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Metro Transit is inviting you to a scheduled Zoom meeting.

Topic: Metro Transit February 2024 Board Meeting

Time: Feb 22, 2024, 08:30 AM Central Time (US and Canada)

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## AGENDA

### REGULAR BOARD MEETING

#### REGIONAL METROPOLITAN TRANSIT AUTHORITY OF OMAHA

2222 Cuming Street

Omaha, Nebraska, 68102

February 22, 2024

8:30 a.m.

*Metro connects people, places, and opportunities through quality transit services.*

1. Call to Order: Notice of the Regular Meeting was published in the Omaha Daily Record on February 16, 2024
2. Approval of Minutes of Previous Meeting:
  - a. Regular Meeting: January 25, 2024
3. General Public Comment Period  
*This is an opportunity for members of the audience to be heard regarding topics related to the Regional Metropolitan Transit Authority of Omaha, not on the agenda for a maximum of 2 minutes.*
4. Administrative Report (L. Cencic)
5. Administrative Reports:
  - a. Administration/Human Resources (J. Hall)
  - b. Programs/Operation (I. Maldonado)
  - c. Communications (N. Ebat)
6. Resolution 2024-02: Resolution To Amend Hourly Employees' Pension Plan (W. Clingman)
7. Resolution 2024-03: Resolution to Amend Operating Policy 3 Disadvantaged Business Enterprise (A. Johnson)
8. Board Chair Report (D. Lawse)
9. Executive Session  
*This Board reserves the right to enter into Executive Session in order to protect the public interest with respect to discussion regarding litigation, personnel, and other matters listed in the Nebraska Revised Statute § 84-1410.*
10. Date, Time, and Place of Next Regular Board Meeting  
Thursday, March 28, 2024, at 8:30 a.m.  
Authority's Administrative Building
11. Adjournment

**Resolution:** 2024-02 Resolution– Proposal to Amend Hourly Employees’ Pension Plan

**Explanation:** Staff is requesting approval of a resolution to update the Hourly Employee’s Pension Plan with the new employee contribution rate from the recently adopted union contract. This will be an increase of 0.50% moving the contribution rate from 7.75% to 8.25%. The employer match will also increase to the same percentage.

The Hourly Pension Committee was notified of this change prior to the Board Meeting.

Staff Recommends Approval

The foregoing resolution was duly adopted by the Board of Regional Metropolitan Transit Authority of Omaha at a meeting held on the 22nd day of February 2024, and the undersigned hereby certifies the adoption of this resolution.

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Daniel Lawse, Board Chair

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Selina Perry, Board Secretary

**METRO AREA TRANSIT  
HOURLY EMPLOYEES' PENSION PLAN  
(AS AMENDED AND RESTATED EFFECTIVE JANUARY 1, 2021)**

**METRO AREA TRANSIT  
HOURLY EMPLOYEES' PENSION PLAN  
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**METRO AREA TRANSIT  
HOURLY EMPLOYEES' PENSION PLAN**

**ARTICLE I - PRELIMINARY MATTERS**

1.1 Name of Plan. The name of this retirement plan shall be the Metro Area Transit Hourly Employees' Pension Plan (hereinafter referred to as the Plan).

1.2 Establishment and Purpose. This Plan, established in the United States, is for the exclusive benefit of the Plan Participants and their Beneficiaries, and shall be interpreted and administered in a manner consistent with the requirements of applicable Federal law and regulations or of any provisions of any future Federal law or regulations of similar scope and purpose.

1.3 Collective Bargaining. This Plan was created pursuant to collective bargaining procedures in accordance with the Agreement between Metro Area Transit and Transport Workers Union of America, Local 223 dated July 1, 1979.

1.4 Construction. This Plan shall be construed according to the laws of the State of Nebraska where it is made and where it shall be enforced.

1.5 Restatement. This Plan amends and restates the Plan amended and restated January 1, 2010, and is effective January 1, 2021, or as otherwise provided herein or required by law.

**ARTICLE II - DEFINITIONS**

2.1 Definitions. Terms defined in this Article shall have the meanings shown unless the context requires otherwise.

A. Employer shall mean the Metro Area Transit owned by the Transit Authority of the City of Omaha, Nebraska.

B. Employee shall mean individuals employed by the Employer who is covered by a collective bargaining agreement between the Employer and the Transport Workers of America, Local 223, including leased employees (as defined in Section 414(n) of the Code) who perform services for the Employer, except leased employees who are covered by a plan maintained by the leasing organization as described in Section 414(n)(5) of the Code. Employees of a controlled group of corporations or trades or businesses which are under common control (within the meaning of Section 414(b) and (c) of the Code) and

Employees of the members of an affiliated service group (within the meaning of Section 414(m)) will be treated as employed by a single Employer for purposes of participation, vesting, and for purposes of Sections 5.5 and 5.6 of this Plan (except that Sections 414(b) and (c) of the Code shall be modified by Code Section 415(h) for purposes of Sections 5.5 and 5.6 of the Plan). Persons who first commence service with the Employer after their attaining age 60 shall not be considered Employees. Persons determined by the Employer to be independent contractors shall not be considered Employees for purposes of benefit accrual under the Plan.

The Plan treats a leased Employee as an Employee of the Employer. A leased Employee is an individual (who otherwise is not an Employee of the Employer) who, pursuant to a leasing agreement between the Employer and any other person, has performed for the Employer (or for the Employer and any persons related to the Employer within the meaning of Code §144(a)(3)) on a substantially full-time basis for at least one year and who performs services under the primary direction or control of the service recipient. If a leased Employee is treated as an Employee by reason of this paragraph of the Plan, "Compensation" includes compensation from the leasing organization which is attributable to services performed for the Employer.

