



**BENEFITS LAW GROUP, P.K. KEESLER, P.C.**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

December 9, 2013

Internal Revenue Service  
P.O. Box 12192  
Covington, KY 41012-0192

Re: **Consolidated Retirement Plan for Employees of the City of Marietta GA**  
**EIN 58-6000616**  
**Plan No. 002**

Dear Sir or Madam:

The City of Marietta, GA hereby submits an application through the Voluntary Compliance Program along with an application for a determination letter on the qualification of the Consolidated Retirement Plan for Employees of the City of Marietta GA (the "Plan"). This Plan is being filed on-cycle. This is a "non-amender" filing pursuant to Rev. Proc. 2012-13.

The following documents are enclosed in support of this application:

- Form 8951 and compliance fee of \$15,000
- Form 8950
- Appendix C, Part I and Part II, Schedule 2
- Appendix D
- Form 2848
- Current Working Plan Document incorporating all amendments
- Prior Plan Documents and Amendments
- Form 8717 and \$2,500 user fee
- Form 5300 and applicable attachments
- Form 2848
- Current Working Plan Document incorporating all amendments
- Prior Plan Documents and Amendments

Please contact me if you have any questions or need additional information.

Sincerely,

Patricia K. Keesler

Encls.

c: Shannon Barrett

## Statement of Amendments

1. Ordinance # 6340: GUST restatement
2. Ordinance # 6465 Clarify period of earnings used for disability
3. Ordinance # 6483 EGTRRA Amendment and CRA
4. Ordinance # 6659 Adding pop up feature to joint and survivor form of benefit
5. Ordinance # 6837 Eliminate mandatory cash out provision
6. Ordinance # 7103 Change to pension board candidates
7. Ordinance # 7142 Changes to plan design for new employees hired on or after 3/18/2008
8. Ordinance # 7234 Add pick up contributions as of 1/1/2009
9. Ordinance # 7274 Changes to plan design for new employees hired on or after 1/1/2009
10. Ordinance # 7301 Clarify rehire's benefits and FMLA
11. Ordinance # 7379 Pension Board changes
12. Ordinance # 7514 PPA, WRERA, HEART Act
13. Ordinance # 7669 Disability
14. Proposed Ordinance – Section 415 incorporation by reference.

Form **8951**

(Rev. January 2013)

Department of the Treasury  
Internal Revenue Service**Compliance Fee for Application of Voluntary  
Correction Program (VCP)**Under the Employee Plans Compliance Resolution System (EPCRS)  
▶ Information about Form 8951 and its instructions is at [www.irs.gov/form8951](http://www.irs.gov/form8951).  
▶ Attach to Form 8950.

OMB No. 1545-1673

For IRS Use Only

Amount Paid

\$ \_\_\_\_\_

1 Name of plan sponsor (employer if single-employer plan)

City of Marietta, GA

2 Plan sponsor's employer identification number

58-6000616

3 Plan number

002

4 Plan name **Consolidated Retirement Plan  
for Employees of City of Marietta GA**

5 Number of plan participants. See instructions to determine this number.

1459

6 If you are submitting a check for an **additional** VCP compliance fee that has been requested by an IRS employee in Voluntary Compliance, check this box  and provide the check amount \$ \_\_\_\_\_ and the VCP Case Number \_\_\_\_\_.

7

**General Compliance Fee Schedule**

Number of Plan Participants	General Compliance Fee Amount
(a) 0-20	<input type="checkbox"/> \$750
(b) 21-50	<input type="checkbox"/> \$1,000
(c) 51-100	<input type="checkbox"/> \$2,500
(d) 101-500	<input type="checkbox"/> \$5,000
(e) 501-1,000	<input type="checkbox"/> \$8,000
(f) 1,001-5,000	<input checked="" type="checkbox"/> \$15,000
(g) 5,001-10,000	<input type="checkbox"/> \$20,000
(h) Over 10,000	<input type="checkbox"/> \$25,000

8 **Exceptions to the General Compliance Fee Schedule. Check all boxes that apply:**

If a VCP submission consists solely of one or more applicable failures checked in 8(a) - (f) (and does not include any other failure), the compliance fee will be the lesser of: (1) the sum of the reduced compliance fee amounts, or (2) the general compliance fee amount (see instructions). If any box in 8(g) - (j) is checked, pay only the corresponding reduced compliance fee amount.

Reduced Compliance Fee Eligibility	Reduced Compliance Fee Amount
(a) VCP submission relates to certain failures involving the late adoption of good faith amendments, interim amendments, or amendments required to implement optional tax law changes, as described in Rev. Proc. 2013-12, section 6.05(3)(a). See Rev. Proc. 2013-12, section 12.03(2).	<input type="checkbox"/> \$375
(b) VCP submission relates to late nonamender failures described in Rev. Proc. 2013-12, section 6.05(2)(a)(ii), and the VCP submission is made within a 1-year period following the expiration of the plan's remedial amendment period for complying with such changes. See Rev. Proc. 2013-12, section 12.03(1).	<input type="checkbox"/> General compliance fee amount from line 7 is reduced by 50%.
(c) VCP submission relates to a failure to comply with Internal Revenue Code (IRC) section 401(a)(9) minimum distribution rules affecting 50 or fewer plan participants. See Rev. Proc. 2013-12, section 12.02(2), for additional rules.	<input type="checkbox"/> \$500
(d) VCP submission relates to a failure of participant loans to comply with IRC section 72(p)(2) rules, provided no more than 25% of plan participants were affected in any year in which the failure occurred. See Rev. Proc. 2013-12, section 12.02(3), for additional rules.	<input type="checkbox"/> General compliance fee amount from line 7 is reduced by 50%.

For Paperwork Reduction Act Notice, see instructions.

Form **8951** (Rev. 1-2013)

**Exceptions to the General Compliance Fee Schedule. Check all boxes that apply, continued**

If a VCP submission consists solely of one or more applicable failures checked in 8(a) - (f) (and does not include any other failure), the compliance fee will be the lesser of: (1) the sum of the reduced compliance fee amounts, or (2) the general compliance fee amount (see instructions). If any box in 8(g) - (j) is checked, pay only the corresponding reduced compliance fee amount.

Reduced Compliance Fee Eligibility	Reduced Compliance Fee Amount
(e) VCP submission relates to a failure to timely adopt an amendment (upon which a favorable determination letter is conditioned) within the applicable remedial amendment period, provided the required amendment is adopted within three months of the expiration of the remedial amendment period for adopting the amendment. See Rev. Proc. 2013-12, sections 6.05(3)(d) and 12.03(3), for additional details and conditions.	<input type="checkbox"/> \$500
(f) VCP submission relates to a failure to timely adopt a written 403(b) plan. The VCP submission must be mailed to the IRS by December 31, 2013. See Rev. Proc. 2013-12, section 12.02(5) for additional details and conditions.	<input type="checkbox"/> General compliance fee amount from line 7 is reduced by 50%.
(g) VCP submission relates to a request for a minor modification of a previously issued compliance statement, and has been mailed within the correction period set forth in the compliance statement. See Rev. Proc. 2013-12, section 10.07(10).	<input type="checkbox"/> Compliance fee amount is the lesser of: 50% of the original compliance fee or \$1,500.
(h) Plan is a SEP, SARSEP, or SIMPLE IRA. See Rev. Proc. 2013-12, section 12.06, for additional rules.	<input type="checkbox"/> \$250
(i) Group submission from an eligible organization, as defined in Rev. Proc. 2013-12, section 10.11(2). See Rev. Proc. 2013-12, section 12.05, for additional	<input type="checkbox"/> Initial fee due with this submission is \$10,000. An additional fee will be requested by the IRS at a later time based on the number of plans in excess of 20 that will be part of the group submission (capped at \$50,000).
(j) Terminating orphan plan, as defined in Rev. Proc. 2013-12, section 5.03. A terminating orphan plan may be granted a waiver of the fee upon request. See instructions and Rev. Proc. 2013-12, sections 11.03(13) and 12.02(4).	<input type="checkbox"/> No compliance fee is due at this time.

**Caution.** In some situations, the compliance fee owed for a VCP submission may be higher than the amounts reflected on pages 1 and 2 of this form. See *Determining the Proper Compliance Fee* in the instructions and in Rev. Proc. 2013-12, section 12.



# Application for Voluntary Correction Program (VCP)

Under the Employee Plans Compliance Resolution System (EPCRS)

OMB No. 1545-1673  
For IRS Use Only

Information about Form 8950 and its instructions is at [www.irs.gov/form8950](http://www.irs.gov/form8950).

Review the attached Procedural Requirements Checklist before mailing this VCP submission to the IRS.

1a Name of plan sponsor (employer if single-employer plan)

City of Marietta, GA

1b Address of plan sponsor (if a P.O. box, see instructions)

205 Lawrence Street

1c City or town

Marietta

1d State

GA

1e ZIP code

30060

1f Foreign country name

1g Foreign province/county

1h Foreign postal code

1i Employer identification number

58-6000616

1j Telephone number

770-794-5567

1k Fax number

770-794-5565

2a Person to contact if more information is needed. (see instructions)

(If a Power of Attorney is attached, check box and do not complete lines 2a through 2g.)

Name

2b Address

2c City or town

2d State

2e ZIP code

2f Telephone number

2g Fax number

If more space is needed for any line items, attach additional sheets of the same size as this form. Identify each additional sheet with the plan sponsor's name and EIN and identify the corresponding line item.

Under penalties of perjury, I declare that I have examined this VCP submission, including Form 8950 and all accompanying documents, and to the best of my knowledge and belief, they and the facts presented in support of this application and submission are true, correct, and complete.

SIGN HERE ▶

This application must generally be signed by the owner or an authorized employee of the plan sponsor. For exceptions, see instructions under *Who Must Sign*.

Date ▶

11/22/13

Type or print name

William F. Bruton, Jr.

Type or print title

City Manager

For Paperwork Reduction Act Notice, see separate instructions.

Form **8950** (1-2013)



**3** Type of VCP submission (see instructions)  
Check one:

- VCP regular submission
- VCP anonymous submission
- VCP group submission
- Non-VCP 457(b) submission (as permitted by Revenue Procedure (Rev. Proc.) 2013-12, section 4.09)

**4a** Name of plan (plan name may not exceed 132 characters, including spaces):

**Consolidated Retirement Plan for Employees of City of Marietta GA**

**4b** Enter 3-digit plan number (see instructions)

**4d** Enter the dollar value of the plan's assets (see instructions)

**4c** Enter month plan year ends (MM) (see instructions)

**4e** Enter number of participants (see instructions)

**5** Indicate type of plan by entering the corresponding number from the list below:  (Enter only one plan type)

- 01-Profit sharing (not 401(k))
- 02-401(k)
- 14-Stock bonus
- 03-Money purchase
- 06-Target benefit
- 04-Defined benefit (not cash balance or other statutory hybrid)
- 09-Cash balance or other statutory hybrid
- 05-ESOP
- 15-KSOP
- 07-403(b)
- 08-457(b)
- 10-Governmental 414(d) defined benefit
- 20-Governmental 414(d) defined contribution
- 11-SEP
- 12-SARSEP
- 13-SIMPLE IRA
- 16-Group submission defined contribution
- 17-Group submission defined benefit
- 99-Other (see instructions)



Yes No

6   Are all qualification failures and correction methods in this VCP submission being resolved by the use of the Appendix C, Part II schedules in Rev. Proc. 2013-12?

If "Yes," please indicate the specific schedules you are submitting.

- Schedule 1       Schedule 6       Schedule 11
- Schedule 2       Schedule 7       Schedule 12
- Schedule 3       Schedule 8
- Schedule 4       Schedule 9
- Schedule 5       Schedule 10

7a   If you are proposing to correct any section 401(a) qualification failure, does the correction include a retroactive plan amendment (see instructions)?

7b   If 7a is "Yes," have you concurrently submitted a Form 5300 series, Application for Determination for Employee Benefit Plan (see instructions)?

If 7b is "No," attach an explanation as to why such determination letter application was not submitted.

7c If 7a is "Yes," indicate the plan's remedial amendment cycle as determined by Rev. Proc. 2007-44 (or successor) that was in effect as of the date of this VCP submission (see instructions):

Cycle C or E

8   Has the plan or plan sponsor been party to an abusive tax avoidance transaction (see Rev. Proc. 2013-12, section 4.13(2))?

If "Yes," attach an explanation that provides details of the transaction (see instructions).

9   Does the VCP submission relate to the diversion or misuse of plan assets (see Rev. Proc. 2013-12, section 4.12)?

10   As of the date this VCP submission is mailed to the IRS, is the plan sponsor or the plan under examination, as defined in Rev. Proc. 2013-12, section 5.09? If "Yes," you are ineligible for VCP (see instructions).

11   As of the date this VCP submission is mailed to the IRS, is the plan being considered in an unrelated Form 5300 series determination letter application?

If "Yes," include an attachment indicating the date the application was filed with the IRS and the determination letter application case number.

12   Have you previously filed a Form 5300 series determination letter application for this plan with the IRS that was subsequently closed or withdrawn as a result of a failure to respond to a request for additional information?

If "Yes," attach an explanation (see instructions).



## Procedural Requirements Checklist

**You do not have to use this checklist, but it may help prevent delayed IRS processing caused by an incomplete submission.**

- 1 Is Form 8951, Compliance Fee for Application for Voluntary Correction Program (VCP) Under the Employee Plans Compliance Resolution System (EPCRS), attached to Form 8950?
- 2 Is the appropriate compliance fee for your submission (and a photocopy of the compliance fee check) attached to Form 8951?
- 3 If appropriate, is Form 2848, Power of Attorney and Declaration of Representative, and/or Form 8821, Tax Information Authorization, attached? For more information, see *Disclosure Request by Taxpayer* in the instructions and Rev. Proc. 2013-4 (or its successor).
- 4 Is the employer identification number (EIN) of the plan sponsor/employer (NOT the trust's EIN, or an individual's SSN) entered on line 1i? See *Line 1i* in the instructions.
- 5 Is the application signed and dated? It generally must be signed by an authorized employee or the owner of the plan sponsor. See *Who Must Sign* in the instructions for situations where the signer may be a different person.
- 6 If you are submitting Appendix C, Part I, Model VCP Compliance Statement or Appendix C, Part II, Schedules, have you used the official versions of these documents that are located at [www.irs.gov/Retirement-Plans/Correcting-Plan-Errors](http://www.irs.gov/Retirement-Plans/Correcting-Plan-Errors)? The format of these documents may not be modified in any way. See Rev. Proc. 2013-12, sections 11.01 and 11.02.
- 7 If you answered "Yes" to line 7a, have you answered lines 7b and 7c and supplied the requested information?
- 8 If you answered "No" to line 7b, have you included a written explanation as requested by line 7b?
- 9 If you answered "Yes" to line 7a, have you included: a separate determination letter application that includes a Form 8717; a Form 5300, 5307, or 5310; a separate check for the user fee; and separate copies of plan documents, amendments, etc., required by the Form 5300 series application instructions? See Rev. Proc. 2013-12, sections 6.05 and 11.04.
- 10 If this is an anonymous VCP submission, have you included a signed statement from the plan sponsor's representative indicating the representative has the legal authorization to make this submission and is willing and able to submit Form 2848 to the IRS upon disclosure of the taxpayer's identity? See instructions and Rev. Proc. 2013-12, sections 10.10 and 11.08.
- 11 If this VCP submission involves an orphan plan, have you included appropriate documentation that establishes that this submission is being made by an eligible party? See instructions and Rev. Proc. 2013-12, sections 5.03 and 11.10.

**NOTE.** If you answered "Yes" to line 6, then items 12 through 19 on this checklist do not apply (as they have been incorporated into Schedules described in Rev. Proc. 2013-12, Appendix C, Part II). All applicable items on each of the Schedules need to be completed, and you must include the enclosure items listed on each applicable Schedule with your VCP submission. The Schedules may be used as part of a Model VCP Submission Compliance Statement described in Rev. Proc. 2013-12, Appendix C, Part I, to resolve certain qualification failures. If you combine the Schedules with the model compliance statement, you must specify in each section of the model compliance statement the Schedules being submitted in that section.



## Procedural Requirements Checklist (Continued)

- 12 Have you included an explanation of how and why the described qualification failures arose? Include a description of the applicable administrative procedures for the plan that were in effect at the time the described failures occurred.
- 13 Have you included a complete description for each qualification failure that is to be resolved by this VCP submission? The narrative description should include the years in which the failure occurred and the number of employees affected by each failure.
- 14 Have you included a detailed description of the method for correcting the failures that the plan sponsor has implemented or proposes to implement to correct each failure described in this VCP submission? Each step of the correction method must be described in narrative form and must include specific information needed to support the proposed correction method. See Rev. Proc. 2013-12, section 11.03.
- 15 Have you included a description of the administrative measures that have been or will be implemented to ensure that the qualification failures described in this VCP submission do not recur? See Rev. Proc. 2013-12, section 11.03.
- 16 For failures involving corrective contributions or distributions, have you included an explanation that provides a detailed, narrative description explaining the methodology you have used to determine lost earnings and how this is consistent with EPCRS correction principles? See Rev. Proc. 2013-12, sections 6.02 and 11.03.
- 17 For failures involving corrective contributions or distributions, have you included detailed and specific calculations for each affected employee or a representative sample of affected employees? The sample calculations must be sufficient to demonstrate each aspect of the proposed correction method. See Rev. Proc. 2013-12, section 11.03.
- 18 For failures involving participant loans that do not comply with section 72(p) requirements, have you included:
- An explanation that contains a detailed description of the failure;
  - An explanation that requests income tax reporting relief, and/or a request to report the distribution on Form 1099-R in the year of correction instead of the year of failure;
  - For cases in which income tax reporting relief has been requested, detailed calculations and narrative that describe the correction proposal and demonstrate compliance with the requirements set forth in Rev. Proc. 2013-12, sections 6.07 and 11.03?
- 19 For operational failures that have resulted in certain excise taxes, have you included an explanation requesting a waiver of the excise tax under section 4972, 4973, 4974, or 4979 or additional income tax under section 72(t), as applicable? Where required, have you included detailed explanations supporting the request? See Rev. Proc. 2013-12, section 6.09, for information as to when such waivers are available.
- 20 Have you included an explanation that describes the method(s) that will be used to locate and notify former employees or beneficiaries? If there are no former employees or beneficiaries affected by the failure described in this VCP submission or the proposed method of correction, have you provided an affirmative statement to that effect? See Rev. Proc. 2013-12, section 11.03.
- 21 If the failures described in this VCP submission include a failure related to transferred assets, as defined in Rev. Proc. 2013-12, section 5.01(7), have you included an attachment that describes the related employer transaction, including the date of the employer transaction and the date the assets were transferred to the plan?
- 22 If the failures described in this VCP submission include an operational failure, have you included a copy of the plan document (and adoption agreement, if applicable) or applicable provisions of the plan document, that were in effect during the period of failure? See Rev. Proc. 2013-12, section 11.04.



## Procedural Requirements Checklist (Continued)

- 23 If the failures described in this VCP submission include a non-amender failure other than late interim amendments, have you included a copy of the plan document in effect prior to any of the amendments used to correct the failure(s)? See Rev. Proc. 2013-12, section 11.04.
- 24 If the failures are being corrected by plan amendments or the adoption of a written plan, have you:
- Included copies of the corrective amendments?
  - Submitted corrective documents that were executed by the plan sponsor (if correcting interim amendment failures or a failure to adopt a written 403(b) plan timely)?
  - Included an explanation that identifies the specific plan language that resolves each specified qualification failure described in the VCP submission (including the page and section of the plan document that includes the specific plan language), if a restated plan document is being submitted as evidence of correction?
- 25 If the plan in this VCP submission is a 403(b) plan, has a written attachment been included that contains the following items?
- A statement as to the type of employer (e.g., a tax-exempt organization described in section 501(c)(3)) that is making the VCP submission; and
  - A statement indicating that the plan sponsor has contacted all other entities involved with the plan and has been assured of cooperation to the extent necessary to implement the applicable correction.
- 26 If you wish to receive an acknowledgement letter that the IRS has received your Form 8950 and VCP submission, have you included an Appendix D Acknowledgement Letter with your submission? See Rev. Proc. 2013-12, section 11.11 and Appendix D.
- 27 Have you assembled your submission as described in Rev. Proc. 2013-12, section 11.14? For those submissions with related determination letter applications, have you included separate copies of all necessary plan documents and amendments so that the VCP submission and the determination letter application each has its own copies? See Rev. Proc. 2013-12, section 11.04.
- 28 Is this VCP submission limited to a minor modification to a previously issued compliance statement, as permitted by Rev. Proc. 2013-12, section 10.07(10)?
- If "Yes," have you included the following items?
- An attachment describing the modification;
  - A copy of the original compliance statement;
  - A copy of the original VCP submission;
  - Any other correspondence relating to the issuance of the original compliance statement, if applicable; and
  - An attachment indicating that the modification request is being mailed to the IRS before the end of the correction period specified in the original compliance statement.



**APPENDIX C-PART I  
MODEL VCP SUBMISSION COMPLIANCE STATEMENT**

Consolidated Retirement Plan for Employees of City of

**Plan Name:** Marietta, GA **EIN:** 58-6000616 **Plan #:** 002

(Include the plan name, Applicant's EIN, and plan number on each page of the compliance statement, including attachments.)

**SECTION I. PLAN INFORMATION**

1. APPLICANT'S NAME: City of Marietta

2. APPLICANT'S EIN: 58-6000616 3. PLAN NO.: 002  
(do not use Social Security Number)

4. PLAN NAME: Consolidated Retirement Plan for Employees of City of Marietta, GA

**SECTION II. APPLICANT'S DESCRIPTION OF FAILURES**

Attach additional pages, as needed. Label attachment "SECTION II. APPLICANT'S DESCRIPTION OF FAILURES." List and number each failure separately. If using the Appendix C, Part II Schedules, simply specify the Schedule(s) that are to be part of this compliance statement and attach them to this compliance statement.

Appendix C Part II Schedule 2

**SECTION III. APPLICANT'S DESCRIPTION OF THE PROPOSED METHOD OF CORRECTION**

Attach additional pages, as needed. Label attachment "SECTION III. APPLICANT'S DESCRIPTION OF THE PROPOSED METHOD OF CORRECTION." Describe the correction method applicable to each failure listed in Section II. If using the Appendix C, Part II Schedules, simply specify the Schedule(s) that are to be part of this compliance statement and attach them to this compliance statement.

Appendix C Part II Schedule 2

**SECTION IV. APPLICANT'S PROPOSED PROCEDURES TO LOCATE AND NOTIFY FORMER EMPLOYEES OR BENEFICIARIES**

Attach additional pages, as needed. Label attachment "SECTION IV. APPLICANT'S PROPOSED PROCEDURES TO LOCATE AND NOTIFY FORMER EMPLOYEES OR BENEFICIARIES." Describe the method(s) that will be used to locate and notify former employees and beneficiaries, or provide an affirmative statement that no former employees or beneficiaries were affected by each failure listed in Part II or will be affected by the correction methods described in Section III. See section 6.02(5) (d) of Rev. Proc. 2013-12.

No former employees or beneficiaries were affected by each failure listed in Part II Schedule 2.

**SECTION V. APPLICANT'S PROPOSED REVISION TO ADMINISTRATIVE PROCEDURES**

Attach additional pages, as needed. Label attachment "SECTION V. APPLICANT'S PROPOSED REVISION TO ADMINISTRATIVE PROCEDURES." Please include an explanation of how and why the failures arose and a description of the measures that will be implemented to ensure that the same failures do not occur in the future. If using the Appendix C, Part II Schedules, simply specify the Schedule(s) that are to be part of this compliance statement and attach them to this compliance statement.

Appendix C, Part II Schedule 2

**SECTION VI. REQUESTS RELATED TO EXCISE TAXES, ADDITIONAL TAX, AND TAX REPORTING**

The Applicant requests that the Internal Revenue Service ("Service") not pursue the following taxes under the Internal Revenue Code ("Code") (attach supporting rationale as required by section 6.09 of Rev. Proc. 2013-12):

- Excise tax under Code section 4972 with respect to failure(s) # \_\_\_\_\_.
- Excise tax under Code section 4973 with respect to failure(s) # \_\_\_\_\_.
- Excise tax under Code section 4974 with respect to failure(s) # \_\_\_\_\_.
- Excise tax under Code section 4979 with respect to failure(s) # \_\_\_\_\_.
- Imposition of additional tax under Code section 72(t) with respect to failure(s) # \_\_\_\_\_.

The Applicant requests that the Service grant the following with respect to plan loan failures as described in section 6.07 of Rev. Proc. 2013-12:

- With respect to loan(s) described in failure(s) # \_\_\_\_\_, that a deemed distribution corrected pursuant to this VCP submission not be required to be reported on Form 1099-R and that repayments made by such correction not result in the affected participant having additional basis in the plan for purposes of determining the tax treatment of subsequent distributions from the plan.
- With respect to loan(s) described in failure(s) # \_\_\_\_\_, that a deemed distribution be reported on Form 1099-R with respect to affected participant(s) for the year of correction instead of the year of the failure.

**SECTION VII. ENFORCEMENT RESOLUTION (to be completed by IRS only)**

The Applicant will neither attempt to nor otherwise amortize, deduct, or recover from the Service any portion of the compliance fee nor receive any Federal tax benefit on account of payment of such compliance fee.

The Service will not pursue the sanction of revoking the tax-favored status of the plan under § 401(a), 403(b), 408(k), or 408(p) of the Internal Revenue Code ("Code") on account of the failure(s) described in this submission. This compliance statement considers only the acceptability of the correction method(s) and the revision(s) of administrative procedures described in the submission and does not express an opinion as to the accuracy or acceptability of any calculations or other materials submitted with the submission. The reliance provided by this compliance statement is limited to the specific failures and years specified and does not provide reliance for any other failure or year. In no event may this compliance statement be relied on for the purpose of concluding that the plan or Plan Sponsor was not a party to an abusive tax avoidance transaction. The compliance statement should not be construed as affecting the rights of any party under any other law, including Title I of the Employee Retirement Income Security Act of 1974.

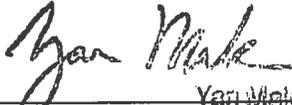
This compliance statement is conditioned on (1) there being no misstatement or omission of material facts in connection with the submission and (2) the completion of all corrections described in this compliance statement within one hundred fifty (150) days of the date of the compliance statement.

- The Service will treat the failure to adopt interim amendments or amendments for optional law changes, as described in section 6.05(3)(a) of Rev. Proc. 2013-12 as if they had been adopted timely for the purpose of making available the extended remedial amendment period currently set forth in Revenue Procedure 2007-44, 2007-2 C.B. 54, or its successors. However, this compliance statement does not constitute a determination as to whether any such plan amendments, as drafted, comply with the applicable changes in qualification requirements.
- With regard to failure # \_\_\_\_\_ relating to the 403(b) Plan failure to timely adopt a written plan, as required under the final § 403(b) regulations and Notice 2009-3, the Service will treat the written plan as if it had been adopted timely for the purposes of making available the extended remedial amendment period set forth in Announcement 2009-89. However, this compliance statement does not constitute a determination as to whether the written plan, as drafted, complies with the applicable requirements associated with § 403(b) and the final § 403(b) regulations.
- With regard to failure # \_\_\_\_\_ (provided that no modification has been made to either the plan document or adoption agreement of the plan that would otherwise cause the employer to lose reliance on the plan's opinion or advisory letter), the corrective amendment will not cause the plan to lose its status as a Master or Prototype plan or Volume Submitter plan and (provided that no modification has been made that would otherwise affect the employer's eligibility for the six-year remedial amendment cycle) the employer will be allowed to remain within the six-year remedial amendment cycle described in Revenue Procedure 2007-44, 2007-2, on a continuing basis until the expiration of the next six-year remedial amendment cycle as provided in section 18.01 of Rev. Proc. 2007-44, or, if different, the deadline announced by the Service, as provided

Consolidated Retirement Plan for  
Plan Name: Employees of City of Marietta, GA EIN: 58-6000616 Plan #: 002

in section 18.03 of that revenue procedure. In addition, the issuance of this compliance statement constitutes a determination of the effect of the corrective plan amendment on the qualification of the plan, and a subsequent filing of a determination letter request on such amendment will not be required until the expiration of the next six-year remedial amendment cycle.

