must satisfy the minimum distribution incidental benefit (MDIB) requirement of Code Section 401(a)(9)(G) and Treasury Regulation 1.401(a)(9)-6T, A-2, or any successor regulation thereto.

- (v) All payments, either in the form of a life annuity or over a period certain must either be non-increasing or increase only in accordance with the rules set forth in Treasury Regulation 1.401(a)(9)-6T, A-1.

For purposes of this Section 7, references to a life annuity shall include an annuity for the joint life expectancy of the Participant and the Designated Beneficiary.

(e) *Incidental Death Benefit Requirement.* Any optional form of benefit elected by the Participant or Designated Beneficiary must comply with the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G). This rule insures that the retirement benefits payable under the Plan are more than incidental.

(f) *Pension Board's Discretion.* The Pension Board for the City shall have the sole authority and full discretion to apply the provisions of this Section 7 to any benefit option elected by the Participant or Designated Beneficiary. The Plan Administrator may, for example, modify a Participant's selection of an optional form of benefit to satisfy the incidental death benefit requirement by requiring, at its discretion, that the Participant select another form of benefit or another contingent annuitant, or by modifying the form of benefit so that it complies with the applicable rules.

(g) *Definitions.* The following definitions shall apply to this Section 7, notwithstanding anything contained herein to the contrary.

- (i) Designated Beneficiary. The term "Designated Beneficiary" shall be determined in accordance with the definition of "Beneficiary" in the Regulations, notwithstanding that this definition may be different from that set forth elsewhere in this Plan, provided that any individual who is a Designated Beneficiary must also be a Beneficiary (but not necessarily all of the Beneficiaries) as defined in this Plan. Each Beneficiary, as defined in the Plan, however, need not be a Designated Beneficiary in the event, for example, that a Beneficiary disclaims his interest under this Plan.
- (ii) Spouse. "Spouse" shall mean "Spouse" as defined in the Regulations. Nothing in this Section 7 shall be deemed, however, to extend any death benefit or permit any Beneficiary designation or payment form not otherwise provided or permitted under this Plan.
- (iii) Regulations. "Regulations" shall refer to the Treasury Regulations (including temporary Regulations) promulgated under Code Section 401(a)(9), as set forth in Treasury Regulations 1.401(a)(9)-1 through 1.401(a)(9)-6T, and any additional guidance issued by the IRS in the form of revenue rulings, notices and other guidance published in the Internal Revenue Bulletin or any successor thereto."

Section 8, Rollovers, a sub-section of Article XII, Miscellaneous, in Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan," shall be amended by restating (b)(2) thereof, the definition of Eligible Retirement Plan, as of January 1, 2002, to read as follows:

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

**Section 4:** It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses, phrases and words are severable, and if any section, paragraph, clause, phrase or word of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, clauses, phrases or words of this Ordinance.

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

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

DATE: February 12, 2003

APPROVED:

  
William B. Dunaway, Mayor

ATTEST:

  
Sheila R. Hill, City Clerk

APPROVED AS TO FORM:

  
Douglas R. Hayne, City Attorney