The Plan does not treat a leased Employee as an Employee of the leasing organization if the leasing organization covers the Employee in a safe harbor plan and, prior to application of the safe harbor plan exception, twenty percent (20%) or less of the Employer's Employees (other than Highly Compensated Employees) are leased Employees. A safe harbor plan is a money purchase pension plan providing immediate participation, full and immediate vesting, and a non-integrated contribution formula equal to at least ten percent (10%) of the Employee's compensation without regard to employment by the leasing organization on a specified date. The safe harbor plan must determine the ten percent (10%) contribution on the basis of compensation as defined in Code §415(c)(3), plus elective contributions.

The Retirement Committee must apply this paragraph in a manner consistent with Code §§414(n) and 414(o) and the regulations issued thereunder. The Retirement Committee will reduce a leased Employee's allocation of Employer contributions under this Plan by the leased Employee's allocation under the leasing organization's plan, but only to the extent that allocation is attributable to the leased Employee's service provided to the Employer. The leasing organization's plan must be a money purchase plan which would satisfy the definition under this paragraph of a safe harbor plan.

C. Hour of Service shall mean:

(i) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer (these hours shall be credited to the Employee for the computation period or periods in which the duties are performed); and

(ii) each hour for which an employee is 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 has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty or military duty; provided that no more than 501 Hours of Service shall be credited under this item (2) for any single continuous period (whether or not such period occurs in a single computation period) (hours under this item (ii) shall be calculated and credited pursuant to Section 2530.200(b)-2 of the Department of Labor Regulations which are incorporated herein by this reference); and

(iii) hours during which an Employee is on an Authorized Leave of Absence, whether or not the Employee is paid or entitled to payment, for that period; and

(iv) each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer, but the same Hour of Service shall not be credited under this item (4) if it is credited under one of the other items (these hours shall be credited to the Employee for the computation period or period to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made); and

(v) hours during which an Employee is on long-term illness leave with his or her name being retained on the Employer's seniority list and duty attendance roster.

For those Employees not receiving an hourly wage, the number of hours credited for any particular period of time shall be based on the number of hours that the Employee would customarily have worked according to his or her regular schedule for work during that period.

Employees will also be given credit for Hours of Service for other hours when required by Federal laws other than the Employee Retirement Income Security Act of 1974.

D. Year of Service shall mean, for all purposes under the Plan, each twelve consecutive month period (beginning with the person's employment date and any subsequent twelve consecutive month period measured from



employment date anniversary) in which that person has not less than 1,000 Hours of Service.

E. Break in Service shall mean any twelve consecutive month period, as described in subsection D of this Section, in which that person has not more than 500 Hours of Service.

F. Participant shall mean an Employee of the Employer who has met the participation requirements specified in Section 3.1 of this Plan.

G. Surviving Spouse shall mean that person to whom a Participant was married at the time of the Participant's death.

H. Beneficiary shall mean that person designated by the Participant to receive any benefits (other than joint and survivor, contingent annuitant or surviving spouses benefits) under this Plan payable after the Participant's death; provided, however, that if no such designation is made and any such benefits become payable, the Beneficiary shall be the Participant's estate.

I. Compensation shall mean for purposes of Sections 5.5 and 5.6 of this Plan, all wages, salaries, fees for professional services, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses and other amounts received for personal services actually rendered in the course of employment with the Employer maintaining the Plan. "Compensation" shall include amounts excludable from gross income under Sections 402(a)(8), 402(b), 132(f)(4), 125 and 403(b) of the Code. For the aforesaid purposes, Compensation shall exclude the following:

(i) Employer contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation;

(ii) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option;

(iv) Reimbursement for expenses incurred by an Employee; and

(v) Other amounts which receive special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Section 403(b) of the Internal Revenue Code ("Code") (whether or not the amounts are actually excludable from the gross income of the Employee).

For all other purposes under this Plan, Compensation shall mean the basic annual compensation of the Participant plus overtime, but exclusive of bonuses and other non-recurring compensation, not exceeding \$30,000 in any calendar year. Compensation shall include the salary paid by the Union to any Union officer of Local 223 who is off duty for authorized Union business directly related to his duties and relationship with the Employer and the Union shall remit contributions to this Plan from such salary as required by Section 9.4.

Effective January 1, 1994, the salary cap on contributions and benefits was raised from \$30,000 to \$35,000. Then effective for calendar year 1996 the salary cap from pension contributions and earnings has been removed. From and after January 1, 1996, all compensation will be subject to the 3.05% contribution.

Only compensation that is under the pension plan compensation caps can be used to calculate a pension. Compensation from prior to 1994 that is used to calculate pension benefits is limited to \$30,000 or total gross pay whichever is lower. Compensation from 1994 or 1995 to be used in calculating a benefit is limited to \$35,000 or total gross pay if it is lower than the cap. Compensation from years 1996 and forward to be used in calculating benefits will be equal to gross pay, subject to the limits of the Code.

In addition to other limitations set forth in the Plan and notwithstanding any other provision of the Plan to the contrary, for Plan Years beginning on or after January 1, 1994, the annual compensation of each Employee taken into account under the Plan shall not exceed the Omnibus Budget Reconciliation Act of 1993 ("OBRA '93") annual compensation limit. The OBRA '93 annual compensation limit is \$150,000 as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue 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 OBRA '93 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.

For Plan Years beginning on or after January 1, 1994, any reference in this Plan to the limitation under Section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit set forth in this provision.

If compensation for any prior determination period is taken into account in determining an employee's benefit accruing in the current Plan Year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the Plan Year beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is \$150,000.

Effective January 1, 2002, for Plan Years beginning after December 31, 2001, the annual Compensation of each Participant taken into account in determining benefit accruals for such Plan Years shall not exceed \$200,000. The \$200,000 limit on annual Compensation shall be adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code.

Family aggregation under former provisions of the Internal Revenue Code shall be eliminated effective January 1, 1997.

For all Plan Years, Compensation shall include basic compensation and overtime, earned vacation and other paid time off pay that are after the Participant terminates employment, provided the payments are made within the later of 2½ months after the Participant terminates employment or the end of the Plan Year that includes the date of such termination; and provided further said amounts would have been paid or been able to have been used had the Participant continued employment.