- The Service will not pursue the following on account of the qualification failure(s) described in this submission:
- Excise tax under Code section 4972.
  - Excise tax under Code section 4973.
  - Excise tax under Code section 4974.
  - Excise tax under Code section 4979.
  - With respect to the Overpayment failures described in this submission that were corrected by removing improper distributions from the IRA(s) of the affected participant(s) and returning those distributions to the plan, the Service will not pursue \_\_\_\_\_ % of the 10% additional income tax under Code § 72(t).
- With respect to the loan failure(s) described in this submission:
- Loan(s) that are corrected in accordance with one of the methods described in section 6.07(2) or 6.07(3) of Rev. Proc. 2013-12: The Service will not require deemed distributions under Code § 72(p) to be reported on Form 1099-R with respect to the participant(s) affected by the failure(s), and repayments made pursuant to the correction of such loan(s) will not result in an affected participant having additional basis in the plan for the purpose of determining the tax treatment of subsequent distributions from the plan to such participant(s).
  - Loan(s) that are not being corrected in accordance with one of the methods described in section 6.07(2) or 6.07(3) of Rev. Proc. 2013-12: The Service will require deemed distributions under Code § 72(p) to be reported on Form 1099-R with respect to the participant(s) affected by the failure(s). However, the plan will be permitted to report deemed distributions on Form 1099-R in the year of correction, instead of the year of the failure.

Approved:   
Yan Mak  
Manager, Employee Plans Voluntary Compliance  
Tax Exempt and Government Entities Division

Date: APR 23 2014

**APPENDIX C PART II, SCHEDULE 2**  
**Nonamender Failures (other than those to which Schedule 1 applies) and Failure to Adopt a 403(b) Plan Timely**

Consolidated Retirement Plan for Employees  
**Plan Name:** of City of Marietta, GA      **EIN:** 58-6000616      **Plan #:** 002  
(Please include the plan name, Applicant's EIN, and plan number on each page of the submission, including attachments.)

**SECTION I. IDENTIFICATION OF FAILURES**

**A. Qualified Plans:** The plan identified above was not amended to comply with the applicable provisions of the following legislative and regulatory requirements by the applicable deadlines in accordance with § 401(b) and the regulations thereunder:

- The Employee Retirement Income Security Act of 1974 (ERISA)
- The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)
- The Deficit Reduction Act of 1984 (DEFRA)
- The Retirement Equity Act of 1984 (REA)
- The Tax Reform Act of 1986 (TRA '86)
- The Unemployment Compensation Amendments of 1992 (UCA)
- The Omnibus Budget Reconciliation Act of 1993 (OBRA)
- GUST (includes The Uruguay Round Agreements Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998, and the Community Renewal Tax Relief Act of 2000)
- The changes required by the Cumulative List for the plan's last on-cycle year:
  - The changes required by the 2004 Cumulative List (Notice 2004-84, 2004-2 C.B. 1030) for an eligible employer using a pre-approved defined contribution plan who failed to adopt the pre-approved plan by 4/30/10, as required by Announcement 2008-23, 2008-1 C.B. 731.
  - The changes required by the 2005 Cumulative List (Notice 2005-101, 2005-2 C.B. 1219) for Cycle A individually designed plans.
  - The changes required by the 2006 Cumulative List (Notice 2007-3, 2007-1 C.B. 255) for Cycle B individually designed plans, and any eligible employer using a pre-approved defined benefit plan who failed to adopt the pre-approved plan by 4/30/12, as required by Announcement 2010-20, 2010-15 I.R.B. 551.)
  - The changes required by the 2007 Cumulative List (Notice 2007-94, 2007-2 C.B. 1179) for Cycle C individually designed plans.
  - The changes required by the 2008 Cumulative List (Notice 2008-108, 2008-50 I.R.B. 1275) for Cycle D individually designed plans.

- The changes required by the 2009 Cumulative List (Notice 2009-98, 2009-52 I.R.B. 974) for Cycle E individually designed plans.
- The changes required by the 2010 Cumulative List (Notice 2010-90, 2010-52 I.R.B. 909) for Cycle A individually designed plans.
- The changes required by the 2011 Cumulative List (Notice 2011-97, 2011-52 I.R.B. 923) for Cycle B individually designed plans.
- The changes required by the 2012 Cumulative List (Notice 2012-76, 2012-52 I.R.B. 775) for Cycle C individually designed plans.

Amendments required as a condition for a favorable determination letter. If this item was selected answer the following questions by checking the applicable boxes:

Is this the sole failure for the VCP submission?  Yes  No

Were the amendments signed within three months of the expiration of the remedial amendment period for adopting the amendments?  Yes  No

Other (specify the legal requirement and applicable Cumulative List):

See attachment.

**B. 403(b) Plans:**

- The Plan Sponsor did not timely adopt a written plan as required by the final 403(b) regulations and Notice 2009-3, 2009-2 I.R.B. 250.

**SECTION II. DESCRIPTION OF PROPOSED METHOD OF CORRECTION**

**A. Qualified Plan.** The Plan Sponsor has adopted (or will adopt) amendments that satisfy the requirements of all of the items checked in Section IA of this Appendix C Part II, Schedule 2, retroactively to the effective dates of the specific provisions contained in the amendments. The amendments and restated plan documents (where applicable) are enclosed with this submission.

**B. 403(b) Plan.** Failure to adopt a written plan timely. The Plan Sponsor has adopted a written plan retroactive to the later of the effective date of the final 403(b) regulations or the initial effective date of the plan. A copy of the signed and dated 403(b) plan is enclosed with this submission.

Plan Name: Consolidated Retirement Plan for Employees of City of Marietta,  
GA EIN: 58-6000616 Plan #: 002

### SECTION III. CHANGE IN ADMINISTRATIVE PROCEDURES

The Plan Sponsor has taken the following step(s) to ensure that the failure(s) will not recur:

The Plan Sponsor has engaged legal counsel to review the plan annually for required changes to document language.

### SECTION IV. ENCLOSURES

In addition to the applicable items listed on the Procedural Requirements Checklist for Form 8950, the Plan Sponsor encloses the following documents, as appropriate, with this submission:

- Copies of all amendments used to correct the failure(s), either as adopted or in proposed form,
- A copy of the plan document in effect prior to any of the amendments used to correct the failure(s),
- A copy of the most recent determination letter issued with respect to the plan (if applicable),
- If required by Section 6.05 of Rev. Proc. 2013-12, a determination letter application (Form 5300, 5307, or 5310 along with Form 8717 and the applicable user fee payment made payable to the U.S. Treasury), or
- For 403(b) plans, a copy of the signed and dated 403(b) Plan document.

**Attachment to Appendix C, Part II Schedule 2**  
**Consolidated Retirement Plan for Employees of City of Marietta GA**  
**EIN: 58-6000616**  
**Plan #: 002**

Other Amendments Required:

GAR

EGTRRA Good Faith Amendment

Section 401(a)(17)

Section 401(a)(31)(B)

Section 401(a)(31)

    Definition of eligible retirement plan

    After-tax rollovers

    Spousal rollovers

Section 415(c) increased limits

Community Renewal Tax Relief Act

Section 415 Regulations



# Power of Attorney and Declaration of Representative

▶ Type or print. ▶ See the separate instructions.

OMB No. 1545-0150  
**For IRS Use Only**  
 Received by: \_\_\_\_\_  
 Name \_\_\_\_\_  
 Telephone \_\_\_\_\_  
 Function \_\_\_\_\_  
 Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**Part I Power of Attorney**

**Caution:** A separate Form 2848 should be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

**1 Taxpayer information.** Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address City of Marietta, GA 205 Lawrence Street  Marietta, GA 30060	Taxpayer identification number(s) 58-6000616  Daytime telephone number 770 794 5567
	Plan number (if applicable) 002

hereby appoints the following representative(s) as attorney(s)-in-fact:

**2 Representative(s) must sign and date this form on page 2, Part II.**

Name and address Patricia K Keesler 945 E. Paces Ferry Rd NE #2515 Atlanta, GA 30326	CAF No. 6505-77905R PTIN _____ Telephone No. (404) 995-995-9592 Fax No. (404) 942-0150
Check if to be sent notices and communications <input checked="" type="checkbox"/>	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input checked="" type="checkbox"/>
Name and address  Check if to be sent notices and communications <input type="checkbox"/>	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____
Check if to be sent notices and communications <input type="checkbox"/>	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address  Check if to be sent notices and communications <input type="checkbox"/>	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____
Check if to be sent notices and communications <input type="checkbox"/>	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service for the following matters:

**3 Matters**

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, etc.) (see instructions for line 3)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions for line 3)
Request for determination letter	5300	N/A
Employee Plans Compliance Resolution System	8950	N/A
Plan #002		

**4 Specific use not recorded on Centralized Authorization File (CAF).** If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. **Specific Uses Not Recorded on CAF**

**5 Acts authorized.** Unless otherwise provided below, the representatives generally are authorized to receive and inspect confidential tax information and to perform any and all acts that I can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The representative(s), however, is (are) not authorized to receive or negotiate any amounts paid to the client in connection with this representation (including refunds by either electronic means or paper checks). Additionally, unless the appropriate box(es) below are checked, the representative(s) is (are) not authorized to execute a request for disclosure of tax returns or return information to a third party, substitute another representative or add additional representatives, or sign certain tax returns.

Disclosure to third parties;  Substitute or add representative(s);  Signing a return; \_\_\_\_\_

Other acts authorized: \_\_\_\_\_

(see instructions for more information)

**Exceptions.** An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Treasury Department Circular No. 230 (Circular 230). An enrolled retirement plan agent may only represent taxpayers to the extent provided in section 10.3(e) of Circular 230. A registered tax return preparer may only represent taxpayers to the extent provided in section 10.3(f) of Circular 230. See the line 5 instructions for restrictions on tax matters partners. In most cases, the student practitioner's (level k) authority is limited (for example, they may only practice under the supervision of another practitioner).

List any specific deletions to the acts otherwise authorized in this power of attorney: \_\_\_\_\_

**6 Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here  **YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

**7 Signature of taxpayer.** If a tax matter concerns a year in which a joint return was filed, the husband and wife must each file a separate power of attorney even if the same representative(s) is (are) being appointed. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

▶ **IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED TO THE TAXPAYER.**

Signature:  Date: 1/22/13 Title (if applicable): City Manager

Print Name: William F. Bruton, Jr.      PIN Number: City of Marietta, GA Print name of taxpayer from line 1 if other than individual

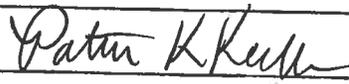
**Part II Declaration of Representative**

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Circular 230 (31 CFR, Part 10), as amended, concerning practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
  - a Attorney - a member in good standing of the bar of the highest court of the jurisdiction shown below.
  - b Certified Public Accountant - duly qualified to practice as a certified public accountant in the jurisdiction shown below.
  - c Enrolled Agent - enrolled as an agent under the requirements of Circular 230.
  - d Officer - a bona fide officer of the taxpayer's organization.
  - e Full-Time Employee - a full-time employee of the taxpayer.
  - f Family Member - a member of the taxpayer's immediate family (for example, spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
  - g Enrolled Actuary - enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
  - h Unenrolled Return Preparer - Your authority to practice before the Internal Revenue Service is limited. You must have been eligible to sign the return under examination and have signed the return. See Notice 2011-6 and Special rules for registered tax return preparers and unenrolled return preparers in the instructions.
  - i Registered Tax Return Preparer—registered as a tax return preparer under the requirements of section 10.4 of Circular 230. Your authority to practice before the Internal Revenue Service is limited. You must have been eligible to sign the return under examination and have signed the return. See Notice 2011-6 and Special rules for registered tax return preparers and unenrolled return preparers in the instructions.
  - k Student Attorney or CPA - receives permission to practice before the IRS by virtue of his/her status as a law, business, or accounting student working in LITC or STCP under section 10.7(d) of Circular 230. See instructions for Part II for additional information and requirements.
  - r Enrolled Retirement Plan Agent - enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ **IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN LINE 2 ABOVE.** See the instructions for Part II.

Note: For designations d-f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column. See the instructions for Part II for more information.

Designation - Insert above letter (a-r)	Licensing jurisdiction (state) or other licensing authority (if applicable)	Bar, license, certification, registration, or enrollment number (if applicable). See instructions for Part II for more information	Signature	Date
a	GA	410900		12-2-2013

## **CHAPTER 4-12 INSURANCE AND RETIREMENT**

### **ARTICLE 4-12-6 EXHIBIT B TO CHAPTER 4-12**

#### **4-12-6-010 Exhibit B to Chapter 4-12.**

**Ordinance No: 4532**

*An Ordinance Adopting a Consolidated Retirement plan for the employees of the City of Marietta, Georgia.*

***Now, Therefore, Be It Hereby Ordained by the Mayor and Council of the City of Marietta, Georgia, That:***

**Section 1:** The Consolidated Retirement Plan for the employees of the City of Marietta, Georgia, a copy of which is attached hereto as Exhibit "A" and by reference made a part hereof, is hereby adopted for the employees of the City of Marietta, Georgia, on the following terms and conditions:

A. Each employee hired after March 1, 1987 (the effective date of this Consolidated Retirement Plan) shall be eligible to participate in the Consolidated Retirement Plan as provided for therein. Each new employee hired after March 1, 1987 shall have no right whatsoever to participate or become eligible to participate in the Retirement Plan adopted by Ordinance No. 4022.

B. Each employee that is employed with the City of Marietta, Georgia on March 1, 1987 shall have the right to either remain with the Retirement Plan adopted by Ordinance No. 4022 or elect to participate in the Consolidated Retirement Plan adopted by this Ordinance. Each employee that elects to participate in this Consolidated Retirement Plan shall make said election in writing and shall waive and relinquish any and all rights to participate or receive any benefits from the Retirement Plan adopted by Ordinance No. 4022 as it was originally enacted or any benefits adopted by any amendments to Ordinance No. 4022. The period to make this election shall be for a period of ninety (90) days commencing on March 1, 1987 and ending on May 29, 1987. Any employee that has not elected to participate in the Consolidated Retirement Plan by May 29, 1987 shall automatically remain a participant in the Retirement Plan adopted by Ordinance No. 4022 and shall have no right whatsoever to participate or become eligible to participate in the consolidated Retirement Plan adopted by this Ordinance.

**Section 2:** All Ordinances and parts of Ordinances in conflict with this Ordinance are hereby repealed, except as provided in Section 3.

**Section 3:** The rights and obligations under the Retirement Plan approved September 20, 1973, as amended, with respect to persons whose employment with the City was

terminated for any reason whatsoever prior to the effective date of this Ordinance are fixed and shall be governed by such Retirement Plan as it existed and was in effect at the time of such termination.

**Section 4:** The effective date of this Ordinance shall be March 1, 1987.

Historical note—Exhibit B contains the consolidated retirement plan for city employees adopted by Ord. No. 4532, 2/11/87, and subsequently amended. Amendments have been worked into their prescribed places and are indicated by a history note following the affected section or subsection.

**Section 1:** That Section 4-12-6-010, Exhibit B to Chapter 4-12, Ordinance No. 4532 of the Code of Ordinances of the City of Marietta be modified to read as follows:

## **ARTICLE I**

### **Purpose**

This ordinance shall constitute the consolidated retirement plan of the City of Marietta, Georgia for the exclusive benefit of the city employees according to the terms and conditions hereinafter contained; and said ordinance shall be subject to amendment from time to time by the city. The provisions of this plan shall be effective March 1, 1987.

“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).”

### **Summary of Consolidated**

Retirement Plan for the  
Employees of the City  
of Marietta, Georgia

**Participation**—All current participants will have the option to participate in the new plan or continue to be participants in the existing plan, new participants must meet the eligibility provisions as outlined in the current plan.

**Normal retirement date for employees hired prior to March 18, 2008**—First day of the month following or coincident with the later of the participant's 65th birthday and the completion of five years of credited service.

**Early retirement**—Age 55 or more with a minimum of five years credited service.

**Disability retirement**—Current plan with offset for any benefit received from Workers' Compensation.

**Normal retirement date for employees hired on or after March 18, 2008 through December 31, 2008**—First day of the month following or coincident with the later of the participant's 65th birthday and the completion of seven years of credited service.

**Early retirement**—Age 55 or more with a minimum of seven years credited service.

**Disability retirement**—Current plan with offset for any benefit received from Workers' Compensation.

**Normal retirement date for employees hired on or after January 1, 2009**—First day of the month following or coincident with the later of the participant's 65th birthday and the completion of ten years of credited service.

**Early retirement**—Age 55 or more with a minimum of ten years credited service.

**Disability retirement**—Current plan with offset for any benefit received from Workers' Compensation.

**Special election period**—All current participants have 90 days from the new plan effective date of March 1, 1987, to elect to be covered under the new plan, failure to elect will mean automatic coverage under the current plan.

**Second special election period**—All current "4022" plan participants as of November 11, 1998, will be provided a 30-day period in the calendar year 1999 to elect to be covered by the provisions of the Consolidated Retirement Plan; failure to elect will mean automatic coverage under their current plan.

**Normal retirement pension**—2.1% (for participants who terminate active service prior to the effective date of this change, the benefit percentage will remain two percent).

**Final average earnings**—Shall mean the average of the annual earnings paid to a participant during any consecutive three-year period preceding his actual date of retirement in which his earnings were highest; or if he had less than three years of total credited service, then his final average earnings shall be his average earnings for his total credited service for employees hired prior to January 1, 2009.

Effective January 1, 2009, final average earnings shall mean the average of the annual earnings paid to a participant during any consecutive five-year period preceding his actual date of retirement in which his earnings were highest; or if he had less than five years of total credited service, then his final average earnings shall be his average earnings for his total credited service for employees hired prior to January 1, 2009.

**80 point pension**—Participants hired prior to March 18, 2008, will be eligible to receive an unreduced retirement when a participant's age plus credited service total 80.

Participants hired on or after March 18, 2008. will only be eligible to receive an unreduced retirement pension under the 80 point pension provision once they reach age 55.

**Early retirement pension for employees hired prior to January 1, 2009**—The accrued normal retirement pension is reduced by .25 of one percent for each month the participant's age at early retirement is less than 65.

**Early retirement pension for employees hired on or after January 1, 2009**—The accrued normal retirement pension is reduced by .417 of one percent for each month the participant's age at early retirement is less than 65.

**Normal benefit form**—No change from the current plan—Lifetime benefit without survivor continuation.

**Benefit form options**—Normal benefit.

Social Security Option  
Joint & Survivor Option

**Break-in-service pension eligibility**—All future participants that incur a break-in-service will only be entitled to a benefit at their normal retirement date.

(Ord. No. 5921, 11/11/98, §§ 1, 3; Ord. No. 6339, 12/12/2001, § 7; Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)

## **ARTICLE II** **Definitions**

Whenever the terms set forth below are used in this plan, they shall have the meanings indicated below, unless a different meaning is plainly required by the context. Masculine pronouns, when used throughout the plan, shall refer to both men and women, and the singular shall include the plural, unless the context indicates otherwise. Headings of sections are used for convenience of reference, and in the case of conflict, the text of the plan, rather than such headings, shall control.

### **Section 1.** Actuarial present value.

Unless otherwise specified in the plan, the actuarial present value of a benefit shall be determined using the interest rate prescribed by the pension benefit guaranty corporation for valuing annuities under the single-employer plans that terminate without a notice of sufficiency during the first month of the calendar year in which the date as of which the benefit is valued, occurs. The mortality assumption shall be based on the 1971 Group Annuity Mortality Table, weighted as follows:

- (a) For a participant's benefit, 80% male and 20% female;

- (b) For the benefit of a participant's spouse or former spouse, 20% male and 80% female; and
- (c) In any other case, 50% male and 50% female.

Actuarial equivalence means two benefits of equal actuarial present value based on the factors and assumptions specified in the provisions in which that phrase is used or, if not otherwise specified, based on the assumptions described in this section.

Notwithstanding the first paragraph hereof, effective January 1, 2002, unless otherwise specified in the plan, the actuarial present value of a benefit shall be determined using the interest rate or rates published by the Pension Benefit Guaranty Corporation for lump sum calculations for private-sector calculations (as described in PBGC Reg. Sec. 4022.7), as in effect as of the first day of the plan year in which a distribution occurs.

*(Ord. No. 6340, 12/12/2001, § 7)*

### **Section 2. Actuary.**

*Actuary* shall mean an actuary who is enrolled under subtitle C of Title III of the Federal Employee Retirement Income Security Act of 1974.

### **Section 3. Beneficiary.**

*Beneficiary* shall mean the person(s) designated by the participant to receive any death benefits. For purposes of this definition, "person" shall include only a natural person(s) and shall not include a corporation, estate or other such entity.

Any beneficiary designation shall be made in a writing submitted to the pension board or its designee, in a form prescribed by the pension board. The submission of a new beneficiary designation shall automatically revoke all prior beneficiary designations. If a participant does not have an effective beneficiary designation on file, his beneficiary shall be his spouse, if he is married as of the date of his death, or his estate, if he is not married on the date of his death.

*(Ord. No. 6340, 12/12/2001, § 8)*

### **Section 4. City.**

*City* shall mean the City of Marietta, Georgia.

### **Section 5. Credited service.**

*Credited service* shall mean the year of credit for full-time work except as otherwise specified herein, with an employer which is used to determine the amount of benefits payable under this plan, including past credited service, for work prior to November 1, 1973 and future credited service, for work after November 1, 1973.

(Ord. No. 6284, 9/12/2001, § 3)

### **Section 6. Disability.**

A participant will be considered disabled if unable, solely because of disease or accidental bodily injury, to work at his or her own occupation or at any reasonable occupation for which the participant may be engaged, or may reasonably become engaged, fitted by education, training or experience provided, however, that such disability shall not have been (a) self-inflicted; (b) incurred in military service; (c) incurred in the commission of a felonious enterprise; or (d) the result of the use of narcotics and/or drugs and/or alcohol.

### **Section 7. Early retirement age.**

*Early retirement age for employees hired prior to March 18, 2008* shall mean the date a participant attains age 55 and has completed at least five years of credited service.

*Early retirement age for employees hired on or after March 18, 2008 through December 31, 2008* shall mean the date a participant attains age 55 and has completed at least seven years of credited service.

*Early retirement age for employees hired on or after January 1, 2009* shall mean the date a participant attains age 55 and has completed at least ten years of credited service.

(Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)

### **Section 8. Earnings.**

*Earnings* shall mean the total compensation paid to an employee of the city for service rendered, but shall exclude compensation for overtime and reimbursed expenses. Earnings shall include holiday and vacation pay and payments made by the city on behalf of an employee during periods of authorized absence for illness and other reasons.

Except with respect to qualified participants (as defined below), for plan years beginning on and after January 1, 1996, the earnings taken into account during a plan year in calculating a participant's benefit under this plan shall not exceed the limitations of Internal Revenue Code Section 401(a)(17) in effect as of the beginning of the plan year (e.g., \$150,000.00 in 1996). For purposes of applying the \$150,000.00 limit, as adjusted, if any employee is the spouse or a lineal descendant of an employee (provided the lineal descendant is younger than age 19 by the end of the plan year) who is one of the ten (10) "highly compensated employees" (within the meaning of Internal Revenue Code Section 414(q)) paid the greatest amount of earnings (determined without regard to the \$150,000.00 limit, as adjusted) during the plan year, the employee shall not be treated as a separate employee. The preceding sentence shall not, however, apply to any plan year which begins on or after January 1, 1997.

The \$150,000.00 limit described in the previous paragraph shall not apply to any qualified participant. A qualified participant is any participant who first became a participant in the plan before January 1, 1996.

Effective for plan years beginning on and after January 1, 2002, the \$150,000.00 amount described in this paragraph, as adjusted by the commissioner, shall be increased to \$200,000.00, 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.

*(Ord. No. 6340, 12/12/2001, § 9; Ord. No. 6483, 2/12/2003, § 2(1))*

### **Section 9. Effective date.**

*Effective date* shall mean March 1, 1987 for the purpose of this consolidated plan.

### **Section 10. Full-time employee.**

*Full-time employee* shall mean a person who is regularly employed for at least thirty (30) hours per week in the services of the city and Marietta Board of Lights and Water, or any person who is an elected or appointed member of the governing authority.

The term full-time employee shall not include:

- (a) Employees, other than elected and appointed members of the governing authority, who regularly work less than thirty (30) hours per week in the service of the city;
- (b) Any person employed by the city to perform scientific, technical, engineering, accounting, legal, or similar expert services in a consulting capacity;
- (c) Any person employed for less than five (5) months in any year or on a retainer contract or fee basis; or
- (d) City solicitor and chief judge—Municipal court for the City.

*(Ord. No. 4905, 6/12/91, § 1)*

### **Section 11. Employer.**

*Employer* shall mean the City of Marietta, Georgia.

### **Section 12. Final average earnings.**

*Final average earnings for participants hired prior to January 1, 2009* shall mean the average monthly earnings paid to a participant during the 36 full months preceding his actual date of retirement in which his earnings were highest.

*Final average earnings for participants hired on or after January 1, 2009* shall mean the average monthly earnings paid to a participant during the 60 full months preceding his actual date of retirement in which his earnings were highest.

*Final average earnings for an elected or appointed member of the governing authority* shall be defined as the average annual salary divided by 12 of all plan participants covered by the plan on the July 1 preceding the plan year of determination. Under no circumstances may this amount be more than five percent greater than the average salary used from the prior year. This amount will also be adjusted as necessary in order to preserve an individual participant's accrued benefit.

(Ord. No. 5907, 10/14/98, § 2; Ord. No. 7234, 9/10/2008, § 1)

### **Section 13. Governing authority.**

*Governing authority* shall mean the mayor and council of the City of Marietta, Georgia.

### **Section 14. Investment manager.**

*Investment manager* shall mean a person or company who:

- (a) has the power to manage, acquire, or dispose of any asset of the plan;
- (b) who is
  - (1) registered as an investment adviser under the Investment Advisers Act of 1940;
  - (2) is a bank, as defined in that act; or
  - (3) is an insurance company qualified to perform services described in subparagraph (a) under the laws of more than one state; and
- (c) has acknowledged in writing that it is a fiduciary with respect to the plan.

### **Section 15. Normal retirement age.**

*Normal retirement age for employees hired prior to March 18, 2008* shall mean the date a participant attains age 65 and has completed at least five years of credited service.

*Normal retirement age for employees hired on or after March 18, 2008 through December 31, 2008* shall mean the date a participant attains age 65 and has completed at least seven years of credited service.

*Normal retirement age for employees hired on or after January 1, 2009* shall mean the date a participant attains age 65 and has completed at least ten years of credited service.

(Ord. No. 7142, 3/17/2008; § 1; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)

**Section 16. Normal retirement date.**

*Normal retirement date* shall mean the first day of the month coinciding with or next following the participant's normal retirement age.

