

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

AMALGAMATED TRANSIT UNION,
LOCAL 1596,

Plaintiffs,

Case No.

vs.

THE BOARD OF TRUSTEES OF THE
AMALGAMATED TRANSIT UNION 1596
PENSION PLAN,

Defendants.

_____ /

COMPLAINT

Plaintiff Amalgamated Transit Union, Local 1596 (“ATU”) files this action against Defendant, the governing board of a benefits plan for public employees, and seeks orders (i) declaring that Defendant violated the Sunshine Law by amending a benefits formula during a meeting that was not publicly noticed, (ii) declaring that the amendment is void *ab initio*, and (iii) enjoining Defendant from further enforcing the amendment.

Parties, Jurisdiction, and Venue

1. Plaintiff ATU is a labor organization representing a bargaining unit of public employees of the Central Florida Regional Transportation Authority (“LYNX”). ATU has offices in Orlando, Florida.

2. LYNX is a state agency operating a regional public transportation system and has offices in Orlando, Florida.

3. ATU’s bargaining unit members hired before March 1, 2014, participate in a benefits plan, the Amalgamated Transit Union 1596 Pension Plan, that provides pension and disability benefits.

4. Defendant, the Board of Trustees of the Amalgamated Transit Union 1596 Pension Plan (the “Board of Trustees”), is the governing board that administers the benefits plan pursuant to the terms of a trust agreement. *See* Ex. A (Amalgamated Transit Union Local 1596 Pension Plan — Restated Agreement and Declaration of Trust and Pension Plan) (hereinafter, the “Trust Agreement”).

5. The Court has jurisdiction over this action pursuant to Article V, § 20(c)(3) of the Florida Constitution and §§ 26.012(2)(c), (3) and 86.011, Fla. Stat.

6. Venue is proper in this Court because the cause of action accrued here.

General Allegations

7. Between December 2012 and December 2015, the Board of Trustees held official meetings that were not publicly noticed in conformity with Florida’s Sunshine Law, § 286.011(1), Fla. Stat.

8. On May 14, 2013, the Board of Trustees met without public notice and adopted an amendment (known as “Amendment One”) to the plan’s Trust Agreement, which among other things amended the plan’s disability benefits formula. Ex. B (hereinafter, “Amendment One”).

9. The Board of Trustees has acknowledged that Amendment One was not adopted at a publicly-noticed meeting, but the Board of Trustees nevertheless continues to act as though Amendment One was validly adopted.

10. Since May 14, 2013, at least three employees have applied for disability benefits and the Board of Trustees has sought to enforce the disability benefits formula as purportedly amended by Amendment One. In 2016, the Board of Trustees took official actions to enforce Amendment One against an ATU bargaining unit member, Adalberto Ruiz, who applied for disability benefits. Mr. Ruiz ultimately received disability benefits under the pre-Amendment

One benefits formula, but only after the Board of Trustees settled a lawsuit over the dispute (and doing so in a manner that avoided a declaratory judgment). *See Ruiz v. Amalgamated Transit Union Local 1596 Pension Fund*, Case No. 2016-CA-003370-O (Fla. 9th Jud. Cir. Ct.). In 2017, the Board of Trustees took similar action to enforce Amendment One against another ATU bargaining unit member, Jean Gilbert, who sought disability benefits. Ms. Gilbert eventually received disability benefits, but only after negotiating a resolution similar to Mr. Ruiz. Now again, in 2018, another ATU bargaining unit member, Kevin Jones, is applying for disability benefits and the Board of Trustees is again taking the position that the disability benefits formula is controlled by Amendment One.

11. The Board of Trustees' actions with respect to Mr. Ruiz, Ms. Gilbert, and now Mr. Jones gives ATU and all of the bargaining unit members it represents reason to question their rights to disability benefits under the Trust Agreement.

12. The Board of Trustees also acts as though Amendment One has been validly adopted by instructing its actuary to assume the validity of Amendment One in performing annual actuarial valuation reports, which are then used to determine the plan's required contribution rates.

13. The Board of Trustees has a fiduciary duty to ensure that the plan is funded through contributions on an actuarially sound basis. Because Amendment One has a favorable impact on the plan's actuarial valuation, if the Board of Trustees were to recognize that Amendment One is void, the Board of Trustees would be required to increase the plan's contribution rates.

14. ATU and its bargaining unit members have an interest in their pension plan being funded on an actuarially sound basis. ATU and its bargaining unit members have reason to

question whether their pension plan is being funded on an actuarially sound basis based on the Board of Trustees' continued refusal to recognize that Amendment One is void *ab initio*.

**COUNT I: DECLARATORY JUDGMENT THAT DEFENDANT VIOLATED THE
SUNSHINE ACT AND THAT AMENDMENT ONE IS VOID *AB INITIO***

15. Defendant Board of Trustees is public board subject to the open-meeting requirements of the Sunshine Law, § 286.011(1), Fla. Stat.

16. Defendant violated the Sunshine Law by taking official action to adopt Amendment One on May 14, 2013, at a meeting that was not publicly noticed in conformity with Florida's Sunshine Law, § 286.011(1), Fla. Stat.

17. Defendant continues to violate the Sunshine Law by continuing to rely Amendment One as though it were validly adopted, including through its actions in calculating disability benefits and in evaluating the plan for actuarial soundness.

18. Based on the Board of Trustee's conduct, there is a bona fide dispute about whether Amendment One is void *ab initio*. ATU and all of the bargaining unit members that it represents have an interest that members receive their appropriate disability benefits and that their pension plan is funded on an actuarially sound basis—but ATU and all of the bargaining unit members have reason to doubt these rights based on the Board of Trustee's continued refusal to recognize that Amendment One is void *ab initio*.

19. Neither ATU nor its members have any adequate alternative remedy to redress the violations alleged herein other than declaratory and injunctive relief.

20. ATU and its members will suffer irreparable harm in the absence of declaratory and injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Declare that Defendant violated the Sunshine Law by taking official action to adopt Amendment One on May 14, 2013, at a meeting that was not publicly noticed in conformity with Florida's Sunshine Law, § 286.011(1), Fla. Stat.;
- (2) Declare that Amendment One is void *ab initio*;
- (3) Enjoin Defendant from relying on Amendment One in any manner, including in calculating disability benefits and in evaluating the plan for actuarial soundness;
- (4) Award Plaintiff its attorney's fees and expenses in bringing this lawsuit; and
- (5) Order any other relief as this Court may deem necessary and proper.

Dated: July 17, 2018.

/s Eric Lindstrom
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EXHIBIT A

**AMALGAMATED TRANSIT UNION LOCAL 1596
PENSION PLAN**

**RESTATED
AGREEMENT AND DECLARATION OF TRUST
AND PENSION PLAN**

Effective this 24th day of May, 2011

Exhibit A

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AMALGAMATED TRANSIT UNION
LOCAL 1596
PENSION TRUST AND PLAN

INTRODUCTION

This Pension Trust and Plan is established for the exclusive benefit of certain employees of the transit system operated by the Employer, the Central Florida Regional Transportation Authority. Employees of the system are represented by the Amalgamated Transit Union Local 1596; and contributions are required by the terms of the Union's collective bargaining agreement. The Employer is also obligated to maintain this plan and to fund certain benefits as part of a settlement agreement entered into by various parties, which agreement has been assumed by and is binding upon the Central Florida Regional Transportation Authority. It is the intent of the parties hereto to maintain and fund this Plan indefinitely in accordance with its terms, to enable the employees of the system to earn adequate pensions upon retirement and to protect the well-being of employees' families through disability and survivor pensions.

In the event of any conflict between this document and the terms of any summary or description of this Plan, the terms of this Plan document shall prevail.

ARTICLE I
DEFINITIONS

Unless the context clearly indicates otherwise, when used herein, the following words and phrases shall have the following meanings:

- 1.01 Accrued Benefit means the amount of the monthly pension benefit to which a Participant would be entitled if eligible on a particular date determined in accordance with the provisions of Article IX of this Plan.
- 1.02 Actuarial Equivalent Any benefit which, under the terms of this Plan, is the actuarial equivalent of a stated benefit shall have the same present value on the date as of which such equivalence is established as such stated benefit. For purposes of establishing actuarial equivalence, present value shall be determined by discounting benefit payments for interest at an interest rate of seven percent (7%) and by using the UP 1984 Mortality Table, Male, adjusted for a ten percent (10%) female population.
- 1.03 Authority shall mean the Central Florida Regional Transportation Authority, doing business as "LYNX," and any successor or agent thereof.
- 1.04 Average Compensation shall mean the average of the total compensation received by an Employee during the five (5) highest paid plan years of an Employee's employment.
- 1.05 Beneficiary means the person or persons to whom a deceased Participant's benefits are payable under the terms of this Plan.
- 1.06 Benefit Credit shall mean the units of credit accumulated by a Participant as a result of covered employment as an Employee, which units are used to determine the amounts of the Employee's monthly pension benefit by multiplying the Units of Benefit Credit by the appropriate percentage of Average Compensation, as set forth in Article VIII.
- 1.07 Break in Service shall have the meaning set forth in Section 7.02 hereof.
- 1.08 Code shall mean the Internal Revenue Code of 1986, as amended. Reference to a section of the Code shall include that section and any comparable section or sections of any future legislation that amends, supplements or supersedes said section.
- 1.09 Collective Bargaining Agreement shall mean the Collective Bargaining Agreement of the Union, the terms of which are approved by and binding upon the Authority and its agents, including any officers and employees thereof.
- 1.10 Compensation shall mean the gross earnings from covered employment of an Employee, including all regular hours, overtime, paid vacation, sick leave and

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leave of absence. Compensation shall not include (a) Employer contributions to this Trust, (b) any contributions or payments to any trust, fund or insurance plan to provide health, death or other fringe benefits to or on behalf of a Participant.

If an Employee becomes disabled as a result of injury or illness arising in the course of employment, he shall be deemed to receive compensation from covered employment during such period of disability up to one year for any such injury or illness, provided that the Employee or his Beneficiary, on his behalf, makes the Employee contributions required under section 3.05. For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, Earnings shall include any elective deferral (as defined in Code Section 402(e)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in Section 15.01(A) hereof, compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Internal Revenue Code.

1.11 Covered Employment shall mean

- (A) Employment in work covered by the Collective Bargaining Agreement;
- (B) employment by the Employer in work that is supervisory or administrative in nature; provided that
 - (1) the Employee was a Participant in the Plan under the Collective Bargaining Agreement at the time of his promotion to a supervisory or administrative position and was promoted after April 23, 2002;
 - (2) the Employer has signed a participation agreement permitting participation in the Plan, and contributions are paid to the Trust by the Employer and Employee, at the same rate as are required for employees in work covered by the Collective Bargaining Agreement;
- (C) employment in, or leave to attend to, Union business or the business of this Plan and Trust, provided that the Employee is paid for such services by the Employer, the Union or the Trust, and provided that contributions are paid to the Trust for such employment.

1.12 Custodian shall mean a bank or other qualified institution designated by the Trustees to hold assets of the Trust for safekeeping and to carry out the directions of the Trustees and any Investment Advisor.

1.13 Early Retirement Date shall have the meaning set forth in Article IX hereof.

- 1.14 Effective Date of this Restated Plan shall mean January 1, 2011, and the original effective date of the Plan is October 1, 1984.
- 1.15 Employee shall mean
- (A) a person employed in work that is within the collective bargaining unit represented by the Union (bargaining unit employee);
 - (B) a person who has been promoted from within the collective bargaining unit on or after April 23, 2002, to a non-exempt, administrative or supervisory position with the employer (non-bargaining unit employee).
- A part-time employee is an employee who regularly works less than thirty (30) hours per week.
- 1.16 Employer shall mean the Authority and any agent, subsidiary, affiliate or successor thereof.
- 1.17 Enrolled Actuary shall mean a person selected by the Trustees who is an Enrolled Actuary within the meaning of Section 112.62(3) Florida Statutes.
- 1.18 Entry Date shall have the meaning set forth in Article VI hereof.
- 1.19 Fiduciary shall mean a person who has any discretionary responsibility in the administration of the Plan; or, when designated by the Trustees pursuant to authority granted by the Plan, one who acts to carry out a fiduciary responsibility.
- 1.20 Fiscal Year shall mean the twelve (12) month period beginning October 1 and ending September 30.
- 1.21 Future Service shall mean the full Units of Benefit Credit with which a Participant is credited from October 1, 1984 to his Early or Normal Retirement Date.
- 1.22 Fund or Trust Fund shall mean any and all assets held under this Plan and Trust by the Trustees.
- 1.23 Gender. Unless the context requires another meaning masculine pronouns include the corresponding feminine pronouns and the singular includes the plural.
- 1.24 Hour of Service shall mean:
- (A) Each hour for which an employee is directly or indirectly paid, or entitled to payment, by the Employer for the performance of duties in covered employment. These hours shall be credited to the Employee for the Plan year in which the duties are performed.
 - (B) Each hour for which an employee is directly or indirectly paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship terminated) due to vacation, holiday,

illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. Except as to duty related disability, no more than 501 hours of service shall be credited under this subsection (B) for any single continuous period (whether or not such period occurs in a single Plan year).