J. Average Monthly Compensation shall mean a Participant's monthly compensation received by a Participant during his period of employment and averaged over the highest consecutive five years during the ten years of employment immediately prior to the date of the event that gives rise to the determination of benefits, or the date, if any, specified in the Plan, except that for Participants and beneficiaries who become entitled to a benefit before January 1, 1983, the Average Monthly Compensation shall be based on Compensation records back to January 1, 1973, the earliest date for which complete Compensation records are available for all Employees.

K. Plan Administrator shall mean an employee of Metro Area Transit selected by the Employer.

L. Named Fiduciary or Board shall mean the Board of Directors of the Metro Area Transit.

M. Plan Year shall mean January 1 through December 31.

N. Effective Date of this Plan shall mean July 1, 1979.

O. Authorized Leave of Absence means a leave of absence granted as such by the Employer. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414 (u) of the Code. Authorized Leaves of Absence shall be granted in a uniform manner under similar circumstances. Authorized Leave of Absence shall include times when any Union officer of Local 223 is off duty for authorized Union business directly related to his duties and relationship with the Employer.

P. Accumulated Contributions shall mean, at any determination date at or prior to the commencement of retirement income under this Plan, the aggregate of a Participant's own contributions to this Plan, pursuant to Section 9.4 hereof, plus interest compounded annually to the date employment terminates. The interest rate shall be that established by the Retirement Committee for this purpose, but in no event shall the rate of interest for the same purpose be less than that required by Federal laws or regulations.

Q. Total and Permanent Disability shall mean disability of an Employee resulting from a medically determinable physical or mental impairment, originating after the Employee has become a Participant under this Plan, and which disability can be expected to result in death or to be of long-continued and indefinite duration and prevents the Employee from engaging in any occupational duties for which he or she is qualified; provided, however, it shall not include disability resulting from (1) intentionally self-inflicted injury, whether sane or insane, (2) commissions of a felony, or (3) habitual drunkenness or addiction to narcotics.

R. Accrued Benefit shall mean a Participant's normal retirement benefit set forth in Section 5.1 based on actual Years of Service and Compensation at the date of determination.

S. Equivalent Actuarial Value shall mean a benefit of equal value using the 1971 Group Annuity Table with 7% interest per annum, compounded annually.

Notwithstanding anything to the contrary, in the case of the determination of an Equivalent Actuarial Value single sum payment (lump sum) under the Plan, which is payable after January 1, 1998, the single sum shall be the Actuarial Equivalence determined by using the Applicable Mortality Table and

the Applicable Interest Rate. For purposes of the foregoing, those terms shall have the following meaning:

(i) The “Applicable Mortality Table” shall mean the table prescribed by the Secretary of Treasury that utilizes the prevailing commissioners standard table for determining reserves for group annuity contracts issued on the date as of which the present value is determined (currently defined as the 83 Group Annuity Mortality Table). Notwithstanding the foregoing, the Applicable Mortality Table used for purposes of adjusting any benefit or limitation under Section 415(b)(2)(B), (C), or (D) of the Internal Revenue Code, and the Applicable Mortality Table used for purposes of satisfying the requirements of Section 417(e) of the Internal Revenue Code, is the table prescribed in Rev. Rul. 2001-62. Effective January 1, 2008, for purposes of the Plan’s provisions relating to the calculation of the present value of a benefit payment that is subject to Code § 417(e), any provision directly or indirectly prescribing the use of the mortality table described in Revenue Ruling 2001-62 shall be amended to prescribe the use of the Applicable Mortality Table within the meaning of Code § 417(e)(3)(B), as initially described in Revenue Ruling 2007-67; and

(ii) The “Applicable Interest Rate” shall mean the annual interest rate on 30-year Treasury securities for the second month preceding the first day of the stability period in which such distribution occurs. The Applicable Interest Rate will remain constant during the stability period, which is the plan year. Effective January 1, 2008, for purposes of the Plan’s provisions relating to the calculation of the present value of a benefit payment that is subject to Code § 417(e), any provision prescribing the use of the annual rate of interest on 30-year U.S. Treasury securities shall be implemented by instead using the rate of interest determined by applicable interest rate described in Code § 417(e) after its amendment by the Pension Protection Act. Specifically, the applicable interest rate shall be adjusted first, second and third segment rates applied under the rules similar to the rules of Code § 430(h)(2)(C) for the calendar year (lookback month) before the first day of the Plan Year in which the annuity starting date occurs (stability period). For this purpose, the first, second and third segment rates are the first, second and third segment rates which would be determined under Code § 430(h)(2)(C) if:

(A) Code § 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section, and

(B) Code § 430(h)(2)(G)(i)(II) were applied by substituting “Section 417(e)(3)(A)(ii)(II)” for “Section 412(b)(5)(B)(ii)(II),” and

(C) The applicable percentage under Code § 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.

T. Annuity Starting Date shall mean the first day of the first period for which an amount is received as an annuity.

U. Highly Compensated Employee, effective January 1, 1997, shall mean an Employee described in Section 414(q) of the Code and the Regulations thereunder, and generally means an Employee who performed services for the Employer during the calendar year and is in one or more of the following groups:

(i) Employees who at any time during the calendar year or preceding calendar year were “five percent owners.”

(ii) Employees who received “415 Compensation” during the preceding calendar year from the Employer in excess of \$80,000 - as adjusted - and were in the Top Paid Group of Employees for such preceding calendar year.

A “five percent owner” shall mean any person who owns (or is considered as owning within the meaning of Code §318) more than five percent (5%) of the outstanding stock of the Employer or stock possessing more than five percent (5%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than five percent (5%) of the capital or profits interest in the Employer. In determining percentage ownership hereunder, employers that would otherwise be aggregated under Sections 414(b), (c), (m) and (o) of the Code shall be treated as separate employers.