**Section 17. OASDI.**

*OASDI* shall mean the Old-Age and Survivors Disability Insurance program under the Social Security Act or the successor act as further amended.

**Section 18. Participant.**

*Participant* shall mean an employee who meets the requirements for participation in the plan as set forth in section 1 of article III.

**Section 19. Plan.**

*Plan* shall mean the Consolidated Retirement Plan for Employees of the City of Marietta, Georgia.

**Section 20. Plan year.**

*Plan year* shall mean the period of twelve consecutive months commencing on July 1 and ending on June 30.

**Section 21. Pension board.**

*Pension board* shall mean the board appointed or elected by the city on this ordinance to represent the city in the administration of the plan hereby established.

**Section 22. Retired participant.**

*Retired participant* shall mean any participant who has qualified for retirement under any provision of the plan and is entitled to receive any pension provided under the plan.

**Section 23. Retirement.**

*Retirement* shall mean withdrawal from service from the city and the participant is eligible for benefits under this plan.

**Section 24. Service.**

*Service* shall mean regular service rendered as an employee of the city. Service includes absence from active employment with the city under conditions which are not treated by it as a termination of employment. However, service shall not include accrued but unused annual leave of the employee. Service also means any tenure of elective office held by an elected or appointed member of the governing authority provided that such tenure of elective office does not include any calendar period during which any elected or appointed member of the governing authority is also in the regular service of the city as a full-time employee.

**Section 25. Terminated participant.**

*Terminated participant* shall mean employees withdrawn from service, who are entitled to a vested benefit under the provisions of this plan.

**Section 26. Trust fund.**

*Trust fund* shall mean the total amount invested or uninvested, held at any time in trust for the city under any trust agreement, pension or investment contract.

**Section 27. Part-time employee.**

*Part-time employee* shall mean a person who is regularly employed for less than thirty (30) hours per week in the services of the city and Marietta Board of Lights and Water.

*(Ord. No. 4905, 6/12/91, § 2)*

**Section 28. Seasonal employee.**

*Seasonal employee* shall mean a person who is regularly employed for at least 30 hours per week for less than five months in any year.

*(Ord. No. 4905, 6/12/91, § 2)*

**Section 29. Temporary employee.**

*Temporary employee* shall mean a person who performs services under a contractual agreement for a duration not exceeding two years.

*(Ord. No. 4905, 6/12/91, § 2)*

**ARTICLE III**  
**Participation**

**Section 1. Eligibility for participation.**

Each employee who is employed by the city on March 1, 1987, and who elected to participate in the plan shall become a participant in this plan on the effective date, provided he is then in active service with the employer or on an authorized leave of absence.

Each new employee hired after July 1, 1990, shall become a participant in the plan at the alter of July 1, 1991, or the first day of the month coinciding with or next following his date of employment.

Each elected or appointed member of the governing authority who holds an elected office of the city on the effective date of this plan shall become a participant on that date.

Each elected or appointed member of the governing authority who holds an elective office of the city subsequent to the effective date of this plan shall become a participant on the first day of the month coinciding with or next following the date he completes one year of service.

Participation in the plan shall not give any employee the right to be retained in the employ of the city nor, upon dismissal, to have any right or interest in the fund other than is herein provided.

A full-time contract employee may elect, in writing, not to participate in the plan. However, once such an election is made, he may not change the election at a later time to again participate in the plan.

Any eligible employee who terminates employment as a public safety participant under the 4022 plan, and who moves to a general employee position on or after June 1, 1999, shall participate in the consolidated retirement plan adopted by Ordinance No. 4532 on the first day of the pay period immediately coinciding with the employee's change to such position. The employee shall have no right whatsoever to participate or become eligible to participate in general employee portion of the retirement plan adopted by Ordinance No. 4022 as such portion has been terminated by the city. The employee also has no right to continue participation in the public safety portion of the retirement plan adopted by Ordinance No. 4022 after the employee moves to a general employee position. However, the employee shall be entitled to a vested right in his accrued retirement benefits, and shall have the option to receive benefits upon retirement as a public safety participant under the 4022 plan from the time the employee became eligible to the date the employee changes to a general employee position and benefits under the consolidated retirement plan from the date the employee changes to a general employee position to the date of retirement, or the employee may waive and relinquish any and all rights to receipt of any benefits under the 4022 plan and have all benefits calculated under the consolidated retirement plan at the date of retirement.

Notwithstanding anything contained herein to the contrary, the following individuals shall not be eligible to participate in the plan:

- (i) A part-time, temporary or seasonal employee hired on or after January 1, 2000;

- (ii) A leased employee within the meaning of Internal Revenue Code Section 414(n)(2);
- (iii) An employee classified by the city or the Marietta Board of Lights and Water as a leased employee, regardless of whether such employee is a leased employee within the meaning of Internal Revenue Code Section 414(n)(2); or
- (iv) A person who is initially classified by the city or the Marietta Board of Lights and Water as an independent contractor or leased employee for purposes of the withholding and payment of employment taxes, even if such person is later determined, whether by the city, the Marietta Board of Lights and Water, or otherwise, to be a common law employee of the city or of the Marietta Board of Lights and Water.

*(Ord. No. 4905, 6/12/91, § 5; Ord. No. 6064, 11/10/1999, § 3; Ord. No. 6340, 12/12/2001, § 10)*

## **Section 2. Termination of participation.**

Participation shall be deemed to be terminated as of the date of quit, resignation or discharge, by lapse of recall rights after layoff, by ceasing to be an eligible employee as defined herein or by failure to return to service as an eligible employee at the end of an approved leave of absence.

For elected or appointed members of the governing authority, participation shall be deemed to be terminated on the date such person vacates his elected office.

A participant shall become a former participant when his employment terminates otherwise than by retirement, provided he has earned a vested percentage in his accrued benefit.

## **Section 3. Reinstatement of participation.**

An employee who has lost his status as a participant in accordance with section 3(2) of this article shall again become a participant as of the first day of the month following the date he is reemployed.

## **ARTICLE IV** **Contributions**

### **Section 1. City contributions.**

The city shall make the necessary contributions to fund this retirement plan. The amount of these contributions shall be based upon the mortality tables adopted by the actuary, the benefits provided in the plan, and the number of participants and their respective ages, earnings and lengths of creditable service and such other factors as the actuary shall deem appropriate to properly fund this plan. All contributions by the city shall be

used only for the benefit of the participants and eligible beneficiaries. City contributions shall be collected and remitted to the investment manager as required.

### **Section 2. Prospective benefit change.**

The employer may at its discretion elect to modify the prospective plan benefits by amendment in the event that the required contribution as determined under section 1 of this article is 14.39% or more of covered payroll or 11.78% or less of covered payroll for any single year. The prospective plan benefits may be modified in the event the required contribution level is outside the range as outlined above during a single year for any reason, including but not limited to the addition or reinstatement of any statutory or court mandated benefits, whether related to this plan or the retirement plan adopted by Ordinance No. 4022 as amended, any financial or other experience, or any other unforeseen events. In addition, the prospective plan benefits may be modified in the event that OASDI benefits are reinstated for all employees. Covered payroll shall mean the total annual earnings of all participants in the plan as reported by the city to the actuary for the most recent actuarial valuation of the plan.

### **Section 3. Participant contributions.**

- (1) As of January 1, 2009, each participant shall make mandatory contributions to the plan. The amount of such contributions shall be four percent of each participant's gross wages other than overtime and expense reimbursements. Such amounts shall be withheld from each payroll check for periods beginning on and after the date that the eligible employee becomes a participant in the plan. The city shall hold such amounts, for recordkeeping purposes, in a participant contribution account for each contributing participant. Such account shall be a notional account only. The participant may not direct the investment of such account, and such amounts shall be held together with the remaining assets of the plan. The participant shall not, on account of the existence of such an account, have any greater or higher-priority claim on the assets of the plan than any other participant.

Participant contributions described in this article IV, section 3, shall be made pursuant to Section 414(h) of the Code and shall be treated as employer contributions in determining their federal income tax treatment under the Internal Revenue Code. Such contributions shall be included in the participant's earnings for purposes of determining their benefits under this plan.

- (2) Refund of participant contributions. If a participant has a termination of employment and is not eligible for any retirement benefit under this plan, or if the participant dies before his benefits have commenced and no death benefit is payable to a spouse or child of the participant, the participant (or the beneficiary, if the participant dies) shall receive the balance of his participant contribution account. A participant who is vested in his benefit under this plan is not eligible for a refund of participant contributions pursuant to this paragraph (2).

If the participant, a contingent annuitant, a spouse or child is receiving benefits under the plan and dies before payments from the plan to the participant, contingent annuitant, spouse or child have been made in an amount equal to or greater than the

total of the participant contribution account, and no additional benefits are due from this plan, then the beneficiary shall receive the amount by which the participant contribution account (as of the date benefits commenced) exceeds such amount. If the beneficiary receives such a refund, no additional death benefits will be paid from the plan.

A refund of a participant contribution account shall not include interest.

"Beneficiary" for purposes of this section 3 shall mean the individual, trust or other entity designated by the participant in accordance with procedures established by the pension board to receive a distribution of the participant's participant contribution account under the circumstances described above.

For the purposes of this section, revocation of prior beneficiary designations will occur when a participant files a new valid designation with the plan administrator.

Nothing in this definition of beneficiary shall be deemed to provide death benefits that are not otherwise provided in this plan.

\* If the participant does not designate a beneficiary, or the beneficiary so designated does not survive the participant, the participant's beneficiary for purposes of receiving any refund of participant contributions shall be his spouse, if the participant is survived by a spouse, or the participant's estate if he is not survived by a spouse.

\* Any refund of the participant contribution account shall be made in a lump sum after the later of (i) the participant's termination of employment and (ii) the date that the participant requests a distribution and completes any forms required by the pension board as a condition of his receiving a refund.

*(Ord. No. 7234, 9/10/2008, § 1)*

## **ARTICLE V** **Eligibility for Benefits and Amounts**

### **Section 1. Eligibility for a normal retirement benefit.**

A participant shall be eligible to retire on a normal retirement benefit upon the later of:

A. Attainment of age 65, and

B. Completion of five years of credited service for employees hired prior to March 18, 2008, completion of seven years of service for those hired on or after March 18, 2008 through December 31, 2008, or completion of ten years of service for employees hired January 1, 2009.

C. Elected or appointed members of the governing authority shall be eligible to retire on a normal retirement benefit upon attainment of age 65, and completion of five years of credited service for those holding office prior to January 1, 2009.

D. Elected or appointed members of the governing authority shall be eligible to retire on a normal retirement benefit upon attainment of age 65, and completion of ten years of credited service for those holding office on or after January 1, 2009. However, commencement of benefits shall be delayed until the first day of the month coinciding with or next following the date he vacates such elective office.

*(Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)*

### **Section 2. Amount of normal retirement benefit.**

The monthly amount of the normal retirement benefit shall be equal to 2.1% (for participants who terminate active service prior to the effective date of this change, the benefit percentage will remain two percent) or the percentage as revised in accordance with article IV, section 2, of the participant's final average earnings multiplied by the years of credited service which he has completed plus credit granted pursuant to article VI, section 7 (up to a maximum of 35 years of credited service).

*(Ord. No. 5907, 10/14/98, § 1; Ord. No. 6339, 12/12/2001, § 6)*

### **Section 3. Eligibility for an early retirement benefit.**

A participant hired prior to March 18, 2008, shall be eligible to retire on the first day of any month following his attainment of age 55, provided he has completed at least five years of credited services.

A participant hired on or after March 18, 2008 through December 31, 2008, shall be eligible to retire on the first day of any month following his attainment of age 55, provided he has completed at least seven years of credited service.

A participant hired on or after January 1, 2009, shall be eligible to retire on the first day of any month following his attainment of age 55, provided he has completed at least ten years of credited service.

*(Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)*

### **Section 4. Amount of early retirement benefit.**

The monthly amount of the early retirement benefit for participants hired prior to January 1, 2009, shall be equal to the benefit determined in section 2 of this article, reduced by .250 of one percent for each month by which the participant is younger than 65 on the effective date of his early retirement.

The monthly amount of the early retirement benefit for participants hired on or after January 1, 2009, shall be equal to the benefit determined in section 2 of this article, reduced by .417 of one percent for each month by which the participant is younger than 65 on the effective date of his early retirement.

*(Ord. No. 7234, 9/10/2008, § 1)*

#### **Section 5. Eligibility for an unreduced early retirement benefit.**

A participant hired prior to March 18, 2008, shall be eligible to retire on an unreduced early retirement benefit, provided the sum of his age plus credited service equals at least eighty (80).

A participant hired on or after March 18, 2008, shall be eligible to retire under the 80 point pension provision on an unreduced early retirement benefit, provided they have reached age fifty-five (55).

*(Ord. No. 5921, 11/11/98, § 2; Ord. No. 7142, 3/17/2008, § 1)*

#### **Section 6. Amount of unreduced early retirement benefit.**

The monthly amount of the unreduced early retirement benefit shall be equal to the benefit determined in accordance with section 2 of this article.

#### **Section 7. Eligibility for a late retirement benefit.**

A participant whose employment with the employer continues after his normal retirement date will receive a late retirement benefit commencing on the first day of the month following the month in which his employment ceases.

Notwithstanding anything contained herein to the contrary, in no event may distribution of a participant's retirement benefit commence later than the first day of April in the calendar year following the later of (a) the calendar year in which the participant attains age 70½, or (b) the calendar year in which the participant retires. If, as of January 1, 2002, a participant is an employee in active employment with the employer and is receiving distributions on account of his attaining age 70½, the participant shall continue to receive plan distributions. A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) shall not receive those distributions for 2009 unless the participant or beneficiary chooses to receive such distributions. Notwithstanding any other provision of this chapter to the contrary, any required minimum distribution made in 2009 shall be treated as eligible rollover distribution.

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. "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."

- (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 nonspouse 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 70½.

(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 nonincreasing 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.

(Ord. No. 6340, 12/12/2001, § 11; Ord. No. 6483, 2/12/2003, § 3(2); Ord. No. 7514, 1/12/2011, § 1)

#### **Section 8. Amount of late retirement benefit.**

The monthly amount of the late retirement benefit shall be equal to the benefit determined in section 2 of this article.

#### **Section 9. Eligibility for a vested retirement benefit.**

A terminated participant shall be eligible to retire and receive a vested retirement benefit if his employment with the employer terminates voluntarily or involuntarily for any reason other than death, normal, early, or disability retirement, provided he has completed at least five years of credited service if hired prior to March 18, 2008, at least seven years of credited service if hired on or after March 18, 2008 through December 31, 2008, or at least ten years of service if hired after January 1, 2009.

A participant whose employment is terminated voluntarily or involuntarily because he is disabled shall be entitled to a vested benefit provided he qualifies for a disability retirement, (in accordance with section 11 of this article), within one year of termination of employment. Should a participant receiving workers' compensation benefits become qualified to receive disability retirement benefits on or after January 1, 2009, his disability retirement benefit will be reduced by the amount of workers' compensation benefit. Once the participant is ineligible for workers' compensation benefits, his total disability benefit will be restored.

Benefits shall commence on the first day of the month in which the terminated participant attains his normal retirement date. If an employee is a participant in the plan on March 1, 1987, and later terminates his employment with the employer, he shall be eligible to retire and commence receiving benefits on the first day of any month following his attainment of age 55, provided he has completed at least five years of credited service.

If an employee becomes a participant in the plan on or after March 18, 2008 through December 31, 2008, and later terminates his employment with the employer, he shall be eligible to retire and commence receiving benefits on the first day of any month following the attainment of age 55, provided he has completed seven years of credited service.

If an employee becomes a participant in the plan on or after January 1, 2009, and later terminates his employment with the employer, he shall be eligible to retire and commence receiving benefits on the first day of any month following the attainment of age 55, provided he has completed ten years of credited service.

In the event a participant is involuntarily terminated for reasons other than willful misconduct, he shall be eligible to retire at any time after attaining his early retirement date, provided he has at least 20 years of credited service on the date he terminates his employment.

*(Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)*

#### **Section 10. Amount of vested retirement benefit.**

The monthly amount of the vested retirement benefit shall be equal to benefit determined in section 2 of this article, based on the benefit rate in effect at the time the former participant terminated his employment.

#### **Section 11. Eligibility for a disability retirement benefit.**

A participant shall be eligible to retire on a disability retirement benefit if he becomes disabled, as defined in section 6 of article II. If the disability is non-job related, the participant must have completed at least 12 months of continuous service. Continuous service shall be defined in the same manner as "Service" under section 24 of article II.

*(Ord. No. 7669, 7/10/2013, § 1)*

## **Section 12. Amount of disability retirement benefit.**

The monthly amount of the disability retirement benefit shall be determined in accordance with Section 2 of this article. In no event, however, shall the benefit be less than 50 percent of the average of the participant's most recent 12 months of earnings. If the employee has completed an initial 12 months of continuous service, from date of hire to date of termination of employment as a result of a disability, but has less than 12 months of monthly earnings, the disability retirement benefit shall be no less than 50 percent of the average monthly earnings for the actual number of months worked. Continuous service shall be defined in the same manner as "Service" section 24 of article II.

Should a participant receiving workers' compensation benefits become qualified to receive disability retirement benefits on or after March 18, 2008, his disability retirement benefit will be reduced by the amount of workers' compensation benefit. Once the participant is ineligible for workers' compensation benefits, his total disability benefit will be restored.

*(Ord. No. 6465, 11/13/2002, § 2; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7669, 7/10/2013, § 2)*

## **Section 13. Evidence of disability.**

Participants applying for disability retirement must provide such evidence of disability in writing on a form provided by the city, which shall substantiate a claim of disability as set forth in section 6 of article II. When an application for disability pension is filed, the applicant shall submit therewith a signed certificate from a licensed, practicing physician certifying to the total disability of such applicant for a pension under the terms required in section 6 of article II, on a form provided by the city. Such form(s) must be completed in full and include all the information required by such form(s). The pension board may accept such completed form(s) or may order the applicant to be examined by a physician named by the pension board who likewise shall certify the physical ability or total disability, if found, of the applicant under the terms required in section 6 of article II. The pension board shall pay the cost of such additional examination. If the certificates of the respective physicians generally agree upon total disability, such facts shall be conclusive as to the physical or mental condition of the applicant and the pension board shall enter an order granting a disability pension in the proper amount. If the certificate tendered by the applicant and the certification of the physician appointed by the pension board shall disagree as to the condition of the applicant, the pension board shall review the documentation related to the request for disability and shall render a determination as to the disability of the applicant. If the applicant is dissatisfied with the decision of the pension board, the participant shall request and the pension board shall conduct a hearing for the purpose of reviewing the application on appeal. Such hearing shall be conducted informally by the examination of witnesses for and in opposition to such application, and both the applicant and the pension board may be represented by legal counsel if they so desire. Any oral testimony shall be summarized in pension board minutes. Copies of documents may be received as evidence in lieu of the original at the discretion of the pension board, and affidavits shall be filed with the pension board at the time of the hearing. The decision of the pension board after a hearing shall be final as to the physical or mental condition of the applicant; provided, however, any person

dissatisfied with the decision of the pension board after such hearing may appeal that decision to council in accordance with section 4 of article X. The applicant shall be entitled to present to council all documents reviewed by the pension board and testimony given during the hearing in making its determination during such final appeal. Council may consider only evidence submitted, heard or considered by the pension board.

At least once every two years after the pension board approves the applicant's disability retirement, or sooner if specifically requested by the pension board, the applicant must furnish evidence to the pension board of his or her ongoing disability as defined in section 6 of article II, in writing, on a form provided by the city. When the form for an ongoing disability pension is filed, the applicant shall submit therewith a signed certificate from a licensed, practicing physician certifying to the ongoing disability of such applicant for a pension on a form provided by the city under the terms required in section 6 of article II. Such form(s) must be completed in full and include all the information required by such form(s) within 30 days of the earlier of the second anniversary of the pension board's approval of such employee's initial or ongoing disability or the date requested by the pension board. Provided, however, if such participant receiving disability benefits does not provide evidence of and provide all of the information required by the city to show an ongoing disability within such 30-day period defined above, the pension board shall withhold payments of his benefits until he submits the required forms and the participant shall be deemed to have forfeited his benefits during the time of his refusal to submit such required forms. Should the refusal continue for a period of six months, or the participant's physician cannot certify to the participant's ongoing disability, such disability pension shall end and be terminated.

The pension board shall have the right to require an examination of any and all participants receiving disability pensions under the provisions of this section once every two years by a physician named by the pension board. The pension board shall pay the cost of such additional examination. If any such participant receiving a disability pension shall be found, as a result of such examination, to no longer be disabled in accordance with section 6 of article II, the pension board may, after hearing evidence thereon, and after giving an opportunity to such participant to be heard, remove such participant from the list of those entitled to disability pension. If the applicant is dissatisfied with the decision of the pension board, the participant shall request and the pension board shall conduct a hearing for the purpose of reviewing the application for ongoing disability, in appeal. Such hearing shall be conducted informally by the examination of witnesses for and in opposition to such application, and both the applicant and pension board may be represented by legal counsel if they so desire. Any oral testimony shall be summarized in pension board minutes. Copies of documents may be received as evidence in lieu of the original at the discretion of the pension board, and affidavits shall be filed with the pension board at the time of the hearing. The decision of the pension board after a hearing shall be final as to the physical or mental condition of the applicant; provided however any person dissatisfied with the decision of the pension board after such hearing may appeal that decision to council in accordance with section 4 of article X. The applicant shall be entitled to present to council all documents reviewed by the pension board and testimony given during the hearing in making its determination during such final appeal. Council may consider only evidence submitted, heard or considered by the pension board.

Provided, however, that in the event a participant receiving disability benefits refuses to submit to a physical examination or does not cooperate with and complete the examination conducted by the physician as requested by the pension board pursuant to this section after 30 days' notice to report for such examination, the pension board shall withhold payments of his benefits until he submits to such examination. The participant shall be deemed to have forfeited his benefits during the time of his refusal to submit to a physical examination. Should the refusal continue for a period of six months, such disability pension shall end and be terminated and can only be reinstated if the participant reapplies for a disability pension in accordance with this section.

*(Ord. No. 7669, 7/10/2013, § 3)*

#### **Section 14. Termination of disability retirement benefit.**

A period of total disability ceases on the earliest of the following dates:

- A. The date the participant ceases to be totally disabled;
- B. The date the participant commences work at a reasonable occupation for which the employee may be engaged or may reasonably become engaged, fitted by education, training or experience;
- C. The date the participant fails to furnish proof of the continuance of total disability or refuses to be examined when required;
- D. The date the participant ceases to be under the care of a physician, or
- E. The date of the participant's death.

#### **Section 15. Successive period of disability.**

Notwithstanding the fact that a participant may initially be determined disabled, and subsequently have disability retirement benefits terminated because of the occurrence of any event set forth in section 14 of this article, said participant may continue to be eligible for a successive period of disability benefits, if the participant is later determined disabled again as provided under section 13 of this article. The purpose of the successive disabilities rule is to encourage the participant to return to full-time work by assuring if the disability occurs again due to the same or related cause soon after returning to work, the participant will not have to complete a new qualifying period in order to qualify for benefits.

#### **Section 16. Definition of physician.**

The term "physician" means a legally qualified physician, except that with respect to a period of total disability, or any portion thereof, during which total disability is caused by any condition other than a medically determinable physical impairment, "physician" shall mean a legally qualified physician who either specializes in the practice of psychiatric

medicine or has by reason of training or experience, a specialized competency in the field of psychiatric medicine sufficient to render the necessary evaluation and treatment of mental illness.

#### **Section 17. Nonduplication of benefits.**

Nothing contained in this plan shall be construed as permitting any person to be entitled to more than one type of benefit under this plan or change the type of benefit elected once he has begun to receive benefit payments, unless otherwise specified in this plan.

#### **Section 18. Return to employment after retirement.**

*A. Reemployment.* Any retirement benefit payable under this plan to any participant who has retired and commenced receiving benefits, shall be suspended as of the month in which he is reemployed as an eligible full-time employee or less than full-time employee if retired under the provisions of article V, section 11, by the employer. Benefits shall be resumed as of the first day of the month coinciding with or next following his subsequent retirement; said benefits shall be recalculated in accordance with this article on the basis of his aggregate credited service and final average earnings at the time of his subsequent retirement, but reduced on an actuarial basis by the value of any early retirement benefits received prior to being reemployed, provided that the resulting benefit shall not be less than the benefit payable at the time of this previous retirement.

*B. Election or appointment to the governing authority.* If a participant is elected or appointed as a member of the governing authority after he has retired from employment in another capacity under this plan, he shall be eligible to earn credited service, after he has met the participation requirements for elected or appointed officials, as set forth in section 1 of article III. He shall be eligible to receive a normal retirement benefit as an elected or appointed official provided he has met the requirements as set forth in section 1 of article V. During the period in which said participant is holding an elected or appointed office with the governing authority, he shall continue to receive retirement benefits previously awarded under the plan, however, such benefits shall not be recalculated as a result of his employment as an elected or appointed official.

*C. Disability retirement.* Any disability retirement benefit payable under this plan to any participant who shall have retired or been retired pursuant to any provision of section 2 of article V shall be suspended as of the date his disability ceases. In any case where the payment of a participant's disability retirement pension shall have been so suspended, said period of absence from employment due to such disability shall be treated as a leave of absence without pay, but shall not be counted toward future service. Any participant who shall have retired or been retired pursuant to the provisions of section 11 of article V and who does or who has been or shall be subsequently declared ineligible for a disability retirement benefit because of a cessation of said disability shall have a right to any benefit afforded under any other provision of this plan to which he might otherwise be entitled. In such a case any disability retirement payments made prior to the date his disability ceases or is declared to no longer exist shall be retained by the participant and disregarded in computing any other benefit payable under this plan.

## **ARTICLE VI**

### **Crediting of Service and Break in Service**

#### **Section 1. General.**

Service and credited service shall be granted to a participant for the purpose of determining such participant's vested percentage of his accrued benefit and for computing the amount of benefits payable under this plan.

#### **Section 2. Past service.**

A participant shall be entitled to receive past service and past credited service for the number of years and full months of continuous employment with the employer prior to November 1, 1973. Past service shall also be granted for any tenure of elected office of an elected or appointed member of the governing authority who was serving as an eligible employee or an elected or appointed official, or both, on November 1, 1973. Otherwise, past service shall not include any tenure of elective office as an elected or appointed member of the governing authority.

#### **Section 3. Future service.**

A participant shall earn future service and future credited service for the number of years and full months of continuous employment with the employer on and after November 1, 1973.

Elective or appointed members of the governing authority shall earn future service and future credited service for all periods of elected office, whether or not successive, however any break in his tenure of elective office will not be considered as a period of future service or future credited service.

#### **Section 4. Break in service.**

A. *General rule.* A participant will incur a break in service upon his termination of employment with the employer. A participant who is vested upon termination of employment shall be eligible for a vested retirement benefit in accordance with section 9 of article V. A participant who is not vested upon termination of employment shall lose his service and credited service. However, if the participant later returns to work with the employer and, after such rehire, earns the number of years of continuous service required to earn a vested percentage for the vesting period in effect on the date of rehire, then, except to the extent described in B below in the case of a participant who received a refund of his participant contributions, his previous years of service, prior to January 1, 2009, and credited service prior to January 1, 2009, for which he did not make participant contributions, shall be restored.