An Employee who is disabled as a result of injury or illness arising in the course of employment shall be credited with Hours of Service under Section 3.05 herein, provided that the Employee or his Beneficiary makes the contributions required under Section 3.05.

(C) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. These hours shall be credited to the Employee for the Plan year to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

Hours of Service shall not be credited under more than one of the above subsections (A), (B) or (C).

Hours under this paragraph shall be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations, which are incorporated herein by this reference.

- 1.25 Insurer shall mean any legal reserve life insurance company which shall issue contracts (if any) purchased hereunder.
- 1.26 Investment Advisor shall mean a party that (i) is either (a) registered as an investment advisor under the Investment Advisors Act of 1940, or (b) a bank (as defined in the Investment Advisors Act of 1940), or (c) an insurance company qualified to manage, acquire and dispose of pension plan assets under the laws of Florida or another State, and (ii) is granted the power to manage, acquire and dispose of any assets of this Plan by the Trustees.
- 1.27 Money Purchase Plan shall mean the "Money Purchase Plan and Trust Agreement for Employees of Transit Management of Florida, Inc." and the plan and trust established pursuant thereto on May 15, 1979, and as amended thereafter.
- 1.28 Normal Retirement Date shall have the meaning set forth in Article IX hereof.
- 1.29 Participant shall mean an Employee who participates in this Plan, or who has retired under this Plan. An employee will become eligible to participate in this Plan and to become a Participant on his Entry Date as defined in Article VI hereof.
- 1.30 Past Service shall mean the full Units of Benefit Credit with which a bargaining unit Employee is credited for employment prior to October 1, 1984. Current Employees will be deemed to have completed a Unit of Past Service for every plan year between October 1, 1978 and September 30, 1984, that they worked

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one-thousand (1,000) hours in work that is covered employment in 1985. Employees covered by the Stipulation of Settlement shall be credited with additional units of past service credit in accordance with Addendum A attached hereto. Certain Employees who were Participants in the Money Purchase Pension Plan may also have a separate Rollover Account in this Plan as a result of transfer of amounts from the Money Purchase Plan pursuant to the provisions of Addendum B hereto.

- 1.31 Plan shall mean this Trust Agreement and Pension Plan.
- 1.32 Plan Year shall mean the twelve (12) consecutive month period commencing October 1 and ending September 30.
- 1.33 Retirement means an employee's withdrawal from employment with the employer, with a pension payable from the Fund except that nothing herein shall be interpreted to prohibit employees from returning to work after retirement, provided that part-time employees shall not be permitted to participate in the pension plan; and full-time employees shall cease receiving retirement benefits upon their return to employment after retirement. This section shall not be interpreted to preclude the parties from adopting a deferred retirement option plan ("DROP").
- 1.34 Stipulation of Settlement shall mean the Stipulation of Settlement given final approval by the Hon. G. Kendall Sharp, District Judge, on February 11, 1985, in the matter of Darden, et al. v. Transit Management of Florida, Inc., et al., Case No. 82-173-Civ-Orl-18, Federal District Court, Middle District of Florida.
- 1.35 Trust or Trust Fund shall mean the trust created by this Trust Agreement.
- 1.36 Trust Agreement shall mean this Agreement and Declaration of Trust and Pension Plan.
- 1.37 Trustees shall mean the Board of Trustees acting collectively in accordance with this Trust Agreement.
- 1.38 Union shall mean the AMALGAMATED TRANSIT UNION LOCAL 1596, AMALGAMATED TRANSIT UNION, AFL-CIO, CLC, or any successor thereto.
- 1.39 Units of Benefit Credit. See Section 1.06, "Benefit Credit."
- 1.40 Vested shall mean having a nonforfeitable right to a benefit under this Plan. An Employee shall be vested in the manner and to the extent set forth in Article VII of this Plan.
- 1.41 Vesting Credit shall mean the units of credit accumulated from year to year as a result of employment with the Employer and that may result in a Participant obtaining vested status, as set forth in Article VI of this Plan.

ARTICLE II

ADMINISTRATION

- 2.01 Board of Trustees. The Board shall consist of six (6) appointed Trustees: three (3) Employer Trustees appointed by the Authority or its designee and three (3) Union Trustees appointed by the President of the Union or his designee. Effective as of October 31, 2001, each trustee shall serve a term of three (3) years, and may be re-appointed to additional terms without limitation. In order to ensure continuity, trustee appointments shall be staggered, so that each appointing entity shall appoint a new trustee to a new three (3) year term in each September of the initial three (3) years after the adoption of this Agreement. This appointment will be effective as of the second to last order of business at the last meeting of the calendar year.

Trustees shall serve until successors have been appointed. Trustees shall serve for their entire term, except that a trustee may be removed for good cause shown, by a vote of five of six trustees.

Upon the removal or resignation of a Trustee, the Authority, or the Union, as the case may be, shall notify the other Trustees of such removal or resignation and the name of the successor trustee within ten (10) days of such removal or resignation.

The Board shall act as Trustees hereunder and shall exercise all the powers of the Trustees as defined herein except to the extent that such powers and duties are expressly delegated to an Investment Advisor, Custodian or other person selected by the Trustees.

- 2.02 Officers of Trustees. At its last meeting of the calendar year, the Board shall, as the last order of business on its agenda, elect as officers a Chairman from among the Union Trustees and a Secretary from among the Employer Trustees. The elected officers shall immediately assume office at the conclusion of the meeting, and shall serve a two (2) year term, with no limitation on the number of terms an officer may serve.

The Chairman shall have the power to determine the agenda and order of Trustees' meetings in accordance with reasonable rules. The Secretary shall keep a record of all meetings, reports to and actions of the Trustees, shall be responsible for the records of the Plan, and, along with the Chairman, shall be authorized to carry out the decisions of the Trustees between meetings. The Chairman and Secretary may delegate these ministerial duties in accordance with the plan provisions.

- 2.03 Meetings of Trustees. Meetings of the Trustees may be called by the Chairman, Secretary or any two (2) Trustees by providing all Trustees with written notice a reasonable time in advance of the meeting along with notice of the matters to be

considered. The Trustees shall meet at least quarterly, and at such other times as necessary to conduct the business of the plan.

- 2.04 Quorum. Two (2) Union Trustees and two (2) Employer Trustees shall be required for a quorum of the Board of Trustees.
- 2.05 Voting. Action by the Board of Trustees shall require a majority vote of those present at a Board Meeting.
- 2.06 Disqualification for Interest. A Trustee shall be disqualified from voting upon any matter affecting only himself.
- 2.07 Authorization to Act for Trustees. The Trustees may, by appropriate actions, authorize any one of its members to take any action on behalf of the Board, and any separate Trustee, and others dealing with the Board may accept and rely upon such actions unless notified in writing that authorization has been revoked by the Board.
- 2.08 Powers and Responsibilities of Trustees. In addition to the specific provisions of this Trust Agreement, the Trustees shall have the following general powers and responsibilities:
- (A) to adopt and construe the Plan, to determine all questions arising thereunder, including, particularly, questions submitted by an Investment Advisor or Custodian on all matters necessary for proper discharge of its duties, powers and obligations. The decision of the Board made in good faith upon matters within the scope of its authority shall be final;
 - (B) at all times to act uniformly and without discrimination and from time to time to set forth rules of interpretation and administration, subject to modification as appropriate in the light of experience;
 - (C) to have the sole authority to enforce the Plan and act regarding it on behalf of all Participants, and any other persons claiming an interest in the assets of the Plan;
 - (D) to make available to the Participants for inspection such reports for such periods as may be required by law;
 - (E) to furnish to any Investment Advisor or Custodian such records, information, and reports as may be necessary in order for such person to discharge its responsibility hereunder;
 - (F) from time to time to furnish Participants with statements of their interest in the Plan and to make such other reports as may be required by law;
 - (G) to employ agents to carry out the business and other matters of the Plan, including hiring actuarial and accounting services and employing legal counsel, and to pay reasonable compensation and expenses for such services;

- (H) to elect from its members a Chairman, who shall be the Plan's agent for the service of process, unless the Board expressly designates another agent for service of process;
- (I) to prepare and file with the Internal Revenue Service, and any other appropriate governmental agency such returns, forms and information as may be required;
- (J) to prepare and file any disclosures or reports required by federal or state law;
- (K) to keep on file minutes of its meetings, a copy of this Trust Agreement, including any subsequent amendments, and all annual reports for examination during reasonable hours by Participants in the Plan;
- (L) to the extent not otherwise prohibited by law, to instruct any Investment Advisor or Custodian as to the investment or Trust assets;
- (M) to preserve and keep safe, all assets of the Trust;
- (N) to prepare and file any accounting or report required by any court or governmental agency;
- (O) except as otherwise required by law, and as limited by its investment policy guidelines, to invest and reinvest in property of any character, real or personal, foreign or domestic, including, but without limitation on the generality of the foregoing, stocks, including shares of open-end investment companies (mutual funds), bonds, notes, mortgages, real estate, debentures, face amount certificates, endowment, annuity, life insurance, immediate participation guarantee and deposit administration annuity contracts (including securities, annuities and insurance contracts distributed by a Custodian or Investment Advisor and its affiliated companies if so qualified, and pooled separate accounts of an insurance company maintained for qualified plans);
- (P) to retain in cash or other property unproductive of income, without liability for interest, so much of the trust assets as may be determined to be necessary and proper; to deposit cash in any bank and select any bank as custodian; and to cause securities or other property to be held in its own name, or in the name of its nominee, with or without a disclosure of the Trust;
- (Q) to manage, control, sell, convey and exchange; compromise, arbitrate or otherwise adjust claims in favor of or against the Trust; institute, compromise and defend actions and proceedings; and take any other action necessary or desirable in connection with the administration of the Trust;

- (R) to vote any stocks, bonds or other securities of any corporation or other issuer at any time held in trust; otherwise consent to any action on the part of any such corporation or other issuer; give general or special proxies or powers of attorney, with or without power of substitution; participate in any reorganization, recapitalization, consolidation, merger or similar transaction with respect to such securities, and to deposit such stocks or other securities in any voting trust, or with any creditors committee; to exercise any subscription rights and conversion privileges; and generally exercise any of the powers of any owner with respect to the stock or other securities or properties comprising the Trust;
 - (S) generally to do all such acts, execute all such instruments, take all such proceedings, and exercise all such rights and privileges with relation to property constituting the trust fund as if the Trustees were the absolute owners thereof.
- 2.09 Ownership of Assets. The ownership of all assets, including shares of stock and any endowment, annuity and life insurance contracts, shall be in the name of the Board of Trustees unless the Trustees expressly direct that they shall be in the name of any Custodian or Investment Advisor. The Investment Advisor, if so directed, will transmit all notices and proxy material in connection with securities held in Trust to the Trustees. The indicia of ownership of all assets held under this Trust shall be retained within the United States.
- 2.10 Authorization to Sign. The Chairman and Secretary and any designated Trustees shall have the authority to execute documents except amendments to the Trust and Plan on behalf of all the Trustees, and any person dealing with said Trustee shall accept and rely upon such documents.
- 2.11 Year-End Report. Following the end of the Plan's fiscal year, the Authority shall certify to the Trustees the amount of Employer contributions for the preceding fiscal year. Within sixty (60) days of the end of the fiscal year, the Custodian and any Investment Advisor shall render to the Trustees an account of its administration of the Trust for the preceding year.
- 2.12 Investment Advisor or Manager. Any investment advisor or Manager appointed by the Board shall be and act as a fiduciary under Section 401 of the Internal Revenue Code for purposes of the Plan. The Investment advisor's or manager's fiduciary or other responsibilities are to be governed by this Trust Agreement, by any applicable federal and state laws, and any express delegation approved by the Trustees and accepted by the Investment Advisor.
- 2.13 Trust Fund Investment. The Trustee may, from time to time, transfer to a common, collective or pooled trust, all or such part of the assets of the Trust Fund as the Trustees may deem advisable and such part or all of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective or pool trust, which contemplates the commingling, for investment purposes of such Trust Fund assets with trust assets of other trust funds. The Trustees may, from time to time, withdraw from such common, collective or pooled trust as the Trustees may deem advisable.

2.14 Valuation of Assets. The Trustees shall cause the certification to the Trustees of the valuation of the Trust's assets as of the preceding fiscal year-end. Within one hundred twenty (120) days following the close of each Plan Year, the Board shall cause the assets of the Trust to be valued as of the end of such Plan Year. The Board may also cause the assets of the Trust to be valued at such other times as it deems necessary or appropriate.

2.15 Enrolled Actuary. The Trustees shall appoint an Enrolled Actuary to perform the duties of the Enrolled Actuary herein specified and such other duties in connection with the administration of the Plan as may be conferred upon him by the Trustees and are not contrary to the provisions of this Plan. All determinations of equivalent values permitted or required to be made under the Plan or otherwise shall be made only in accordance with the advice of the Enrolled Actuary and the rules, regulations and tables relating thereto shall be applied in a uniform manner and shall become effective only with the Trustees' approval.