“Top paid group” means the top twenty percent (20%) of Employees who performed services for the Employer during the applicable year, ranked according to the amount of “415 Compensation” received from the Employer during such year. All affiliated employers shall be taken into account as a single employer, and leased employees within the meaning of Sections 414(n)(2) and 414(o)(2) of the Code shall be considered Employees unless such leased employees are covered by a plan described in Section 414(n)(5) of the Code and are not covered in any qualified plan maintained by the Employer. Employees who are non-resident aliens and who received no earned income (within the meaning of Section 911(d)(2) of the Code) from the Employer constituting United

States source income within the meaning of Section 861(a)(3) of the Code shall not be treated as Employees. Additionally, for the purpose of determining the number of active Employees in any year, the following additional Employees shall still be considered for the purpose of identifying the particular Employees in the top paid group:

- (i) Employees with less than six (6) months of service;
- (ii) Employees who normally work less than seventeen and one-half (17 ½) hours per week.
- (iii) Employees who normally work less than six (6) months during a year; and
- (iv) Employees who have not yet attained age 21 (age 19 for Plan Years beginning on or after January 1, 1998).

In addition, if ninety percent (90%) or more of the Employees of the Employer are covered under agreements the Secretary of Labor finds to be collective bargaining agreements between Employee representative and the Employer, and the Plan covers only Employees who are not covered under such agreements, then Employees covered by such agreements shall be excluded from both the total number of active Employees as well as from the identification of particular Employees in the top paid group.

In determining who is a Highly Compensated Employee, Employees who are non-resident aliens and who received no earned income (within the meaning of Section 911(d)(2) of the Code) from the Employer constituting United States source income within the meaning of Section 861(a)(3) of the Code shall not be treated as Employees. Additionally, all affiliated employers shall be taken into account as a single employer and leased employees within the meaning of Sections 414(n)(2) and 414(o)(2) of the Code shall be considered Employees unless such leased employees are covered by a plan described in Section 414(n)(5) of the Code and are not covered in any qualified plan maintained by the Employer. The exclusion of leased employees for this purpose shall be applied on a uniform and consistent basis for all of the Employer's retirement plans.

### **ARTICLE III - PARTICIPATION**

3.1 Employees on July 1, 1979. Any Employee who was an Employee on July 1, 1979 shall become a Participant under this Plan as of such date and shall continue to be a Participant until participation ceases in accordance with the provisions of the Plan.

3.2 Participation After July 1, 1979. Any Employee hired after July 1, 1979, shall become a Participant on the first day of the pay period after a probation period of service with the Employer. Effective for any Employee hired after July 1, 2012, said participation date shall be the first day of the month next following the completion of a 120 day probation period. An Employee hired after his or her 60<sup>th</sup> birthday shall not become a Participant under the Plan.

3.3 Participation After Terminating Employment Without Participation. An Employee whose employment terminates before becoming a Participant and who is subsequently reemployed by the Employer shall become a Participant in accordance with the provisions of Section 3.2, and the Plan shall treat that person as a new Employee on the date the Employee first performs an Hour of Service for the Employer after reemployment.

3.4 Participation After Break in Service. If a Participant who is not vested in benefits attributable to Employer contributions under this Plan has a number of consecutive Breaks in Service that equals or exceeds the aggregate number of Years of Service prior to such Breaks in Service, any employment by the Employer after such Breaks in Service will be treated under this Plan as if the person was a new Employee with no previous employment by the Employer.

If a Participant who is not vested in benefits attributable to Employer contributions under this Plan returns to employment by the Employer but had a number of consecutive Breaks in Service less than the aggregate number of Years of Service prior to such Breaks in Service, the Participant shall again become a Participant on the date of his or her reemployment. If such a person within two years after returning to such employment returns any accumulated Contributions paid to that Participant plus interest (at the rate specified by Federal law or regulation) from the date of refund to the date of repayment, the Years of Service before and after the break shall be considered together for purposes of this Plan.

If a Participant who was vested in benefits attributable to Employer contributions under this Plan has any number of Breaks in Service but returns to employment by the Employer, the Participant shall again become a Participant on the date of his or her reemployment. The percent of vesting and benefits accrued after the Break of Service shall be based on Years of Service before and after the Break in Service, subject to the application of Section 6.2 and Section 6.5. Withdrawn contributions may be repaid as provided in the immediately preceding paragraph, in which event benefits attributable to the Employee's contributions shall be restored.

3.5 Employees Retired Between June 30, 1977 and July 1, 1979. Each employee who retired between June 30, 1977 and July 1, 1979 shall be entitled to receive a monthly pension from this Plan, commencing on July 1, 1979. The amount of such



pension shall be the monthly pension determined in accordance with Sections 5.1, 5.2 and 5.4 of this Plan reduced by the monthly pension already being paid to the retired employee by the Employer outside the terms of this Plan.

#### ARTICLE IV - RETIREMENT DATES

##### 4.1 Normal.

A. For each person who is hired as an Employee prior to January 1, 2018, the normal retirement date shall be the first day of the month coincidental with or next following the Participant's 65th birthday. A Participant shall have a fully vested Accrued Benefit upon attaining age 65.

B. For each person who is hired as an Employee on or after January 1, 2018, the normal retirement date shall be the first day of the month coincidental with or next following the date the Participant reaches full retirement age for purposes of receiving unreduced old-age, wife's or husband's benefits as determined by the Social Security Administration and set forth in 20 CFR § 404.409 (or any such successor regulations thereto). A Participant shall have a fully vested Accrued Benefit upon attaining such full retirement age.

##### 4.2 Early.

A. For each person who is hired as an Employee prior to January 1, 2018, the early retirement date shall be either of the following dates, as selected by the Participant:

(i) The first day of any month before Participant's normal retirement date but after his termination of employment (other than for disability) and completion of 20 Years of Service and after the Participant's 58th birthday.

(ii) The first day of any month before the Participant's normal retirement date but after his termination of employment and completion of 30 years of continuous employment. For this purpose, a year of continuous employment shall mean a year (measured from the Participant's employment commencement date) during which the Participant has completed at least one Hour of Service.