B. *Participant received a refund of participant contributions.* The rules set forth in this paragraph B shall apply to any participant who (1) has a termination of employment with the employer; (2) is rehired in a position in which he is or will be eligible to accrue a benefit under this plan; and (3) received, upon his original termination of employment, a refund of his participant contributions, pursuant to Article IV, Section 3(2). In such a case:

1. If the participant is rehired as of a date that is within sixty (60) months of his original termination of employment, and subsequently attains vested status according to the vesting requirements in place at the time of rehire, the participant shall, upon his rehire date and for purposes of calculating both his vested percentage and the amount of any benefit payable under this plan (i.e., both retirement and disability benefit), receive credit for fifty percent (50%) of the service with which the participant was credited during the period that he made participant contributions.
2. If the participant is rehired as of a date that is more than sixty (60) months after his original termination of employment, the participant shall not receive credit, for purposes of calculating the amount of any benefit payable under this plan, for the period of service earned during the period that he made participant contributions. Such a participant may, however, receive credit for vesting purposes under the rule set forth in Section 4.A above.

*(Ord. No. 7301, 3/11/2009, § 1)*

#### **Section 5. Exceptions to break in service.**

An exception to the break in service provisions shall be allowed and a grace period granted if the participant's failure to earn service is due to:

A. An employee's absence from service by reasons of (1) her pregnancy, (2) birth of child of the employee, (3) placement of a child with the employee in connection with his or her adoption of the child, or (4) care for such child for a period beginning immediately after such birth or placement for reasons defined under the Family Medical Leave Act (FMLA). Such absence shall be credited as hours of employment up to the number of months allowed per incident pursuant to the FMLA. The time so credited shall be applied to the plan year in which such absence begins, if doing so will prevent the employee from incurring a break in service in that plan year; otherwise it shall be applied to the next plan year. FMLA may cover absences that are attributable to (1) the birth and care of the newborn child of the employee; (2) the placement with the employee of a son or daughter for adoption or foster care; (3) the employee's care of an immediate family member (spouse, child, or parent) with a serious health condition; or (4) the employee's medical leave when the employee is unable to work because of a serious health condition, or (5) other FMLA-covered reasons;

B. The employee's absence for the purpose of involuntary service in the Armed Forces of the United States;

C. Disability, for which the employee is receiving a disability retirement benefit; or

D. An authorized leave of absence, provided:

1. The individual was regularly employed by the employer immediately prior to his leave of absence;
2. The individual makes application for reemployment on or before the date of expiration of any leave of absence or within 90 days after he first becomes entitled to his discharge from military service; and
3. The individual is reemployed as an eligible employee within ninety (90) days after such application.

*(Ord. No. 7301, 3/11/2009, § 2)*

### **Section 6. Vesting.**

A participant hired prior to March 18, 2008, who is a full-time employee and who has completed at least five years of service shall have his credited service vested and the break in service rules as set forth in section 4 of this article shall not operate to deprive him of his accumulated service.

A participant who is a full-time employee hired on or after March 18, 2008 through December 31, 2008, and who has completed at least seven years of credited service shall have his credited service vested and the break in service rules as set forth in section 4 of this article shall not operate to deprive him of his accumulated credited service.

A participant who is a full-time employee hired on or after January 1, 2009, and who has completed at least ten years of credited service shall have his credited service vested and the break in service rules as set forth in section 4 of this article shall not operate to deprive him of his accumulated credited service.

*(Ord. No. 4905, 6/12/91, § 3; Ord. No. 6284, 9/12/2001, § 4; Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)*

### **Section 7. Unused sick leave or military duty used in benefit calculation.**

New retirees will be credited with additional service for benefit calculation purposes only (i.e. this additional credit will not be used to satisfy any eligibility criteria for plan benefits) for either unused sick leave or for active duty federal military service prior to becoming an employee of the City of Marietta/BLW whichever is greater, to a maximum of one year. Unused sick leave or military service will be granted for whole months only. Unused sick leave will be verified by the city/BLW. Proof of military service will require evidence of an honorable discharge. This provision only applies to active employees who apply for normal or unreduced early retirement (if applicable) after the effective date of this ordinance.

*(Ord. No. 6339, 12/12/2001, § 5)*

**ARTICLE VII**  
**Forms of Benefit Payment**

**Section 1. Normal form of payment.**

The normal form of benefit payment shall be a single life benefit, payable monthly to the retired participant. Benefits will cease as of the month in which the participant's death occurs.

**Section 2. Election of optional retirement benefit.**

A participant may elect, or may revoke said election, at any time prior to his actual retirement date, to have his retirement benefit payable under the options hereinafter set forth, in lieu of the single life benefit he is otherwise entitled to receive. The benefit shall be paid in accordance with the terms of said option. Election of said option shall be made by the participant in writing. The amount of the optional retirement benefit shall be the actuarial equivalent of the amount of benefit that would otherwise be payable to the participant under article V.

Any optional form of benefit elected by the participant must comply with the minimum distribution incidental benefit ("MDIB") requirement of proposed Treasury Regulation 1.401(a)(9)-2, or its successor. This rule ensures that the retirement benefits payable under the plan are more than incidental. If a participant designates a beneficiary or elects a form of benefit that would cause the payments to violate the MDIB rules, the pension board may, at its discretion, require the participant to designate another beneficiary or adjust the form of payment to satisfy such rules.

*(Ord. No. 6340, 12/12/2001, § 12)*

**Section 3. Social Security option.**

A participant may elect this option and receive an increased retirement benefit payable to the participant during his lifetime until he is eligible for benefits commenced under O.A.S.D.I. and a decreased retirement benefit payable thereafter for life in order to have a more level retirement income when such decreased retirement benefit is added to his primary benefits under O.A.S.D.I. determined as of his early retirement date; said benefit shall be computed in accordance with the factors set forth below. At the death of the participant all payments will cease and no further benefits shall be payable.

The factors set forth below shall be applied to the assumed O.A.S.D.I. benefit payable at the appropriate age. This amount shall then be added to the monthly benefit determined in accordance with section 4 of article V. When O.A.S.D.I. be reduced by the amount of the assumed O.A.S.D.I. benefits; if this amount results in a negative balance, this option may not be elected.

*O.A.S.D.I. Benefits Paid at Age*

Age	65	62
55	.3670	.5071
56	.4022	.5558
57	.4414	.6101
58	.4853	.6708
59	.5346	.7390
60	.5900	.8156
61	.6525	.9021
62	.7232	n/a
63	.8035	n/a
64	.8951	n/a

**Section 4. Joint and survivor benefit.**

A participant may elect to receive an actuarially reduced monthly retirement benefit with a continuation upon his death after retirement of 50%, 75% or 100% of his benefit, to that person he might name as his beneficiary, with the continuation of benefits being for the life of the beneficiary.

The participant's monthly amount shall be a percentage of the full monthly amount otherwise payable as a single life benefit (after adjustment, of any, for early retirement) as follows:

1. *50% joint and survivor option:*

- a. If the participant's pension is a nondisability retirement—The percentage shall be 88.0% plus 0.4% for each full year that the beneficiary is older than the participant or 88.0% minus 0.4% for each full year that the beneficiary is younger than the participant;
  - b. If the participant's pension is a disability pension—The percentage shall be 77.5% plus 0.4% for each full year that the beneficiary is older than the participant or 77.5% minus 0.4% for each full year that the beneficiary is younger than the participant;
  - c. In no event is the percentage to be greater than 99%; and
2. *75% joint and survivor option:*
- a. If the participant's pension is a nondisability retirement—The percentage shall be 83.5% plus 0.5% for each full year that the beneficiary is older than the participant or 83.5% minus 0.5% for each full year that the beneficiary is younger than the participant;
  - b. If the participant's pension is a disability pension—The percentage shall be 70.0% plus 0.5% for each full year that the beneficiary is older than the participant or 70.0% minus 0.5% for each full year that the beneficiary is younger than the participant;
  - c. In no event is the percentage to be greater than 99%; and
3. *100% joint and survivor option:*
- a. If the participant's pension is a nondisability retirement—The percentage shall be 79.0% plus 0.6% for each full year that the beneficiary is older than the participant or 79.0% minus 0.6% for each full year that the beneficiary is younger than the participant;
  - b. If the participant's pension is a disability pension—The percentage shall be 63.0% plus 0.6% for each full year that the beneficiary is older than the participant or 63.0% minus 0.6% for each full year that the beneficiary is younger than the participant;
  - c. In no event is the percentage to be greater than 99%.

#### **Section 5. Joint and survivor level benefit option.**

A participant may elect to receive the Social Security option (section 3 of this article) and a joint and survivor option (50%, 75% or 100%), (section 4 of this article), so that the participant will receive the increased retirement benefit until he is eligible for benefits to commence under O.A.S.D.I. and the decreased benefit payable thereafter for the remainder of his lifetime. Upon his death, the beneficiary will receive a percentage of the

benefit the participant was receiving at the time of his death (50%, 75% or 100%, whichever the participant had elected). However, in the event the participant dies before benefits commence under O.A.S.D.I., the beneficiary will receive a percentage (as elected) of the benefit the participant was receiving at the time of his death until the date he would have been entitled to O.A.S.D.I. benefits, at which time the beneficiary will receive a percentage (as elected) of the benefit the participant would have received.

This option may not be elected if the benefits payable under this plan after the participant commences to receive O.A.S.D.I. benefits, equal an amount less than zero.

The participant's monthly benefit shall be determined as follows:

1. Determine the benefits payable in accordance with section 3 of this article.
2. Determine the base level, which is the benefit payable under this plan after the participant commences to receive O.A.S.D.I. benefits. Determine the supplemental level, which is the benefit payable under this plan prior to the participant's commencement of O.A.S.D.I. benefits, minus the base level.
3. Multiply the joint and survivor option factors (in accordance with section 4 of this article) times the base level.
4. Multiply the supplemental level times the applicable factor below:
  - a. 50% joint and survivor option:  $1 - (.0025 \times \text{the years the supplemental level amount will be paid})$
  - b. 75% joint and survivor option:  $1 - (.0035 \times \text{the years the supplemental level amount will be paid})$
  - c. 100% joint and survivor option:  $1 - (.0045 \times \text{the years the supplemental level amount will be paid})$
5. Add the amounts determined in subsections (3) and (4) of this section; this is the benefit payable to the participant at retirement.
6. The amount determined in subsection (3) of this section is the benefit payable to the participant when he commences to receive O.A.S.D.I. benefits, and shall be payable for the remainder of his lifetime.
7. Upon the participant's death, the beneficiary will receive a monthly benefit equal to a percentage (as elected) of the benefit the participant was receiving. If the participant dies prior to the date O.A.S.D.I. benefits commence, the beneficiary will receive a percentage (as elected) of the benefits the participant was receiving until the date the participant's

O.A.S.D.I. benefits would have commenced, at which time the beneficiary will receive a percentage (as elected) of the benefit the participant would have received.

*(Ord. No. 4547, 4/8/87, § 1)*

## **Section 6. Reserved.**

*Editor's note—*

Section 1 of Ord. No. 6837, adopted July 13, 2005, deleted § 6, mandatory lump sum cashout, which derived from Ord. No. 4532, adopted Feb. 11, 1987; Ord. No. 4905, adopted June 12, 1991; Ord. No. 6019, adopted Aug. 11, 1999; and Ord. No. 6340, adopted Dec. 12, 2001.

## **Section 7. Joint and Survivor Benefit with Pop-up Feature.**

Effective on or after May 13, 2004, a participant may elect to receive an actuarially reduced monthly retirement benefit with a continuation upon his death after retirement of 50%, 75% or 100% of his benefit, to that person he might name as his beneficiary, with the continuation of benefits being for the life of the beneficiary. In the event the beneficiary predeceases the participant, after benefits have commenced, the participant's monthly benefit shall be adjusted to the single life benefit. This "pop-up" adjustment shall be made the month following written notification to the plan of the beneficiary's death. Notification shall also include a certified copy of the death certificate of the beneficiary. This option is available to participants until the day before the beginning date of any plan year in which the provision of this option would result in an increase in the City/BLW's contribution to the pension plans. In which case, authorization for this option will cease and it will no longer be available to participants.

If this option is elected, the participant's monthly retirement benefit amount shall be a percentage of the full monthly amount otherwise payable as a single life benefits (after adjustment, if any), for early retirement as follows:

1. *50% joint and survivor option:*
  - a. If the participant's pension is a nondisability retirement the percentage shall be 87.5%, plus 0.4% for each full year the beneficiary is older than the participant, or 87.5% minus 0.4% for each full year the beneficiary is younger than the participant.
  - b. If the participant's pension is a disability retirement the percentage shall be 77.0% plus 0.4% for each full year the beneficiary is older than the participant, or 77.0% minus 0.4% for each full year the beneficiary is younger than the participant.
  - c. In no event is the percentage to be greater than 99%; and

2. *75% joint and survivor option:*
  - a. If the participant's pension is a non disability retirement the percentage shall be 82.9%, plus 0.5% for each full year the beneficiary is older than the participant, or 82.9% minus 0.5% for each full year the beneficiary is younger than the participant.
  - b. If the participant's pension is a disability retirement the percentage shall be 69.4% plus 0.5% for each full year the beneficiary is older than the participant, or 69.4% minus 0.5% for each full year the beneficiary is younger than the participant.
  - c. In no event is the percentage to be greater than 99%; and
  
3. *100% joint and survivor option:*
  - a. If the participant's pension is a nondisability retirement the percentage shall be 78.3%, plus 0.6% for each full year the beneficiary is older than the participant, or 78.3% minus 0.6% for each full year the beneficiary is younger than the participant.
  - b. If the participant's pension is a disability retirement the percentage shall be 62.3% plus 0.6% for each full year the beneficiary is older than the participant, or 62.3% minus 0.6% for each full year the beneficiary is younger than the participant.
  - c. In no event is the percentage to be greater than 99%.
  
4. *Modification of benefit reduction factors:* Periodically the above factors will be reviewed and may be modified as necessary to ensure that the option provided under this section 7 does not increase the City/BLW's required contributions necessary to fund the plan.

(Ord. No. 6659, 5/12/2004, § 1)

**ARTICLE VIII**  
**Maximum Benefits**

**Section 8.01. General rule.**

(Ord. No. 7514, 1/12/2011, § 2)

**"Article VIII**  
**Maximum Benefits**

**Section 8.01 General Rule.**

*Section 8  
 which is the IRS  
 415 limits  
 dictated by IRS  
 this entire section  
 was amended by  
 Patti a submitted with  
 the original filing.  
 This updates  
 our plan to reflect*

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 includible 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:

*Calculating re: sick leaves, etc. Don't change calculations*

- (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 includible 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: This 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:

**ARTICLE IX**  
**Application, Benefit Payments and Claim Procedures**

**Section 1. Benefits payments generally.**

A. A participant who is eligible to receive benefits under this plan and makes application in accordance with the rules of this retirement plan shall be entitled upon

retirement to receive the monthly benefits provided for the remainder of his life, subject to the provisions of this plan. Benefit payments shall be payable commencing with the first full calendar month in which the participant has fulfilled all the conditions for entitlement to benefits.

B. However, in no event shall deferral of commencement of benefits be allowed whereby it can be reasonably anticipated (except on account of premature death) that benefits will inure primarily to a beneficiary rather than to the employee.

C. Pension payment shall end with the payment for the month in which the death of the pensioner occurs, except as provided in accordance with a joint and survivor benefit.

D. Pension benefits shall be payable commencing with the month following the month in which the claimant has fulfilled all the conditions for entitlement to benefits, including the requirement of section 2 of the filing of an application and notice of retirement with the pension board. The first day of such first month is what is meant by the "effective date" of the pension.

An employee may elect, in writing filed with the pension board, to receive benefits first payable for a later month, provided that no such election may postpone the commencement of benefits to a date later than April 1 following the calendar year in which the employee will reach age 70½, or, if later, retires.

E. If a participant's beneficiary is not his surviving spouse, the payment of any benefits under the plan that become payable on account of the participant's death shall begin no later than one year from the date of death and shall be distributed over the life of the beneficiary (or a period not extending beyond the life expectancy of such beneficiary).

### **Section 2. Filing an application for benefits.**

A participant must file an application for benefits under the plan no earlier than 90 days and no later than 30 days in advance of the date benefit payments are to commence. Such request may be in any form adequate to give reasonable notice to the pension board and shall set forth the basis of such application and shall authorize the pension board to conduct such examinations as may be necessary to facilitate the payment of any benefits to which the participant or beneficiary may be entitled under the plan.

### **Section 3. Claims.**

Any payment to a participant, or beneficiary, or to their legal representatives, in accordance with the provisions of the plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the pension board or the city, either of which may require such participant, beneficiary, or legal representative, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the pension board or the city, as the case may be.

#### **Section 4. Fraud, embezzlement, theft, and dismissal for cause.**

In the event the employer shall receive prior to a participant's actual retirement date, written confession by such participant, or proof satisfactory to the pension board that such participant has committed or has been convicted of having committed a felony in connection with his duties or in the course of his employment with the city, or in connection with the plan, his participation in the plan shall be forthwith terminated; and any vested interest that such participant may have in the fund shall be forfeited.

#### **Section 5. Errors in computation of benefits.**

Any overpayments or underpayments from the plan to a retired participant or to a beneficiary caused by errors of computation shall be adjusted. Underpayments shall be made up from the plan.

### **ARTICLE X** **Pension Board**

#### **Section 1. Definitions and rules of construction.**

- A. "Board" shall mean the pension board created by this article.
- B. "Police and fire employees" shall mean the sworn personnel of the police and fire departments.
- C. "General employees" are personnel other than the sworn personnel of the police and fire departments.
- D. "Council" shall mean the governing authority of the City of Marietta which shall include the mayor and members of the council.
- E. In computing time required under this ordinance, time shall be computed without exclusion of Sundays and holidays.
- F. When used in this ordinance, the male gender shall include the female and neuter genders.

#### **Section 2. Creation.**

There is hereby created in the City of Marietta a pension board which shall consist of such members elected and appointed and having such duties, functions and powers as are hereinafter prescribed.

#### **Section 3. Functions and powers.**

The pension board shall have the following duties, functions and powers:

A. In dealing with those persons participating or eligible to participate in any pension, retirement or disability program, the pension board shall:

1. Handle distribution of all reports to participants.
2. Handle arbitration between the city and the participants in all matters regarding the plan.
3. Handle any notices of eligibility, benefits, available options, and any other notices required by this plan, contract or rules and regulations.
4. Decide all questions and disputes on the interpretation and eligibility of persons for payment under any pension, retirement and disability ordinance of the City of Marietta.

B. In performance of its duties, the pension board shall have the following powers:

1. Recommend to the council the awarding of contract(s) for actuarial, and investment management and other administrative services as needed;
2. Adopt rules and regulations providing procedures for the granting of pension, retirement and disability benefits and to approve payments for such persons entitled to payment;
3. Adopt investment programs and procedures for funds held by any investment manager;
4. Adopt all documents issued by the board;
5. Review and recommend changes in the pension, retirement and disability program;
6. When requested by the city manager, to advise the city manager on all pension, retirement, or disability payment matters; and
7. To do all other things necessary and proper to carry out the duties required of it as the pension board of the City of Marietta.

#### **Section 4. Appeal and procedure.**

Any person dissatisfied with any decision of the pension board shall have the right to appeal the decision to the council by delivering to the city manager a written notice within ten days of the decision complained of. The city manager shall cause the secretary of the pension board, within ten days after such receipt, to provide to the clerk of the council all documents relied upon by the pension board in reaching its decision. The council shall decide the appeal within 75 days of receipt of the appeal documents

from the secretary of the pension board. Should the council fail to act within 75 days of the decision of the pension board, the decision of the pension board shall be affirmed. In ruling on any appeal from the pension board, the decision of the pension board shall be presumed correct and based upon sufficient facts to sustain it.

**Section 5. Membership and operation of pension board.**

The pension board shall consist of nine members elected from posts as follows:

Post 1: City manager or his designee

Post 2: Council member

Post 3: Council member

Post 4: General employee representative

Post 5: General employee representative

Post 6: General employee representative

Post 7: General employee representative

Post 8: Police department representative

Post 9: Fire department representative

The police chief and fire chief shall be ex officio members of the pension board and shall only vote in the absence of the police and fire representatives.

*Terms.* All members shall be elected as hereinafter provided in November and shall begin service on January 1 for a term of three years.

Selection of council, police, fire and general employee members:

*Council representative.* Two members of the council shall serve on the pension board. They shall be appointed by the mayor with consent of the council and shall serve for their duly elected term. If for some reason a duly appointed member cannot fulfill his or her term of the board, he or she shall be replaced by a member of the council appointed by the mayor with consent of the council.

*Police representative.* One member of the pension board shall be a representative of the police department. The senior officer in each of the ranks of police deputy chief, police captain, police lieutenant, police sergeant, detective and police officer shall serve as a

nominating committee for the police department. The highest ranking officer shall serve as chairman of the nominating committee.

*Fire representative.* One member of the pension board shall be a representative of the fire department. The senior officer in each of the ranks of deputy chief, assistant chief, commander, lieutenant, firefighter engineer, and firefighter shall serve as a nominating committee for the fire department. The highest ranking officer shall serve as chairman of the nominating committee.

*Election of police and fire representatives.* The chairman of each respective nominating committee of police and fire shall call a meeting of the committee in November of the year immediately preceding the termination of the police and fire representatives on January 1 of the next year. The purpose of this meeting will be to nominate three employees from each of the departments of fire and police. The names of the three employees nominated shall be placed on a ballot with space provided for write-ins. Ballots shall be distributed by the nominating committees to all of the employees in the respective departments of police and fire. Ballots shall be marked in secret and returned to the nominating committee the same day they are distributed. Each employee will vote for one candidate and the candidate receiving a plurality of votes shall be the representative of their respective departments to the pension board. If for any reason duly elected representative of the police or fire departments cannot fulfill his or her office, the respective nominating committee shall designate a replacement for the duration of the vacated membership.

*General employees.* Four members of the pension board shall be representatives of the general employees. A nominating committee consisting of the director of personnel, or a designee thereof; two persons appointed by the director of public works, one of which cannot be in a supervisory position; three persons appointed by the BLW general manager, one of which cannot be in a supervisory position; two persons appointed by the city manager, one of which cannot be in a supervisory position; and one person appointed by the director of parks and recreation shall nominate the candidates for membership on the pension board. The director of personnel, or the designee thereof, shall act as presiding officer of the nominating committee and call a meeting of the committee in the month of November in the year immediately preceding the end of the current member's term. The purpose of this meeting shall be to nominate two candidates for each expiring term of a member of the pension board represented by the general employees. The names of such employees nominated shall be placed on a ballot with space provided for write-ins. Ballots shall be distributed to all general employees. Ballots shall be marked in secret and returned to the nominating committee the same day they are distributed. Each employee will vote for as many candidates as there are representative seats of the general employees expiring on January 1. The candidates receiving the highest plurality votes for such seats shall be selected as the representatives of the general employees to the pension board. If for any reason for duly elected representatives of the general employees cannot fulfill his or her office, the nominating committee shall designate a replacement for the duration of vacated membership.

*Officers.* The pension board may elect such officers as it deems necessary. The board shall elect a chairman and a secretary.

The chairman shall preside at meetings of the board, cast a vote on any issue, call meetings as may be necessary, and do all things necessary to carry on the orderly affairs of the board. The chairman shall be selected by a majority vote of the board for a one-year term. The board shall designate, in writing, a secretary or other representative who shall have full authority to represent the board in all communications with any provider and the city's employees, including elected and appointed members of the governing authority. The secretary shall keep accurate minutes of all meetings of the board, recording those voting for and against any issue. Minutes shall be distributed to each member of the board, the council of the City of Marietta and shall be posted in a prominent place(s) within the City Government Complex.

*Legal assistance.* The city attorney or other attorney appointed by the governing authority shall furnish legal advice to the pension board on any issue before it upon which legal advice is sought.

*Meetings.* The pension board shall meet at least quarterly. Five members of the board (including the chairman) shall constitute a quorum. The city manager or his designee shall have authority to approve pension, retirement and disability payments pending a meeting of the board.

*Rules of procedure.* The pension board shall have the authority to promulgate rules and regulations for its internal operation, as well as the approval of payments within its jurisdiction.

(Ord. No. 5923, 11/11/98, § 2; Ord. No. 7103, 10/10/2007, § 2; Ord. No. 7379, 9/9/2009, § 1)

**ARTICLE XI**  
**Amendment and Termination**

**Section 1. Amendment of the plan.**

The governing authority shall have the right at any time, and from time to time, to amend, in whole or in part, any or all of the provisions of the plan following the review and recommendation by the pension board; provided, however, that no such amendment shall:

- A. Reduce the accrued benefits of any participant or beneficiary, or
- B. Authorize or permit any part of the trust fund held by the provider to be diverted to purposes other than for the exclusive benefit of participants and their beneficiaries, and
- C. No amendment shall operate to derive any participant or beneficiary of any rights or benefits irrevocably vested in him under the plan prior to such amendment except that the governing authority may make any and all changes and modifications necessary to qualify the plan or to keep the plan qualified under the Internal Revenue Code and the regulations thereunder, or any amendment thereto.

## **Section 2. Termination of the plan.**

A. The employer expects the plan to be continued indefinitely but, of necessity, reserves the right to terminate the plan and contributions thereunder at any time by action of the governing authority. Upon receipt of written notice from the governing authority of termination of the plan, the board shall prepare a list of all participants showing for each, as of the date of plan termination, the following:

1. For each retired participant and beneficiary receiving payment of benefits, the amount and terms of payment of such benefits.
2. For each terminated participant entitled to a deferred benefit, the amount, commencement date, and terms of payment of such benefit.
3. For each active participant the amount of his accrued benefit.

B. The board shall arrange for the liquidation of all assets held in the plan maintained in connection with the plan and shall prepare a statement of the liquidated value of such assets. The governing authority, in its sole discretion, may direct the board to purchase from an insurance company an annuity contract or contracts which provide the benefits to which each participant or beneficiary is entitled or to pay a lump sum to each participant or beneficiary, such lump sum amount to be [the] actuarial equivalent of the benefit to which such participant or beneficiary is entitled.

C. The board shall then deduct from the assets total remaining expenses incurred or to be incurred by the board on behalf of the plan. The board shall, except as otherwise provided in this section, then allocate the remaining assets for distribution in accordance with the classes listed below. The benefits of each class shall be satisfied before proceeding to the next class. If at any time the remaining plan assets would be insufficient to provide the accrued benefits for the class in question, the remaining assets would be applied on a pro rata basis within that class, and all subsequent classes would receive no benefit.

Class 1—Retired participants or beneficiaries who are receiving payments on the termination date.

Class 2—Participants delaying retirement.

Class 3—Participants eligible for early retirement.

Class 4—Former employees who are terminated participants.

Class 5—All other participants on a pro rata basis.

D. Upon distribution of the assets as specified above, the plan shall be regarded as terminated and no participant or beneficiary shall have any further rights or claim therein.

**ARTICLE XII**  
**Miscellaneous**

**Section 1. Construction.**

- A. The plan shall be construed in accordance with the laws of the State of Georgia.
- B. In the event that any section, subsection, sentence, clause or phrase of this agreement shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the previously existing provisions or the other section or section, subsections, sentences, clauses, or phrases of this agreement, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudicated invalid or unconstitutional were not originally a part hereof. The governing authority hereby declares that it would have passed the remaining parts of this agreement or retained the previously existing provisions if it had known that such part or parts hereof would be declared or adjudicated invalid or unconstitutional.

