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File I.D. #: 20011452

ORDINANCE NO.: 6340

AN ORDINANCE

AMENDING Code Section 4-12-4-010, Exhibit A (Ordinance 4022) and Code Section 4-12-6-10, Exhibit B (Ordinance 4532) to update and modify the City's pension plans to comply with Federal IRS pension plan rules known as the GUST Amendments.

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

Section 1: That Section 4-12-4-010, Exhibit A of Ordinance 4022, Article II - Definitions, Subsection 25, the definition of "Earnings" be amended effective January 1, 1996, by adding the following at the end thereof:

"Except with respect to Qualified Participants (as defined below), for Plan Years beginning on and after January 1, 1996, the earnings taken into account in calculating a Participant's benefit under this Plan shall not exceed the limitations of Code Section 401(a)(17) in effect as of the beginning of each such Plan Year (e.g., $150,000 in 1996). For purposes of applying the $150,000 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 a one of the ten (10) "highly compensated employees" (within the meaning of Code Section 414(q)) paid the greatest amount of earnings (determined without regard to the $150,000 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 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."

Section 2: That Section 4-12-4-010, Exhibit A of Ordinance 4022, Article II - Definitions, be amended effective as of January 1, 2002, by adding thereto a new Section 46, a definition of **Beneficiary**, to read as follows:

"**Section 46. Beneficiary:**

Shall mean the person named by a Participant or by any other person eligible to name a Beneficiary by written designation filed with the Pension Board or its designee. 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."

Section 3: That Section 4-12-4-010, Exhibit A of Ordinance 4022, Article V, Section 3, **Delayed retirement benefit,** be amended effective January 1, 1997, by adding the following new paragraph at the end thereof:

"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 70-1/2, 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 70 ½, the participant shall continue to receive Plan distributions."

Section 4: That Section 4-12-4-010, Exhibit A of Ordinance 4022, Article VI, Section 1, **Election of Optional Retirement Benefit,** shall be amended effective January 1, 1985, by adding the following new paragraph at the end thereof:

"Any optional form of benefit elected by the Participant must comply with the minimum distribution incidental benefit 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."

Section 5: That Section 4-12-4-010, Exhibit A of Ordinance 4022, Article XII, **Miscellaneous,** shall be amended by adding a new Section 11 thereto, effective October 12, 1994, to read as follows:

"**Section 11. 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 Code Section 414(u)."

Section 6: That Section 4-12-4-010, Exhibit A of Ordinance 4022, be amended by adding a new Article XIV, entitled **Maximum Benefits,** to the Plan effective as of January 1, 1995, to read as follows:

"**ARTICLE XIV**

MAXIMUM BENEFITS

Refer to Section 14.05 for the definitions of certain terms used in this Article 14.

Section 14.01. 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 ($160,000, 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").

14.02 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.

14.03 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 14.03.

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 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 limitation for age 55.

Notwithstanding the preceding paragraph, if a Participant is a "qualified participant" (e.g., certain police and firefighters) 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.

(iii) 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.

14.04 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. 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 14 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 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 14.03(i) for benefits that commence before age 62, and the reduction described in Section 14.02 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 Code Section 415(b)(2)(I) and any regulations thereunder.

(e) Periods Prior to 1995. For Limitation Years beginning before January 1, 1995, the limitations prescribed by Section 415 of the Code, to the extent that they apply to governmental plans, are incorporated herein by reference as of the latest date by which such provisions (if the effective date is elective) may be applied.

14.05 **Definitions.**

For purposes of this Article 14, 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 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 Non-Annuity Benefit Form to an Annual Benefit (*i.e.*, a straight life annuity), first convert the Non-Annuity 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 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 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 24, the definition of **Earnings**.

(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 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 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 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) "Non-Annuity 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."

Section 7: That Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan", Article II, Section 1, the definition of "**Actuarial present value**" shall be amended effective January 1, 2002 by adding the following at the end thereof:

> "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."

Section 8: That Article II, Section 3, the definition of **Beneficiary**, of Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan", shall be amended effective January 1, 2002, by adding the following at the end thereof:

> "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."

Section 9: That Article II, Section 8, the definition of "**Earnings**" in Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan", shall be amended effective January 1, 1996, by adding the following at the end thereof:

> "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 in 1996). For purposes of applying the $150,000 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 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 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."

Section 10: That Article III, Section 1, **Eligibility for participation,** in Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan", shall be amended effective January 1, 2002, by adding the following new paragraph at the end thereof:

"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."

Section 11: That Article V, Section 7, **Eligibility for a late retirement benefit,** in Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan", shall be amended effective January 1, 1997, by adding the following new paragraph at the end thereof:

"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 70-1/2, 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 70 ½, the participant shall continue to receive Plan distributions."

Section 12: That Article VII, Section 2, **Election of optional retirement benefit,** in Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan", shall be amended effective January 1, 1985, by adding the following new paragraph at the end thereof:

"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."

Section 13: That Article VII, Section 6, **Mandatory lump sum cashout**, in Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan", shall be amended effective upon approval of this ordinance by substituting "$5,000" for "3,500" where it appears therein.

Section 14: That Article VIII, **Maximum Retirement Income Benefits**, in Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan", shall be amended effective as of January 1, 1995 to read as follows:

"ARTICLE VIII

MAXIMUM BENEFITS

Refer to Section 8.07 for the definitions of certain terms used in this Article 8.

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 ($160,000, 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 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 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 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.

(iii) 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 <u>Special Rules</u>.

(a) <u>All plans a single plan</u>. 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. 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 8 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 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)(I) 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 8 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 Non-Annuity 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 Non-Annuity Benefit Form to an Annual Benefit (*i.e.*, a straight life annuity), first convert the Non-Annuity 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**.

(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) "Non-Annuity 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."

Section 15: That Article XII, **Miscellaneous,** in Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan", shall be amended by adding a new Section 7 thereto, effective as of October 12, 1994, to read as follows:

"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)."

Section 16: That Article XII, **Miscellaneous,** in Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan", shall be amended by adding a new Section 8 thereto, effective as of January 1, 1993, to read as follows:

"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 includible 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. 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.

(2) Eligible Retirement Plan. An Eligible Retirement Plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

(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.

(4) Direct Rollover. A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

Section 17: 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 18: All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 19: This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

DATE: December 12, 2001 **APPROVED:** Ansley Meaders

Ansley L. Meaders, Mayor

ATTEST: Shelia R. Hill

Shelia R. Hill, City Clerk

APPROVED AS TO FORM: DR Haynie

Douglas R. Haynie, City Attorney