B. For each person who is hired as an Employee on or after January 1, 2018, no early retirement date shall be available.

4.3 Late. If a Participant has remained in employment without a Break in Service after his normal retirement date, the late retirement date shall be the first day of the month next following the termination of employment of that Participant which shall be no later than his or her seventieth birthday except with approval of the Employer.

4.4 Disability. The disability retirement date shall be the first day of the month next following or coincidental with the commencement of Total and Permanent Disability of a Participant and after his completion of fifteen or more Years of Service.

## ARTICLE V - RETIREMENT BENEFITS

5.1 Normal Retirement. Each person who is a Participant on his or her normal retirement date and retires at that time shall be entitled to receive a fully vested monthly pension.

A. For each person who is hired as an Employee prior to January 1, 2018, the amount of said pension, payable as a life annuity on the Participant's life with a return of the Participant's Accumulated Contributions guaranteed, shall be determined as follows:

1.25% of the Participant's Average Monthly Compensation multiplied by the Participant's number of Years of Service. If employment does not terminate at the end of a Year of Service, credit for the last fractional Year of Service shall be given in proportion to time during that year that the Participant was employed. The retirement benefit herein provided shall be subject to adjustment as provided in Section 9.2, as determined by the Plan actuary.

Effective January 1, 1994, the benefit factor used in the pension benefit formula was raised from 1.25% to 1.30%. This was not a retroactive increase and affects only pension benefits earned after January 1, 1994. For participants employed prior to the increase, pension benefits will be calculated in two parts - the old factor for years prior to 1994 and the new factor for years after.

Effective December 21, 1999, the benefit factor used in the pension benefit formula was raised from 1.30% to 1.40% for all Participants terminating employment after December 21, 1999. The increase applies to all Years of Service of such Participants.

B. For each person who is hired as an Employee on or after January 1, 2018, the amount of said pension, payable as a life annuity on the Participant's life with a return of the Participant's Accumulated Contributions guaranteed, shall be determined as follows:

Benefit factors used in the pension benefit formula shall be tiered based on the Years of Service of such Participant since the Participant became an Employee, as set forth below. Benefit factors shall remain fixed for the Years of Service of the Participant in each tier. The sum of the amounts calculated in each of the tiers applicable to such Participant shall be the amount of said pension, payable as a life annuity on the Participant's life with a return of the Participant's Accumulated Contributions guaranteed, determined as follows:

Tier 1: For Years of Service through the end of tenth (10th) Year of Service, 1.2% of the Participant's Average Monthly Compensation multiplied by the Participant's number of Years of Service during said period. If employment does not terminate at the end of a Year of Service, credit for the last fractional Year of Service shall be given in proportion to time during that year that the Participant was employed. The retirement benefit herein provided shall be subject to adjustment as provided in Section 9.2, as determined by the Plan actuary.

Tier 2: For Years of Service beginning on the eleventh (11th) Year of Service and through the end of the twentieth (20th) Year of Service, 1.3% of the Participant's Average Monthly Compensation multiplied by the Participant's number of Years of Service during said period. If employment does not terminate at the end of a Year of Service, credit for the last fractional Year of Service shall be given in proportion to time during that year that the Participant was employed. The retirement benefit herein provided shall be subject to adjustment as provided in Section 9.2, as determined by the Plan actuary.

Tier 3: For Years of Service beginning on the twenty-first (21st) Year of Service and continuing thereafter, 1.4% of the Participant's Average Monthly Compensation multiplied by the Participant's number of Years of Service during said period. If employment does not terminate at the end of a Year of Service, credit for the last fractional Year of Service shall be given in proportion to time during that year that the Participant was employed. The retirement benefit herein provided shall be subject to adjustment as provided in Section 9.2, as determined by the Plan actuary.

As examples of the calculation, if a Participant has 17 Years of Service, the Tier 1 benefit factor for Years of Service 0 through 10 is 1.2% and the Tier 2 benefit factor for Years of Service 11 through 17 is 1.3%. The amount calculated in Tier 1 is added to the amount calculated in Tier 2, with the result being the amount of said pension. If a Participant has 24 Years of Service, the Tier 1 benefit factor for Years of Service 0 through 10 is 1.2%, the Tier 2 benefit factor for Years of Service 11 through 20 is 1.3%, and the Tier 3 benefit factor for Years of Service 21 through 24 is 1.4%. The

amounts calculated in Tier 1, Tier 2 and Tier 3 are added together, with the result being the amount of said pension.

5.2 Early Retirement. A Participant who elects to retire on an early retirement date shall be entitled to a monthly pension determined in the manner prescribed in Section 5.1, based on the Participant's Years of Service and Average Monthly Compensation on the date his or her employment terminated, and then reduced by 1/2% for each month that the early retirement date precedes normal retirement date.

5.3 Late Retirement. A Participant who retires on a late retirement date shall be entitled to a fully vested monthly pension in an amount equal to what the Participant would have received had retirement been on the Participant's normal retirement date.

5.4 Disability Benefits. A Participant who retires because of Total and Permanent Disability shall be entitled to a fully vested monthly pension determined as provided for in Section 5.1 for Normal Retirement, based on the Participant's Years of Service and Average Monthly Compensation on his or her disability retirement date as provided for in Section 4.4.

5.5 Commencement and Form of Payment. Any pension due a Participant under this Plan shall be payable monthly commencing on the normal, early or late retirement date, whichever is applicable. Payments shall be made under one of the following options:

A. A single-life annuity on the Participant's life, with a payment to the Participant's Beneficiary equal to the excess, if any, of the Participant's Accumulated Contributions over the benefits paid to the Participant.

B. A ten-year certain period with payments thereafter as long as the Participant lives. If payments have started and the Participant dies before 120 monthly payments have been made, the monthly payments shall continue to his Beneficiary for the remainder of the 120 monthly payments. If no Beneficiary survives the Participant, such remainder shall continue to be paid to the Participant's estate or, at the election of the Plan Administrator, the commuted value of any such remainder shall be paid to the Participant's estate. If payments become payable to a Beneficiary pursuant to this paragraph and the Beneficiary dies before a total of 120 monthly payments have been made to the Participant and the Beneficiary, any remainder of the 120 monthly payments shall continue to be paid to the Beneficiary's estate or, at the election of the Plan Administrator, the commuted value of any such remainder shall be paid to the Beneficiary's estate. Any commuted value determined in accordance with this paragraph shall be calculated using the rate of interest specified by the Plan Administrator for this purpose.