The Trustees shall have the right at any time to remove the Enrolled Actuary then acting, and to appoint a successor or successors.

2.16 Disputes of Trustees. In the event of a deadlock of the Trustees, including the failure because of a dispute to obtain a quorum at two (2) successive meetings of the Trustees (after written notice of said meetings) any Trustee may submit the dispute to final and binding arbitration under the rules and regulations of the American Arbitration Association. Any dispute among the Trustees or between the Trustees and the plaintiffs covered under the Stipulation of Settlement, including any dispute over the terms or benefits to be included in this Trust Agreement, shall be submitted to final and binding arbitration under the rules and regulations of the American Arbitration Association. The decision of the arbitrator in any such dispute shall be final and binding upon all parties, the Trustees, the Authority and the Union. The arbitrator shall not have the authority to alter or amend the terms of the Stipulation of Settlement or the terms of any Collective Bargaining Agreement, but shall have the authority to interpret this Trust Agreement and the obligations set forth herein and under the Stipulation of Settlement in such a manner as to carry out the intent of this Plan to benefit Participants and their Beneficiaries.

ARTICLE III**COLLECTION OF CONTRIBUTIONS**

- 3.01 Employer Contributions. Employer contributions and deductions of Employee contributions ("Contributions") shall be made in accordance with the terms of the Collective Bargaining Agreement, or any applicable Participation Agreement and as provided herein to carry out the terms of the Stipulation of Settlement. All Contributions shall be paid to the Board of Trustees within ten (10) business days of the date of paychecks for which Employees have worked in covered employment. Any Contribution not received by the Board or its designated Custodian on the date on which it is due shall be considered a delinquent contribution. The Employer shall be obligated to pay interest at the rate of one percent (1%) per month from the date on which Contributions were due and any costs of collection incurred by or on behalf of Trustees, including reasonable auditor's and attorney's fees.

Reports of Employees' wages and hours shall be delivered at least quarterly to the Trustees or to any person designated by the Trustees, and such reports shall be made in the form prescribed by the Trustees.

- 3.02 Funding of Benefits and Administrative Costs Under Stipulation of Settlement. The Authority shall assume all obligations of Transit Management of Florida to fund all past service credits to which Participants are entitled as a result of the Stipulation of Settlement. Employer Contributions to fund such benefits shall be determined separately and shall be in addition to those required by any Collective Bargaining Agreement. Such Employer Contributions shall include payments to the Trustees for any administrative expense in carrying out the Stipulation of Settlement, including actuarial fees required to determine levels of benefits and funding.

Employer Contributions pursuant to the Stipulation of Settlement shall be sufficient to cover at least the normal costs of the benefits and expenses and to amortize the unfunded liability within at least thirty (30) years of the date of the Stipulation of Settlement or such shorter period as may be required by law.

- 3.03 Payments to Investment Advisor or Custodian. The amount of contributions, if any, to be paid or forwarded to an Investment Advisor or Custodian appointed hereunder shall be determined by the Trustees in accordance with the plan adopted by the Trustees for the funding of benefits, investment of plan assets and payment of plan expenses.
- 3.04 Contributions on Behalf of Disabled Employee. An Employee who is disabled as a result of injury or illness arising in the course of employment shall be entitled to have Employer contributions made to the Plan on his behalf for up to one year for any such injury or illness in the amount provided for in Section 3.01, provided that, the Employee or his Beneficiary on his behalf, makes any Employee Contributions required under Section 3.01. Such Employee Contributions, in

order to be accepted and credited, must be received by the Trustees within one (1) year of the earliest of the following dates in order to be credited:

- (A) the Employee's return to covered employment after the cessation of disability;
- (B) the first anniversary date of the Employee's disability; or
- (C) the death of the Employee.

The Employer contribution attributable to such Employee Contributions shall be paid to the Plan at the same time and in the same amounts as the Contributions made by the Employee. The Compensation rate of any such Employee, for purposes of determining Contributions and for calculating average compensation for any period of such illness or injury, shall be deemed to be equal to the Employee's average gross earnings from covered employment over the twelve (12) months prior to the onset of illness or injury, or the adjusted average over any lesser period if the Employee had not been employed for twelve (12) months prior to illness or injury.

An Employee who is receiving a disability pension under this Plan shall not be entitled to make contributions under this Section.

3.05 Employee Contributions. Effective the first day of the first full payroll period on or after January 1, 1993, or if later, the first day of the full payroll period of the first calendar quarter following receipt of a favorable determination letter from the Internal Revenue Service, the Employer shall pick up the employee contributions. The contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code. The Employer shall pick up the employee contributions from funds established and available from salaries, which funds would have otherwise been designated as employee contributions and paid to the Trust Fund. Employee contributions picked up by the Employer pursuant to this Section shall be treated for purposes of making a return of employees contributions, for vesting of employee contributions, and for all other purposes of this and other laws, in the same manner and to the extent as employee contributions made prior to the effective date of this Section. The intent of this Section is to comply with Section 414(h)(2) of the Internal Revenue Code.

3.06 Additional Employee Contribution.

- (A) Enhanced Benefit Option: Any Participant who elects to do so may make an additional contribution of two and one half percent (2.50%) of wages to the pension plan, for the purpose of purchasing an enhanced retirement benefit in accordance with Section 9.02(A) hereof.
- (B) Additional Enhanced Benefit Option: Any Participant who elects to do so may make an additional contribution of two and one half percent (2.50%)

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of wages to the pension plan (for a total additional contribution of five percent (5%) of wages), for the purpose of purchasing an additional enhanced retirement benefit in accordance with Section 9.02(B) hereof.

- (C) Share Account: Any Participant who elects to do so may contribute an additional three percent (3%) or six percent (6%) of wages for the purpose of establishing a Share Account in accordance with 9.07(B).

Once the additional contribution for the enhanced retirement benefit option is elected, the Participant may not thereafter revoke the election.

3.07 Rollovers from qualified plans

- (A) Rollovers from qualified plans. Subject to any and all applicable Treasury regulations, and solely for the purposes of: (1) making a contribution in order to restore Benefit Credits under Section 6.01(E), or (2) making a contribution to the SHARE PLAN pursuant to Section 9.07(B) upon entry or re-entry into the Plan, a member may rollover to this Fund all or part of his or her interest in another qualified plan, provided that the amount rolled-over to this Fund shall not include any amount arising from post-tax contributions to the plan from which the funds are being rolled-over.

ARTICLE IV

RESPONSIBILITY OF EMPLOYER

- 4.01 Contribution and Service Records. The Employer shall maintain records in which there will be designated (a) the amounts and dates of all contributions and deductions paid, (b) hours of service of each Employee and the basis for determining contributions and deductions, and (c) such other data as the Trustees may determine useful in carrying out their functions hereunder.
- 4.02 Reports to Trustees. The Employer shall furnish to the Trustees such records as are necessary for the Trustees to discharge their responsibilities hereunder.
- 4.03 Information to Participants. The Employer shall keep on file and make available access to the Trust Agreement and such other reports or documents as may be required for examination by Participants during reasonable hours. The Employer will provide all necessary assistance to the Trustees in distributing information to Participants.
- 4.04 Assistance to Trustees. The Employer shall assist the Trustees in carrying out their responsibilities as Trustees by releasing the Trustees from other responsibilities without loss of pay or benefits to attend Trustees' meetings, training, conferences, and to carry out the other duties of Trustees, by providing the Trustees with suitable facilities for meetings and for storage of Plan records and by making equipment and facilities of the Employer available to Trustees or persons employed by Trustees for preparation of Plan documents and reports.

ARTICLE V

EXPENSES OF PLAN AND TRUSTEES

- 5.01 Payment by Plan. Any income taxes, penalties or other taxes of any kind whatsoever that may be levied or assessed upon or in respect of the Trust created hereunder, and any other expenses or fees incurred by or on behalf of the Plan, including compensation to an Investment Advisor or Custodian, accounting, actuarial and attorneys' fees and all administrative expenses incurred by the Trustees in the performance of their duties, except those enumerated in Article IV as payable by Employer, shall constitute a charge upon the assets of the Plan and shall be paid from the assets held hereunder.
- 5.02 Compensation for Services to Trustees. The compensation payable to persons providing services to Trustees shall be such reasonable compensation as may from time to time be agreed upon by the Trustees and service providers and shall be paid by Trustees.
- 5.03 Reimbursement of Expenses of Trustees. The Trustees shall receive reimbursement from the Trust for reasonable expenses properly and actually incurred in the performance of their duties as Trustees.
- 5.04 Compensation of Trustees. To the extent permitted by law, the Trustees may receive reasonable compensation from the Trust for their services as Trustees, including the time spent preparing for and attending Trustees' meeting and attending to the business of the Trust, except that no Trustee shall receive additional payment for attendance at Trustees' meetings or the performance of duties where the Trustee has been compensated by the Employer under the provisions of Article IV or the Stipulation of Settlement, or has been compensated by the Union for such service.
- 5.05 Education of Trustees. Trustees are authorized to use Trust assets to obtain memberships in professional or educational organizations and to pay reasonable expenses of Trustees to attend educational programs and other meetings designed to assist the Trustees in the performance of their duties or the protection of the Trust.

ARTICLE VI

ELIGIBILITY

6.01 Entry Dates and Participation.

- (A) Each Employee shall be eligible to participate in this Plan and shall be a Participant on his Entry Date. The original Entry Date under this Plan is October 1, 1984. The Entry Dates of Employees hired after October 1, 1984 shall be the first day of employment in the bargaining unit, provided that the Employee completes his Probationary Period as defined in the Collective Bargaining Agreement.
- (B) Every Participant shall execute such forms as required by the Trustees.
- (C) A Participant shall become ineligible to participate if he is no longer a member of an eligible class of employees. In the event an employee who is not a member of the eligible class of employees becomes a member of the eligible class, such employee shall participate from his Entry Date.
- (D) Rehired Employee. A previous Participant rehired following severance of employment shall be treated as a new employee, except as otherwise provided herein.
 - (1) *No Break in Service.* If such former Participant's years of vesting service before his termination exceeds the number of consecutive one (1) year breaks in service after such termination, such Participant shall participate immediately and shall retain his Benefit Credit from prior participation, provided, however, that a Participant who has taken a return of contributions shall refund his/her contributions in accordance with Section 6.01(E).
 - (2) *Break in Service.* A Participant who incurs a Break in Service and who is not partially or completely vested (does not have a nonforfeitable right to any portion of his Accrued Benefit derived from Employer contributions) at the time of his termination shall be considered a new Participant if:
 - a. the number of consecutive one (1) year breaks in service equals or exceeds five (5); and
 - b. the number of consecutive one (1) year breaks in service equals or exceeds the aggregate number of years of vesting service.
- (E) If an Employee receives a distribution, refund, or a benefit under this plan, and the Employee thereafter resumes employment covered under the plan, he or she shall have the right to restore his or her Benefit Credit, to

the extent forfeited, upon repayment to the Plan of the full amount of the distribution, refund, or benefit, plus interest, compounded annually from the date of distribution at the rate of five percent (5%). Such repayment must be made by the Employee not later than the end of the seven (7) year period beginning with the date of return to covered employment, or, if earlier, the date that his or her pension would commence. Unless the Participant repays the amount of such distribution, together with five percent (5%) interest compounded annually from the date of distribution, service performed by the Participant with respect to which a distribution or refund has been made shall be disregarded in determining his or her right to an accrued benefit derived from Employer contributions.

(F) The Trustees shall determine any question of eligibility.

6.02 Part time Employees' Optional Participation.

All part time employees who do not want to participate in the Plan may opt out of participation. Part time employees shall have until the end of their probationary period (one hundred and twenty (120) days) to opt out of the Plan. Part time employees who decide to opt out shall notify the Trustees of their desire not to participate in the Plan. Thereafter, there shall be no withholding from the part time employee's salary for pension contributions and there shall be no employer contributions made on his/her behalf. If a part time employee changes to full time status, participation in the Plan shall be mandatory.

Participants who were part time employees as of April 1, 1991 who did not opt out as of June 30, 1991 shall not be permitted any further opportunity to opt out of the Plan. Part time employees who opted out as of June 30, 1991, but who were vested in the Plan shall be entitled to a retirement benefit at retirement age.

ARTICLE VII

VESTING AND FORFEITURE

7.01 Vesting and Forfeitures.

(A) A Participant's accrued benefit resulting from Employer contributions shall be vested in accordance with the following schedule:

up to five (5) years of employment:	not vested
more than five (5) but fewer than six (6) years of employment:	fifty percent (50%) vested
more than six (6) but fewer than seven (7) years of employment:___	sixty percent (60%) vested
more than seven (7) but fewer than eight (8) years of employment:	seventy percent (70%) vested
more than eight (8) but fewer than nine (9) years of employment:	eighty percent (80%) vested
more than nine (9) but fewer than ten(10) years of employment:	ninety percent (90%) vested
ten (10) or more years:	one hundred percent (100%) vested

(B) A Participant shall be vested in his or her own contributions and shall be entitled to a refund of such contributions, along with five percent (5%) interest compounded annually, in the event the Participant terminates employment without being vested in Employer contributions.