**Section 2. Non-alienation of benefits.**

None of the benefits, payments, proceeds, or distributions payable under the plan shall be subject to the claim of any creditor of any participant or to the claim of any creditor of any beneficiary hereunder, or to any legal process of levy or attachment by a creditor of any such participant or beneficiary; and no such benefits shall be in any manner liable for or subject to the debts, liabilities, engagements, or torts of any participant or beneficiary; and neither any such participant or beneficiary shall have any right to alienate, commute, anticipate, transfer, encumber, pledge or assign any of the benefits, payments, proceeds, or distributions under the plan. If any participant or beneficiary shall become bankrupt or attempt to anticipate, assign, or pledge any benefits, then such benefits shall, in the discretion of the pension board, cease, and in that event the pension board shall have authority to cause the same, or any part thereof, to be held or applied to or for the benefit of such member, his spouse, his children, or other dependents, or any of them, in such manner and in such proportion as the pension board may think proper.

**Section 3. Legally incompetent.**

Any participant or beneficiary receiving or claiming benefits under the plan shall be conclusively presumed to be mentally competent and of age until the pension board receives a written notice, in a form and manner acceptable to it, that such person is incompetent or a minor, and that a guardian or other person legally vested with the care of his estate has been appointed. In the event that the pension board finds that any person to whom a benefit is payable under the plan is unable to properly care for his affairs, or is a minor, then any payment due (unless a prior claim therefor shall have been made by a duly appointed legal representative) may be paid to the spouse, a child; a parent, or a brother or sister, or to any person deemed by the pension board to have incurred expense for such person otherwise entitled to payment. In the event a guardian of the estate of any person receiving or claiming benefits under the plan shall be appointed by a court of competent jurisdiction, payments shall be made to such guardian provided that proper proof of appointment is furnished in a form and manner suitable to

the pension board. Any payment so made shall be a complete discharge of liability therefor under the plan.

#### **Section 4. Benefits supported only by trust fund.**

Any person having any claim under the plan will look solely to the assets of the trust fund for satisfaction. In no event will the employer, or any of its employees or agents, be liable in their individual capacities to any person whosoever, under the provisions of the plan.

#### **Section 5. Discrimination.**

The employer through the pension board, shall administer the plan in a uniform and consistent manner with respect to all participants and shall not permit discrimination in favor of supervisory or highly paid employees, elected or appointed members of the governing authority, the chief legal officer or any associate legal officer of the city, or any municipal officer elected or appointed to preside over the court of said city.

#### **Section 6. Limitation of liability; legal actions.**

A. It is expressly understood and agreed by each employee who becomes a participant hereunder that, except for its or their willful neglect or fraud, neither the employer, nor the pension board, shall be in any way subject to any suit or litigation, or to any legal liability, for any cause or reason or thing whatsoever, in connection with the plan or its operation, and each such participant hereby releases the employer, all its employees and agents, and the pension board, from any and all liability or obligation.

B. To any action or proceeding involving any rights under the plan or the proper administration thereof, the city and the pension board shall be the only necessary parties and no participant, or his beneficiary, or any other persons having or claiming to have an interest in the plan shall be entitled to any notice or process. Any final judgment which is not appealed or appealable that may be entered in any such action or proceeding shall be binding and conclusive on the parties hereto and all persons having or claiming to have an interest.

#### **Section 7. Service in the Armed Forces.**

Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u). A participant who dies during a period of qualified military service shall be treated as having returned to employment with the city on the day before his death and died the next day for purposes of any survivor benefits including preretirement survivor benefits and any accelerated vesting. Such participant shall receive service for vesting purposes for such period of military service but shall not receive service for purposes of accruing benefits for such period of military service.

*(Ord. No. 6340, 12/12/2001, § 15; Ord. No. 7514, 1/12/2011, § 3)*

## Section 8. Rollovers.

- (a) *General rule.* Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the pension board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (b) *Definitions.* (1) *Eligible rollover distribution.* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); and (iii) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.) A distributee may not elect a direct rollover with respect to an eligible rollover distribution during the plan year that is less than \$200.00. If the distributee elects to have only a portion of an eligible rollover distribution paid to an eligible retirement plan, that portion must be equal to at least \$500.00. Eligible rollover distributions from this plan as limited to refunds of participant contributions.
- (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. Effective as of January 1, 2008, an eligible retirement plan shall include a Roth IRA established under Code Section 408A for purposes of eligible rollover distributions.
- (3) *Distributee.* A distributee includes a participant or former participant. In addition, the participant's or former participant's surviving spouse and the participant's or former participant's spouse or former spouse who is an alternate payee under a qualified domestic relations order,

as defined in Section 414(p) of the Internal Revenue Code, are distributees with regard to the interest of the spouse or former spouse. For distributions on and after January 1, 2007, "Distributee" shall include a nonspouse beneficiary of an eligible rollover distribution to the extent permitted by IRC Section 402(c)(11).

- (4) *Direct rollover.* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(Ord. No. 6340, 12/12/2001, § 16; Ord. No. 6483, 2/12/2003, § 3(3); Ord. No. 7514, 1/12/2011, §§ 4—6)

### **Section 9. Limitations of Federal law.**

For purposes of the plan, any provisions mandated by Federal law shall remain in effect only so long as such provisions are currently required. If any such provisions are found to be unconstitutional or unenforceable, are rescinded, or are repealed or become discretionary, those portions of the plan shall be deleted automatically, rescinded and revoked consistent with such action without any further action of the City Council of the City of Marietta.

(Ord. No. 7514, 1/12/2011, § 7)

### **SECTION 10: 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~~ returned to the City."

to plan not incl ?

**IRS Required Amendment to the City of Marietta/BLW Retirement Plan  
4532**

File I.D. #: \_\_\_\_\_

ORDINANCE NO.: \_\_\_\_\_

**AN ORDINANCE**

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

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**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: \_\_\_\_\_

APPROVED: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Approved as to Form: \_\_\_\_\_

## CHAPTER 4-12 INSURANCE AND RETIREMENT

### ARTICLE 4-12-6 EXHIBIT B TO CHAPTER 4-12

#### 4-12-6-010 Exhibit B to Chapter 4-12.

##### **Ordinance No: 4532**

*An Ordinance Adopting a Consolidated Retirement plan for the employees of the City of Marietta, Georgia.*

***Now, Therefore, Be It Hereby Ordained by the Mayor and Council of the City of Marietta, Georgia, That:***

**Section 1:** The Consolidated Retirement Plan for the employees of the City of Marietta, Georgia, a copy of which is attached hereto as Exhibit "A" and by reference made a part hereof, is hereby adopted for the employees of the City of Marietta, Georgia, on the following terms and conditions:

A. Each employee hired after March 1, 1987 (the effective date of this Consolidated Retirement Plan) shall be eligible to participate in the Consolidated Retirement Plan as provided for therein. Each new employee hired after March 1, 1987 shall have no right whatsoever to participate or become eligible to participate in the Retirement Plan adopted by Ordinance No. 4022.

B. Each employee that is employed with the City of Marietta, Georgia on March 1, 1987 shall have the right to either remain with the Retirement Plan adopted by Ordinance No. 4022 or elect to participate in the Consolidated Retirement Plan adopted by this Ordinance. Each employee that elects to participate in this Consolidated Retirement Plan shall make said election in writing and shall waive and relinquish any and all rights to participate or receive any benefits from the Retirement Plan adopted by Ordinance No. 4022 as it was originally enacted or any benefits adopted by any amendments to Ordinance No. 4022. The period to make this election shall be for a period of ninety (90) days commencing on March 1, 1987 and ending on May 29, 1987. Any employee that has not elected to participate in the Consolidated Retirement Plan by May 29, 1987 shall automatically remain a participant in the Retirement Plan adopted by Ordinance No. 4022 and shall have no right whatsoever to participate or become eligible to participate in the consolidated Retirement Plan adopted by this Ordinance.

**Section 2:** All Ordinances and parts of Ordinances in conflict with this Ordinance are hereby repealed, except as provided in Section 3.

**Section 3:** The rights and obligations under the Retirement Plan approved September 20, 1973, as amended, with respect to persons whose employment with the City was terminated for any reason whatsoever prior to the effective date of this Ordinance are fixed and shall be governed by such Retirement Plan as it existed and was in effect at the time of such termination.

**Section 4:** The effective date of this Ordinance shall be March 1, 1987.

Historical note—Exhibit B contains the consolidated retirement plan for city employees adopted by Ord. No. 4532, 2/11/87, and subsequently amended. Amendments have been worked into their prescribed places and are indicated by a history note following the affected section or subsection.

**Section 1:** That Section 4-12-6-010, Exhibit B to Chapter 4-12, Ordinance No. 4532 of the Code of Ordinances of the City of Marietta be modified to read as follows:

## **ARTICLE I**

### **Purpose**

This ordinance shall constitute the consolidated retirement plan of the City of Marietta, Georgia for the exclusive benefit of the city employees according to the terms and conditions hereinafter contained; and said ordinance shall be subject to amendment from time to time by the city. The provisions of this plan shall be effective March 1, 1987.

### **Summary of Consolidated**

Retirement Plan for the  
Employees of the City  
of Marietta, Georgia

**Participation**—All current participants will have the option to participate in the new plan or continue to be participants in the existing plan, new participants must meet the eligibility provisions as outlined in the current plan.

**Normal retirement date for employees hired prior to March 18, 2008**—First day of the month following or coincident with the later of the participant's 65th birthday and the completion of five years of credited service.

**Early retirement**—Age 55 or more with a minimum of five years credited service.

**Disability retirement**—Current plan with offset for any benefit received from Workers' Compensation.

**Normal retirement date for employees hired on or after March 18, 2008 through December 31, 2008**—First day of the month following or coincident with the later of the participant's 65th birthday and the completion of seven years of credited service.

**Early retirement**—Age 55 or more with a minimum of seven years credited service.

**Disability retirement**—Current plan with offset for any benefit received from Workers' Compensation.

**Normal retirement date for employees hired on or after January 1, 2009**—First day of the month following or coincident with the later of the participant's 65th birthday and the completion of ten years of credited service.

**Early retirement**—Age 55 or more with a minimum of ten years credited service.

**Disability retirement**—Current plan with offset for any benefit received from Workers' Compensation.

**Special election period**—All current participants have 90 days from the new plan effective date of March 1, 1987, to elect to be covered under the new plan, failure to elect will mean automatic coverage under the current plan.

**Second special election period**—All current "4022" plan participants as of November 11, 1998, will be provided a 30-day period in the calendar year 1999 to elect to be covered by the provisions of the Consolidated Retirement Plan; failure to elect will mean automatic coverage under their current plan.

**Normal retirement pension**—2.1% (for participants who terminate active service prior to the effective date of this change, the benefit percentage will remain two percent).

**Final average earnings**—Shall mean the average of the annual earnings paid to a participant during any consecutive three-year period preceding his actual date of retirement in which his earnings were highest; or if he had less than three years of total credited service, then his final average earnings shall be his average earnings for his total credited service for employees hired prior to January 1, 2009.

Effective January 1, 2009, final average earnings shall mean the average of the annual earnings paid to a participant during any consecutive five-year period preceding his actual date of retirement in which his earnings were highest; or if he had less than five years of total credited service, then his final average earnings shall be his average earnings for his total credited service for employees hired prior to January 1, 2009.

**80 point pension**—Participants hired prior to March 18, 2008, will be eligible to receive an unreduced retirement when a participant's age plus credited service total 80.

Participants hired on or after March 18, 2008, will only be eligible to receive an unreduced retirement pension under the 80 point pension provision once they reach age 55.

**Early retirement pension for employees hired prior to January 1, 2009**—The accrued normal retirement pension is reduced by .25 of one percent for each month the participant's age at early retirement is less than 65.

**Early retirement pension for employees hired on or after January 1, 2009**—The accrued normal retirement pension is reduced by .417 of one percent for each month the participant's age at early retirement is less than 65.

**Normal benefit form**—No change from the current plan—Lifetime benefit without survivor continuation.

**Benefit form options**—Normal benefit.

Social Security Option  
Joint & Survivor Option

**Break-in-service pension eligibility**—All future participants that incur a break-in-service will only be entitled to a benefit at their normal retirement date.

(Ord. No. 5921, 11/11/98, §§ 1, 3; Ord. No. 6339, 12/12/2001, § 7; Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)

## **ARTICLE II**

### **Definitions**

Whenever the terms set forth below are used in this plan, they shall have the meanings indicated below, unless a different meaning is plainly required by the context. Masculine pronouns, when used throughout the plan, shall refer to both men and women, and the singular shall include the plural, unless the context indicates otherwise. Headings of sections are used for convenience of reference, and in the case of conflict, the text of the plan, rather than such headings, shall control.

#### **Section 1. Actuarial present value.**

Unless otherwise specified in the plan, the actuarial present value of a benefit shall be determined using the interest rate prescribed by the pension benefit guaranty corporation for valuing annuities under the single-employer plans that terminate without a notice of sufficiency during the first month of the calendar year in which the date as of which the benefit is valued, occurs. The mortality assumption shall be based on the 1971 Group Annuity Mortality Table, weighted as follows:

- (a) For a participant's benefit, 80% male and 20% female;
- (b) For the benefit of a participant's spouse or former spouse, 20% male and 80% female; and
- (c) In any other case, 50% male and 50% female.

Actuarial equivalence means two benefits of equal actuarial present value based on the factors and assumptions specified in the provisions in which that phrase is used or, if not otherwise specified, based on the assumptions described in this section.

Notwithstanding the first paragraph hereof, effective January 1, 2002, unless otherwise specified in the plan, the actuarial present value of a benefit shall be determined using the interest rate or rates published by the Pension Benefit Guaranty Corporation for lump sum calculations for private-sector calculations (as described in PBGC Reg. Sec. 4022.7), as in effect as of the first day of the plan year in which a distribution occurs.

(Ord. No. 6340, 12/12/2001, § 7)

## **Section 2. Actuary.**

*Actuary* shall mean an actuary who is enrolled under subtitle C of Title III of the Federal Employee Retirement Income Security Act of 1974.

## **Section 3. Beneficiary.**

*Beneficiary* shall mean the person(s) designated by the participant to receive any death benefits. For purposes of this definition, "person" shall include only a natural person(s) and shall not include a corporation, estate or other such entity.

Any beneficiary designation shall be made in a writing submitted to the pension board or its designee, in a form prescribed by the pension board. The submission of a new beneficiary designation shall automatically revoke all prior beneficiary designations. If a participant does not have an effective beneficiary designation on file, his beneficiary shall be his spouse, if he is married as of the date of his death, or his estate, if he is not married on the date of his death.

(Ord. No. 6340, 12/12/2001, § 8)

## **Section 4. City.**

*City* shall mean the City of Marietta, Georgia.

## **Section 5. Credited service.**

*Credited service* shall mean the year of credit for full-time work except as otherwise specified herein, with an employer which is used to determine the amount of benefits payable under this plan, including past credited service, for work prior to November 1, 1973 and future credited service, for work after November 1, 1973.

(Ord. No. 6284, 9/12/2001, § 3)

## **Section 6. Disability.**

A participant will be considered disabled if unable, solely because of disease or accidental bodily injury, to work at his or her own occupation or at any reasonable occupation for which the participant may be engaged, or may reasonably become engaged, fitted by education, training or experience provided, however, that such disability shall not have been (a) self-inflicted; (b) incurred in military service; (c) incurred in the commission of a felonious enterprise; or (d) the result of the use of narcotics and/or drugs and/or alcohol.

## **Section 7. Early retirement age.**

*Early retirement age for employees hired prior to March 18, 2008* shall mean the date a participant attains age 55 and has completed at least five years of credited service.

*Early retirement age for employees hired on or after March 18, 2008 through December 31, 2008* shall mean the date a participant attains age 55 and has completed at least seven years of credited service.

*Early retirement age for employees hired on or after January 1, 2009* shall mean the date a participant attains age 55 and has completed at least ten years of credited service.

(Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)

## **Section 8. Earnings.**

*Earnings* shall mean the total compensation paid to an employee of the city for service rendered, but shall exclude compensation for overtime and reimbursed expenses. Earnings shall include holiday and vacation pay and payments made by the city on behalf of an employee during periods of authorized absence for illness and other reasons.

Except with respect to qualified participants (as defined below), for plan years beginning on and after January 1, 1996, the earnings taken into account during a plan year in calculating a participant's benefit under this plan shall not exceed the limitations of Internal Revenue Code Section 401(a)(17) in effect as of the beginning of the plan year (e.g., \$150,000.00 in 1996). For purposes of applying the \$150,000.00 limit, as adjusted, if any employee is the spouse or a lineal descendant of an employee (provided the lineal descendant is younger than age 19 by the end of the plan year) who is one of the ten (10) "highly compensated employees" (within the meaning of Internal Revenue Code Section 414(q)) paid the greatest amount of earnings (determined without regard to the \$150,000.00 limit, as adjusted) during the plan year, the employee shall not be treated as a separate employee. The preceding sentence shall not, however, apply to any plan year which begins on or after January 1, 1997.

The \$150,000.00 limit described in the previous paragraph shall not apply to any qualified participant. A qualified participant is any participant who first became a participant in the plan before January 1, 1996.

Effective for plan years beginning on and after January 1, 2002, the \$150,000.00 amount described in this paragraph, as adjusted by the commissioner, shall be increased to \$200,000.00, 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.

*(Ord. No. 6340, 12/12/2001, § 9; Ord. No. 6483, 2/12/2003, § 2(1))*

#### **Section 9. Effective date.**

*Effective date* shall mean March 1, 1987 for the purpose of this consolidated plan.

#### **Section 10. Full-time employee.**

*Full-time employee* shall mean a person who is regularly employed for at least thirty (30) hours per week in the services of the city and Marietta Board of Lights and Water, or any person who is an elected or appointed member of the governing authority.

The term full-time employee shall not include:

- (a) Employees, other than elected and appointed members of the governing authority, who regularly work less than thirty (30) hours per week in the service of the city;
- (b) Any person employed by the city to perform scientific, technical, engineering, accounting, legal, or similar expert services in a consulting capacity;
- (c) Any person employed for less than five (5) months in any year or on a retainer contract or fee basis; or
- (d) City solicitor and chief judge—Municipal court for the City.

*(Ord. No. 4905, 6/12/91, § 1)*

#### **Section 11. Employer.**

*Employer* shall mean the City of Marietta, Georgia.

**Section 12. Final average earnings.**

*Final average earnings for participants hired prior to January 1, 2009* shall mean the average monthly earnings paid to a participant during the 36 full months preceding his actual date of retirement in which his earnings were highest.

*Final average earnings for participants hired on or after January 1, 2009* shall mean the average monthly earnings paid to a participant during the 60 full months preceding his actual date of retirement in which his earnings were highest.

*Final average earnings for an elected or appointed member of the governing authority* shall be defined as the average annual salary divided by 12 of all plan participants covered by the plan on the July 1 preceding the plan year of determination. Under no circumstances may this amount be more than five percent greater than the average salary used from the prior year. This amount will also be adjusted as necessary in order to preserve an individual participant's accrued benefit.

(Ord. No. 5907, 10/14/98, § 2; Ord. No. 7234, 9/10/2008, § 1)

**Section 13. Governing authority.**

*Governing authority* shall mean the mayor and council of the City of Marietta, Georgia.

**Section 14. Investment manager.**

*Investment manager* shall mean a person or company who:

- (a) has the power to manage, acquire, or dispose of any asset of the plan;
- (b) who is
  - (1) registered as an investment adviser under the Investment Advisers Act of 1940;
  - (2) is a bank, as defined in that act; or
  - (3) is an insurance company qualified to perform services described in subparagraph (a) under the laws of more than one state; and
- (c) has acknowledged in writing that it is a fiduciary with respect to the plan.

**Section 15. Normal retirement age.**

*Normal retirement age for employees hired prior to March 18, 2008* shall mean the date a participant attains age 65 and has completed at least five years of credited service.

*Normal retirement age for employees hired on or after March 18, 2008 through December 31, 2008* shall mean the date a participant attains age 65 and has completed at least seven years of credited service.

*Normal retirement age for employees hired on or after January 1, 2009 shall mean the date a participant attains age 65 and has completed at least ten years of credited service.*

*(Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)*

**Section 16. Normal retirement date.**

*Normal retirement date shall mean the first day of the month coinciding with or next following the participant's normal retirement age.*

**Section 17. OASDI.**

*OASDI shall mean the Old-Age and Survivors Disability Insurance program under the Social Security Act or the successor act as further amended.*

**Section 18. Participant.**

*Participant shall mean an employee who meets the requirements for participation in the plan as set forth in section 1 of article III.*

**Section 19. Plan.**

*Plan shall mean the Consolidated Retirement Plan for Employees of the City of Marietta, Georgia.*

**Section 20. Plan year.**

*Plan year shall mean the period of twelve consecutive months commencing on July 1 and ending on June 30.*

**Section 21. Pension board.**

*Pension board shall mean the board appointed or elected by the city on this ordinance to represent the city in the administration of the plan hereby established.*

**Section 22. Retired participant.**

*Retired participant shall mean any participant who has qualified for retirement under any provision of the plan and is entitled to receive any pension provided under the plan.*

**Section 23. Retirement.**

*Retirement* shall mean withdrawal from service from the city and the participant is eligible for benefits under this plan.

**Section 24. Service.**

*Service* shall mean regular service rendered as an employee of the city. Service includes absence from active employment with the city under conditions which are not treated by it as a termination of employment. However, service shall not include accrued but unused annual leave of the employee. Service also means any tenure of elective office held by an elected or appointed member of the governing authority provided that such tenure of elective office does not include any calendar period during which any elected or appointed member of the governing authority is also in the regular service of the city as a full-time employee.

**Section 25. Terminated participant.**

*Terminated participant* shall mean employees withdrawn from service, who are entitled to a vested benefit under the provisions of this plan.

**Section 26. Trust fund.**

*Trust fund* shall mean the total amount invested or uninvested, held at any time in trust for the city under any trust agreement, pension or investment contract.

**Section 27. Part-time employee.**

*Part-time employee* shall mean a person who is regularly employed for less than thirty (30) hours per week in the services of the city and Marietta Board of Lights and Water.

(Ord. No. 4905, 6/12/91, § 2)

**Section 28. Seasonal employee.**

*Seasonal employee* shall mean a person who is regularly employed for at least 30 hours per week for less than five months in any year.

(Ord. No. 4905, 6/12/91, § 2)

**Section 29. Temporary employee.**

*Temporary employee* shall mean a person who performs services under a contractual agreement for a duration not exceeding two years.

(Ord. No. 4905, 6/12/91, § 2)

**ARTICLE III**  
**Participation**

**Section 1. Eligibility for participation.**

Each employee who is employed by the city on March 1, 1987, and who elected to participate in the plan shall become a participant in this plan on the effective date, provided he is then in active service with the employer or on an authorized leave of absence.

Each new employee hired after July 1, 1990, shall become a participant in the plan at the alter of July 1, 1991, or the first day of the month coinciding with or next following his date of employment.

Each elected or appointed member of the governing authority who holds an elected office of the city on the effective date of this plan shall become a participant on that date.

Each elected or appointed member of the governing authority who holds an elective office of the city subsequent to the effective date of this plan shall become a participant on the first day of the month coinciding with or next following the date he completes one year of service.

Participation in the plan shall not give any employee the right to be retained in the employ of the city nor, upon dismissal, to have any right or interest in the fund other than is herein provided.

A full-time contract employee may elect, in writing, not to participate in the plan. However, once such an election is made, he may not change the election at a later time to again participate in the plan.

Any eligible employee who terminates employment as a public safety participant under the 4022 plan, and who moves to a general employee position on or after June 1, 1999, shall participate in the consolidated retirement plan adopted by Ordinance No. 4532 on the first day of the pay period immediately coinciding with the employee's change to such position. The employee shall have no right whatsoever to participate or become eligible to participate in general employee portion of the retirement plan adopted by Ordinance No. 4022 as such portion has been terminated by the city. The employee also has no right to continue participation in the public safety portion of the retirement plan adopted by Ordinance No. 4022 after the employee moves to a general employee position. However, the employee shall be entitled to a vested right in his accrued retirement benefits, and shall have the option to receive benefits upon retirement as a public safety participant under the 4022 plan from the time the employee became eligible to the date the employee changes to a general employee position and benefits under the consolidated retirement plan from the date the employee changes to a general employee position to the date of retirement, or the employee may waive and relinquish any and all rights to receipt of any benefits under the 4022 plan and have all benefits calculated under the consolidated retirement plan at the date of retirement.

Notwithstanding anything contained herein to the contrary, the following individuals shall not be eligible to participate in the plan:

- (i) A part-time, temporary or seasonal employee hired on or after January 1, 2000;
- (ii) A leased employee within the meaning of Internal Revenue Code Section 414(n)(2);
- (iii) An employee classified by the city or the Marietta Board of Lights and Water as a leased employee, regardless of whether such employee is a leased employee within the meaning of Internal Revenue Code Section 414(n)(2); or
- (iv) A person who is initially classified by the city or the Marietta Board of Lights and Water as an independent contractor or leased employee for purposes of the withholding and payment of employment taxes, even if such person is later determined, whether by the city, the Marietta Board of Lights and Water, or otherwise, to be a common law employee of the city or of the Marietta Board of Lights and Water.

*(Ord. No. 4905, 6/12/91, § 5; Ord. No. 6064, 11/10/1999, § 3; Ord. No. 6340, 12/12/2001, § 10)*

## **Section 2. Termination of participation.**

Participation shall be deemed to be terminated as of the date of quit, resignation or discharge, by lapse of recall rights after layoff, by ceasing to be an eligible employee as defined herein or by failure to return to service as an eligible employee at the end of an approved leave of absence.

For elected or appointed members of the governing authority, participation shall be deemed to be terminated on the date such person vacates his elected office.

A participant shall become a former participant when his employment terminates otherwise than by retirement, provided he has earned a vested percentage in his accrued benefit.

## **Section 3. Reinstatement of participation.**

An employee who has lost his status as a participant in accordance with section 3(2) of this article shall again become a participant as of the first day of the month following the date he is reemployed.

## **ARTICLE IV** **Contributions**

### **Section 1. City contributions.**

The city shall make the necessary contributions to fund this retirement plan. The amount of these contributions shall be based upon the mortality tables adopted by the actuary, the benefits provided in the plan, and the number of participants and their respective ages, earnings and lengths of creditable service and such other factors as the actuary shall deem appropriate to properly fund this plan. All contributions by the city shall be used only for the benefit of the participants and eligible beneficiaries. City contributions shall be collected and remitted to the investment manager as required.

### **Section 2. Prospective benefit change.**

The employer may at its discretion elect to modify the prospective plan benefits by amendment in the event that the required contribution as determined under section 1 of this article is 14.39% or more of covered payroll or 11.78% or less of covered payroll for any single year. The prospective plan benefits may be modified in the event the required contribution level is outside the range as outlined above during a single year for any reason, including but not limited to the addition or reinstatement of any statutory or court mandated benefits, whether related to this plan or the retirement plan adopted by Ordinance No. 4022 as amended, any financial or other experience, or any other unforeseen events. In addition, the prospective plan benefits may be modified in the event that OASDI benefits are reinstated for all employees. Covered payroll shall mean the total annual earnings of all participants in the plan as reported by the city to the actuary for the most recent actuarial valuation of the plan.