C. A contingent annuitant form of annuity with the Participant's spouse, with either 100%, 75% (effective January 1, 2008), 66-2/3% or 50% of the amount payable to the Participant (while both the Participant and the spouse are alive) being payable to the spouse for life after the Participant's death.

All forms of payment under the Plan shall be the Equivalent Actuarial Value of a Participant's Accrued Benefit.

The Participant may specify which of the above options is to apply by filing a written election with the Plan Administrator in accordance with the rules established by the Plan Administrator governing such elections. Such rules shall provide the Participant with a reasonable opportunity in accordance with any applicable law or governmental regulation, to make such written elections and shall provide for a written explanation of the options and the effect of the options on the benefits payable.

Unless the Participant otherwise elects as provided herein, payment of a pension to a married Participant shall be in the form of an annuity for the life of the Participant with a survivor annuity for the life of his or her spouse which is 100% of the amount of the annuity payable during the joint lives of the Participant and his or her spouse and which is of Equivalent Actuarial Value of the form set forth in Option A.

The Retirement Committee shall notify each Participant in writing at least 180 days prior to the date payments are to commence under the Plan of (i) the terms and conditions of the joint and survivor annuity, (ii) the Participant's right to make, and the effect of a waiver election and a revocation of a waiver, (iii) the spousal consent requirements regarding the election, and (iv) the right of the Participant to revoke with election and the effect of such revocations.

Any distribution provided for in this Section 5.4C may commence less than 30 days after the notice required by Section 417(a)(3) of the Code is given, provided that:

(i) the Administrative Committee clearly informs the Participant that the Participant has a right to a period of 30 days after receiving the notice to consider whether to waive the joint and survivor annuity and consent to a form of distribution other than a joint and survivor annuity,

(ii) the Participant is permitted to revoke an affirmative distribution election at least until the annuity starting date, or, if later, at any time prior to the expiration of the 7-day period that begins the day

after the explanation of the joint and survivor annuity is provided to the Participant,

(iii) the annuity starting date is after the date that the explanation of the joint and survivor annuity is provided to the Participant. However, the annuity starting date may be before the date that any affirmative distribution election is made by the Participant and before the date that the distribution is permitted to commence under (iv) below, and

(iv) distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins the day after the explanation of the joint and survivor annuity is provided to the Participant.

Any Participant may at any time within the 90 day period ending on his or her Annuity Starting Date elect to waive the form of benefit provided under this section and to receive his or her retirement benefits in one of the optional forms listed above. An election may be revoked at any time during the election period and a new election may also be made at any time during such period. Said election (or revocation) shall be filed with the Retirement Committee and shall be in writing and in such form with such information as the Retirement Committee may require. No election which waives a Participant's joint and survivor form of benefit shall be effective with respect to any spouse unless either (i) the Participant's spouse consents to the election in a writing which acknowledges the effect of such election and which is witnessed by a member of the Retirement Committee or notary public, or (ii) it is established to the satisfaction of the Retirement Committee that the consent under (i) cannot be obtained because there is no spouse, because the spouse cannot be located or because of other circumstances as may be prescribed in regulations under Section 417(a)(2) of the Code.

If the Participant is not married at the time benefits are to commence but makes no written election of an option as provided above, the retirement benefits shall be paid in the option A form of payment.

D. Minimum Distribution Requirements. The Retirement Committee may not direct the Trustee to distribute the Participant's Nonforfeitable Accrued Benefit, nor may the Participant elect to have the Trustee distribute his Nonforfeitable Accrued Benefit, under a method of payment which, as of the Required Beginning Date, does not satisfy the minimum distribution requirements under Section 401(a)(9) of the Code and the applicable Treasury regulations, including regulation Section 1.401(a)(9)-6, the provisions of which are incorporated herein by reference. A Participant's Required Beginning Date is

the later April 1 following the close of the calendar year in which Participant attains age 70 1/2, or April 1 of the calendar year following the calendar year in which the Employee retires.

If the Participant's spouse is not his or her designated Beneficiary, a method of payment to the Participant (whether by Participant election or by Retirement Committee direction) may not provide more than incidental benefits to the Beneficiary. For Plan Years beginning after December 31, 1988, the Plan must satisfy the minimum distribution incidental benefit ("MDIB") requirement in the Treasury regulations issued under Code §401(a)(9) for distributions made on or after the Participant's Beginning Date and before the Participant's death. For Plan Years beginning prior to January 1, 1989, the Plan satisfies the incidental benefits requirement if the distributions to the Participant satisfied the MDIB requirement or if the present value of the retirement benefits payable solely to the Participant greater than 50% of the present value of the total benefits payable to the Participant and his Beneficiaries. The Retirement Committee must determine whether benefits to the Beneficiary are incidental as of the date the Trustee is to commence payment of the retirement benefits to the Participant, or as of any date the Trustee redetermines the payment period to the Participant.

The minimum distribution for the first distribution calendar year is due by the Participant's Required Beginning Date. The minimum distribution for each subsequent distribution calendar year, including the calendar year in which the Participant's Required Beginning Date falls, is due by December 31 of that year.

With respect to distributions under the Plan for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with Treasury regulations under Section 401(a)(9) that were proposed on January 17, 2001.

E. Minimum Distribution Requirements for Beneficiaries. The method of distribution to the Participant's Beneficiary must satisfy Code §401(a)(9) and the applicable Treasury regulations, including Treas. Reg. §1.401(a)(9)-6, the provisions of which are incorporated herein by reference.

