



# City of Grand Island

Tuesday, January 25, 2011

Council Session

## Item G12

**#2011-24 - Approving Required Interim Amendment for the City of Grand Island's 457(b) Retirement Plan Document**

Staff Contact: Mary Lou Brown

# Council Agenda Memo

**From:** Mary Lou Brown, Finance Director

**Meeting:** January 25, 2011

**Subject:** Required Interim Amendment for the City of Grand Island's 457(b) Retirement Plan Document

**Item #'s:** G-12

**Presenter(s):** Mary Lou Brown, Finance Director

## Background

Due to recent law changes and IRS guidance, Ameritas Life Insurance Corp, was required to make certain changes to the City of Grand Island's retirement plan. The changes were made under the following two pieces of legislation: Heroes Earning Assistance and Relief Tax (HEART) Act of 2008; and Worker, Retiree and Employer Recovery Act of 2008 (WRERA).

## Discussion

This is an Interim Amendment required by the IRS for all qualified retirement plans. The changes are to comply with the HEART Act of 2008 and the WRERA Act of 2008.

The HEART Act allows the plan to treat a Participant who dies while performing qualified military service as re-employed and to receive benefit accruals and vesting. The City of Grand Island 457 plan does not have employer contributions so accruals and vesting are not applicable. The default option on the amendment is to not adopt this provision.

The WRERA Act allows the plan to not process required minimum distributions in 2009 to former participants age 70½ or older. The plan did not process 2009 minimum distributions for participants unless requested by the participant. This is the default option of the amendment. In addition, it requires the plan to allow non-spousal beneficiaries to rollover the 457 account to an IRA or another qualified retirement plan.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve the Interim Amendment as attached.
2. Postpone the issue to a future meeting.
3. Take no action.

## **Recommendation**

City Administration recommends that the Council approve the Interim Amendment as attached.

## **Sample Motion**

Move to approve the Interim Amendment.

**Tami Herald**

**From:** SHolechek@ameritas.com  
**Sent:** Tuesday, January 04, 2011 11:31 AM  
**To:** Tami Herald  
**Cc:** SDoane@ameritas.com  
**Subject:** RE: FW: 210742 City of Grand Island 457 Deferred Compensation Plan interim amendment

Tami,

For you, of course!

This is an Interim Amendment required by the IRS for all qualified retirement plans. This is for compliance with the Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008 and the Worker, Retiree and Employer Recovery Act of 2008 (WRERA) and other guidance.

The HEART Act allows the plan to treat a Participant who dies while performing qualified military service as re-employed and to receive benefit accruals and vesting. The City of Grand Island 457 plan does not have employer contributions so accruals and vesting are not applicable. The default option on the amendment is to not adopt this provision.

The WRERA Act allows the plan to not process required minimum distributions in 2009 to former participants age 70 1/2 or older. The plan did not process 2009 minimum distributions for participants unless requested by the participant. This is the default option of the amendment. In addition, it requires the plan to allow non-spousal beneficiaries to rollover the 457 account to an IRA or another qualified retirement plan.

Hope that this helps! Please let me know if you need further information!

**Scott A. Holechek, CEBS, FLMI | Retirement Plans | Director – Governmental and Client Relationship Services**  
5900 O Street, Lincoln, NE 68510 | p: 800-745-9995 ext. 87398 | f: 402-467-7952 |  
sholechek@ameritas.com

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Tami Herald <TamiH@grand-island.com>

01/04/2011 09:41 AM

To "SHolechek@unificompanies.com" <SHolechek@unificompanies.com>

cc

Subject RE: FW: 210742 City of Grand Island 457 Deferred Compensation Plan interim amendment

1/4/2011



December 2010

RE: Required Interim Amendment for your 457(b) Retirement Plan Document

Dear Plan Sponsor,

Due to recent law changes and IRS guidance, we were required to make certain changes to your retirement plan. Attached is an amendment for your plan designed to comply with the recent changes made under the following legislation:

- Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008; and
- Worker, Retiree and Employer Recovery Act of 2008 (WRERA).

Please sign the attached amendment no later than December 31, 2010, and retain a copy for your records. Please return a copy of the signed amendment to your Client Service Representative via email, fax or regular mail to:

Ameritas Life Insurance  
P.O. Box 40888  
Cincinnati, OH 45240-0888  
Attn: Betsy Schaaf

If you have any questions about the attached amendment please contact your Client Service Representative.