### **Section 3. Participant contributions.**

- (1) As of January 1, 2009, each participant shall make mandatory contributions to the plan. The amount of such contributions shall be four percent of each participant's gross wages other than overtime and expense reimbursements. Such amounts shall be withheld from each payroll check for periods beginning on and after the date that the eligible employee becomes a participant in the plan. The city shall hold such amounts, for recordkeeping purposes, in a participant contribution account for each contributing participant. Such account shall be a notional account only. The participant may not direct the investment of such account, and such amounts shall be held together with the remaining assets of the plan. The participant shall not, on account of the existence of such an account, have any greater or higher-priority claim on the assets of the plan than any other participant.

Participant contributions described in this article IV, section 3, shall be made pursuant to Section 414(h) of the Code and shall be treated as employer contributions in determining their federal income tax treatment under the Internal Revenue Code. Such contributions shall be included in the participant's earnings for purposes of determining their benefits under this plan.

- (2) Refund of participant contributions. If a participant has a termination of employment and is not eligible for any retirement benefit under this plan, or if the participant dies before his benefits have commenced and no death benefit is payable to a spouse or

child of the participant, the participant (or the beneficiary, if the participant dies) shall receive the balance of his participant contribution account. A participant who is vested in his benefit under this plan is not eligible for a refund of participant contributions pursuant to this paragraph (2).

If the participant, a contingent annuitant, a spouse or child is receiving benefits under the plan and dies before payments from the plan to the participant, contingent annuitant, spouse or child have been made in an amount equal to or greater than the total of the participant contribution account, and no additional benefits are due from this plan, then the beneficiary shall receive the amount by which the participant contribution account (as of the date benefits commenced) exceeds such amount. If the beneficiary receives such a refund, no additional death benefits will be paid from the plan.

A refund of a participant contribution account shall not include interest.

"Beneficiary" for purposes of this section 3 shall mean the individual, trust or other entity designated by the participant in accordance with procedures established by the pension board to receive a distribution of the participant's participant contribution account under the circumstances described above.

For the purposes of this section, revocation of prior beneficiary designations will occur when a participant files a new valid designation with the plan administrator.

Nothing in this definition of beneficiary shall be deemed to provide death benefits that are not otherwise provided in this plan.

\* If the participant does not designate a beneficiary, or the beneficiary so designated does not survive the participant, the participant's beneficiary for purposes of receiving any refund of participant contributions shall be his spouse, if the participant is survived by a spouse, or the participant's estate if he is not survived by a spouse.

\* Any refund of the participant contribution account shall be made in a lump sum after the later of (i) the participant's termination of employment and (ii) the date that the participant requests a distribution and completes any forms required by the pension board as a condition of his receiving a refund.

*(Ord. No. 7234, 9/10/2008, § 1)*

## **ARTICLE V** **Eligibility for Benefits and Amounts**

### **Section 1. Eligibility for a normal retirement benefit.**

A participant shall be eligible to retire on a normal retirement benefit upon the later of:

A. Attainment of age 65, and

B. Completion of five years of credited service for employees hired prior to March 18, 2008, completion of seven years of service for those hired on or after March 18, 2008 through December 31, 2008, or completion of ten years of service for employees hired January 1, 2009.

C. Elected or appointed members of the governing authority shall be eligible to retire on a normal retirement benefit upon attainment of age 65, and completion of five years of credited service for those holding office prior to January 1, 2009.

D. Elected or appointed members of the governing authority shall be eligible to retire on a normal retirement benefit upon attainment of age 65, and completion of ten years of credited service for those holding office on or after January 1, 2009. However, commencement of benefits shall be delayed until the first day of the month coinciding with or next following the date he vacates such elective office.

*(Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)*

### **Section 2. Amount of normal retirement benefit.**

The monthly amount of the normal retirement benefit shall be equal to 2.1% (for participants who terminate active service prior to the effective date of this change, the benefit percentage will remain two percent) or the percentage as revised in accordance with article IV, section 2, of the participant's final average earnings multiplied by the years of credited service which he has completed plus credit granted pursuant to article VI, section 7 (up to a maximum of 35 years of credited service).

*(Ord. No. 5907, 10/14/98, § 1; Ord. No. 6339, 12/12/2001, § 6)*

### **Section 3. Eligibility for an early retirement benefit.**

A participant hired prior to March 18, 2008, shall be eligible to retire on the first day of any month following his attainment of age 55, provided he has completed at least five years of credited services.

A participant hired on or after March 18, 2008 through December 31, 2008, shall be eligible to retire on the first day of any month following his attainment of age 55, provided he has completed at least seven years of credited service.

A participant hired on or after January 1, 2009, shall be eligible to retire on the first day of any month following his attainment of age 55, provided he has completed at least ten years of credited service.

*(Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)*

#### **Section 4. Amount of early retirement benefit.**

The monthly amount of the early retirement benefit for participants hired prior to January 1, 2009, shall be equal to the benefit determined in section 2 of this article, reduced by .250 of one percent for each month by which the participant is younger than 65 on the effective date of his early retirement.

The monthly amount of the early retirement benefit for participants hired on or after January 1, 2009, shall be equal to the benefit determined in section 2 of this article, reduced by .417 of one percent for each month by which the participant is younger than 65 on the effective date of his early retirement.

*(Ord. No. 7234, 9/10/2008, § 1)*

#### **Section 5. Eligibility for an unreduced early retirement benefit.**

A participant hired prior to March 18, 2008, shall be eligible to retire on an unreduced early retirement benefit, provided the sum of his age plus credited service equals at least eighty (80).

A participant hired on or after March 18, 2008, shall be eligible to retire under the 80 point pension provision on an unreduced early retirement benefit, provided they have reached age fifty-five (55).

*(Ord. No. 5921, 11/11/98, § 2; Ord. No. 7142, 3/17/2008, § 1)*

#### **Section 6. Amount of unreduced early retirement benefit.**

The monthly amount of the unreduced early retirement benefit shall be equal to the benefit determined in accordance with section 2 of this article.

#### **Section 7. Eligibility for a late retirement benefit.**

A participant whose employment with the employer continues after his normal retirement date will receive a late retirement benefit commencing on the first day of the month following the month in which his employment ceases.

Notwithstanding anything contained herein to the contrary, in no event may distribution of a participant's retirement benefit commence later than the first day of April in the calendar year following the later of (a) the calendar year in which the participant attains age 70½, or (b) the calendar year in which the participant retires. If, as of January 1, 2002, a participant is an employee in active employment with the employer and is receiving distributions on account of his attaining age 70½, the participant shall continue to receive plan distributions. A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) shall not receive those distributions for 2009 unless the participant

or beneficiary chooses to receive such distributions. Notwithstanding any other provision of this chapter to the contrary, any required minimum distribution made in 2009 shall be treated as eligible rollover distribution.

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 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 nonspouse 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 70½.

(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 nonincreasing 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.

(Ord. No. 6340, 12/12/2001, § 11; Ord. No. 6483, 2/12/2003, § 3(2); Ord. No. 7514, 1/12/2011, § 1)

### **Section 8. Amount of late retirement benefit.**

The monthly amount of the late retirement benefit shall be equal to the benefit determined in section 2 of this article.

### **Section 9. Eligibility for a vested retirement benefit.**

A terminated participant shall be eligible to retire and receive a vested retirement benefit if his employment with the employer terminates voluntarily or involuntarily for any reason other than death, normal, early, or disability retirement, provided he has completed at least five years of credited service if hired prior to March 18, 2008, at least seven years

of credited service if hired on or after March 18, 2008 through December 31, 2008, or at least ten years of service if hired after January 1, 2009.

A participant whose employment is terminated voluntarily or involuntarily because he is disabled shall be entitled to a vested benefit provided he qualifies for a disability retirement, (in accordance with section 11 of this article), within one year of termination of employment. Should a participant receiving workers' compensation benefits become qualified to receive disability retirement benefits on or after January 1, 2009, his disability retirement benefit will be reduced by the amount of workers' compensation benefit. Once the participant is ineligible for workers' compensation benefits, his total disability benefit will be restored.

Benefits shall commence on the first day of the month in which the terminated participant attains his normal retirement date. If an employee is a participant in the plan on March 1, 1987, and later terminates his employment with the employer, he shall be eligible to retire and commence receiving benefits on the first day of any month following his attainment of age 55, provided he has completed at least five years of credited service.

If an employee becomes a participant in the plan on or after March 18, 2008 through December 31, 2008, and later terminates his employment with the employer, he shall be eligible to retire and commence receiving benefits on the first day of any month following the attainment of age 55, provided he has completed seven years of credited service.

If an employee becomes a participant in the plan on or after January 1, 2009, and later terminates his employment with the employer, he shall be eligible to retire and commence receiving benefits on the first day of any month following the attainment of age 55, provided he has completed ten years of credited service.

In the event a participant is involuntarily terminated for reasons other than willful misconduct, he shall be eligible to retire at any time after attaining his early retirement date, provided he has at least 20 years of credited service on the date he terminates his employment.

*(Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)*

#### **Section 10. Amount of vested retirement benefit.**

The monthly amount of the vested retirement benefit shall be equal to benefit determined in section 2 of this article, based on the benefit rate in effect at the time the former participant terminated his employment.

#### **Section 11. Eligibility for a disability retirement benefit.**

A participant shall be eligible to retire on a disability retirement benefit if he becomes disabled, as defined in section 6 of article II. If the disability is non-job related, the

participant must have completed at least 12 months of continuous service. Continuous service shall be defined in the same manner as "Service" under section 24 of article II.

*(Ord. No. 7669, 7/10/2013, § 1)*

### **Section 12. Amount of disability retirement benefit.**

The monthly amount of the disability retirement benefit shall be determined in accordance with Section 2 of this article. In no event, however, shall the benefit be less than 50 percent of the average of the participant's most recent 12 months of earnings. If the employee has completed an initial 12 months of continuous service, from date of hire to date of termination of employment as a result of a disability, but has less than 12 months of monthly earnings, the disability retirement benefit shall be no less than 50 percent of the average monthly earnings for the actual number of months worked. Continuous service shall be defined in the same manner as "Service" section 24 of article II.

Should a participant receiving workers' compensation benefits become qualified to receive disability retirement benefits on or after March 18, 2008, his disability retirement benefit will be reduced by the amount of workers' compensation benefit. Once the participant is ineligible for workers' compensation benefits, his total disability benefit will be restored.

*(Ord. No. 6465, 11/13/2002, § 2; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7669, 7/10/2013, § 2)*

### **Section 13. Evidence of disability.**

Participants applying for disability retirement must provide such evidence of disability in writing on a form provided by the city, which shall substantiate a claim of disability as set forth in section 6 of article II. When an application for disability pension is filed, the applicant shall submit therewith a signed certificate from a licensed, practicing physician certifying to the total disability of such applicant for a pension under the terms required in section 6 of article II, on a form provided by the city. Such form(s) must be completed in full and include all the information required by such form(s). The pension board may accept such completed form(s) or may order the applicant to be examined by a physician named by the pension board who likewise shall certify the physical ability or total disability, if found, of the applicant under the terms required in section 6 of article II. The pension board shall pay the cost of such additional examination. If the certificates of the respective physicians generally agree upon total disability, such facts shall be conclusive as to the physical or mental condition of the applicant and the pension board shall enter an order granting a disability pension in the proper amount. If the certificate tendered by the applicant and the certification of the physician appointed by the pension board shall disagree as to the condition of the applicant, the pension board shall review the documentation related to the request for disability and shall render a determination as to the disability of the applicant. If the applicant is dissatisfied with the decision of the pension board, the participant shall request and the pension board shall conduct a hearing for the purpose of reviewing the application on appeal. Such hearing shall be

conducted informally by the examination of witnesses for and in opposition to such application, and both the applicant and the pension board may be represented by legal counsel if they so desire. Any oral testimony shall be summarized in pension board minutes. Copies of documents may be received as evidence in lieu of the original at the discretion of the pension board, and affidavits shall be filed with the pension board at the time of the hearing. The decision of the pension board after a hearing shall be final as to the physical or mental condition of the applicant; provided, however, any person dissatisfied with the decision of the pension board after such hearing may appeal that decision to council in accordance with section 4 of article X. The applicant shall be entitled to present to council all documents reviewed by the pension board and testimony given during the hearing in making its determination during such final appeal. Council may consider only evidence submitted, heard or considered by the pension board.

At least once every two years after the pension board approves the applicant's disability retirement, or sooner if specifically requested by the pension board, the applicant must furnish evidence to the pension board of his or her ongoing disability as defined in section 6 of article II, in writing, on a form provided by the city. When the form for an ongoing disability pension is filed, the applicant shall submit therewith a signed certificate from a licensed, practicing physician certifying to the ongoing disability of such applicant for a pension on a form provided by the city under the terms required in section 6 of article II. Such form(s) must be completed in full and include all the information required by such form(s) within 30 days of the earlier of the second anniversary of the pension board's approval of such employee's initial or ongoing disability or the date requested by the pension board. Provided, however, if such participant receiving disability benefits does not provide evidence of and provide all of the information required by the city to show an ongoing disability within such 30-day period defined above, the pension board shall withhold payments of his benefits until he submits the required forms and the participant shall be deemed to have forfeited his benefits during the time of his refusal to submit such required forms. Should the refusal continue for a period of six months, or the participant's physician cannot certify to the participant's ongoing disability, such disability pension shall end and be terminated.

The pension board shall have the right to require an examination of any and all participants receiving disability pensions under the provisions of this section once every two years by a physician named by the pension board. The pension board shall pay the cost of such additional examination. If any such participant receiving a disability pension shall be found, as a result of such examination, to no longer be disabled in accordance with section 6 of article II, the pension board may, after hearing evidence thereon, and after giving an opportunity to such participant to be heard, remove such participant from the list of those entitled to disability pension. If the applicant is dissatisfied with the decision of the pension board, the participant shall request and the pension board shall conduct a hearing for the purpose of reviewing the application for ongoing disability, in appeal. Such hearing shall be conducted informally by the examination of witnesses for and in opposition to such application, and both the applicant and pension board may be represented by legal counsel if they so desire. Any oral testimony shall be summarized in pension board minutes. Copies of documents may be received as evidence in lieu of the original at the discretion of the pension board, and affidavits shall be filed with the pension board at the time of the hearing. The decision of the pension board after a hearing shall be final as to the physical or mental condition of the applicant; provided

however any person dissatisfied with the decision of the pension board after such hearing may appeal that decision to council in accordance with section 4 of article X. The applicant shall be entitled to present to council all documents reviewed by the pension board and testimony given during the hearing in making its determination during such final appeal. Council may consider only evidence submitted, heard or considered by the pension board.

Provided, however, that in the event a participant receiving disability benefits refuses to submit to a physical examination or does not cooperate with and complete the examination conducted by the physician as requested by the pension board pursuant to this section after 30 days' notice to report for such examination, the pension board shall withhold payments of his benefits until he submits to such examination. The participant shall be deemed to have forfeited his benefits during the time of his refusal to submit to a physical examination. Should the refusal continue for a period of six months, such disability pension shall end and be terminated and can only be reinstated if the participant reapplies for a disability pension in accordance with this section.

*(Ord. No. 7669, 7/10/2013, § 3)*

#### **Section 14. Termination of disability retirement benefit.**

A period of total disability ceases on the earliest of the following dates:

- A. The date the participant ceases to be totally disabled;
- B. The date the participant commences work at a reasonable occupation for which the employee may be engaged or may reasonably become engaged, fitted by education, training or experience;
- C. The date the participant fails to furnish proof of the continuance of total disability or refuses to be examined when required;
- D. The date the participant ceases to be under the care of a physician, or
- E. The date of the participant's death.

#### **Section 15. Successive period of disability.**

Notwithstanding the fact that a participant may initially be determined disabled, and subsequently have disability retirement benefits terminated because of the occurrence of any event set forth in section 14 of this article, said participant may continue to be eligible for a successive period of disability benefits, if the participant is later determined disabled again as provided under section 13 of this article. The purpose of the successive disabilities rule is to encourage the participant to return to full-time work by assuring if the disability occurs again due to the same or related cause soon after

returning to work, the participant will not have to complete a new qualifying period in order to qualify for benefits.

#### **Section 16. Definition of physician.**

The term "physician" means a legally qualified physician, except that with respect to a period of total disability, or any portion thereof, during which total disability is caused by any condition other than a medically determinable physical impairment, "physician" shall mean a legally qualified physician who either specializes in the practice of psychiatric medicine or has by reason of training or experience, a specialized competency in the field of psychiatric medicine sufficient to render the necessary evaluation and treatment of mental illness.

#### **Section 17. Nonduplication of benefits.**

Nothing contained in this plan shall be construed as permitting any person to be entitled to more than one type of benefit under this plan or change the type of benefit elected once he has begun to receive benefit payments, unless otherwise specified in this plan.

#### **Section 18. Return to employment after retirement.**

*A. Reemployment.* Any retirement benefit payable under this plan to any participant who has retired and commenced receiving benefits, shall be suspended as of the month in which he is reemployed as an eligible full-time employee or less than full-time employee if retired under the provisions of article V, section 11, by the employer. Benefits shall be resumed as of the first day of the month coinciding with or next following his subsequent retirement; said benefits shall be recalculated in accordance with this article on the basis of his aggregate credited service and final average earnings at the time of his subsequent retirement, but reduced on an actuarial basis by the value of any early retirement benefits received prior to being reemployed, provided that the resulting benefit shall not be less than the benefit payable at the time of this previous retirement.

*B. Election or appointment to the governing authority.* If a participant is elected or appointed as a member of the governing authority after he has retired from employment in another capacity under this plan, he shall be eligible to earn credited service, after he has met the participation requirements for elected or appointed officials, as set forth in section 1 of article III. He shall be eligible to receive a normal retirement benefit as an elected or appointed official provided he has met the requirements as set forth in section 1 of article V. During the period in which said participant is holding an elected or appointed office with the governing authority, he shall continue to receive retirement benefits previously awarded under the plan, however, such benefits shall not be recalculated as a result of his employment as an elected or appointed official.

*C. Disability retirement.* Any disability retirement benefit payable under this plan to any participant who shall have retired or been retired pursuant to any provision of section 2 of article V shall be suspended as of the date his disability ceases. In any case where the payment of a participant's disability retirement pension shall have been so

suspended, said period of absence from employment due to such disability shall be treated as a leave of absence without pay, but shall not be counted toward future service. Any participant who shall have retired or been retired pursuant to the provisions of section 11 of article V and who does or who has been or shall be subsequently declared ineligible for a disability retirement benefit because of a cessation of said disability shall have a right to any benefit afforded under any other provision of this plan to which he might otherwise be entitled. In such a case any disability retirement payments made prior to the date his disability ceases or is declared to no longer exist shall be retained by the participant and disregarded in computing any other benefit payable under this plan.

*(Ord. No. 6284, 9/12/2001, § 2)*

## **ARTICLE VI**

### **Crediting of Service and Break in Service**

#### **Section 1. General.**

Service and credited service shall be granted to a participant for the purpose of determining such participant's vested percentage of his accrued benefit and for computing the amount of benefits payable under this plan.

#### **Section 2. Past service.**

A participant shall be entitled to receive past service and past credited service for the number of years and full months of continuous employment with the employer prior to November 1, 1973. Past service shall also be granted for any tenure of elected office of an elected or appointed member of the governing authority who was serving as an eligible employee or an elected or appointed official, or both, on November 1, 1973. Otherwise, past service shall not include any tenure of elective office as an elected or appointed member of the governing authority.

#### **Section 3. Future service.**

A participant shall earn future service and future credited service for the number of years and full months of continuous employment with the employer on and after November 1, 1973.

Elective or appointed members of the governing authority shall earn future service and future credited service for all periods of elected office, whether or not successive, however any break in his tenure of elective office will not be considered as a period of future service or future credited service.

#### **Section 4. Break in service.**

A. *General rule.* A participant will incur a break in service upon his termination of employment with the employer. A participant who is vested upon termination of employment shall be eligible for a vested retirement benefit in accordance with section 9 of article V. A participant who is not vested upon termination of employment shall lose his service and credited service. However, if the participant later returns to work with the employer and, after such rehire, earns the number of years of continuous service required to earn a vested percentage for the vesting period in effect on the date of rehire, then, except to the extent described in B below in the case of a participant who received a refund of his participant contributions, his previous years of service, prior to January 1, 2009, and credited service prior to January 1, 2009, for which he did not make participant contributions, shall be restored.

B. *Participant received a refund of participant contributions.* The rules set forth in this paragraph B shall apply to any participant who (1) has a termination of employment with the employer; (2) is rehired in a position in which he is or will be eligible to accrue a benefit under this plan; and (3) received, upon his original termination of employment, a refund of his participant contributions, pursuant to Article IV, Section 3(2). In such a case:

1. If the participant is rehired as of a date that is within sixty (60) months of his original termination of employment, and subsequently attains vested status according to the vesting requirements in place at the time of rehire, the participant shall, upon his rehire date and for purposes of calculating both his vested percentage and the amount of any benefit payable under this plan (i.e., both retirement and disability benefit), receive credit for fifty percent (50%) of the service with which the participant was credited during the period that he made participant contributions.
2. If the participant is rehired as of a date that is more than sixty (60) months after his original termination of employment, the participant shall not receive credit, for purposes of calculating the amount of any benefit payable under this plan, for the period of service earned during the period that he made participant contributions. Such a participant may, however, receive credit for vesting purposes under the rule set forth in Section 4.A above.

(Ord. No. 7301, 3/11/2009, § 1)

#### **Section 5. Exceptions to break in service.**

An exception to the break in service provisions shall be allowed and a grace period granted if the participant's failure to earn service is due to:

A. An employee's absence from service by reasons of (1) her pregnancy, (2) birth of child of the employee, (3) placement of a child with the employee in connection with his or her adoption of the child, or (4) care for such child for a period beginning immediately after such birth or placement for reasons defined under the Family Medical Leave Act (FMLA). Such absence shall be credited as hours of employment up to the number of months allowed per incident pursuant to the FMLA. The time so credited shall be applied

to the plan year in which such absence begins, if doing so will prevent the employee from incurring a break in service in that plan year; otherwise it shall be applied to the next plan year. FMLA may cover absences that are attributable to (1) the birth and care of the newborn child of the employee; (2) the placement with the employee of a son or daughter for adoption or foster care; (3) the employee's care of an immediate family member (spouse, child, or parent) with a serious health condition; or (4) the employee's medical leave when the employee is unable to work because of a serious health condition, or (5) other FMLA-covered reasons;

B. The employee's absence for the purpose of involuntary service in the Armed Forces of the United States;

C. Disability, for which the employee is receiving a disability retirement benefit; or

D. An authorized leave of absence, provided:

1. The individual was regularly employed by the employer immediately prior to his leave of absence;
2. The individual makes application for reemployment on or before the date of expiration of any leave of absence or within 90 days after he first becomes entitled to his discharge from military service; and
3. The individual is reemployed as an eligible employee within ninety (90) days after such application.

*(Ord. No. 7301, 3/11/2009, § 2)*

### **Section 6. Vesting.**

A participant hired prior to March 18, 2008, who is a full-time employee and who has completed at least five years of service shall have his credited service vested and the break in service rules as set forth in section 4 of this article shall not operate to deprive him of his accumulated service.

A participant who is a full-time employee hired on or after March 18, 2008 through December 31, 2008, and who has completed at least seven years of credited service shall have his credited service vested and the break in service rules as set forth in section 4 of this article shall not operate to deprive him of his accumulated credited service.

A participant who is a full-time employee hired on or after January 1, 2009, and who has completed at least ten years of credited service shall have his credited service vested and the break in service rules as set forth in section 4 of this article shall not operate to deprive him of his accumulated credited service.

*(Ord. No. 4905, 6/12/91, § 3; Ord. No. 6284, 9/12/2001, § 4; Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)*

**Section 7. Unused sick leave or military duty used in benefit calculation.**

New retirees will be credited with additional service for benefit calculation purposes only (i.e. this additional credit will not be used to satisfy any eligibility criteria for plan benefits) for either unused sick leave or for active duty federal military service prior to becoming an employee of the City of Marietta/BLW whichever is greater, to a maximum of one year. Unused sick leave or military service will be granted for whole months only. Unused sick leave will be verified by the city/BLW. Proof of military service will require evidence of an honorable discharge. This provision only applies to active employees who apply for normal or unreduced early retirement (if applicable) after the effective date of this ordinance.

*(Ord. No. 6339, 12/12/2001, § 5)*

**ARTICLE VII**

**Forms of Benefit Payment**

**Section 1. Normal form of payment.**

The normal form of benefit payment shall be a single life benefit, payable monthly to the retired participant. Benefits will cease as of the month in which the participant's death occurs.

**Section 2. Election of optional retirement benefit.**

A participant may elect, or may revoke said election, at any time prior to his actual retirement date, to have his retirement benefit payable under the options hereinafter set forth, in lieu of the single life benefit he is otherwise entitled to receive. The benefit shall be paid in accordance with the terms of said option. Election of said option shall be made by the participant in writing. The amount of the optional retirement benefit shall be the actuarial equivalent of the amount of benefit that would otherwise be payable to the participant under article V.

Any optional form of benefit elected by the participant must comply with the minimum distribution incidental benefit ("MDIB") requirement of proposed Treasury Regulation 1.401(a)(9)-2, or its successor. This rule ensures that the retirement benefits payable under the plan are more than incidental. If a participant designates a beneficiary or elects a form of benefit that would cause the payments to violate the MDIB rules, the pension board may, at its discretion, require the participant to designate another beneficiary or adjust the form of payment to satisfy such rules.

*(Ord. No. 6340, 12/12/2001, § 12)*

**Section 3. Social Security option.**

A participant may elect this option and receive an increased retirement benefit payable to the participant during his lifetime until he is eligible for benefits commenced under O.A.S.D.I. and a decreased retirement benefit payable thereafter for life in order to have a more level retirement income when such decreased retirement benefit is added to his primary benefits under O.A.S.D.I. determined as of his early retirement date; said benefit shall be computed in accordance with the factors set forth below. At the death of the participant all payments will cease and no further benefits shall be payable.

The factors set forth below shall be applied to the assumed O.A.S.D.I. benefit payable at the appropriate age. This amount shall then be added to the monthly benefit determined in accordance with section 4 of article V. When O.A.S.D.I. be reduced by the amount of the assumed O.A.S.D.I. benefits; if this amount results in a negative balance, this option may not be elected.

*O.A.S.D.I. Benefits Paid at Age*

Age	65	62
55	.3670	.5071
56	.4022	.5558
57	.4414	.6101
58	.4853	.6708
59	.5346	.7390
60	.5900	.8156
61	.6525	.9021
62	.7232	n/a
63	.8035	n/a
64	.8951	n/a

#### **Section 4. Joint and survivor benefit.**

A participant may elect to receive an actuarially reduced monthly retirement benefit with a continuation upon his death after retirement of 50%, 75% or 100% of his benefit, to that person he might name as his beneficiary, with the continuation of benefits being for the life of the beneficiary.