#### 5.6 Limitation on Benefits.

A. Effective Date. The limitations of this section apply in Limitation Years beginning on or after January 1, 2008, except as otherwise provided herein. Section 5.6 of this Plan in effect prior to January 1, 2008, shall apply prior to that date to the extent not superseded herein.

B. Annual Benefit. The Annual Benefit otherwise payable to a Participant under the Plan at any time shall not exceed the Maximum

Permissible Benefit. If the benefit the Participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, then the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Maximum Permissible Benefit.

Compensation for purposes of computing the Maximum Permissible Benefit shall be adjusted, as set forth herein, for the following types of compensation paid after a Participant's Severance from Employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code § 414(b), (c), (m) or (o)). However, amounts described in subsections (a) and (b) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2½ months after Severance from Employment or by the end of the Limitation Year that includes the date of such Severance from Employment. Any other payment of compensation paid after Severance from Employment that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code § 415(c)(3), even if payment is made within the time period specified above.

(a) Regular pay. 415 compensation shall include regular pay after Severance from Employment if:

(1) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(2) The payment would have been paid to the Participant prior to a Severance from Employment if the Participant had continued in employment with the Employer.

(b) Leave cashouts. Leave cashouts shall be included in 415 Compensation if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's Severance from Employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other paid time off, but only if the Participant would have been able to use the leave if employment had continued.

If, in connection with the adoption of this restatement, the definition of Compensation has been modified, then, for Plan Years prior to the Plan Year which includes the adoption date of this restatement, Compensation means compensation determined pursuant to the Plan then in effect.



C. Adjustment if in Two Defined Benefit Plans. If the Participant is, or has ever been, a Participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the Employer or a Predecessor Employer, the sum of the Participant's Annual Benefits from all such plans may not exceed the Maximum Permissible Benefit. Where the Participant's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the Maximum Permissible Benefit applicable at that age, the Employer shall limit a Participant's benefit in accordance with the terms of the Plans.

D. Grandfather of Limits Prior to January 1, 2008. The application of the provisions of this Article shall not cause the Maximum Permissible Benefit for any Participant to be less than the Participant's Accrued Benefit under all the defined benefit plans of the Employer or a Predecessor Employer as of the end of the last Limitation Year beginning before January 1, 2008 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, Regulations, and other published guidance relating to Code §415 in effect as of the end of the last Limitation Year beginning before January 1, 2008, as described in Treas. Reg. §1.415(a)-1(g)(4).

E. Other Rules Applicable. The limitations of this Article shall be determined and applied taking into account the rules in Section 5.6G.

F. Definitions. For purposes of this Section 5.6, the following definitions apply:

(i) Annual Benefit. Annual Benefit means a benefit that is payable annually in the form of a Straight Life Annuity. Except as provided below, where a benefit is payable in a form other than a Straight Life Annuity, the benefit shall be adjusted to an actuarially equivalent Straight Life Annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Article. 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 Article 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 Annuity Starting Date has occurred shall be made without regard to Treas. Reg. §1.401(a)-20, Q&A 10(d), and with regard to Treas. Reg. §1.415(b)1(b)(1)(iii)(B) and (C).

No actuarial adjustment to the benefit shall be made for (a) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Participant's benefit were paid in another form; (b) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (c) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code §417(e)(3) and would otherwise satisfy the limitations of this Article, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Article applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code §415(d). 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.

The determination of the Annual Benefit shall take into account Social Security supplements described in Code §411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant to Treas. Reg. §1.411(d)-4, Q&A-3(c), but shall disregard benefits attributable to Employee contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a Straight Life Annuity shall be made in accordance with (i) or (ii) below.

(A) *Benefit forms not subject to Code §417(e)(3).* The Straight Life Annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this subsection (i) if the form of the Participant's benefit is either (a) a nondecreasing annuity (other than a Straight Life Annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse), or (b) an annuity that decreases during the life of the Participant merely because of (1) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (2) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code §401(a)(11)).

i. Limitation Years beginning before January 1, 2008. For Limitation Years beginning before January 1, 2008, the actuarially equivalent Straight Life Annuity is equal to the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and (II) 5% interest rate assumption and the applicable mortality table defined in the Plan for that Annuity Starting Date.

ii. Limitation Years beginning on or after January 1, 2008. For Limitation Years beginning on or after January 1, 2008, the actuarially equivalent Straight Life Annuity is equal to the greater 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 Participant's form of benefit; and (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 Participant's form of benefit, computed using a 5% interest rate assumption and the applicable mortality table defined in the Plan for that Annuity Starting Date.

(B) *Benefit Forms Subject to Code §417(e)(3).* The Straight Life Annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this paragraph if the form of the Participant's benefit is other than a benefit form described in Section 3A.02(a)(i) above. In this case, the actuarially equivalent Straight Life Annuity shall be determined as follows:

i. Annuity Starting Date in Plan Years Beginning After 2005. If the Annuity Starting Date of the Participant's form of benefit is in a Plan Year beginning after 2005, the actuarially equivalent Straight Life Annuity is equal to the greatest of (I) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; (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 Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in the Plan; and (III) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate and applicable mortality table defined in the Plan, divided by 1.05.

ii. Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the Annuity Starting Date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent Straight Life Annuity is equal to the annual amount of the Straight Life Annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and (II) a 5.5% interest rate assumption and the applicable mortality table defined in the Plan.

(ii) Defined Benefit Dollar Limitation. Defined Benefit Dollar Limitation means, effective for Limitation Years ending after December 31, 2001, \$160,000, automatically adjusted under Code §415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a Straight Life Annuity. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

(iii) Employer. Employer means, for purposes of this Article, the Employer that has adopted the Plan, and all members of a controlled group of corporations, as defined in Code §414(b), as modified by Code §415(h)), all commonly controlled trades or businesses (as defined in Code §414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Code §415(h)), or affiliated service groups (as defined in Code §414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the employer pursuant to Code §414(o).