(C) If a Participant is partially vested in Employer contributions, then he or she shall have the option to select a refund of his or her contributions as provided in Section 9.06, or to receive a deferred pension benefit.

(D) If the employment of a non-vested Participant is terminated otherwise than by death, his entire interest in the accrued benefits resulting from Employer contributions shall become forfeitable; and he shall not be entitled to any payment or benefit of any kind with respect to such contributions.

7.02 Vesting Service. Vesting service means an Employee's period of employment with the Employer, whether before or after adoption of the Plan, determined in accordance with reasonable and uniform standards and policies adopted by the Trustees, which standards and policies shall be consistently observed. A year of vesting service means a Plan year during which an Employee has not less than one thousand (1,000) hours of service. A Plan year in which a Participant has

fewer than one thousand (1,000) hours of service shall not be counted as a year of vesting service.

Employees who leave this Plan after April 23, 2002 and subsequently re-enter this Plan after service as non-bargaining unit employees but who did not participate in this Plan as non-bargaining unit employees, shall be credited for vesting purposes only with their years of service in non-bargaining unit positions.

(A) *Credit During Military Leave.* Time spent on a military leave of absence required by law or granted by the Employer on account of service with the armed forces of the United States, or with such allies as the Employer may determine, which the employee entered from full time employment with the Employer during a period of national emergency or on account of compulsory service, shall count as vesting and benefit credit if the employee returned or returns therefrom to work with the Employer within the period prescribed by law to retain employment rights, or in the absence of any applicable law, within ninety (90) days.

(B) *Credit During Other Leave.* Time spent on a leave of absence (other than a military leave of absence) granted by the Employer in writing with or without pay, or on a temporary lay-off shall not be deemed to be a break in service, but no vesting or Benefit Credit shall be granted for such leave, except as otherwise specified for maternity/paternity leave and disability leave. If an employee has been granted a leave of absence or has been temporarily laid-off and does not return to work by the first working day after the expiration of the leave of absence or does not return to work after receiving notice to do so for any reason, such employee shall be deemed to have terminated his employment as of the expiration of leave of absence or the date of notice to return to work. Leaves of absence shall be granted by the Employer only in accordance with laws governing such leaves and with uniform rules adopted by the Employer requiring Employees in like circumstances to be treated in the same manner.

(C) *Break in Service* - A Break in Service is defined as a Plan year during which a Participant does not complete five hundred (500) hours of service in covered employment.

(1) *Vested Employee.* A former Participant who had a nonforfeitable right to all or a portion of his accrued benefit derived from Employer contributions at the time of his termination shall receive credit for all years of vesting service and Units of Benefit Credit prior to his break in service upon returning to Employment; and

(2) *Non-vested Employee.* A former Participant who did not have a nonforfeitable right to any portion of his accrued benefit derived from Employer contributions at the time of his termination shall receive credit for all years of vesting service and Units of Benefit Credit earned prior to his Break in Service if (1) he returns to covered employment; and (2) the number of consecutive one (1) year breaks in service is fewer than five (5) or the aggregate number of years of vesting service before such break is more than five (5).

Hours of service shall be credited in accordance with Section 1.24, except that additional hours of service may be credited to Participants for vesting purposes in accordance with rules adopted by the Trustees from time to time to conform to applicable law.

7.03 Vesting Service for Employment Prior to Entry Date and After Change of Employment.

In determining a Participant's vested interest in the Plan, service with Employer during any period for which Employer did not maintain this Plan or a predecessor plan shall be considered for vesting service.

7.04 Forfeiture. Any forfeitures under this Plan shall be applied to reduce unfunded past service liability, if any, or to increase benefits, as determined by the Trustees.

7.05 If the Employer makes a contribution to this Plan because of mistake in fact, it may be returned to such Employer if written request is made by the Employer within one year from the date of the making of such contribution by the Employer.

ARTICLE VIII

BENEFIT CREDIT ACCRUAL

- 8.01 Benefit Credit. A Participant will be credited with Units of Benefit Credit for hours of service worked in a Plan Year as follows:

<u>Hours of Service</u>	<u>Units of Benefit Credit</u>
2500 or more	1.3
2300 - 2499	1.2
2100 - 2299	1.1
1900 - 2099	1.0
1700 - 1899	0.9
1500 - 1699	0.8
1300 - 1499	0.7
1100 - 1299	0.6
900 - 1099	0.5
700 - 899	0.4
500 - 699	0.3
Below 500	0.0

Units of Benefit Credit shall be accumulated by a Participant as a result of covered employment only for the period from and after October 1, 1978. Hours of Service shall be credited in accordance with Section 1.24.

Former Participants who return to employment but did not have a nonforfeitable right to any portion of their Benefit Credits derived from Employer contributions at the time of termination shall receive credit for all Units of Benefit Credit earned prior to their break in service in accordance with Section 6.01 (Entry Dates and Participation).

8.02 Family Leave

- (A) Family and Medical Leave Act Leave. Any employee who is absent from work due to taking leave under the Family and Medical Leave Act, 29 U.S.C. §2601-2654, shall not lose any benefit accrued prior to taking such leave because of taking such leave.
- (B) Maternity and Paternity Leave. Solely for purposes of determining whether a break in service for participation and vesting purposes has occurred (as defined in Section 7.02), an individual who is absent from work for maternity or paternity reasons shall receive credit for the hours of service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, eight (8) hours of service per day of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence:

- (1) by reason of pregnancy of the individual,

- (2) by reason of the birth of a child of the individual,
- (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or
- (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

The hours of service credited under this paragraph shall be credited (1) in the computation period in which the absence begins if the crediting is necessary to prevent a break in service in that period, or (2) in all other cases, in the following computation period.

ARTICLE IX

BENEFITS

- 9.01 Normal Retirement Benefit. The normal Retirement Benefit for each Participant hereunder shall be a monthly pension payable on an Employee's Normal Retirement Date in an amount equal to two and thirteen one-hundredths percent (2.13%) of the Participant's average compensation multiplied by the number of units of the Participant's Benefit Credit.

Normal Retirement Date shall mean the first of the calendar month coincident with or next following the Participant's sixty-second (62nd) birthday.

- 9.02 Enhanced Retirement Benefit.

- (A) Any Participant who elects to make an additional voluntary contribution of two and one-half (2.5%) percent of wages in accordance with Section 3.06(A) shall be entitled to an enhanced retirement benefit which shall consist of an additional .25% (one-quarter of one percent) of the Participant's average compensation multiplied by the number of units of the Participant's Benefit Credit which are earned after the date of the election.
- (B) Any Participant who elects to make an additional voluntary contribution of five percent (5%) of wages in accordance with Section 3.06(B) shall be entitled to an additional enhanced retirement benefit which shall consist of an additional .50% (one-half of one percent) of the Participant's average compensation multiplied by the number of units of the Participant's Benefit Credit which are earned after the date of the election.

- 9.03 Early Retirement Benefits.

- (A) *Unreduced early retirement benefit.* A Participant who has reached age fifty-eight (58) and has twenty (20) or more years of service is entitled to an unreduced pension benefit, calculated in accordance with Section 9.01.
- (B) *Reduced early retirement benefit.* A Participant who has reached age fifty-five (55) and is vested in accordance with Article VII (having at least ten (10) years of vesting credit), shall be entitled to a reduced early retirement benefit on or after age fifty-five (55). The amount of such early retirement benefit shall be determined as follows:
 - (1) for Participants with twenty (20) or more years of service who have not reached age fifty-eight (58): the retirement benefit shall be reduced by five-ninths of one percent (5/9%) for each month for the first three (3) years by which the early retirement date precedes age fifty-eight (58) (the unreduced early retirement date);

- (2) for Participants with fewer than twenty (20) years of service: the retirement benefit shall be reduced by five-ninths of one percent (5/9%) for each month (up to a maximum of sixty months) by which the early retirement date precedes age sixty-two (62) (normal retirement date), and by five-eighteenhs of one percent (5/18%) for each additional month before age sixty-two (62) (normal retirement date).

Early Retirement Date shall mean the first day of the calendar month coincident with or next following the date that Employee meets the requirements of a Reduced Early Retirement Benefit as defined above.

- 9.04 Late Retirement Benefits. Late retirement after normal retirement date shall be permitted. On late retirement a Participant shall be entitled to a pension payable monthly, the first payment to be made as of the first day of the month coincident with or next following the date of such late retirement. The monthly amount of such pension shall be determined in accordance with Section 9.01.
- 9.05 Termination of Employment. Upon termination of employment (except by death) for which other benefits are not provided herein, a Participant's vested interest in his accrued benefit shall be distributed to him in the normal form of benefit under the Plan commencing as indicated:
 - (A) A Participant who has a vested interest herein and is not at the time of his application for benefits eligible for, or receiving a pension under another provision of the Plan based in whole or in part on his service at the time of his termination of employment, shall be entitled to receive a pension payable on the first day of each month commencing on the first day of the month following his normal retirement date if he is living on the date payments are to commence.
 - (B) If a Participant separated from service before satisfying the age requirement for early retirement, but has satisfied the service requirement, the Participant will be entitled to elect an early retirement benefit upon satisfaction of such age requirement.

If the actuarial equivalent of said amounts on the date of termination is one-thousand dollars (\$1,000) or less, distribution may be made in a lump sum immediately following such termination of employment.

- 9.06 Return of Employee Contributions. Participants shall be entitled to the return of their employee contributions as follows:
 - (A) Employee contributions shall be returned with interest at the rate of five percent (5%) compounded annually if an employee does not qualify for a pension. When an active Participant who is not vested dies, his or her

contributions shall be returned to their beneficiary or their estate, whichever is applicable, in the form of a lump sum payment.

- (B) If a Participant dies after becoming vested, but prior to retirement, a pre-retirement survivor benefit will be paid to a surviving spouse, surviving minor child or children, or other surviving beneficiary, calculated in accordance with Section 12.03. If no surviving spouse, surviving beneficiary, or minor child or children exist, or if such survivor annuity has been waived by the Participant and spouse, or by the legal guardian of a minor child or children, a lump sum payment may be made to the beneficiary or estate of the Participant, of the amount (if any) that is in excess of accumulated Employee contributions at retirement over the pension payments actually made.
- (C) If a Participant dies after retirement with a ten year certain benefit, but no surviving spouse, no minor child or children, and no other designated beneficiary, or where the surviving spouse or other beneficiary has waived the joint and survivor benefit form, a lump sum payment will be made to the Participant's estate of the amount (if any) that is in excess of accumulated Employee contributions at retirement over the pension payments actually made.
- (D) If a joint and survivor pension applies, then on the death of the last survivor, a lump sum payment shall be made to the estate of the last survivor, of the excess, if any, of accumulated Employee contributions at retirement over pension payments made to both Participant and beneficiary.

9.07 Deferred Retirement Option Plan ("DROP") and Share Accounts.

(A) DROP

(1) Eligibility to Participate in the DROP

- a. Any Participant who is eligible to receive a retirement pension, whether early or normal, and who has either (1) reached age fifty-eight (58) and has twenty (20) or more years of service or (2) has reached age sixty-two (62), with a minimum of ten (10) years of service, or (3) reaches age fifty-five (55) with twenty-five (25) or more years of service, may participate in the DROP. Participants shall elect to participate by applying to the Board of Trustees on a form provided for that purpose.
- b. Election to participate shall be forfeited if not exercised within ten (10) years after the earliest retirement date. However, participation during the first year of enactment will

be extended to those Participants within eleven (11) years of their earliest retirement date.

- c. Participants shall not participate in the DROP beyond the time of attaining ten (10) years beyond their earliest early retirement date. The total years of participation in the DROP shall not exceed five (5) years.
- d. Upon a Participant's election to participate in the DROP, he or she shall cease to be a Participant and shall no longer accrue any benefits under the Pension Fund. For all Fund purposes, the Participant becomes a Retirant. The amount of credited service and final average salary freeze as of the date of entry into the DROP. The DROP Participant shall no longer contribute any portion of his/her salary to the pension plan, nor shall the employer make any contributions to the pension plan on behalf of the Participant after the Participant enters the DROP.

(2) Amounts Payable upon Election to Participate in DROP

- a. Monthly retirement benefits that would have been payable had the Participant terminated employment with the Employer and elected to receive monthly pension payments will be paid into the DROP and credited to the Retirant. Payments into the DROP will be made monthly over the period the Retirant participates in the DROP, up to a maximum of sixty (60) months.
- b. Payments to the DROP shall earn or lose interest according to one of the following options chosen by the DROP Participant:
 - (i) Fund Rate Option - The Participant's DROP account is credited or debited with same percentage as the net investment return earned (or lost) by the Fund as a whole.
 - (ii) Money Market Option - The Participant's DROP account is credited with the net investment yield received by the Fund from a money market mutual fund or bank or trust company short term investment fund ("STIF") chosen by the Board based upon the recommendation of the Consultant.