The participant's monthly amount shall be a percentage of the full monthly amount otherwise payable as a single life benefit (after adjustment, of any, for early retirement) as follows:

1. *50% joint and survivor option:*
  - a. If the participant's pension is a nondisability retirement—The percentage shall be 88.0% plus 0.4% for each full year that the beneficiary is older than the participant or 88.0% minus 0.4% for each full year that the beneficiary is younger than the participant;
  - b. If the participant's pension is a disability pension—The percentage shall be 77.5% plus 0.4% for each full year that the beneficiary is older than the participant or 77.5% minus 0.4% for each full year that the beneficiary is younger than the participant;
  - c. In no event is the percentage to be greater than 99%; and
2. *75% joint and survivor option:*
  - a. If the participant's pension is a nondisability retirement—The percentage shall be 83.5% plus 0.5% for each full year that the beneficiary is older than the participant or 83.5% minus 0.5% for each full year that the beneficiary is younger than the participant;
  - b. If the participant's pension is a disability pension—The percentage shall be 70.0% plus 0.5% for each full year that the beneficiary is older than the participant or 70.0% minus 0.5% for each full year that the beneficiary is younger than the participant;
  - c. In no event is the percentage to be greater than 99%; and
3. *100% joint and survivor option:*
  - a. If the participant's pension is a nondisability retirement—The percentage shall be 79.0% plus 0.6% for each full year that the

beneficiary is older than the participant or 79.0% minus 0.6% for each full year that the beneficiary is younger than the participant;

- b. If the participant's pension is a disability pension—The percentage shall be 63.0% plus 0.6% for each full year that the beneficiary is older than the participant or 63.0% minus 0.6% for each full year that the beneficiary is younger than the participant;
- c. In no event is the percentage to be greater than 99%.

#### **Section 5. Joint and survivor level benefit option.**

A participant may elect to receive the Social Security option (section 3 of this article) and a joint and survivor option (50%, 75% or 100%), (section 4 of this article), so that the participant will receive the increased retirement benefit until he is eligible for benefits to commence under O.A.S.D.I. and the decreased benefit payable thereafter for the remainder of his lifetime. Upon his death, the beneficiary will receive a percentage of the benefit the participant was receiving at the time of his death (50%, 75% or 100%, whichever the participant had elected). However, in the event the participant dies before benefits commence under O.A.S.D.I., the beneficiary will receive a percentage (as elected) of the benefit the participant was receiving at the time of his death until the date he would have been entitled to O.A.S.D.I. benefits, at which time the beneficiary will receive a percentage (as elected) of the benefit the participant would have received.

This option may not be elected if the benefits payable under this plan after the participant commences to receive O.A.S.D.I. benefits, equal an amount less than zero.

The participant's monthly benefit shall be determined as follows:

1. Determine the benefits payable in accordance with section 3 of this article.
2. Determine the base level, which is the benefit payable under this plan after the participant commences to receive O.A.S.D.I. benefits. Determine the supplemental level, which is the benefit payable under this plan prior to the participant's commencement of O.A.S.D.I. benefits, minus the base level.
3. Multiply the joint and survivor option factors (in accordance with section 4 of this article) times the base level.
4. Multiply the supplemental level times the applicable factor below:
  - a. 50% joint and survivor option:  $1 - (.0025 \times \text{the years the supplemental level amount will be paid})$

- b. 75% joint and survivor option:  $1 - (.0035 \times \text{the years the supplemental level amount will be paid})$
- c. 100% joint and survivor option:  $1 - (.0045 \times \text{the years the supplemental level amount will be paid})$
- 5. Add the amounts determined in subsections (3) and (4) of this section; this is the benefit payable to the participant at retirement.
- 6. The amount determined in subsection (3) of this section is the benefit payable to the participant when he commences to receive O.A.S.D.I. benefits, and shall be payable for the remainder of his lifetime.
- 7. Upon the participant's death, the beneficiary will receive a monthly benefit equal to a percentage (as elected) of the benefit the participant was receiving. If the participant dies prior to the date O.A.S.D.I. benefits commence, the beneficiary will receive a percentage (as elected) of the benefits the participant was receiving until the date the participant's O.A.S.D.I. benefits would have commenced, at which time the beneficiary will receive a percentage (as elected) of the benefit the participant would have received.

*(Ord. No. 4547, 4/8/87, § 1)*

#### **Section 6. Reserved.**

*Editor's note—*

Section 1 of Ord. No. 6837, adopted July 13, 2005, deleted § 6, mandatory lump sum cashout, which derived from Ord. No. 4532, adopted Feb. 11, 1987; Ord. No. 4905, adopted June 12, 1991; Ord. No. 6019, adopted Aug. 11, 1999; and Ord. No. 6340, adopted Dec. 12, 2001.

#### **Section 7. Joint and Survivor Benefit with Pop-up Feature.**

Effective on or after May 13, 2004, a participant may elect to receive an actuarially reduced monthly retirement benefit with a continuation upon his death after retirement of 50%, 75% or 100% of his benefit, to that person he might name as his beneficiary, with the continuation of benefits being for the life of the beneficiary. In the event the beneficiary predeceases the participant, after benefits have commenced, the participant's monthly benefit shall be adjusted to the single life benefit. This "pop-up" adjustment shall be made the month following written notification to the plan of the beneficiary's death. Notification shall also include a certified copy of the death certificate of the beneficiary. This option is available to participants until the day before the beginning date of any plan year in which the provision of this option would result in an

increase in the City/BLW's contribution to the pension plans. In which case, authorization for this option will cease and it will no longer be available to participants.

If this option is elected, the participant's monthly retirement benefit amount shall be a percentage of the full monthly amount otherwise payable as a single life benefits (after adjustment, if any), for early retirement as follows:

1. *50% joint and survivor option:*
  - a. If the participant's pension is a nondisability retirement the percentage shall be 87.5%, plus 0.4% for each full year the beneficiary is older than the participant, or 87.5% minus 0.4% for each full year the beneficiary is younger than the participant.
  - b. If the participant's pension is a disability retirement the percentage shall be 77.0% plus 0.4% for each full year the beneficiary is older than the participant, or 77.0% minus 0.4% for each full year the beneficiary is younger than the participant.
  - c. In no event is the percentage to be greater than 99%; and
2. *75% joint and survivor option:*
  - a. If the participant's pension is a nondisability retirement the percentage shall be 82.9%, plus 0.5% for each full year the beneficiary is older than the participant, or 82.9% minus 0.5% for each full year the beneficiary is younger than the participant.
  - b. If the participant's pension is a disability retirement the percentage shall be 69.4% plus 0.5% for each full year the beneficiary is older than the participant, or 69.4% minus 0.5% for each full year the beneficiary is younger than the participant.
  - c. In no event is the percentage to be greater than 99%; and
3. *100% joint and survivor option:*
  - a. If the participant's pension is a nondisability retirement the percentage shall be 78.3%, plus 0.6% for each full year the beneficiary is older than the participant, or 78.3% minus 0.6% for each full year the beneficiary is younger than the participant.
  - b. If the participant's pension is a disability retirement the percentage shall be 62.3% plus 0.6% for each full year the beneficiary is older than the participant, or 62.3% minus 0.6% for each full year the beneficiary is younger than the participant.

- c. In no event is the percentage to be greater than 99%.
4. *Modification of benefit reduction factors:* Periodically the above factors will be reviewed and may be modified as necessary to ensure that the option provided under this section 7 does not increase the City/BLW's required contributions necessary to fund the plan.

(Ord. No. 6659, 5/12/2004, § 1)

## **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. "Maximum permissible amount" shall mean \$90,000.00 (\$160,000.00, effective for limitation years beginning on and after January 1, 2002), 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").

### **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 8.03.

Generally, the age-adjusted dollar limitation is the actuarial equivalent of the dollar limitation payable at age 62 or age 65, as calculated under (i) or (ii) following, whichever is applicable:

*(i) If the age at which the benefit is payable is less than 62:* First, reduce the dollar limitation 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 retirement benefits under the plan. Second, reduce the dollar limitation 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 (i). For limitation years beginning before January 1, 2002, nothing in this

paragraph shall reduce the applicable dollar limitation below \$75,000.00 if the annual benefit begins at or after age 55. Also for limitation years beginning before January 1, 2002, if the annual benefit begins before age 55, nothing in this paragraph shall reduce the dollar limitation below the actuarial equivalent of the \$75,000.00 limitation for age 55.

Notwithstanding the preceding paragraph, if a participant is a "qualified participant" (e.g., certain police and firefighters) as defined under Internal Revenue Code Section 415(b)(2)(G), such participant may retire before age 62, without a reduction in the dollar limitation if at least 15 years of service is required to receive a full benefit under the plan.

(ii) *If the age at which the benefit is payable is greater than age 65:* The age-adjusted dollar limitation is determined by increasing the dollar limitation 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 Appendix F that is used for actuarial equivalence for delayed retirement benefit under the plan and the equivalent amount computed using 5 percent interest and the applicable mortality table.

#### **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) *Combined plan limitations.* If the employer maintains, or has any time maintained, one or more qualified defined contribution plans covering any participant in this plan, the sum of the participant's defined contribution fraction and defined benefit fraction shall not exceed 1.0 in any limitation year, and the annual benefit otherwise payable to the participant under this plan, and not the defined contribution plan, shall be frozen or reduced to the extent necessary so that the sum of such fractions shall not exceed 1.0. The combined plan limitation described in the preceding sentence shall not apply for any plan year beginning on or after January 1, 2000.
- (c) *Total annual benefits not in excess of \$10,000.00.* Notwithstanding anything contained herein to the contrary, the annual benefit payable to a participant shall not be deemed to exceed the limits of this article VIII if the annual benefit payable to the participant under this plan and all other defined benefit plans maintained by the employer does not exceed \$10,000.00 for the plan year or any prior plan year, and the employer has not at any time maintained a defined contribution plan in which the participant participated.

- (d) *Exceptions for disability or survivors' benefits.* Notwithstanding anything contained herein to the contrary, the adjustment prescribed by section 8.03(i) for benefits that commence before age 62, and the reduction described in section 8.02 for fewer than ten (10) years of participation shall not apply to any benefit paid from this plan on account of a participant's becoming disabled by reason of personal injuries or sickness, or amounts received by a beneficiary as a result of the participant's death. This paragraph shall be interpreted in accordance with Internal Revenue Code Section 415(b)(2)(l) and any regulations thereunder.
- (e) *Protection of pre-1987 benefits.* For any limitation year before 1987, the limitations prescribed by Section 415 of the Internal Revenue Code as in effect before enactment of the Tax Equity and Fiscal Responsibility Act of 1982 shall apply, and no pension earned under this plan prior to 1987 shall be reduced on account of the provisions of this article VIII if it would have satisfied those limitations under such prior law.

### **Section 8.05. Definitions.**

For purposes of this article VIII, 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 Internal Revenue 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 nonannuity benefit form is adjusted to an annual benefit as described below. 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.

To convert a nonannuity benefit form to an annual benefit (i.e., a straight life annuity), first convert the Nonannuity benefit form to a straight life annuity using the interest rate and mortality table, or tabular factors, as applicable, which are specified in the plan for the non-annuity benefit form. Second, convert the non-annuity benefit form to an annual benefit using a 5 percent interest rate and the applicable mortality table. The greater of the amounts determined under the two preceding sentences is the equivalent annual benefit.

- (c) *Applicable mortality table* is the table prescribed by the Secretary of the Treasury in Revenue Ruling 95-6 or any successor thereto which prescribes the mortality table to be applied pursuant to Internal Revenue Code Section 415(b)(2)(E)(v). To the extent that a forfeiture does not occur upon death, the mortality decrement may be ignored prior to age 62 and must be ignored after Social Security retirement age, as prescribed by IRS Notice 83-10, Q&A G-3 and Q&A G-4, or any successor thereto.
- (d) *Compensation* means the participant's earned income within the meaning of Treasury Regulation Section 1.415-2(d), as limited by Internal Code Section 401(a)(17) and subject, for limitation years beginning prior to January 1, 1997, to the family aggregation rules described in article II, section 8, the definition of "earnings". Compensation paid after severance of employment shall not be included as compensation under this section unless (i) such compensation is paid by the later of 2½ months after the participant's severance from employment with the city or the end of the limitation year that includes the date of the participant's severance from employment, and (ii) the amounts are regular compensation for services rendered prior to severance of employment and would have constituted compensation if they were paid prior to the participant's severance from employment with the city.
- (e) *Defined benefit fraction* means a fraction, the numerator of which is the sum of the participant's projected annual benefits under all the defined benefit plans (whether or not terminated) maintained by the employer, and the denominator of which is the lesser of (i) 125 percent of the dollar limitation in effect for the limitation year under Internal Revenue Code Section 415(b)(1)(A); or (ii) 140 percent of the participant's highest average compensation. Notwithstanding the foregoing, if the participant was a participant in a plan maintained by the employer and in existence on July 1, 1982, the denominator of this fraction shall not be less than 125 percent of the sum of the annual benefits under such plans which the participant had accrued as of the end of the last limitation year beginning before January 1, 1983, but determined without regard to changes in the plan or cost-of-living increases occurring after July 1,

1982. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of Internal Revenue Code Section 415 for all limitation years beginning before January 1, 1983.

- (f) *Defined contribution fraction* means a fraction, the numerator of which is the sum of the annual additions to the participant's account under all the defined contribution plans (whether or not terminated) maintained by the employer for the current and all prior limitation years, and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior limitation years of employment with the employer (regardless of whether a defined contribution plan was maintained by the employer).

The maximum aggregate amount in any limitation year is the lesser of (i) 125 percent of the dollar limitation in effect under Internal Revenue Code Section 415(c)(1)(A); or (ii) 35 percent of the participant's compensation for such year.

If the employee was a participant in one or more defined contribution plans maintained by the employer which were in existence on July 1, 1982, the numerator of this fraction shall be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0 under the terms of this plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the fractions over 1.0 times and (2) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1983.

- (g) *Employer* means the City of Marietta, Georgia, or the Marietta Board of Lights and Water.
- (h) *Limitation year* means the plan year.

(i) *Nonannuity benefit form* means a benefit, whether a normal form or an optional form, which is not payable in a straight life annuity for the life of the participant.

(j) *Projected annual benefit* means the annual benefit to which the participant would be entitled under the terms of the plan assuming (i) the participant will continue employment until normal retirement age under the plan (or current age, if later), and (ii) the participant's compensation for the current limitation year and all other relevant factors used to determine benefits under the plan will remain constant for all future limitation years.

(Ord. No. 7514, 1/12/2011, § 2)

## **ARTICLE IX**

### **Application, Benefit Payments and Claim Procedures**

#### **Section 1. Benefits payments generally.**

A. A participant who is eligible to receive benefits under this plan and makes application in accordance with the rules of this retirement plan shall be entitled upon retirement to receive the monthly benefits provided for the remainder of his life, subject to the provisions of this plan. Benefit payments shall be payable commencing with the first full calendar month in which the participant has fulfilled all the conditions for entitlement to benefits.

B. However, in no event shall deferral of commencement of benefits be allowed whereby it can be reasonably anticipated (except on account of premature death) that benefits will inure primarily to a beneficiary rather than to the employee.

C. Pension payment shall end with the payment for the month in which the death of the pensioner occurs, except as provided in accordance with a joint and survivor benefit.

D. Pension benefits shall be payable commencing with the month following the month in which the claimant has fulfilled all the conditions for entitlement to benefits, including the requirement of section 2 of the filing of an application and notice of retirement with the pension board. The first day of such first month is what is meant by the "effective date" of the pension.

An employee may elect, in writing filed with the pension board, to receive benefits first payable for a later month, provided that no such election may postpone the commencement of benefits to a date later than April 1 following the calendar year in which the employee will reach 70½, or, if later, retires.

E. If a participant's beneficiary is not his surviving spouse, the payment of any benefits under the plan that become payable on account of the participant's death shall begin no later than one year from the date of death and shall be distributed over the life of the beneficiary (or a period not extending beyond the life expectancy of such beneficiary).

#### **Section 2. Filing an application for benefits.**

A participant must file an application for benefits under the plan no earlier than 90 days and no later than 30 days in advance of the date benefit payments are to commence. Such request may be in any form adequate to give reasonable notice to the pension board and shall set forth the basis of such application and shall authorize the pension board to conduct such examinations as may be necessary to facilitate the payment of any benefits to which the participant or beneficiary may be entitled under the plan.

#### **Section 3. Claims.**

Any payment to a participant, or beneficiary, or to their legal representatives, in accordance with the provisions of the plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the pension board or the city, either of which may require such participant, beneficiary, or legal representative, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the pension board or the city, as the case may be.

#### **Section 4. Fraud, embezzlement, theft, and dismissal for cause.**

In the event the employer shall receive prior to a participant's actual retirement date, written confession by such participant, or proof satisfactory to the pension board that such participant has committed or has been convicted of having committed a felony in connection with his duties or in the course of his employment with the city, or in connection with the plan, his participation in the plan shall be forthwith terminated; and any vested interest that such participant may have in the fund shall be forfeited.

#### **Section 5. Errors in computation of benefits.**

Any overpayments or underpayments from the plan to a retired participant or to a beneficiary caused by errors of computation shall be adjusted. Underpayments shall be made up from the plan.

### **ARTICLE X** **Pension Board**

#### **Section 1. Definitions and rules of construction.**

- A. "Board" shall mean the pension board created by this article.
- B. "Police and fire employees" shall mean the sworn personnel of the police and fire departments.
- C. "General employees" are personnel other than the sworn personnel of the police and fire departments.
- D. "Council" shall mean the governing authority of the City of Marietta which shall include the mayor and members of the council.
- E. In computing time required under this ordinance, time shall be computed without exclusion of Sundays and holidays.
- F. When used in this ordinance, the male gender shall include the female and neuter genders.

#### **Section 2. Creation.**

There is hereby created in the City of Marietta a pension board which shall consist of such members elected and appointed and having such duties, functions and powers as are hereinafter prescribed.

**Section 3. Functions and powers.**

The pension board shall have the following duties, functions and powers:

A. In dealing with those persons participating or eligible to participate in any pension, retirement or disability program, the pension board shall:

1. Handle distribution of all reports to participants.
2. Handle arbitration between the city and the participants in all matters regarding the plan.
3. Handle any notices of eligibility, benefits, available options, and any other notices required by this plan, contract or rules and regulations.
4. Decide all questions and disputes on the interpretation and eligibility of persons for payment under any pension, retirement and disability ordinance of the City of Marietta.

B. In performance of its duties, the pension board shall have the following powers:

1. Recommend to the council the awarding of contract(s) for actuarial, and investment management and other administrative services as needed;
2. Adopt rules and regulations providing procedures for the granting of pension, retirement and disability benefits and to approve payments for such persons entitled to payment;
3. Adopt investment programs and procedures for funds held by any investment manager;
4. Adopt all documents issued by the board;
5. Review and recommend changes in the pension, retirement and disability program;
6. When requested by the city manager, to advise the city manager on all pension, retirement, or disability payment matters; and

7. To do all other things necessary and proper to carry out the duties required of it is as the pension board of the City of Marietta.

#### **Section 4. Appeal and procedure.**

Any person dissatisfied with any decision of the pension board shall have the right to appeal the decision to the council by delivering to the city manager a written notice within ten days of the decision complained of. The city manager shall cause the secretary of the pension board, within ten days after such receipt, to provide to the clerk of the council all documents relied upon by the pension board in reaching its decision. The council shall decide the appeal within 75 days of receipt of the appeal documents from the secretary of the pension board. Should the council fail to act within 75 days of the decision of the pension board, the decision of the pension board shall be affirmed. In ruling on any appeal from the pension board, the decision of the pension board shall be presumed correct and based upon sufficient facts to sustain it.

#### **Section 5. Membership and operation of pension board.**

The pension board shall consist of nine members elected from posts as follows:

- Post 1: City manager or his designee
- Post 2: Council member
- Post 3: Council member
- Post 4: General employee representative
- Post 5: General employee representative
- Post 6: General employee representative
- Post 7: General employee representative
- Post 8: Police department representative
- Post 9: Fire department representative

The police chief and fire chief shall be ex officio members of the pension board and shall only vote in the absence of the police and fire representatives.

*Terms.* All members shall be elected as hereinafter provided in November and shall begin service on January 1 for a term of three years.

Selection of council, police, fire and general employee members:

*Council representative.* Two members of the council shall serve on the pension board. They shall be appointed by the mayor with consent of the council and shall serve for their duly elected term. If for some reason a duly appointed member cannot fulfill his or her term of the board, he or she shall be replaced by a member of the council appointed by the mayor with consent of the council.

*Police representative.* One member of the pension board shall be a representative of the police department. The senior officer in each of the ranks of police deputy chief, police captain, police lieutenant, police sergeant, detective and police officer shall serve as a nominating committee for the police department. The highest ranking officer shall serve as chairman of the nominating committee.

*Fire representative.* One member of the pension board shall be a representative of the fire department. The senior officer in each of the ranks of deputy chief, assistant chief, commander, lieutenant, firefighter engineer, and firefighter shall serve as a nominating committee for the fire department. The highest ranking officer shall serve as chairman of the nominating committee.

*Election of police and fire representatives.* The chairman of each respective nominating committee of police and fire shall call a meeting of the committee in November of the year immediately preceding the termination of the police and fire representatives on January 1 of the next year. The purpose of this meeting will be to nominate three employees from each of the departments of fire and police. The names of the three employees nominated shall be placed on a ballot with space provided for write-ins. Ballots shall be distributed by the nominating committees to all of the employees in the respective departments of police and fire. Ballots shall be marked in secret and returned to the nominating committee the same day they are distributed. Each employee will vote for one candidate and the candidate receiving a plurality of votes shall be the representative of their respective departments to the pension board. If for any reason duly elected representative of the police or fire departments cannot fulfill his or her office, the respective nominating committee shall designate a replacement for the duration of the vacated membership.

*General employees.* Four members of the pension board shall be representatives of the general employees. A nominating committee consisting of the director of personnel, or a designee thereof; two persons appointed by the director of public works, one of which cannot be in a supervisory position; three persons appointed by the BLW general manager, one of which cannot be in a supervisory position; two persons appointed by the city manager, one of which cannot be in a supervisory position; and one person appointed by the director of parks and recreation shall nominate the candidates for membership on the pension board. The director of personnel, or the designee thereof, shall act as presiding officer of the nominating committee and call a meeting of the committee in the month of November in the year immediately preceding the end of the current member's term. The purpose of this meeting shall be to nominate two candidates for each expiring term of a member of the pension board represented by the general employees. The names of such employees nominated shall be placed on a ballot with space provided for write-ins. Ballots shall be distributed to all general employees. Ballots

shall be marked in secret and returned to the nominating committee the same day they are distributed. Each employee will vote for as many candidates as there are representative seats of the general employees expiring on January 1. The candidates receiving the highest plurality votes for such seats shall be selected as the representatives of the general employees to the pension board. If for any reason for duly elected representatives of the general employees cannot fulfill his or her office, the nominating committee shall designate a replacement for the duration of vacated membership.

*Officers.* The pension board may elect such officers as it deems necessary. The board shall elect a chairman and a secretary.

The chairman shall preside at meetings of the board, cast a vote on any issue, call meetings as may be necessary, and do all things necessary to carry on the orderly affairs of the board. The chairman shall be selected by a majority vote of the board for a one-year term. The board shall designate, in writing, a secretary or other representative who shall have full authority to represent the board in all communications with any provider and the city's employees, including elected and appointed members of the governing authority. The secretary shall keep accurate minutes of all meetings of the board, recording those voting for and against any issue. Minutes shall be distributed to each member of the board, the council of the City of Marietta and shall be posted in a prominent place(s) within the City Government Complex.

*Legal assistance.* The city attorney or other attorney appointed by the governing authority shall furnish legal advice to the pension board on any issue before it upon which legal advice is sought.

*Meetings.* The pension board shall meet at least quarterly. Five members of the board (including the chairman) shall constitute a quorum. The city manager or his designee shall have authority to approve pension, retirement and disability payments pending a meeting of the board.

*Rules of procedure.* The pension board shall have the authority to promulgate rules and regulations for its internal operation, as well as the approval of payments within its jurisdiction.

(Ord. No. 5923, 11/11/98, § 2; Ord. No. 7103, 10/10/2007, § 2; Ord. No. 7379, 9/9/2009, § 1)

## **ARTICLE XI** **Amendment and Termination**

### **Section 1. Amendment of the plan.**

The governing authority shall have the right at any time, and from time to time, to amend, in whole or in part, any or all of the provisions of the plan following the review

and recommendation by the pension board; provided, however, that no such amendment shall:

- A. Reduce the accrued benefits of any participant or beneficiary, or
- B. Authorize or permit any part of the trust fund held by the provider to be diverted to purposes other than for the exclusive benefit of participants and their beneficiaries, and
- C. No amendment shall operate to derive any participant or beneficiary of any rights or benefits irrevocably vested in him under the plan prior to such amendment except that the governing authority may make any and all changes and modifications necessary to qualify the plan or to keep the plan qualified under the Internal Revenue Code and the regulations thereunder, or any amendment thereto.

## **Section 2. Termination of the plan.**

A. The employer expects the plan to be continued indefinitely but, of necessity, reserves the right to terminate the plan and contributions thereunder at any time by action of the governing authority. Upon receipt of written notice from the governing authority of termination of the plan, the board shall prepare a list of all participants showing for each, as of the date of plan termination, the following:

1. For each retired participant and beneficiary receiving payment of benefits, the amount and terms of payment of such benefits.
2. For each terminated participant entitled to a deferred benefit, the amount, commencement date, and terms of payment of such benefit.
3. For each active participant the amount of his accrued benefit.

B. The board shall arrange for the liquidation of all assets held in the plan maintained in connection with the plan and shall prepare a statement of the liquidated value of such assets. The governing authority, in its sole discretion, may direct the board to purchase from an insurance company an annuity contract or contracts which provide the benefits to which each participant or beneficiary is entitled or to pay a lump sum to each participant or beneficiary, such lump sum amount to be [the] actuarial equivalent of the benefit to which such participant or beneficiary is entitled.

C. The board shall then deduct from the assets total remaining expenses incurred or to be incurred by the board on behalf of the plan. The board shall, except as otherwise provided in this section, then allocate the remaining assets for distribution in accordance with the classes listed below. The benefits of each class shall be satisfied before proceeding to the next class. If at any time the remaining plan assets would be insufficient to provide the accrued benefits for the class in question, the remaining assets

would be applied on a pro rata basis within that class, and all subsequent classes would receive no benefit.

Class 1—Retired participants or beneficiaries who are receiving payments on the termination date.

Class 2—Participants delaying retirement.

Class 3—Participants eligible for early retirement.

Class 4—Former employees who are terminated participants.

Class 5—All other participants on a pro rata basis.

D. Upon distribution of the assets as specified above, the plan shall be regarded as terminated and no participant or beneficiary shall have any further rights or claim therein.

## **ARTICLE XII** **Miscellaneous**

### **Section 1. Construction.**

A. The plan shall be construed in accordance with the laws of the State of Georgia.

B. In the event that any section, subsection, sentence, clause or phrase of this agreement shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the previously existing provisions or the other section or section, subsections, sentences, clauses, or phrases of this agreement, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudicated invalid or unconstitutional were not originally a part hereof. The governing authority hereby declares that it would have passed the remaining parts of this agreement or retained the previously existing provisions if it had known that such part or parts hereof would be declared or adjudicated invalid or unconstitutional.

### **Section 2. Non-alienation of benefits.**

None of the benefits, payments, proceeds, or distributions payable under the plan shall be subject to the claim of any creditor of any participant or to the claim of any creditor of any beneficiary hereunder, or to any legal process of levy or attachment by a creditor of any such participant or beneficiary; and no such benefits shall be in any manner liable for or subject to the debts, liabilities, engagements, or torts of any participant or beneficiary; and neither any such participant or beneficiary shall have any right to alienate, commute, anticipate, transfer, encumber, pledge or assign any of the benefits, payments, proceeds, or distributions under the plan. If any participant or beneficiary shall become bankrupt or attempt to anticipate, assign, or pledge any benefits, then such benefits shall, in the discretion of the pension board, cease, and in that event the

pension board shall have authority to cause the same, or any part thereof, to be held or applied to or for the benefit of such member, his spouse, his children, or other dependents, or any of them, in such manner and in such proportion as the pension board may think proper.

