

AN ORDINANCE

AMENDING the City of Marietta/BLW Retirement Plan 4532 (New Consolidated Plan) to bring the plan into compliance with IRS requirements.

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

Section 1: That Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan," Article I, "**Purpose**," shall be amended by adding the following to the end thereof to read as follows:

"This Plan is intended to be a qualified defined benefit plan under Internal Revenue Code Section 401(a) by meeting the requirements of Internal Revenue Code Section 414(d)."

Section 2: That Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan," Article V, Section 7, "**Eligibility for a late retirement benefit**" shall be amended by adding the following to the end thereof to read as follows:

"Notwithstanding any other provision of the Plan to the contrary, distributions from the Plan will be made in accordance with a good faith interpretation of Code Section 401(a)(9) and the regulations thereunder as applicable to governmental plans with the meaning of Code Section 414(d) and shall be implemented in accordance with the grandfathering provisions of such regulations applicable to annuity option distributions in effect on April 17, 2001."

Section 3: That Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan," Article VIII, "Maximum Benefits," shall be amended by deleting it entirely and replacing it with the following:

**"Article VIII
Maximum Benefits**

Section 8.01 General Rule.

The Annual Benefit payable under this Plan to a Participant at any time shall not exceed the Maximum Permissible Amount under Code Section 415(b) and the regulations thereunder as applicable to governmental plans (as defined in Code Section 414(d)) and which are hereby incorporated by reference. 'Maximum Permissible Amount' shall mean \$160,000, as adjusted by the Secretary of the Treasury for each calendar year, with the new limitation to apply to limitation years ending within the calendar year of the date of the adjustment (the 'Dollar Limitation').

The limitation above is sometimes referred to herein as the 'Code Section 415(b) limitation'.

Section 8.02 Reduction for Less than Ten Years of Participation or Employment.

If the Annual Benefit commences when the Participant has less than ten years of participation in this Plan or any predecessor plan to this Plan, the Dollar Limitation shall be reduced by one-tenth for each year less than ten, but in no event shall be less than one-tenth of the unreduced Dollar Limitation.

Section 8.03 Adjustment if the Annual Benefit Commences Before Age 62 or After Age 65.

If the payment of benefits under this Plan commences before age 62 or after age 65, the Dollar Limitation shall be adjusted as provided in this Section 10.03. The method for making this adjustment is not affected by whether the benefit is payable in a form subject to Code Section 417(e)(3).

Generally, the age-adjusted Dollar Limitation is the actuarial equivalent of the Dollar Limitation payable at age 65, as calculated under (a) or (b) below, whichever is applicable:

(a) *If the age at which the benefit is payable is less than 62:*

The Dollar Limitation is determined by reducing the Dollar Limitation at age 65 on an actuarially equivalent basis. First, reduce the Dollar Limitation at age 65 using the interest rate and mortality table, or tabular factors, as applicable, which are set forth in the Plan for the reduction of benefits for early commencement. Second, reduce the Dollar Limitation at age 65 using 5 percent interest and the Applicable Mortality Table. Use the *lesser* of the amounts determined under the two preceding sentences as the age-adjusted Dollar Limitation under this paragraph (a).

If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in the Plan and the mortality table (or other tabular factor) specified in the Plan; or (2) a 5-percent interest rate assumption and the applicable mortality table as defined in the Plan.

(i) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting

Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted for years of participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for the Annuity Starting Date as defined in the Plan (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

- (ii) Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Dollar Limitation for the Participant's Annuity Starting Date is the lesser of the limitation determined under subsection (i). and the Dollar Limitation (adjusted for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this section.

(b) *If the age at which the benefit is payable is later than 65:*

The Dollar Limitation is determined by increasing the Dollar Limitation at age 65 on an actuarially equivalent basis. The increased age-adjusted Dollar Limitation shall be the lesser of the equivalent amount computed using the interest rate and mortality table set forth in Article 1 in the definition of Actuarial Equivalence under the Plan and the equivalent amount computed using 5 percent interest and the Applicable Mortality Table.

If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation (adjusted for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in the Plan and the mortality table (or other tabular factor) specified the Plan; or (2) a 5-percent interest rate assumption and the applicable mortality table as defined in the Plan.