Sincerely,

Betsy Schaaf, J.D.  
Vice President ERISA Services & Administration

GOVERNMENTAL 457(B) PLAN

INTERIM AMENDMENT

HEROES EARNINGS ASSISTANCE AND RELIEF TAX (HEART) ACT OF 2008, WORKER, RETIREE, AND  
EMPLOYER RECOVERY ACT OF 2008 (WRERA) AND OTHER GUIDANCE

ARTICLE I  
PURPOSE OF AMENDMENT

- 1.01 **Compliance with Plan Qualification Requirements.** This Interim Amendment and the elective provisions below are intended to qualify as a good-faith amendment of the Plan to document the Plan's compliance with the requirements under the Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008 and the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA).
- 1.02 **Application of Amendment.** This amendment supersedes any contrary provisions under the Plan.

ARTICLE II  
REQUIREMENTS UNDER HEROES EARNINGS ASSISTANCE AND RELIEF TAX (HEART) ACT OF 2008

- 2.01 **Death Benefits under Qualified Military Service.** In the case of a Participant who dies while performing qualified military service (as defined in Code §414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as though the Participant resumed and then terminated employment on account of death. In addition, a Participant who dies while performing qualified military service will also be credited with service for vesting purposes under the Plan as though the Participant resumed and then terminated employment on account of death. This provision is effective with respect to deaths occurring on or after January 1, 2007.
- 2.02 **Benefit Accruals.** If elected under Section 4.01(a)(1) of the Elective Provisions section below, for benefit accrual purposes, the Plan will treat an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service (as defined in Code §414(u)) with respect to the Employer, as if the individual has resumed employment in accordance with the individual's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. This provision is effective with respect to deaths and disabilities occurring on or after January 1, 2007, unless a later date is elected under Section 5.01(a)(2).
- (a) This Section 2.02 shall apply only if all individuals performing qualified military service with respect to the Employer maintaining the plan who die or became disabled as a result of performing qualified military service prior to reemployment by the employer are credited with service and benefits on reasonably equivalent terms.
- (b) The amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 2.02 shall be determined on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of:
- (1) the 12-month period of service with the Employer immediately prior to qualified military service, or
- (2) if service with the Employer is less than such 12-month period, the actual length of continuous service with the Employer.
- 2.03 **Differential Pay.** Effective for years beginning on or after January 1, 2009, in the case of an individual who receives Differential Pay from the Employer:
- (a) such individual will be treated as an Employee of the Employer making the payment, and

- (b) the Differential Pay shall be treated as wages and will be included in calculating an Employee's Total Compensation under the Plan.

If all Employees performing service in the Uniformed Services are entitled to receive Differential Pay on reasonably equivalent terms and are eligible to make contributions based on the payments on reasonably equivalent terms, the Plan shall not be treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit based on Differential Pay. The Employer may elect to exclude Differential Pay from the definition of Plan Compensation under Section 4.01(b) of the Elective Provisions section below.

For purposes of this Section 2.03, Differential Pay means any payment which is made by an Employer to an individual while the individual is performing service in the Uniformed Services while on active duty for a period of more than 30 days, and represents all or a portion of the wages the individual would have received from the Employer if the individual were performing services for the Employer. In applying the provisions of this Section 2.03, Uniformed Services are services as described in Code §3401(h)(2)(A).

Notwithstanding the provisions of this Section 2.03, an individual shall be treated as having been severed from employment during any period the individual is performing service in the Uniformed Services for purposes of receiving a Plan distribution. If an individual elects to receive a distribution by reason of this paragraph, the individual may not make employee contributions under the Plan during the 6-month period beginning on the date of the distribution.

### ARTICLE III

#### REQUIREMENTS UNDER WORKER, RETIREE AND EMPLOYER RECOVERY ACT OF 2008 (WRERA)

- 3.01 **Waiver of Required Minimum Distributions.** For calendar year 2009, the Required Minimum Distribution rules under the Plan will not apply. In applying the Required Minimum Distribution provisions of the Plan for the 2009 Distribution Calendar Year,

- (a) the Required Beginning Date with respect to any individual shall be determined without regard to this subsection (a) for purposes of applying this paragraph for Distribution Calendar Years after 2009, and
- (b) required distributions to a beneficiary upon the death of the Participant shall be determined without regard to calendar year 2009.

A Participant or beneficiary who would have been required to receive a Required Minimum Distribution for the 2009 Distribution Calendar Year but for the enactment of Code §401(a)(9)(H) ("2009 RMD"), may elect whether or not to receive the 2009 RMD (or any portion of such distribution). A distribution of the 2009 RMD or a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years, will be treated as an Eligible Rollover Distribution. However, if all or any portion of a distribution during 2009 is treated as an Eligible Rollover Distribution but would not be so treated if the Required Minimum Distribution requirements under the Plan had applied during 2009, such distribution shall not be treated as an Eligible Rollover Distribution for purposes of Code §§401(a)(31), 402(f) or 3405(c). (See Notice 2009-82 for transitional rules that apply for purposes of applying the rollover rules to the distribution of 2009 RMDs.)