### **Section 3. Legally incompetent.**

Any participant or beneficiary receiving or claiming benefits under the plan shall be conclusively presumed to be mentally competent and of age until the pension board receives a written notice, in a form and manner acceptable to it, that such person is incompetent or a minor, and that a guardian or other person legally vested with the care of his estate has been appointed. In the event that the pension board finds that any person to whom a benefit is payable under the plan is unable to properly care for his affairs, or is a minor, then any payment due (unless a prior claim therefor shall have been made by a duly appointed legal representative) may be paid to the spouse, a child; a parent, or a brother or sister, or to any person deemed by the pension board to have incurred expense for such person otherwise entitled to payment. In the event a guardian of the estate of any person receiving or claiming benefits under the plan shall be appointed by a court of competent jurisdiction, payments shall be made to such guardian provided that proper proof of appointment is furnished in a form and manner suitable to the pension board. Any payment so made shall be a complete discharge of liability therefor under the plan.

### **Section 4. Benefits supported only by trust fund.**

Any person having any claim under the plan will look solely to the assets of the trust fund for satisfaction. In no event will the employer, or any of its employees or agents, be liable in their individual capacities to any person whatsoever, under the provisions of the plan.

### **Section 5. Discrimination.**

The employer through the pension board, shall administer the plan in a uniform and consistent manner with respect to all participants and shall not permit discrimination in favor of supervisory or highly paid employees, elected or appointed members of the governing authority, the chief legal officer or any associate legal officer of the city, or any municipal officer elected or appointed to preside over the court of said city.

### **Section 6. Limitation of liability; legal actions.**

A. It is expressly understood and agreed by each employee who becomes a participant hereunder that, except for its or their willful neglect or fraud, neither the employer, nor the pension board, shall be in any way subject to any suit or litigation, or to any legal liability, for any cause or reason or thing whatsoever, in connection with the plan or its operation, and each such participant hereby releases the employer, all its employees and agents, and the pension board, from any and all liability or obligation.

B. To any action or proceeding involving any rights under the plan or the proper administration thereof, the city and the pension board shall be the only necessary parties and no participant, or his beneficiary, or any other persons having or claiming to have an interest in the plan shall be entitled to any notice or process. Any final judgment which is not appealed or appealable that may be entered in any such action or proceeding shall be binding and conclusive on the parties hereto and all persons having or claiming to have an interest.

#### **Section 7. Service in the Armed Forces.**

Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u). A participant who dies during a period of qualified military service shall be treated as having returned to employment with the city on the day before his death and died the next day for purposes of any survivor benefits including preretirement survivor benefits and any accelerated vesting. Such participant shall receive service for vesting purposes for such period of military service but shall not receive service for purposes of accruing benefits for such period of military service.

(Ord. No. 6340, 12/12/2001, § 15; Ord. No. 7514, 1/12/2011, § 3)

#### **Section 8. Rollovers.**

(a) *General rule.* Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the pension board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) *Definitions.*

(1) *Eligible rollover distribution.* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); and (iii) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.) A distributee may not elect a direct rollover with respect to an eligible rollover distribution during the plan year that is less than \$200.00. If the distributee elects to have only a portion of an eligible rollover distribution paid to an eligible retirement plan, that portion

must be equal to at least \$500.00. Eligible rollover distributions from this plan as limited to refunds of participant contributions.

- (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. Effective as of January 1, 2008, an eligible retirement plan shall include a Roth IRA established under Code Section 408A for purposes of eligible rollover distributions.
- (3) *Distributee.* A distributee includes a participant or former participant. In addition, the participant's or former participant's surviving spouse and the participant's or former participant's spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, are distributees with regard to the interest of the spouse or former spouse. For distributions on and after January 1, 2007, "Distributee" shall include a nonspouse beneficiary of an eligible rollover distribution to the extent permitted by IRC Section 402(c)(11).
- (4) *Direct rollover.* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(Ord. No. 6340, 12/12/2001, § 16; Ord. No. 6483, 2/12/2003, § 3(3); Ord. No. 7514, 1/12/2011, §§ 4—6)

### **Section 9. Limitations of Federal law.**

For purposes of the plan, any provisions mandated by Federal law shall remain in effect only so long as such provisions are currently required. If any such provisions are found to be unconstitutional or unenforceable, are rescinded, or are repealed or become discretionary, those portions of the plan shall be deleted automatically, rescinded and revoked consistent with such action without any further action of the City Council of the City of Marietta.

(Ord. No. 7514, 1/12/2011, § 7)

# User Fee for Employee Plan Determination Letter Request

▶ Attach to determination letter application.  
 ▶ For the latest information about this form, go to [www.irs.gov/form8717](http://www.irs.gov/form8717).

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 Only

OMB No. 1545-1772

Amount paid \_\_\_\_\_

1 Name of plan sponsor (employer if single-employer plan)

City of Marietta, GA

2 Sponsor's employer identification number

58-6000616

3 Plan number

002

4 Plan name **Consolidated Retirement Plan for Employees of the City of Marietta GA**

Caution. If you qualify for the exemption from user fees for small business employers, complete only the certification below (see the instructions on page 2 for details). For all other applications, leave the certification blank and check the appropriate box in column B of line 5.

### Certification

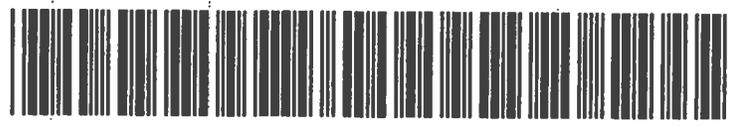
I certify that the application for a determination letter on the qualified status of the plan listed above meets the conditions for exemption from user fees described in section 7528(b)(2)(B) of the Internal Revenue Code.

Sign Here ▶ \_\_\_\_\_ Date ▶ \_\_\_\_\_

Type or print name and title ▶ \_\_\_\_\_

Form Submitted	Fee Schedule	
	A	B no Demo 5 and no Demo 6:
<b>5a Form 5300:</b>		<input checked="" type="checkbox"/> \$ 2,500
<b>b Form 5307:</b>		<input type="checkbox"/> \$ 300
<b>c Form 5310:</b>		<input type="checkbox"/> \$ 2,000
<b>d</b>		
<b>e Multiple employer plans (Form 5300):</b>		
(1) 2 to 10 Forms 5300 submitted . . . . .	<input type="checkbox"/>	(1) \$ 3,000
(2) 11 to 99 Forms 5300 submitted . . . . .	<input type="checkbox"/>	(2) \$ 3,000
(3) 100 to 499 Forms 5300 submitted . . . . .	<input type="checkbox"/>	(3) \$15,000
(4) Over 499 Forms 5300 submitted . . . . .	<input type="checkbox"/>	(4) \$15,000
<b>f Multiple employer plans (Form 5310):</b>		
(1) 2 to 10 employers maintaining the plan . . . . .	<input type="checkbox"/>	(1) \$ 3,000
(2) 11 to 99 employers maintaining the plan . . . . .	<input type="checkbox"/>	(2) \$ 3,000
(3) 100 to 499 employers maintaining the plan . . . . .	<input type="checkbox"/>	(3) \$15,000
(4) Over 499 employers maintaining the plan . . . . .	<input type="checkbox"/>	(4) \$15,000
<b>g Reserved</b>		
(1a)		
(1b)		
(2a)		
(2b)		
(3)		
(4)		
<b>h Reserved</b>		
(1a)		
(1b)		
(2)		
(3)		
(4a)		
(4b)		
(5)		
(6)		
(7)		
<b>i Form 5316 (Group trusts)</b> . . . . .		\$ 1,000

Attach Check or Money Order Here



# Application for Determination for Employee Benefit Plan

OMB No. 1545-0197

See separate instructions.

Review the Procedural Requirements Checklist before submitting this application.

For Internal Use Only

1a Number Assigned under Section 6.19  
of Revenue Procedure 2008-6  -

1b Name of plan sponsor (employer if single-employer plan)

1c Address of plan sponsor (if a P.O. Box, see instructions)   
1d City  1e State  1f Zip Code

1g Country

1h Employer identification number (EIN)  1i Telephone number  1j Fax number  1k Employer's tax year ends

2a Person to contact if more information is needed. (See instructions.)  
(If a Power of Attorney is attached, check box, and do not complete this line.)

Contact person's name

2b Contact person's address   
2c City  2d State  2e Zip Code

2f Telephone number   
2g Fax number

If more space is needed for any item, attach additional sheets the same size as this form. Identify each additional sheet with the plan sponsor's name and EIN and identify each item.

Under penalties of perjury, I declare that I have examined this application, including accompanying statements and schedules, and to the best of my knowledge and belief, it is true, correct, and complete.

SIGN HERE  Date

Type or print name  Type or print title



3a Determination requested for (enter applicable number in box) (See instructions.)

- 1 - Initial qualification
- 2 - Request after initial qualification
- 3 - Affiliated Service Group (ASG) status (IRC section 414(m))
- 4 - Leased employee status (IRC section 414(n))
- 5 - Partial termination
- 6 - Termination of collectively bargained multi-employer or multiple-employer plan covered by PBGC insurance

- b (i) If line 3a is 1, enter the effective date of the plan
- (ii) If line 3a is 1, enter the date the plan was signed
- (iii) If line 3a is 2, enter the effective date of the restatement
- c If line 3a is 5, enter the effective date of the partial termination
- d If line 3a is 6, enter the effective date of termination

e Enter number of amendments included

f Enter the date the amendment(s) were signed (If more than 4, see instructions)  
(i)  (ii)  (iii)  (iv)

g Enter the date the amendment(s) were effective (If more than 4, see instructions)  
(i)  (ii)  (iii)  (iv)

Yes No

h   Has the plan received a determination letter?

If "No," submit copies of all prior plan(s) and/or adoption agreement(s) and/or amendments. (See instructions.)

i If 3h is "Yes," enter the date of the latest letter

j Enter the number of amendments since the last determination letter.

k   Was this plan a prior adopter of a pre-approved plan? (See instructions.)

l If line 3k is "Yes," enter the Serial Number.

m   If line 3k is "Yes," was the sponsor authorized to adopt amendments?

n   Have interested parties been given the required notification of this application? (See instructions.)

o   Does the plan have a cash or deferred arrangement (section 401(k) or 414(x))?

p   Does the plan have matching contributions (section 401(m))?



3 (continued)

Yes No

q   Does the plan have after-tax employee voluntary contributions (section 401(m))?

r   Does the plan benefit noncollectively bargained employees or are more than 2% of the employees who are covered under a collectively bargaining agreement professional employees? See Regulations section 1.410(b)-6(d).

s   Does the plan utilize the permitted disparity rules of section 401(l) when allocating contributions or benefits?

t   Is the plan being filed "on-cycle" pursuant to Section 13 of Revenue Procedures 2007-44?

If "Yes," indicate the cycle the plan is being submitted in

If "No," skip to question v.

Enter the applicable number in the box to indicate the reason the plan was submitted in the cycle listed above.

1 - Last digit of the EIN.

2 - Multiple employer plan.

3 - Government plan including governmental multiple employer plan.

4 - Multi-employer plan.

5 - Pre-approved plan filing in the 2-year Remedial Amendment Cycle window (including special ASG leased employee or partial termination) rulings.

6 - Cycle changing event (enter date and attach explanation of cycle changing event).

u   Is the EIN of the parent company, jointly trusted single employer collective bargained plan (if the plan sponsor is the Joint Board of Trustees include the EIN of the Form 5500), or centralized organization (include the EIN of the centralized organization if that organization handles the administration and operations of the plan) being used? (See instructions.)

(1) If line 3u is "Yes," enter the EIN of parent, Joint Board of Trustees, or centralized organization.

v   If 3t is "No," are you requesting priority considerations as specified in Section 14.02 of Revenue Procedure 2007-44?

If "Yes," indicate the cycle the plan is being submitted in

Enter the applicable number in the box for the reason the plan was submitted in the cycle listed above.

1 - New plan exception.

2 - Urgent business need.

3 - Cycle changing event (date and explanation of cycle changing event).

w   Is this plan an offset arrangement with any other plan? (If "Yes," attach a separate statement providing the name, EIN, the plan provision, and type of the other plan including plan sections that is part of the arrangement.) (See instructions.)



4a Name of plan (If plan name exceeds 70 characters, including spaces, see instructions):

Consolidated Retirement Plan for Employees of the City of Marietta, GA

b Enter 3-digit plan number (See instructions.) 002

c Enter the month on which the plan year ends 06

d Enter plan's original effective date 03011987

e Enter number of participants (See instructions.) 1459

5 Indicate type of plan by entering the number from the list below:

- 1 - profit sharing and/or 401(k)
- 2 - money purchase
- 3 - target benefit
- 4 - defined benefit but not cash balance
- 5 - cash balance (See instructions.)
- 6 - leveraged ESOP
- 7 - non-leveraged ESOP (See instructions.)
- 8 - stock bonus
- 9 - safe harbor 401(k)

If this plan contains any ESOP provisions, do not use 1 or 2, use 6 or 7, as applicable.

Yes No

- 6a   Is the employer a member of an affiliated service group (ASG)?
- b   Is the employer a member of a controlled group of corporations or a group of trades or businesses under common control? If 6a and/or 6b is "Yes," see instructions.
- c   Were elections made to use "Cycle A" per Section 9 of Revenue Procedure 2007-44? (See instructions.)
- 7a   Is this a governmental plan? Date of last legislative session. 11132013
- b   If line 7a is "Yes," is the plan a state level plan?
- c   Is this a nonelecting church plan?
- d   Is this a collectively bargained plan? (See Regulations section 1.410(b)-9)
- e   Is this a section 412(e)(3) plan?
- f   Has this plan been involved in a merger which was not considered in a prior favorable determination letter?
- g   Has the plan been amended or restated to change the type of plan?
- h   Is this a multiple employer plan?

If line 7h is "Yes," enter the total number of participating employers.

[Empty box]

i If line 7h is "Yes," enter the number of participating employers currently being submitted.

[Empty box]



7 (continued)

j (i) If line 7h is "Yes," enter the EIN of the employer submitting the lead plan.

(ii) If line 7h is "Yes," enter the plan number of the lead plan.

k   Is this a multi-employer plan as described in section 414(f)?

l   Is this a request for a ruling under section 401(h) or section 420?

m   Is this considered a foreign plan or is the trust a foreign trust?

If 7f, 7g, 7h, 7i, 7k, 7l, or 7m is "Yes," see instructions.

8a Yes  No  Do you maintain any other qualified plan(s) under section 401(a)? If "Yes," attach required statement per instructions. If "No," skip to line 8d.

b   Do you maintain another plan of the same type (for example, both this plan and the other plan are defined contribution plans or both are defined benefit plans) that covers non-key employees who are also covered under this plan?

If "Yes," when the plan is top-heavy, do the non-key employees covered under both plans receive the required top-heavy minimum contribution or benefit under (see instructions):

(1) This plan?

(2) The other plan?

c   If this is a defined contribution plan, do you maintain a defined benefit plan (or if this is a defined benefit plan, do you maintain a defined contribution plan) that covers non-key employees who are also covered under this plan?

If "Yes," when the plan is top-heavy, do the non-key employees covered under both plans receive (see instructions):

(1) The top-heavy minimum benefit under the defined benefit plan?

(2) At least a 5% minimum contribution under the defined contribution plan?

(3) The minimum benefit offset by benefits provided by the defined contribution plan?

(4) Benefits under both plans that, using a comparability analysis, are at least equal to the minimum benefit?

d   Does the plan prevent the possibility that the section 415 limitations will be exceeded for any employee who is (or was) a participant in this plan and any other plan of the employer?



**9 General Eligibility Requirements**

a Check all that apply:

- (1)  All employees
- (2)  Hourly rate employees
- (3)  Salaried employees
- (4)  Other: (Specify in box below)

See Attachment

b  Minimum years of service required to participate. If no minimum, check

c  Minimum age required to participate. If no minimum, check

**10 Vesting** Indicate the regular (non-top heavy) vesting provisions of the plan by entering the letter from the list below:

- a - Full and immediate
- c - Full vesting after 3 years of service
- e - 2 to 6 year graded vesting
- b - Full vesting after 2 years of service
- d - Full vesting after 5 years of service
- f - 3 to 7 year graded vesting
- g - Other

**11 Benefits and Requirements for Benefits**

a For defined benefit plans - Method for determining accrued benefit:

(1) Benefit Formula at early retirement age is

Normal retirement benefit reduced by .00417/month before NRA

(2) Benefit Formula at normal retirement age is

2.1% x FAE x service

(3) Normal form of retirement benefit is

Life annuity

b For defined contribution plans - Employer contributions:

(1) Profit Sharing or stock bonus plan contributions are determined under (check box):

- A definite formula
- A discretionary formula
- Both

(2) Matching contributions are determined under, check box:

- A definite formula
- A discretionary formula
- Both



11b (continued)

(3) Money purchase plan - Enter rate of contribution

(4) Target benefit plan - State target benefit formula

Indicate the plan section where the allocation/benefit formula is located in the plan document.

Art V, sec. 2

12 Miscellaneous

a 

N/A	Yes	No	Does any amendment to the plan reduce or eliminate any section 411(d)(6) protected benefit including an amendment adopted after September 6, 2000, to eliminate the joint and survivor annuity form of benefit? (See instructions.)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

b 

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are trust earnings and losses allocated on the basis of account balances in a defined contribution plan? If "No," attach a statement explaining how they are allocated.
-------------------------------------	--------------------------	--------------------------	---

c Is this plan or trust currently under examination or is any issue related to this plan or trust currently pending before the:

- |     | Yes                                 | No                                  |   |
|-----|-------------------------------------|-------------------------------------|---|
| (1) | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Internal Revenue Service,   |
| (2) | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Department of Labor,  |
| (3) | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Pension Benefit Guaranty Corporation,   |
| (4) | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Voluntary Compliance Resolution Program of the Employee Plans Compliance Resolution System (EPCRS), or Employee Benefits Security Administration, |
| (5) | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Any Court?  |

If "Yes," attach a statement explaining the issues involved and the contact person's name (IRS Agent, DOL Investigator, etc.) and telephone number.

**Determination request regarding the ratio percentage test. A determination regarding the average benefit test may be requested by attaching Schedule Q (Form 5300), Elective Determination Requests. See instructions.**

13 

Yes	No	Is this a request for a determination regarding the ratio percentage test of Regulations section 1.410(b)-2(b)(2) or a request for a determination regarding one of the special requirements of Regulations section 1.410(b)-2(b)(5), (6), or (7)?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	

If "Yes," complete only lines 13a through 13n for a ratio percentage test determination or complete only line 13o for a determination regarding one of the special requirements. If "No," skip to line 14.

a 

Yes	No	Is this plan disaggregated into two or more separate plans that are not section 401(k), 401(m), or profit sharing plans? If "Yes," see the instructions and attach separate schedules for each disaggregated portion.
<input type="checkbox"/>	<input type="checkbox"/>	

b 

<input type="checkbox"/>	<input type="checkbox"/>	Does the employer receive services from any leased employees as defined in section 414(n)?
--------------------------	--------------------------	--



13 (continued)

c	Coverage date (MMDDYYYY). See instructions for inserting date. . . . .	<input type="text"/>
d	Total number of employees (include self-employed individuals) (employer-wide) . . . . .	<input type="text"/>
e	Statutory and regulatory exclusions under this plan (do not count an employee more than once):	
	(1) Number of employees excluded because of minimum age or years of service required . . . . .	<input type="text"/>
	(2) Number of employees excluded because of inclusion in a collective bargaining unit . . . . .	<input type="text"/>
	(3) Number of employees excluded because they terminated employment with less than 501 hours of service and were not employed on the last day of plan year . . . . .	<input type="text"/>
	(4) Number of employees excluded because employed by other qualified separate lines of business (QSLOBs) . . . . .	<input type="text"/>
	(5) Number of employees excluded because they were nonresident aliens with no earned income from sources within the United States . . . . .	<input type="text"/>
f	Total statutory and regulatory exclusions (add lines 13e(1) through 13e(5)). . . . .	<input type="text"/>
g	Nonexcludable employees (subtract line 13f from line 13d) . . . . .	<input type="text"/>
h	Number of nonexcludable employees on line 13g who are highly compensated employees (HCEs) . . . . .	<input type="text"/>
i	Number of nonexcludable HCEs on line 13h benefiting under the plan . . . . .	<input type="text"/>
j	Number of nonexcludable employees who are nonhighly compensated employees (NHCEs) (subtract line 13h from line 13g) . . . . .	<input type="text"/>
k	Number of nonexcludable NHCEs on line 13j benefiting under the plan . . . . .	<input type="text"/>
l	Ratio percentage (see instructions). . . . .	<input type="text"/>
m	Enter the ratio percentage for the following, if applicable:	
	(1) Section 401(k) part of the plan . . . . .	<input type="text"/>
	(2) Section 401(m) part of the plan . . . . .	<input type="text"/>



## 13 (continued)

- Yes No
- n   Are the results on line 13l or 13m based on the aggregated coverage of more than one plan? If "Yes," attach a statement listing the names, plan numbers, EINs, and benefit/allocation formula of the other plans. **All on-cycle individually designed aggregated plans should be filed concurrently.**
- o If the plan satisfied coverage using one of the special requirements of Regulations section 1.410(b)-2(b)(5), (6), or (7), enter the letter from the list below that identifies the special rule.
- A = 1.410(b)-2(b)(5) - No NHCEs employed  
 B = 1.410(b)-2(b)(6) - No HCEs benefit  
 C = 1.410(b)-2(b)(7) - Collectively bargained only

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**Determination request regarding the nondiscrimination design-based safe harbors of section 401(a)(4). See instructions.**


---

- Yes No
- 14   Is this a request for a determination regarding a design-based safe harbor under section 401(a)(4)? If "Yes," complete a-d.
- Note. Section 401(k) and/or section 401(m) plans that do not contain a provision for discretionary contributions should not complete this line.**

**Design-based nondiscrimination safe harbors:**

- a   Does the plan provide for disparity in contributions or benefits that is intended to meet the permitted disparity requirements of section 401(l)? If "Yes," answer line 14b. Otherwise, skip to line 14c.
- b   Do the provisions of the plan ensure that the overall permitted disparity limits will not be exceeded?
- c Enter the letter ("A" - "G") from the list below that identifies the safe harbor intended to be satisfied.
- A = 1.401(a)(4)-2(b)(2) defined contribution (DC) plan with uniform allocation formula  
 B = 1.401(a)(4)-3(b)(3) unit credit defined benefit (DB) plan  
 C = 1.401(a)(4)-3(b)(4)(i)(C)(1) unit credit DB fractional rule plan  
 D = 1.401(a)(4)-3(b)(4)(i)(C)(2) flat benefit DB plan  
 E = 1.401(a)(4)-3(b)(5) insurance contract plan  
 F = 1.401(a)(4)-8(b)(3) target benefit plan  
 G = 1.401(a)(4)-8(c)(3)(iii)(B) cash balance plan
- d List the plan section(s) that satisfy the safe harbor (including, if applicable, the permitted disparity requirements):
- 



## Procedural Requirements Checklist

Use this list to ensure that your submitted package is complete. Failure to supply the appropriate information may result in a delay in the processing of the application.

1.  Is Form 8717, User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request, attached to your submission?
2.  Is the appropriate user fee for your submission attached to Form 8717?
3.  If appropriate, is Form 2848, Power of Attorney and Declaration of Representative, Form 8821, Tax Information Authorization, or a privately designed authorization attached? (For more information, see the Disclosure Request by Taxpayer in the instructions and Rev. Proc. 2011-4, 2011-1 I.R.B. 123.)
4.  Is a copy of your plan's latest determination letter, if any, attached?
5.  Have you included a copy of the plan, trust, and all amendments since your last determination letter?
6.  Is the EIN of the plan sponsor/employer (NOT the trust's EIN) entered on line 1h?
7.  Does line 4d provide the plan's original effective date?
8.  Is the application signed and dated? (Stamped signatures are not acceptable; see Rev. Proc. 2011-4.)
9.  Have interested parties been given the required notification of this application? Make sure line 3n is completed. (See **Instructions.**)
10.  If you are requesting a determination for an Affiliated Service Group Status, have you included the information requested in the instructions?
11.  If you answered "Yes" to line(s) 6a and/or 6b, have you included the information requested in the instructions?
12.  **For Multiple Employer Plans:** Have you included the required information as specified in the instructions under *Specific Plans-Additional Requirements*?
13.  **For Partial Termination Requests:** Have you included the required information as specified in the instructions under *Type of Determination Letter Requested, Partial Termination*?
14.  If you answered "Yes" to line 8a, have you included the requested information?
15.  If lines 13 and 14 are "No," and you are requesting additional determinations, are Schedule Q (Form 5300) and the applicable demonstrations attached? (**See Instructions for Schedule Q.**)
 

<input type="checkbox"/> Demo 1	<input type="checkbox"/> Demo 5	<input type="checkbox"/> Demo 8	<input type="checkbox"/> Demo 11
<input type="checkbox"/> Demo 3	<input type="checkbox"/> Demo 6	<input type="checkbox"/> Demo 9	
<input type="checkbox"/> Demo 4	<input type="checkbox"/> Demo 7	<input type="checkbox"/> Demo 10	



**Procedural Requirements Checklist (continued)**

- 16.  **For Employee Stock Ownership Plans (ESOP):** Have you attached Form 5309, Application for Determination of Employee Stock Ownership Plan, to your submission?
- 17.  **For Pension Benefit Guaranty Corporation Terminations (PBGC):** Have you included the required information as specified in the instructions under *Type of Determination Letter Requested*?
- 18.  Have you included the signed and dated Form 8905, Certification of Intent To Adopt a Pre-approved Plan, if applicable?



**Consolidated Retirement Plan for Employees of City of Marietta GA**

**EIN#: 58-6000616**

**Plan #002**

**Attachment to Form 5300**

**Plan Amendments –Item 3(f) and (g)**

<u>Signed:</u>	12122001
<u>Effective:</u>	01011996
<u>Signed:</u>	11132002
<u>Effective:</u>	11132002
<u>Signed:</u>	02122003
<u>Effective:</u>	01012001
<u>Signed:</u>	05122004
<u>Effective:</u>	05132004
<u>Signed:</u>	07132005
<u>Effective:</u>	07012005
<u>Signed:</u>	10082007
<u>Effective:</u>	10082007
<u>Signed:</u>	03172008
<u>Effective:</u>	03182008
<u>Signed:</u>	09102008
<u>Effective:</u>	01012009
<u>Signed:</u>	12102008
<u>Effective:</u>	01012009
<u>Signed:</u>	03112009
<u>Effective:</u>	01012009
<u>Signed:</u>	09092009
<u>Effective:</u>	09092009
<u>Signed:</u>	01122011
<u>Effective:</u>	01012007
<u>Signed:</u>	07102013
<u>Effective:</u>	07102013
<u>Signed:</u>	Proposed
<u>Effective:</u>	01012014

**Other Qualified Plans – Item 8a**

Name of Plan:	City of Marietta Supplemental Pension Plan
Type of Plan:	Defined Contribution Plan
Form of Plan:	Individually designed
Plan No:	003

This Plan is being filed for a favorable determination letter in Cycle C ending 01/31/2014.

**General Eligibility Requirements – Item 9a**

Regular Full time Employees (including elected and appointed Employees) hired on and after 03/01/1987

Excludes: Part time employees (less than 30 hours per week), leased Employees, City Solicitor, Chief Municipal Court Judge, contract employees, independent contractors, any person employed for less than five (5) months in any year.