Each DROP participant shall select one of the options upon enrolling in the DROP and may change the election quarterly by giving notice to the Plan's administrator at least 15 days before the beginning of any calendar quarter (i.e., notice must be given by March 15th, June 15th, September 15th and December 15th for change to take effect the first of the following quarter.) The initial election and any changes must apply to the Participant's entire DROP account; DROP accounts cannot be split between the two options. Any expenses or fees charged to the Fund due to changes made by the DROP participant shall be paid by the DROP participant making the change.

In addition, costs, fees, and other expenses of administration of the Fund shall be debited from all individual DROP accounts on a proportionate basis taking the cost, fees and expenses of administration of the Fund as a whole, multiplied by a fraction, the numerator of which is the total assets in all individual DROP accounts and the denominator of which is the total assets of the Fund.

- c. If an employee does not terminate employment at the end of participation in the DROP, interest credits shall cease on the current balance and on all future DROP deposits.
- d. No payments will be made from DROP until the employee terminates employment with the Employer. Upon termination of employment, Participants in the DROP will receive the balance of the DROP account in accordance with the following rules:
 - 1. Participants may elect to begin to receive payment upon termination of employment or defer payment of DROP until the latest day under (3) below.
 - 2. Payments shall be made in either:
 - i. Lump sum - the entire account balance will be paid to the Retirant upon approval of the Board of Trustees.
 - ii. Installments - the account balance will be paid out to the Retirant in three (3) equal payments paid over three (3) years, the first payment to be made upon approval of the Board of Trustees.

3. Any form of payment selected by a Participant must comply with the minimum distribution requirements of IRC 401(A)(9), and are subject to the requirements of the pension plan (payments must commence either at retirement, or by age seventy and one half (70½), whichever occurs later).
 4. The beneficiary of the DROP Participant who dies before payments from "DROP" begin shall have the same rights as the Participant in accordance with this plan document.
- (3) Participation by non- bargaining unit employees. A bargaining unit employee who becomes a non-bargaining unit employee within the Authority, and who has elected to participate in the DROP while still a bargaining unit employee, may continue to participate in the DROP after leaving employment in the bargaining unit in accordance with the rules established by the Board of Trustees. This Participant shall have the option to continue employment as a non-bargaining unit employee after completion of up to sixty (60) months in the DROP.
- (B) Share Account. Effective October 1, 2001, a separate individual member account shall be established and maintained in each member's name. Non-bargaining unit employees who did not participate in this Plan but who enter or re-enter this Plan after April 23, 2002, may, effective October 1, 2002 roll over into the Share Account of this Plan, monies that are credited to their individual accounts in the plan they are leaving.
- (1) Funding. The share account shall be funded by an additional contribution of three percent (3%) or six percent (6%) of the member's annual salary per year to the individual member account. The option to participate in the Share Account shall be made no later than September 30 of each fiscal year.
- (2) Annual Allocation of Accounts.
- a. At the end of each fiscal year (September 30), each individual member account shall be adjusted to reflect the earnings or losses resulting from investment, as well as reflecting the costs, fees and expenses of administration.
 - b. The investment earnings or losses credited to the individual member accounts shall be in the same percentage as are earned (or lost) by the total investment earnings (or losses) of the fund as a whole.

- c. Costs, fees, and expenses of administration shall be debited from the individual member accounts on a proportionate basis, taking the cost, fees and expenses of administration of the fund as a whole, multiplied by a fraction, the numerator of which is the total assets in all individual member accounts and the denominator of which is the total assets of the fund as a whole. Each member's individual account shall be debited for a proportionate share of the costs, fees and expenses.
 - d. If the entire balance of the individual member account is withdrawn before September 30 of any year, there will be no adjustment made to that individual member account to reflect either investment earnings (or losses) or costs, fees, and expenses of administration.
- (3) Eligibility for Share Account benefit. Any member who terminates employment with the Employer, upon application filed with the Board of Trustees, shall be entitled to be paid one hundred percent (100%) of the value of his or her individual member account, provided the member is eligible to receive a pension as provided in this Article VIII.
- (4) Return of contributions. Any member who terminates employment with the Employer prior to vesting, and who chooses a return of his or her contributions shall receive the return of his or her individual member account, with interest as provided for return of employee contributions.
- (5) Form of benefit. The normal form of benefit payment from the individual member account shall be a lump sum payment of the entire balance of the member's individual member account; or upon the written election of the member, upon a form provided by the board, payment shall be made over three (3) years in annual installments.
- (6) Death of a member. If a member dies and is eligible for benefits from the individual member account, the entire balance of the individual member account shall be paid in a lump sum to the beneficiaries designated in accordance with this pension plan. If a member fails to designate a beneficiary, or if the beneficiary predeceases the member, the entire balance will be paid in a lump sum, in the following order, to the:
- a. Member's surviving spouse; or
 - b. If no spouse is alive, to the member's surviving children, on a pro rata basis; or

- c. If no children are alive, to the member's parents on a pro rata basis; or
- d. If none of the above are alive, to the estate of the Participant.

ARTICLE X

FORMS OF RETIREMENT BENEFIT PAYMENTS AND COMMENCEMENT OF PAYMENTS

10.01 Forms of Retirement Benefits. The automatic form of retirement benefit for an unmarried Participant is the ten year certain and life annuity, payable during the lifetime of the Participant only. The automatic form of retirement benefit for a married Participant is a joint and survivor annuity, unless she or he elects otherwise. If a married Participant elects a benefit other than a joint and survivor annuity or other contingent annuitant option, the spouse must sign a notarized waiver of rights to the contingent option. The consent shall acknowledge the effect of such waiver of rights and must be witnessed by a notary public.

- (A) Ten year certain and life benefit. The ten year certain and life benefit is the automatic form of benefit for an unmarried Participant who has not selected a joint and survivor option. The ten year certain and life benefit provides a monthly benefit payment for the lifetime of the Participant only, except that if he or she dies after retirement but before receiving benefits for a period of ten years, the same monthly benefit will be paid to the beneficiary (or beneficiaries) designated by the Participant for the balance of the ten year period, or, if no beneficiary is designated, to the surviving spouse, descendants, heirs at law, or estate of the Participant.
- (B) Contingent annuitant option. A Participant may elect to receive an actuarially reduced monthly retirement benefit with a continuation upon his or her death after retirement of the monthly benefit to the person named as Contingent Annuitant (beneficiary) in the amount selected by the Participant. The Contingent Annuitant Option may not be elected by a Participant if it would result in a monthly benefit of less than twenty dollars (\$20) to the Pensioner or his beneficiary.

The Participant's monthly benefit shall be a percentage of the full monthly amount he/she would otherwise receive as a single life pension (after adjustment, if any, for early retirement) as selected by the Participant. The Contingent Annuitant options available are:

- (1) Fifty percent (50%) Contingent Annuitant - The Participant shall receive an actuarially reduced monthly benefit, and the Contingent Annuitant (Beneficiary) shall receive fifty percent (50%) of that monthly benefit following the death of the Participant.
- (2) Seventy-five percent (75%) Contingent Annuitant - The Participant shall receive an actuarially reduced monthly benefit, and the Contingent Annuitant (Beneficiary) shall receive seventy-five percent (75%) of that monthly benefit following the death of the Participant.
- (3) One hundred percent (100%) Contingent Annuitant - The Participant shall receive an actuarially reduced monthly benefit, and

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the Contingent Annuitant (Beneficiary) shall receive one hundred percent (100%) of that benefit following the death of the Participant.

- (4) Pop-up Option - If the Participant elects one of the Contingent Annuitant options listed above, he or she may elect also to have his or her monthly benefit return to the original straight life annuity amount he or she would have had, without the contingent annuitant option, if the Contingent Annuitant (Beneficiary) dies before the Participant. The monthly benefit to the Participant may be actuarially reduced under this option. If the Pop-up Option is selected, the benefit will be increased to the original life annuity amount after the death of the beneficiary for the life of the Participant subject to the following conditions:
- a. The election of the Pop-up Option must be made in writing on a form prescribed by the Trustees and filed with the Trustees.
 - b. Any election or revocation may not be made or altered after payment of the pension has commenced.
 - c. If the beneficiary dies before the Participant begins to receive his pension, the election will be void and the Participant will be treated as if no election were made.

Unless the pop-up option has been selected, the contingent annuitant option selected shall remain in effect if the beneficiary dies after the Participant has retired, and the Participant shall continue to receive the reduced benefit as calculated under the contingent annuitant option initially selected.

- (C) Change of option after cashing or depositing first check – No member may make any change in his or her retirement benefit option after the date of cashing or depositing the first retirement check.

10.02 Commencement Date for Pension Benefits. Subject to the limitations set forth in Article XV hereof, pension payments shall commence at the earlier of the following times:

- (A) As soon as administratively feasible after the date specified by the applicable Plan provision for the commencement of pension payments following retirement and after the receipt of an application for benefits providing the Trustees with the information needed to determine the Participant's eligibility, provided, however, that a disability pension will be effective on the earlier of the day it is approved by the Trustees, or the first day of the month following submission to the Trustees or their administrator of a complete application with information needed to determine the Participant's eligibility; the determination of the date on which an application is complete as defined in this Section shall be within the discretion of the trustees;

- (B) The sixtieth (60th) day after the close of the Plan year in which the Participant's normal retirement date occurs or in which the Participant has a termination of Employment, whichever is later; provided, however, that if the amount of the payment to be made cannot be determined by the latest of said dates, a payment retroactive to such date may be made no later than sixty (60) days after the earliest date on which the amount of such payment can be ascertained.

10.03 Duplication of Benefits In no event shall there be a duplication of benefits for a Participant under this Plan.

10.04 Incapacity of Payee Whenever, in the Trustee's opinion, a person who is entitled to receive any payment of a benefit or installment thereof hereunder is under a legal disability or is incapacitated in any way so as to be unable to manage his financial affairs, the Trustees may make payments to such person or to his legal representative or to a relative or friend of such person for his benefit, or the Trustees may apply the payment for the benefit of such person in such manner as the Trustees consider advisable subject to modes of distribution provided for in the Plan. Any payment of a benefit or installment thereof in accordance with the provisions of this Section shall be a complete discharge of any liability for the making of such payment under the provisions of the Plan.

10.05 Unlocated Payee. At the close of each Plan year, the Trustees shall notify each person entitled to a distribution hereunder who is not receiving such distribution, that he is so entitled. Notice shall be sent by registered or certified mail, return receipt requested, and be directed to such person's last known address.

If:

- (A) for three (3) consecutive Plan years each such notification is returned as undeliverable because the addressee cannot be located at his stated address; and
- (B) by the end of the Plan year coinciding with or immediately following the third anniversary of the first mailing of such notice, said person has not informed the Employer or the Trustees of his whereabouts; and
- (C) the Employer and the Trustees jointly certify that they have no knowledge of his whereabouts;

then the benefits to which such person was entitled shall be forfeited and such person shall have no further right or interest therein; provided that if the Participant or, in the event of Participant's death, Participant's beneficiary make a claim for the Participant's benefit which was forfeited under this Section, such benefit shall be reinstated.

10.06 Lump Sum Distribution. The Trustees, in their sole discretion, may provide for payment in one lump sum, on an Actuarial Equivalent basis, of benefits which would otherwise be payable in small amounts monthly for life or a period of years; provided, however, that the present value of such benefits (including

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Employee contributions) may not result in a payment of a lump sum which will exceed five-thousand dollars (\$5,000).

For purposes of this Section 10.06, present value shall be calculated using interest rate and mortality table as provided in Section 1.02 (Actuarial Equivalent).

ARTICLE XI

DISABILITY BENEFITS

11.01 Disability Pension.

- (A) Service Required A Participant who becomes disabled on or after January 1, 1985, who has accrued ten (10) or more Units of Benefit Credit shall be eligible to receive a monthly disability pension benefit.
- (B) Computation. The monthly disability pension shall be computed in the same manner as provided in Section 9.01 for a normal retirement benefit.
- (C) Definition of Disability A Participant shall be regarded as being disabled when he is unable to engage in any substantial, gainful employment with the Employer by reason of any medically determinable physical or mental impairment which can be expected to continue for at least ninety (90) days or to result in death or to be of indefinite duration. In no event shall a Participant who is entitled to disability benefits under the United States Social Security System fail to meet the requirements of this Section, provided he meets the other requirement of Subsection (D).
- (D) Proof of Disability and its continuance shall be furnished by the Participant to the Trustees. The Trustees may require proof of continued disability from time to time but not more frequently than once every six (6) months. No Participant shall be entitled to receive a disability allowance under the Plan when he declines to permit a physician selected by the Trustees to examine or re-examine him or materially hinders an investigation ordered by the Trustees.
- (E) Discontinuance of Disability. If, at any time, the Trustees find that any retired Participant receiving a disability allowance is no longer disabled as defined above, they shall order the discontinuance of the payments provided for herein.
- (F) Disability Death Benefit If a Participant becomes disabled but dies prior to retirement, and leaves a surviving beneficiary to whom no Survivor benefit is payable, a monthly survivor Disability Pension, reduced in accordance with the terms of this Plan for survivor benefits, shall be paid to the beneficiary where, upon written application by the beneficiary, the Trustees determine that:
 - (1) The Participant was entitled to a Disability Pension prior to the date of his death; and
 - (2) Because of the disability the Participant failed to file a written application for a Disability Pension; and
 - (3) The Participant was disabled for at least ninety (90) days prior to his death.