- 3.02 **Non-Spousal Rollovers after December 31, 2009.** Effective for Plan Years beginning after December 31, 2009, the Plan must permit a non-spouse beneficiary (as defined in Code §401(a)(9)(E)) to make a direct rollover of an eligible rollover distribution to an individual retirement account under Code §408(a) or an individual retirement annuity under Code §408(b) that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code §402(c)(11). A non-spouse rollover made after December 31, 2009 will be subject to the direct rollover requirements under Code §401(a)(31), the rollover notice requirements under Code §402(f) or the mandatory withholding requirements under Code §3405(c).

ARTICLE IV  
ELECTIVE PROVISIONS

*This Section contains the elective provisions for implementing the interim amendments set forth in this amendment. The interim amendments and any elections under these elective provisions supersede any contrary provisions under the Plan or Adoption Agreement.*

4.01 **HEART Act Provisions**

- (a) **Benefit Accruals.** The benefit accrual provisions under Section 2.02 of this amendment do not apply. To apply the benefit accrual provisions under Section 2.02, check the box below.
- (1) **Eligibility for Plan benefits.** Check this box if the Plan will provide the benefits described in Section 2.02 of this amendment. If this box is checked, an individual who dies or becomes disabled in qualified military service will be treated as reemployed for purposes of determining entitlement to benefits under the Plan.
- (2) **Delayed effective date.** Unless elected otherwise under this subsection (2), the benefit accrual provisions apply for deaths or disabilities occurring on or after January 1, 2007.
- The benefit accrual provisions selected in subsection (1) apply for deaths or disabilities occurring on or after \_\_\_\_\_ (may not be earlier than January 1, 2007).
- (b) **Treatment of Differential Pay.** Section 2.03 of this amendment provides that if an individual performing service in the Uniformed Services receives Differential Pay from the Employer, such Differential Pay is treated as Total Compensation under the Plan. In addition, unless designated otherwise below, Differential Pay will be treated as Plan Compensation for purposes of applying the contribution provisions under the Plan. To exclude Differential Pay from Plan Compensation, check the box below.
- Definition of Plan Compensation.** Check this box if Differential Pay will be excluded from the definition of Plan Compensation. If this box is checked, no contribution under the Plan will be made with respect to Differential Pay.

4.02 **Required Minimum Distribution.** For purposes of applying the Required Minimum Distribution rules for the 2009 Distribution Calendar Year, as described in Section 3.01 of this amendment, a Participant (including an Alternate Payee or beneficiary of a deceased Participant) who is eligible to receive a Required Minimum Distribution for the 2009 Distribution Calendar Year may elect whether or not to receive the 2009 Required Minimum Distribution (or any portion of such distribution). Unless elected otherwise under this Section 4.02, 2009 Required Minimum Distributions will not be made to Participants who are otherwise required to receive a Required Minimum Distribution for the 2009 Distribution Calendar Year, unless the Participant elects to receive such distribution.

- Automatic distribution.** If a Participant does not specifically elect to leave the 2009 Required Minimum Distribution in the Plan, such distribution will be made for the 2009 Distribution Calendar Year pursuant to Section 3.01 of this amendment.



**ARTICLE V**  
**APPLICATION OF AMENDMENT**

*The undersigned Employer adopts this Interim Amendment on behalf of the Plan. This amendment supersedes any contrary provisions under the Plan. This Interim Amendment applies to the signatory Employer and any other adopting employers of the Plan.*

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*(Name of Employer)*

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*(Name of Authorized Representative)*

*(Title)*

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*(Signature)*

*December 31, 2010*

RESOLUTION 2011-24

WHEREAS, The HEART Act allows the Plan to treat a Participant who dies while performing qualified military service as re-employed and to receive benefit accruals and vesting; and

WHEREAS, The City of Grand Island 457 plan does not include employer contributions so accruals and vesting are not applicable; and

WHEREAS, The default option on the amendment is to not adopt this provision; and

WHEREAS, THE WRERA Act allows the plan to not process required minimum distributions in 2009 to former participants age 70 ½ or older; and

WHEREAS, The Plan did not process 2009 minimum distributions for participants unless requested by the participant; and

WHEREAS, This is the default option of the amendment; and

WHEREAS, The WRERA Act requires the plan to allow non-spousal beneficiaries to rollover the 457 account to an IRA or another qualified retirement plan; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that:

The attached Application of Amendment be signed in order to adopt the Interim Amendment on behalf of the Plan. The Mayor is so authorized to sign the Application of Amendment.

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Adopted by the City Council of the City of Grand Island, Nebraska, January 25, 2011.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form    ☐ \_\_\_\_\_  
January 19, 2011        ☐ City Attorney