- (i) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Dollar Limitation at the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation (adjusted for years of participation less than

10, if required), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that Annuity Starting Date as defined the Plan (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date). "(d) For limitation years beginning on or after July 1, 2007, the actuarial adjustment is equal to the equivalent Annual Benefit, computed using (i) the interest rate and mortality table (or other tabular factor) specified in the Plan; (ii) a 5.5% interest assumption and the applicable mortality table for distributions under Treasury Regulation Section 1.417(e)-1(d)(2); or (iii) the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) and the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) divided by 1.05.

- (ii) Plan Has immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Dollar Limitation at the Participant's Annuity Starting Date is the lesser of the limitation determined under subsection (i) above, and the Dollar Limitation (adjusted for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this section. For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

Section 8.04 Special Rules.

- (a) All plans a single plan. For purposes of the maximum limitations of this Article, all defined benefit plans maintained by the Employer shall be considered as a single defined benefit plan, and all defined contribution plans maintained by the Employer shall be considered a single defined contribution plan.
- (b) Special Limitation for Qualified Police or Firefighter. If a Participant is a 'qualified participant' as defined under Code Section 415(b)(2)(G), such Participant may retire before age sixty-two (62), without a reduction in the Dollar Limitation if at least fifteen (15) years of service is required to receive a full benefit under the Plan.
- (c) Ancillary Benefits. 'Ancillary benefits' i.e. benefits that are not directly related to retirement income benefits, or as otherwise defined in Code Section

415(b)(2)(B), shall not count toward the Dollar Limitation. Such ancillary benefits include pre-retirement disability benefits and death benefits.

Section 8.05 Definitions.

For purposes of this Article 10, the following definitions shall apply:

- (a) 'Annual Additions' means the sum of the following amounts credited to a Participant's account under a defined contribution plan for the limitation year:
 - (i) Employer contributions;
 - (ii) Forfeitures;
 - (iii) Nondeductible employee contributions; provided, however, that the annual addition for any limitation year beginning before January 1, 1987 shall not be recomputed to treat nondeductible employee contributions as an annual addition; and
 - (iv) Amounts described in Code Sections 415(l)(1) and 419A(d)(2).
- (b) 'Annual Benefit' means a retirement benefit under the Plan which is payable annually in the form of a straight life annuity. If a Participant's benefit is payable in a Non-Annuity Benefit Form, whether as the normal form of benefit or as an optional form which the Participant or his Beneficiary elects, the Non-Annuity Benefit Form is adjusted as provided below, whichever is applicable. No actuarial adjustment to the Non-Annuity Benefit Form is required for (i) the value of a qualified joint and survivor annuity; (ii) the value of benefits that are not directly related to retirement benefits (such as a disability benefit, pre-retirement death benefits, and post-retirement medical benefits); or (iii) the value of post-retirement cost-of-living increases made in accordance with Treasury Regulations.
 - (i) Conversion for Optional Forms Subject to Code Section 417(c)(3). For purposes of applying the Maximum Permissible Amount, retirement benefits payable in an optional form other than a straight life annuity, which are subject to Code Section 417(c)(3) are adjusted to an actuarially equivalent straight life annuity that is equal to the greater of the equivalent Annual Benefit, computed using the interest rate and mortality table (or other tabular factor) specified in the Plan and the equivalent Annual Benefit computed using the applicable mortality table under Rev. Rul. 2001-62.
 - (ii) Conversion for Optional Forms Not Subject to Code Section 417(c)(3). For purposes of applying the Maximum Permissible Amount, retirement benefits payable in an optional form other than a straight life annuity, which are not subject to Code Section 417(c)(3) are adjusted to an actuarially equivalent straight life annuity that equals:

- (A) For limitation years beginning on or after July 1, 2007, the greater of the annual amount of the straight life annuity (if any) payable under the Plan at the same Annuity Starting Date, and the annual amount of a straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit computed using an interest rate of 5 percent and the applicable mortality table under Code section 417(e)(3). For limitation years beginning on or after July 1, 2007, the actuarial adjustment is equal to the equivalent Annual Benefit, computed using (i) the interest rate and mortality table (or other tabular factor) specified in the Plan; (ii) a 5.5% interest assumption and the applicable mortality table for distributions under Treasury Regulation Section 1.417(e)-1(d)(2); or (iii) the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) and the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) divided by 1.05.
- (B) For limitation years beginning before July 1, 2007, the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table or other tabular factor specified in the Plan for adjusting benefits in the same form and (II) a 5 percent interest rate assumption and the applicable mortality table described in Code section 417(e)(3).
- (c) 'Compensation' means a Participant's earned income, wages, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the Employer (including, but not limited to, commissions paid sales representatives, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses), and excluding the following:
- (1) Employer contributions to a plan of deferred compensation that are not included in the employee's gross income for the taxable year in which contributed or Employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the employee, or any distributions from a plan of deferred compensation;
 - (2) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
 - (3) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option;
 - (4) Other amounts which receive special tax benefits; and

- (5) Amounts that do not satisfy the timing rules set forth in the Regulations under Code Section 415.

Compensation for any limitation year is the compensation actually paid or includable in gross income during such year.

Notwithstanding the foregoing, Compensation shall include any elective deferral (as defined in Code Section 402(g)(3)) and any amount that is contributed or deferred by the Employer at the election of the Employee and which is not includable in the gross income of the Employee by reason of Code Section 125 or 457. In addition, 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).

The annual Compensation taken into account shall not exceed the limitations of Code Section 401(a)(17) in effect as of the beginning of the Plan Year in which it is paid.

- (d) Amounts that would otherwise constitute "Compensation" under (c) above but are paid from a nonqualified, unfunded deferred compensation plan sponsored by the Employer nevertheless shall constitute "Compensation" for purposes of the limitations in Code Section 415 in the year in which such amounts are actually received by the Participant, but only to the extent such amounts are includable in the Participant's gross income.
- (e) The following amounts also shall constitute "Compensation" under (c) above if
- (i) the amounts are paid by the later of 2 ½ months after the Participant's severance from employment with the Employer or the end of the limitation year that includes the date of the Participant's severance from employment, and
 - (ii) the amounts would have constitute Compensation under (c) above if they were paid prior to the Participant's severance from employment with the Employer:
- (1) payment for unused accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use the leave if employment had continued; and
 - (2) amounts received by a Participant pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Participant at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includable in the Participant's gross income.

Section 8.06 General Rule.

Anything contained in the Plan to the contrary notwithstanding, effective January 1, 2014, an Accrued Benefit computed under Article 10 shall be limited to the maximum

permissible amount under Code Section 415(b) and the regulations thereunder, as applicable to a governmental plan (as defined in Code Section 414(d)), which are hereby incorporated by reference.”

Section 4: That Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the “Consolidated Plan,” Article XII, “**Miscellaneous**,” shall be amended by adding a new Section 11 to the end thereof to read as follows:

“Section 11. **Exclusive Benefit.**

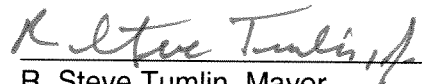
The assets of the trust fund shall be for the exclusive benefit of Participants and persons claiming under or through them and for defraying reasonable expenses of administering the Plan. All contributions made pursuant to Article IV, Section 1, shall be based on the initial qualification of the Plan under Code Sections 401 and 501(a). All such contributions shall be irrevocable and such contributions as well as the trust fund, or any portion of the principal or income thereof, shall never revert to or inure to the benefit of the City except that (1) any contributions which are made under a mistake of fact may be returned to the City within one year after the contributions were made and (2) any funds remaining after all liabilities of the Plan have been met may be returned to the City.”

Section 5: 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.

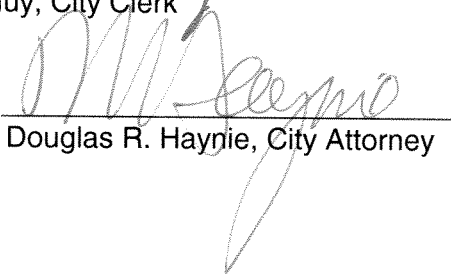
Section 6: All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 7: This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

DATE: June 11, 2014


R. Steve Tumlin, Mayor

ATTEST: 
Stephanie Guy, City Clerk

Approved as to Form: 
Douglas R. Haynie, City Attorney