The amount of survivor benefits payable under this section shall be determined as if the Participant was granted a Disability Pension on the day prior to his or her death.

ARTICLE XII

DEATH BENEFITS

12.01 Death Benefits. The following benefits are payable on the death of a Participant:

(A) Regular retirement death benefits:

- (1) Ten year certain and life benefit. If a retiree who has elected the ten year certain and life benefit dies before receiving benefits for ten years, the same monthly benefit will be paid to the beneficiary (or beneficiaries) designated by the Participant for the balance of the ten year period, or, if no beneficiary is designated, to the surviving spouse, descendants, heirs at law, or estate of the Participant. A lump sum payment will be made to the beneficiary, heirs or estate of the Participant of the excess of accumulated contributions over pension payments, if any remain, after payment of the benefit.
- (2) Contingent annuitant option. If a Participant elected a contingent annuitant (beneficiary) option, then, upon his or her death after retirement, his beneficiary will receive a monthly retirement benefit in the amount selected by the Participant. Under the contingent annuitant option, on the death of the last survivor, a lump sum payment shall be made to the estate of the last survivor, of the excess, if any, of accumulated Employee contributions at retirement over pension payments made to both Participant and beneficiary.

(B) Pre-Retirement Death Benefits - Vested Participant A Participant who dies after having attained vested status and who had not received early or normal retirement benefits prior to his death shall be entitled to have a survivor benefit paid to his beneficiary as follows:

- (1) Early or normal retirement date. If the Participant had reached early or normal retirement date prior to death, the surviving spouse or beneficiary shall receive a survivor benefit as if the Participant had retired on the day before his death with a one hundred percent (100%) contingent annuity.
- (2) Before Earliest Retirement Date. If the Participant dies before his earliest retirement date, the surviving spouse or beneficiary shall receive a survivor benefit as if the Participant had separated from covered employment on the date of death, retired on his earliest early retirement date with a one hundred percent (100%) contingent annuity, and died on the same day.

(C) Optional Forms for Pre-retirement death benefits. The surviving spouse or beneficiary of a vested Participant who dies before his or her earliest retirement date may elect to receive a survivor benefit in any one of the following actuarially equivalent forms:

- (1) a monthly benefit payable when the Participant would have reached retirement age;
- (2) a reduced monthly benefit, payable as of the first day of the month following the date the Participant died;
- (3) a lump sum payment of an amount that is actuarially equivalent to the present value of the annuity, if paid out over the beneficiary's lifetime.

In the case of a married Participant, the spouse shall be the beneficiary, unless prior to death the spouse had signed a valid consent and waiver, in which case the Participant's designated beneficiary shall be entitled to the benefit.

- (D) Pre-Retirement - Disabled Participant If a Participant dies prior to retirement and leaves a surviving beneficiary to whom no Joint or Survivor benefit is payable, a monthly survivor Disability Pension, reduced in accordance with the terms of this Plan for one hundred percent (100%) contingent annuitant benefits, shall be paid to the beneficiary where, upon written application by the beneficiary, the Trustees determine that:

- (1) The Participant was entitled to a Disability Pension prior to the date of his death;
- (2) Because of his disability the Participant failed to file a written application for a Disability Pension;
- (3) The Participant was disabled for at least ninety (90) days prior to his or her death.

The amount of survivor benefits payable under this section shall be determined as if the Participant was granted a Disability Pension on the day prior to his or her death.

- (E) Pre-Retirement Death Benefits - Non-vested Employees. When an active Participant who is not vested dies, his or her contributions shall be returned to their beneficiary or their estate, whichever is applicable, in the form of a lump sum payment.

- (F) Failure to Designate Beneficiary If no beneficiary is designated as to Participant's interest as of the date of death of the Participant, the following shall be deemed to be such Participant's beneficiary:

- (1) Participant's surviving spouse;
- (2) If the Participant has no surviving spouse, the Participant's lawful children or survivors of such children, in equal shares;

- (3) If the Participant has no surviving spouse, lawful children, or survivors of such children, then Participant's estate.

The Trustees shall determine the identity of the beneficiary in each case unless there is a surviving spouse in which case the surviving spouse shall automatically be designated as the beneficiary.

ARTICLE XIII
BENEFICIARIES

13.01 Designation of Beneficiary.

- (A) Each Participant, upon entry in the Plan, shall designate, in writing filed with the Trustees, a beneficiary or beneficiaries. The designation of a beneficiary other than the spouse of a married Participant must be consented to by the spouse, which consent must be provided by the spouse, in writing. The consent shall acknowledge the effect of such beneficiary designation, and must be witnessed by a notary public. The Participant may change the beneficiary designation by filing a written notice of change with the Trustees. However, no married Participant may change his beneficiary without the written consent of his spouse. The spouse's consent must be in writing; must acknowledge the effect of such change of beneficiary; and must be witnessed by a notary public.
- (B) *Insurance Contracts* With respect to a Participant's interest in any endowment, annuity or life insurance contracts, or deposit administration annuity contracts, the beneficiary thereof shall be as designated in accordance with the terms of such contracts. To change such designation, the Participant shall file written notice of change with the Trustees and the Trustees shall direct any insurer or other person to change the designation of beneficiary and to perform all acts as may be necessary to give effect to the instructions of the Participant. However, no married Participant may change his beneficiary without the consent of his spouse. The spouse's consent must be in writing; must acknowledge the effect of such change of beneficiary; and must be witnessed by a notary public.
- (C) *Failure to Designate* If no beneficiary is designated as to a Participant's interest as of the date of death of the Participant, the beneficiary shall be deemed to be the Participant's surviving spouse, and if there is no surviving spouse, then the beneficiary(ies) shall be deemed to be the individual(s) bearing the highest ranking relationship to the Participant, determined in accordance with the order set forth for intestate succession under §§ 732.103 of the Florida Statutes.
- (D) Change of Beneficiary After Retirement.

After payment of retirement benefits has commenced, a retiree may change his or her designation of joint annuitant no more than two times in a lifetime. There is no limit on the number of times that a beneficiary can be changed to receive a refund of contributions or the balance of a 10-year certain benefit that is payable due to a retiree's death. If the retiree desires to change his or her joint annuitant, the retiree shall file with the

Board a notarized notice of such change either by certified letter or on a form as provided by the Board. If the retiree's named beneficiary or joint annuitant at the time of retirement was his or her spouse, then the retiree must either:

- (1) submit proof that the spouse has died; or
- (2) submit a notarized affidavit from the spouse or ex-spouse, on a form to be provided by the Plan, waiving the spouse's or ex-spouse's right to any further beneficiary benefits under the plan.
- (3) submit a certified copy of the court order dissolving the marriage.

Upon receipt of a completed change of joint annuitant form or such other notice, the Board shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit. The retiree requesting the change of beneficiary shall pay any costs associated with obtaining the actuarial information necessary to re-calculate the benefit.

ARTICLE XIV
CLAIMS PROCEDURE

- 14.01 Claims Procedure Within ninety (90) days of receipt of an application for benefits (or notification of the death of a Participant), the Trustees shall notify a Participant or Beneficiary in writing of his eligibility or non-eligibility for benefits under the Plan, except where a Participant is eligible for benefits on account of Disability. In the case of disability claimants, notice of eligibility or non-eligibility shall be given by the Board within ninety (90) days after the later of (1) the receipt of the Board of a written application to the Board by the Participant of his eligibility for a disability benefit, or (2) submission to the Board of competent, substantial evidence of disability.
- 14.02 Denial of Claim If the Board determines that a Participant or Beneficiary is not eligible for benefits, a written notice shall be mailed to the claimant setting forth the specific reasons for such denial. The notice shall be written in a manner calculated to be understood by the Participant or Beneficiary. The notice shall cite specific references to the Plan provisions on which the denial is based, a description of any additional material or information necessary to perfect the claim and why it is necessary, and an explanation of the Plan's claim review procedure.
- 14.03 Review of Denial of Claim
- (A) If a Participant or Beneficiary is determined by the Trustees to be ineligible for benefits, or if the Participant or Beneficiary believes that he is entitled to greater or different benefits than determined by the Trustees, he may have the claim reviewed by the Trustees, by filing a petition for review with the Trustees within ninety (90) days after receipt by him of the notice issued by the Trustees. The petition shall state the specific reasons the Participant or Beneficiary believes he is entitled to benefits, or greater or different benefits. Within ninety (90) days after receipt by the Trustees of the petition, the Trustees shall notify the Participant or Beneficiary of its decision in writing, stating specifically the basis of their decision. The Trustees shall not be required to follow the strict rules of evidence, but their decision shall be based on competent substantial evidence.
 - (B) If the trustees deny the claim after plenary review, the applicant may seek further review by filing a petition for certiorari with the circuit court within thirty (30) days of the notice of denial of the claim for benefits.
- 14.04 Changes in Procedure. The Trustees may revise this claims procedure to any extent deemed necessary to comply with applicable law or to insure proper and clear notification to the Participant or Beneficiary and may delegate the implementation of claims procedures to one Trustee or to an agent of the Trustees.

ARTICLE XV

INTERNAL REVENUE CODE COMPLIANCE

15.01 Internal Revenue Code Compliance.

(A) *Maximum Pension.*

Notwithstanding any provision of this Plan to the contrary, the Annual Pension that is accrued by or paid to a participant shall not exceed the Dollar Limitation set forth below. If the benefit the participant would otherwise accrue in a Limitation Year would produce an Annual Pension in excess of the Dollar Limitation, the benefit shall be limited to a benefit that does not exceed the Dollar Limitation.

(1) *Definitions Used in this Section.*

(a) “Annual Pension” means the benefits received by a participant under this Plan expressed in the form of a straight life annuity. In determining whether benefits payable exceed the Dollar Limitation set forth below, benefits payable in any form other than a straight life annuity shall be adjusted to the larger of:

(i) The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant; or

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption and the applicable mortality table described in §1.417(e)-1(d)(2) for that annuity starting date.

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to §417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this Subsection (a), and the amount payable under the form of benefit in any Limitation

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Year shall not exceed the limits of this Subsection (a) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(b) “Dollar Limitation” means \$160,000 (subject to the annual adjustments provided under Section 415(d) of the IRC). Said amount shall be adjusted based on the age of the participant when benefits begin, as follows:

(i) Except with respect to a participant who is a “Qualified Participant” as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code) beginning before age 62 the Age-Adjusted Dollar Limitation is equal to the lesser of--

(I) the actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a deferred straight life annuity commencing at age 62, where annual payments under the straight life annuity commencing at age 62 are equal to the Dollar Limitation (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5 percent interest rate and the applicable mortality table under §1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant’s age based on completed calendar months as of the annuity starting date); and

(II) the Dollar Limitation (as adjusted pursuant to section 415(d)) multiplied by the ratio of the annual amount of the straight life annuity under the plan to the annual amount of the straight life annuity under the plan commencing at age 62, with both annual amounts determined without applying the rules of section 415.

- (ii) For benefits beginning after the age of 65, the age-adjusted Dollar Limitation is equal to the lesser of:

(I) the actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a straight life annuity commencing at age 65, where annual payments under the straight life annuity commencing at age 65 are equal to the dollar limitation of section 415(b)(1)(A) (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5 percent interest rate and the applicable mortality table under §1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date); and

(II) the section 415(b)(1)(A) Dollar limitation (as adjusted pursuant to section 415(d) and §1.415(d)-1 for the limitation year) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan to the adjusted age 65 straight life annuity. The adjusted immediately commencing straight life annuity means the annual amount of the immediately commencing straight life annuity payable to the participant, computed disregarding the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are applied to offset accruals. For this purpose, the annual amount of the immediately commencing straight life annuity is determined without applying the rules of section 415. The adjusted age 65 straight life annuity means the annual amount of the straight life annuity that would be payable under the plan to a hypothetical participant who is 65 years old and has the same accrued benefit (with no actuarial increases for commencement after age 65) as the participant receiving the distribution (determined disregarding the participant's accruals after age 65 and without applying the rules of section 415).

- (iii) There shall be no age adjustment of the Dollar Limitation with respect to benefits beginning between the ages of 62 and 65.
- (2) The limitations set forth in this Subsection (A) shall not apply if the Annual Pension does not exceed \$10,000 provided the participant has never participated in a Defined Contribution Plan maintained by the City.
- (3) Cost-of-living adjustments in the Dollar Limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Section Subsection 415(d) of the Code.
- (4) Except with respect to survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code, in the case of a participant who has fewer than 10 years of participation in the Plan, the Dollar Limitation set forth in Paragraph (1)(B) of this Subsection (a) shall be multiplied by a fraction - (i) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (ii) the denominator of which is 10.
- (5) Any portion of a participant's benefit that is attributable to mandatory employee contributions (unless picked-up by the City) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.
- (6) Should any participant participate in more than one defined benefit plan maintained by the Employer in any case in which the participant's benefits under all such defined benefit plans (determined as of the same age) would exceed the Dollar Limitation applicable at that age, the accrual of the participant's benefit under this Plan shall be reduced so that the participant's combined benefits will equal the Dollar Limitation.
- (7) For a participant who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without

regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

- (8) The determination of the Annual Pension under Paragraph (A)(1) of this Subsection (A) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.
- (9) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the City shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this Subsection (A) and the provisions of Section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this Subsection (A) shall be used to decrease future employer contributions.

(B) *Required Beginning Date.*

Notwithstanding any other provision of the Plan, payment of a participant's retirement benefits under the Plan shall commence not later than the participant's Required Beginning Date, which is defined as the later of:

- April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of 70½ years; or
- April 1 of the calendar year that next follows the calendar year in which the participant retires.

(C) *Required Minimum Distributions.*

- (1) *Required Beginning Date.* The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's Required Beginning Date as defined in Subsection (B) of this Section 15.01.

(2) Death of participant Before Distributions Begin.

(a) If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.

(ii) If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

(iii) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(b) The participant's entire interest shall be distributed as follows:

(i) participant Survived by Designated Beneficiary. If the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in Subparagraph (2)(a) above, over the life of the designated beneficiary or over a period certain not exceeding:

(l) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or

(II) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(ii) No Designated Beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. In any case in which (i) the participant dies before the date distribution of his or her interest begins, (ii) the participant's surviving spouse is the participant's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, Subparagraphs (2)(a) and 2(b) above shall apply as though the surviving spouse were the participant.

(3) Requirements For Annuity Distributions That Commence During participant's Lifetime.

(a) Joint Life Annuities Where the Beneficiary Is Not the participant's Spouse. If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's Required Beginning Date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity

payments to be made to the designated beneficiary after the expiration of the period certain.

(b) **Period Certain Annuities.** Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this Subparagraph (3)(b), or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

- (4) **Form of Distribution.** Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Subparagraphs (4)(a), (4)(b) and (4)(c) below. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

(a) General Annuity Requirements. If the participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

(i) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(ii) the distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in Paragraphs 2 or 3 above, whichever is applicable, of this Subsection (C);

(iii) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

(iv) payments will either be non-increasing or increase only as follows:

(I) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

(II) to the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;

(III) to provide cash refunds of employee contributions upon the participant's death; or

(IV) to pay increased benefits that result from a Plan amendment.

(b) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the participant's Required Beginning Date (or, if the participant dies

before distributions begin, the date distributions are required to begin under Subparagraph (2)(a)(i) or (2)(a)(ii), whichever is applicable) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's Required Beginning Date.

(C) **Additional Accruals After First Distribution Calendar Year.** Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

- (5) For purposes of this Subsection (C), distributions are considered to begin on the participant's Required Beginning Date. If annuity payments irrevocably commence to the participant (or to the participant's Surviving Spouse) before the participant's Required Beginning Date (or, if to the participant's Surviving Spouse, before the date distributions are required to begin in accordance with Subparagraph (2)(a) above), the date distributions are considered to begin is the date distributions actually commence.

- (6) *Definitions.*

(a) *Designated beneficiary.* The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(b) *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's Required Beginning Date. For distributions beginning after the participant's death, the first

distribution calendar year is the calendar year in which distributions are required to begin pursuant to Paragraph (2) of this Subsection (C).

(c) *Life expectancy.* Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(D) *Rollover Distributions.*

(1) 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 Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) *Definitions*

The following definitions apply to this Section:

(a) 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 10 years or more;

(ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;

(iii) the portion of any distribution that is a hardship distribution described in Section 401(k)(2)(B)(i)(IV) of the Code; and

(iv) 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), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(b) 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, an annuity contract described in Section 403(b) of the Code, a qualified trust described in Section 401 (a) of the Code, an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of Code Section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.

(c) Distributee. A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in Section 401(a)(9)(E) of the Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code shall be considered a distributee.

(d) Direct rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

- (E) Notwithstanding any other provision of this Plan, the maximum amount of any mandatory distribution, as defined in Section 401(a)(31) of the Code, payable under the Plan shall be \$1000.

- (F) Compensation Limitations Under 401(a)(17).

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual compensation of each participant taken into account under the Plan shall not exceed the EGTRRA annual compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is \$200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Any reference in the Plan to the limitation under Section 401 (a)(17) of the Code shall mean the EGTRRA annual compensation limit set forth in this provision.

- (G) At no time prior to the satisfaction of all liabilities under the plan with respect to members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

ARTICLE XVI

AMENDMENT AND TERMINATION

16.01 Amendment. The Trustees shall have the right at any time or from time to time to amend this Plan to any extent and in any manner that they deem advisable. The effective date of any amendment shall be the date specified by the Trustees.

16.02 Limitation of Amendment. No amendment under Section 16.01 shall:

- (A) have the effect of vesting in the Employer any interest in any property held subject to the terms of the Plan;
- (B) cause or permit any property held subject to the terms of the Plan to be diverted to purposes other than the exclusive benefit of the present or future Participants and their beneficiaries; or
- (C) cause a Participant to have a vested interest after the amendment which is less than what he would have had if the amendment had not been made.

No amendment to the vesting schedule shall deprive a Participant of his nonforfeitable rights to accrued benefits as of the date of the amendment. Further, if the vesting schedule of the Plan is amended, each Participant with at least five (5) Years of Service with the Employer shall, at all times, have his vested interest calculated in accordance with either the previous schedule or method of determining vested interest or the new amended schedule or method of determining vested interest, whichever gives him the greater vested interest.

16.03 Termination.

- (A) The Employer and Union have established this Plan with the bona fide intention and expectation that contributions will be made indefinitely under the Plan, but the Employer shall not be under any obligation or liability to continue contributions or to maintain the Plan for any given length of time, except as provided in a Collective Bargaining Agreement between Employer and Union and the Stipulation of Settlement.
- (B) If the Trustees consolidate or replace this Plan with a comparable plan, such action shall not operate to terminate this Plan nor shall this Plan terminate if the Employer no longer operates the bus system if a successor employer continues this Plan as a separate and distinct plan or consolidates or replaces this Plan with a comparable plan.
- (C) This Plan shall terminate on the happening of any of the following events:

- (1) Delivery to the Employer and Union of a notice of termination executed by the Trustees specifying the date as of which the Plan shall terminate.
- (2) Dissolution of the Employer without the creation by law of a successor employer.
- (3) Upon request by the Union for termination of the Plan on account of a cessation of Employer contributions. A cessation of Employer contributions shall be deemed to have occurred when:
 - a. The Employer has notified the Plan or Employees of its intent to cease making contributions under the Collective Bargaining Agreement; and/or
 - b. The obligation of the Employer to contribute to the Plan under the provisions of the Collective Bargaining Agreement has terminated without reasonable expectation of renewal and the Employer has fulfilled all the obligations of the Stipulation of Settlement. The costs of determining and making an equitable allocation of assets in a termination under this subsection (c)(3) shall be paid by the Employer. If the Employer is willing to continue to make contributions to the Plan, but the Trustees terminate the Plan, then such costs shall be paid out of the Plan assets.
- (D) Upon any termination or partial termination of the Plan, after payment of all expenses, the accrued benefits of a Participant or a beneficiary of a deceased Participant, to the extent funded, shall become fully vested and nonforfeitable as of the date of such termination. The Trustees shall then distribute to each Participant, retired Participant, or beneficiary of a Participant affected, any amounts allocated for his benefit in accordance with Section 10.04 in such form as the Trustees shall determine. The Trustees may make payments of such amounts in cash or in assets of the Plan or in the form of immediate or deferred fixed or variable annuities as the Trustees shall in their sole discretion direct, subject to the modes of distribution provided for in the Plan.

16.04 Allocation of Assets. Under termination, the assets of the Plan will be allocated in the following manner in the priority as shown:

- (A) Benefits to Participants who began receiving benefits at least three (3) years before the Plan termination (including those benefits which would have been received for at least three (3) years if the employee had then retired), based on Plan provisions in effect five (5) years prior to termination;
- (B) All other benefits in pay status;

(C) All other vested benefits;

(D) All other benefits.

If assets available for allocation, except for items (C) and (D) above, are insufficient to cover all claims in any priority class, they may be allocated pro rata within that class in accordance with the provisions of applicable state and federal law. There shall be no double allocation of assets resulting from any benefits being included in more than one priority category. Thus, to the extent that a benefit is satisfied in a higher priority category, it is not entitled to allocation in a lower priority category.

In the event there shall be a balance in the Plan (due to differences between actuarial computations and experience during the life of the Plan) after making provision for all benefits specified previously, and after satisfaction of all other liabilities and expenses (both fixed and contingent), if any, with respect to Participants and their beneficiaries under the Plan such balance shall be paid to Participants in the form of additional benefits in the manner prescribed by the Trustees.

If assets available for distribution are insufficient to pay all benefits, liabilities and expenses of the Plan, neither the Employer, the Union, or individual Trustees shall be liable for the payment of any benefits under the Plan. To the extent provided by law all Participants and beneficiaries and anyone claiming through them shall be limited to the assets of the Trust Fund for the satisfaction of any claim. The Employer shall have no additional obligations under the Plan upon the cessation of its obligation to contribute to the Trust Fund. This provision does not apply to any obligation of the Employer to Fund benefits payable under the Stipulation of Settlement.

- 16.05 Merger, Consolidation or Transfer. In the event of the merger or consolidation of this Plan with, or in the event of any transfer of assets and/or liabilities of this Plan to, any other plan or trust, each Participant hereunder shall, if the Plan would then be terminated, be eligible to receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer had this Plan then terminated.

ARTICLE XVII
FIDUCIARY PROVISIONS

- 17.01 Fiduciary and Plan Administrator. The Board of Trustees shall be the Named Fiduciary within the meaning of Section 112.625(8) Florida Statutes. The Trustees shall have the authority to control and manage the operation and administration of this Plan and the Trust created in connection therewith, and shall have the exclusive management and control over the investment of the assets of the Trust. The Trustees shall also have the sole authority to interpret this Plan, and all decisions of the Trustees in that regard shall be final and binding.
- 17.02 More than One Capacity. Any fiduciary or other person may serve the Plan in more than one capacity, and may be a Trustee, or member of the Board, a Participant, an Employee, actuary or a bookkeeper for the Plan, as well as an officer, director or employee of Employer and a party-in-interest under the Code.

ARTICLE XVIII
MISCELLANEOUS

- 18.01 Plan Not a Contract. Nothing herein contained shall be deemed to give a Participant the right to continue to be employed by the Employer or to interfere with any right of the Employer to discharge a Participant.
- 18.02 Non-alienability. To the extent permitted by the law the interest hereunder of a Participant or his beneficiary shall not be alienable by assignment or by any other method, and shall not be subject to taking by the creditors of such Participant or his beneficiary by any process whatsoever. The preceding sentence shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be an income deduction order qualified under Florida law.
- 18.03 Indemnity. To the extent permitted by law, the Trustees hereby agree to indemnify out of the assets of the Plan any Custodian or Investment Advisor, officers, directors, and employee of the Trust, the Authority and employees of the Authority, and such others to whom the Trustees have delegated administrative and fiduciary duties, except for persons or organizations (and their employees) who render advice or service for a fee or charge, against any and all claims, losses, damages, expenses and liabilities arising from their responsibilities in connection with the Plan, unless the same are determined to be due to gross negligence or intentional misconduct. This indemnification provision shall be effective for all actions taken by such persons with respect to the Plan from and after October 1, 1984.

The Trustees may purchase, out of plan assets, fiduciary liability insurance to protect the plan, provided that such insurance complies with the requirements of law with respect to any right of recourse provisions.

IN WITNESS WHEREOF, the undersigned have caused this Trust Agreement and Pension Plan to be executed this 8th day of September, 2011, to be effective May 24, 2011.

Franklin
Robert Doane
m. f. m.

TRUSTEES

Lisa Carnall
Albert / Francis
Ed. J. Jol

Witness to signatures of Trustees:

Dwaine Miles.

AMALGAMATED TRANSIT UNION LOCAL 1596
 AMALGAMATED TRANSIT UNION, AFL-CIO, CLC

BY:

Norman G. Caudel

CENTRAL FLORIDA REGIONAL
 TRANSPORTATION AUTHORITY

BY:

[Signature]

**AMALGAMATED TRANSIT UNION
LOCAL 1596
PENSION PLAN**

ADDENDUM A

Additional Past Service Benefits Payable to Certain Participants

In addition to the benefits payable under Article III, the employees listed on the attached Exhibit A to Addendum A shall be entitled to a monthly past service benefit payable for life beginning at normal retirement date in the amounts set forth in Exhibit A (or the actual equivalent thereto if payable as a joint and survivor annuity under Section 8.08 and/or on a date other than normal retirement date) or in such larger amount as may be provided as a result of experience gains, determined by the Trustees from time to time in accordance with the terms of the Stipulation of Settlement.

These benefits shall be paid as additional benefits and shall be paid in accordance with all of the provisions of this plan and of the Stipulation of Settlement.

**AMALGAMATED TRANSIT UNION
LOCAL 1596
PENSION PLAN**

ADDENDUM B

Treatment of Money Purchase Pension Plan

- B.1 Rollovers From Money Purchase Pension Plan: An Employee eligible to participate in the Plan, may, in accordance with procedures approved by the Trustees, transfer amounts from the Money Purchase Pension Plan and Trust Agreement for Employees of Transit Management of Florida, Inc. (the "Money Purchase Plan"), which Plan was terminated effective September 30, 1985. Such amounts as the Employee elects may be transferred by the Employee to this Plan in a tax free rollover transaction. The Trustees have the power to enter into direct transfer of assets agreements with the Trustee of the Money Purchase Plan, and to accept the direct transfer of plan assets or to transfer plan assets, as a party to any such agreement. All expenses associated with such rollovers shall be paid from the Amalgamated Transit Union Local 1596 Pension Trust.
- B.2 Separate Rollover Account: The amount transferred shall be deposited in the Trust Fund and shall be credited to a separate account, herein referred to as a "Rollover Account." Such Rollover Account shall be nonforfeitable at all times and in any events and shall share proportionately in the income earned by the Plan. The Rollover Account is for accounting purposes only, and a segregation of the assets of the Trust Fund shall not be required.
- B.3 Benefits: The Rollover Account of a Participant shall be treated as part of his Account for purposes of determining the amount of his benefits under Article VIII, and the provisions of Article VIII shall apply thereto, except that such Participant shall remain fully vested in his Rollover Account should paragraph 8.07 be applicable to the termination of his employment.
- B.4 Other Provisions: Except as expressly provided in this Article, all other provisions of this Agreement shall apply to the Rollover Account and the funds allocable thereto shall be held, administered and distributed as part of the Trust Fund pursuant to the provisions of this Agreement. All other provisions of this Agreement shall be deemed modified and amended to the extent necessary to give effect to this Addendum.

EXHIBIT B

AMALGAMATED TRANSIT UNION LOCAL 1596 PENSION PLAN

Amendment No. 1

The AGREEMENT AND DECLARATION OF TRUST of the AMALGAMATED TRANSIT UNION LOCAL 1596 PENSION PLAN, as amended and restated on May 24, 2011 is hereby amended as follows:

1. Section 2.05 is hereby amended by adding the following underlined sentence:

2.05 Voting. Action by the Board of Trustees shall require a majority vote of those present at a Board Meeting. If at any meeting the number of Employer and Union Trustees present shall be unequal, then the group of Trustees lesser in number shall be entitled to cast the same number of votes as the other group of Trustees by each such Trustee in the lesser group casting one and one-half votes.

2. Section 11.01 is hereby amended by changing the title as follows:

Section 11.01 Disability Pension - Incurred before May 1, 2013

...

3. Article XI is hereby amended by adding the following Section 11.02:

...

11.02 Disability Pension Coordinated with Disability Insurance (Effective May 1, 2013).

(1) This subsection, applies only to disabilities that are incurred or claimed to be incurred:

(a) on or after May 1, 2013, and

(b) while group short term disability insurance and group long term disability insurance policies issued to the Authority

are in effect covering Participants of this Trust. If such policies are not in effect, then the above provisions of Section 11.01(A) – (F) shall apply.

- (2) **Service Required.** A Participant who becomes disabled on or after May 1, 2013, who has accrued ten (10) or more units of benefit credit shall be eligible to receive a monthly disability pension benefit.

- (3) **Definition of Disability.**

(a) for the first six months of disability, a participant shall be regarded as being disabled if he or she is unable to perform with reasonable continuity full time employment with the Employer and such inability has lasted or is expected to last for at least one year or to result in death.

(b) Thereafter, a participant shall be regarded as disabled if:

- i. he or she continuously received a "Long Term Disability Benefit" for the "Maximum Benefit Period" (as those terms are defined in the Long Term Disability Insurance Policy in effect at the time of the Participant's disability), or
- ii. he or she continuously received Social Security disability benefits on account of the same disability until he or she reached age 65.

- (4) **Duration and amount of disability benefit.**

(a) During the first six months of disability, the monthly disability benefit shall be paid only after the exhaustion of all accrued paid leave and shall continue until the earlier of recovery or six months after the onset of Participant's disability. The amount of this monthly disability benefit shall be the difference between the monthly Compensation received by the Participant during the Participant's last month of regular full-time Covered Employment (not light duty employment) and the amounts that the Participant received as Worker's Compensation lost wages disability benefits and the benefits payable under the least costly option of the aforementioned Group Short Term Disability

Policy, regardless of whether or not the Participant purchased such coverage, another level of optional coverage, or no coverage under said Group Short Term Disability Policy. In other words, during the first six months of disability, after the exhaustion of accrued paid leave, the monthly benefit shall be:

100% of last month's Compensation
Minus Worker's Compensation lost wages disability benefits
Minus lowest available Short Term Disability Benefit
= Monthly benefit payable by Plan

(b) After six months of disability, no benefits shall be paid until the Participant reaches the later of age 65 or the expiration of the Maximum Benefit Period under the aforementioned Group Long Term Disability Policy, at which time a lifetime monthly disability pension shall begin. The monthly disability pension benefit shall be computed in the same manner as provided in Section 11.01(B) for a normal retirement benefit and shall be in the form of benefit as chosen by the Participant or as otherwise provided pursuant to Article X, except the disability pension benefit shall be based upon

i. the Average Compensation in effect as of the onset of the Participant's disability and

ii. benefit credits equal to the total of

I. those benefit credits earned by the Participant as of the onset of disability, plus

II. One-twelfth of a benefit credit for each month starting with the month following the onset of disability and ending with the month during which the Participant reaches the later of age 65 or the expiration of the Maximum Benefit Period under the aforementioned Group Long Term Disability Policy, with a maximum of 25 benefit credits.

(5) Claiming Disability Benefits and Proving Entitlement

(a) The Participant bears the burden of proving entitlement to disability pension benefits.

(b) A claim must be filed no later than 90 days after termination of employment with LYNX.

(c) The Participant must file a written claim for disability pension benefits on a form provided by the Board of Trustees that shall be accompanied by a Medical Records Release, Waiver of Confidentiality (to permit the Participant's medical condition and medical records to be discussed and disclosed at a public meeting of the Board of Trustees, which is required to meet in public), a list of all medical providers, copies of claims made for short term disability benefits, long term disability benefits, social security disability benefits, and workers compensation benefits and any responses thereto, together with any other information requested by the Board of Trustees.

(d) The Participant must claim Social Security disability benefits and long term disability insurance benefits in order to make a claim for disability pension benefits under this Plan. If the Participant purchased short term disability insurance coverage, the Participant must also claim Short-Term Disability Benefits under the Group Short Term Disability Policy in order to make a claim for disability pension benefits under this Plan. If the Participant suffered an injury that is compensable under Florida's Worker's Compensation laws, the Participant must also file a report of injury and make a claim for Worker's Compensation benefits in order to make a claim for disability pension benefits under this Plan.

(e) A Participant shall be eligible for disability pension benefits during the first six months of disability only if the disability is expected to last for at least one year or to result in death. The Board of Trustees may consider all available facts, circumstances, personnel records, and medical records and opinions in determining such eligibility. For all claims made for disability pension benefits during the first six months of disability, a medical statement must be provided by the Participant's treating physician at the Participant's expense on a form provided by the Board of Trustees. The Board of Trustees, in its sole discretion, also may require the

Participant to be examined by an independent medical examiner to be appointed by the Board of Trustees or its designee at the Plan's expense. Refusal to submit to such an examination may be grounds for denial of disability pension benefits.

- (f) To receive disability pension benefits upon reaching the later of age 65 or the expiration of the Maximum Benefit Period under the aforementioned Group Long Term Disability Policy, the Participant must provide proof that he or she continuously, from the date when he or she first became eligible for such benefits, either received a "Long Term Disability Benefit" for the "Maximum Benefit Period" (as those terms are defined in the Long Term Disability Insurance Policy in effect at the time of the Participant's disability), or received Social Security disability benefits on account of the same disability until he or she reached age 65. Such proof can be provided at any time after reaching the requisite age but no more than 12 months of retroactive disability pension benefits shall be paid if the Participant provides the proof more than 12 months after reaching the requisite age. If the Participant's claim for Long Term Disability Benefits or Social Security disability benefits is pending or on appeal when the Participant reaches the requisite age, then the time for providing such proof is extended until 12 months after said claim or appeal is determined or finally adjudicated. If the claim is determined or adjudicated in the Participant's favor, then disability pension benefits from this Plan shall be paid retroactively to the requisite age, except no more than 12 months of retroactive benefits shall be paid if the Participant provides the proof more than 12 months after the favorable claim determination or final adjudication.
- (6) Discontinuance of Disability. If, during the first six months of disability, the Trustees find that any Participant receiving a disability pension is no longer disabled as defined above, they shall order the discontinuance of the disability pension.
- (7) Waiver of Privacy Rights. As meetings of the Board of Trustees are public, the trustees may require applicants for disability pensions to sign waivers of their privacy rights.

(8) Disability death benefit.

(a) If a Participant dies after the onset of disability but before reaching the later of age 65 or the expiration of the Maximum Benefit Period under the aforementioned Group Long Term Disability Policy, then the Pre-Retirement Death Benefit provided by Section 12.01 shall be paid and Section 12.01(c)'s optional forms of benefits shall be available, except the survivor benefit shall be paid as if the Participant had continued to be employed in covered employment until the date of death and shall be based upon the Participant's Average Compensation in effect as of the onset of the Participant's disability.

(b) If a Participant dies after the onset of disability but after reaching the later of age 65 or the expiration of the Maximum Benefit Period under the aforementioned Group Long Term Disability Policy, then a survivor benefit or death benefit shall be payable only if so chosen by the Participant.

(c) If a disabled Participant failed to file a written claim for disability benefits prior to death, then the Participant's survivor annuitant, beneficiary, executor, or personal representative may file the claim for disability benefits and disability death benefits within one year after the Participant's death.

- (9) If the trustees determine that any participant has fraudulently obtained a disability pension, or fraudulently continues to receive a disability pension, or has filed false information with the trustees with regard to any aspect of his or her disability pension application or his or her income from outside employment, then the trustees may in their sole discretion terminate or reduce the participant's pension, and refer the matter to legal authorities for prosecution.

4. Section 9.6(A) is hereby repealed and replaced with the following language:

9.06 **Return of Employee Contributions.** Participants shall be entitled to the return of their employee contributions as follows:

(A) Employee contributions shall be returned with interest at the rate of five percent (5%) through March 31, 2013, and thereafter at the "Money Market Option" rate described in section 9.07(A)(2)b(ii) hereof (the same rate that is credited to the DROP accounts of participants that chose the Money market Option), compounded annually, if an employee does not qualify for a pension. When an active Participant who is not vested dies, his or her contributions shall be returned to their beneficiary or their estate, whichever is applicable, in the form of a lump sum payment.

...

5. Section 18.03, Indemnity, is hereby amended as follows:

18.03 Indemnity. To the extent permitted by law, the Trustees hereby agree to indemnify out of the assets of the Plan officers, directors, and employees of the Trust against any and all claims, losses, damages, expenses and liabilities arising from their responsibilities in connection with the Plan, unless the same are determined to be due to gross negligence or intentional misconduct. This indemnification provision shall be effective for all actions taken by such persons with respect to the Plan from and after October 1, 1984.

The Trustees may purchase, out of plan assets, fiduciary liability insurance to protect the plan, provided that such insurance complies with the requirements of law with respect to any right of recourse provisions.

EXCEPT AS HEREIN AMENDED, THE AMALGAMATED TRANSIT UNION
LOCAL 1596 PENSION PLAN AGREEMENT AND DECLARATION OF TRUST,
RESTATED MAY 24, 2011, SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the Board of Trustees has caused this Amendment #1
to the Restated Pension Plan to be ADOPTED this 14th day of ^{May} April, 2013.

TRUSTEES:

Blanche W. Sherman
Print Name: Blanche W. Sherman

Ronald E. Morgan
Print Name: RONALD E. MORGAN

DONNA S. TERFILLER
Print Name: Donna S. Terfiller

Bert Francis
Print Name: Bert Francis

Thomas F. Lapins
Print Name: Thomas F. Lapins

Frank Luna
Print Name: FRANK LUNA
Chairman