(iv) Formerly Affiliated Plan of the Employer. Formerly Affiliated Plan of the Employer means a plan that, immediately prior to the cessation of affiliation, was actually maintained by the Employer and, immediately after the cessation of affiliation, is not actually maintained by the Employer. For this purpose, cessation of affiliation means the event that (i) causes an entity to no longer be considered the Employer, such as the sale of a member of a controlled group of corporations, as defined in Code §414(b), as modified by Code §415(h), to an unrelated corporation, or (ii) causes a plan to not actually be maintained by the Employer, such as transfer of plan sponsorship outside a controlled group.

(v) Limitation Year. Limitation Year means the period specified in the Plan that is used to apply the Code §415 limitations (i.e., the calendar year).

(vi) Maximum Permissible Benefit. Maximum Permissible Benefit means the Defined Benefit Dollar Limitation (adjusted where required, as provided below).

(A) *Adjustment for Less Than 10 Years of Participation or Service.* If the Participant has less than 10 years of participation in the Plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction -- (i) the numerator of which is the number of Years of Participation in the Plan (or part thereof, but not less than one year), and (ii) the denominator of which is ten (10).

(B) *Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or After Age 65.* Effective for benefits commencing in Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation shall be adjusted if the Annuity Starting Date of the Participant's benefit is before age 62 or after age 65 as provided below.

i. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62:

(aa) *Limitation Years Beginning Before January 1, 2008.* If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning before January 1, 2008, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting

Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 5.6.F(vi)(A) for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table (or other tabular factor) specified in the Plan; or (2) a five percent (5%) interest rate assumption and the applicable mortality table as defined in the Plan.

(bb) *Limitation Years Beginning on or After January 1, 2008.*

1. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after January 1, 2008, and the Plan does not have an immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 5.6.F(vi)(A) for years of participation less than ten (10), if required) with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for the Annuity Starting Date as defined in the Plan (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

2. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date

for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after January 1, 2008, and the Plan has an immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the lesser of the limitation determined under Amendment Section 3A.2(h)(II)(A) and the Defined Benefit Dollar Limitation (adjusted under Section 5.6.F(vi)(A) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing Straight Life Annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing Straight Life Annuity under the Plan at age 62, both determined without applying the limitations of this article.

ii. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65.

(aa) *Limitation Years Beginning Before January 1, 2008.* If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning before January 1, 2008, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 5.6.F(vi)(A) for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table (or other tabular factor) specified in the Plan; or (2) a five percent (5%) interest rate assumption and the applicable mortality table as defined in the Plan.

(bb) *Limitation Years Beginning After January 1, 2008.*

1. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after January 1, 2008, and the Plan does not have an immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 5.6.F(vi)(A) for years of participation less than 10, if required), with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for that Annuity Starting Date as defined in the Plan (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

2. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after January 1, 2008, and the plan has an immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting Date is the lesser of the limitation determined under Section 5.6.F(vi)(B)i(bb)1 and the Defined Benefit Dollar Limitation (adjusted under Section 5.6.F(vi)(A) for years



of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing Straight Life Annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing Straight Life Annuity under the Plan at age 65, both determined without applying the limitations of this Article. For this purpose, the adjusted immediately commencing Straight Life Annuity under the Plan at the Participant's Annuity Starting Date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing Straight Life Annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

iii. Notwithstanding the other requirements of this Section, no adjustment shall be made to the Defined Benefit Dollar Limitation to reflect the probability of a Participant's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, as defined in Code §417(c), upon the Participant's death.

(aa) *Minimum benefit permitted.* Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:

1. the retirement benefits payable for a Limitation Year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Employer do not exceed \$10,000 multiplied by a fraction – (I) the numerator of which is the Participant’s number of Years (or part thereof, but not less than one year) of Service (not to exceed ten (10)) with the Employer, and (II) the denominator of which is ten (10); and

2. the Employer (or a Predecessor Employer) has not at any time maintained a defined contribution plan in which the Participant participated (for this purpose, mandatory Employee contributions under a defined benefit plan, individual medical accounts under Code §401(h), and accounts for post-retirement medical benefits established under Code §419A(d)(1) are not considered a separate defined contribution plan).

(vii) Predecessor Employer. Predecessor Employer means, with respect to a Participant, a former employer of such Participant if the Employer maintains a Plan that provides a benefit which the Participant accrued while performing services for the former employer. A former entity that antedates the Employer is also a Predecessor Employer with respect to a Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity. For this purpose, the formerly affiliated plan rules in Treas. Reg. §1.415(f)-1(b)(2) apply as if the Employer and Predecessor Employer constituted a single employer under the rules described in Treas. Reg. §1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Treas. Reg. §1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the Predecessor Employer relationship, such as a transfer of benefits or plan sponsorship.

(viii) Severance from Employment. Severance from Employment means, with respect to any individual, cessation from being an Employee of the Employer maintaining the Plan. An Employee does not have a

Severance from Employment if, in connection with a change of employment, the Employee's new employer maintains the Plan with respect to the Employee.

(ix) Straight Life Annuity. Straight Life Annuity means an annuity payable in equal installments for the life of a Participant that terminates upon the Participant's death.

(x) Year of Participation. Year of Participation means, with respect to a Participant, each accrual computation period (computed to fractional parts of a year) for which the following conditions are met: (1) the Participant is credited with at least the number of Hours of Service (or Period of Service if the Elapsed Time Method is used) for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual computation period, and (2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a Year of Participation credited to the Participant shall equal the amount of benefit accrual service credited to the Participant for such accrual computation period. A Participant who is permanently and totally disabled within the meaning of Code §415(c)(3)(C)(i) for an accrual computation period shall receive a Year of Participation with respect to that period.

In addition, for a Participant to receive a Year of Participation (or part thereof) for an accrual computation period, the Plan must be established no later than the last day of such accrual computation period. In no event shall more than one Year of Participation be credited for any 12-month period.

G. Other Rules.

(i) Benefits Under Terminated Plans. If a defined benefit plan maintained by the Employer has terminated with sufficient assets for the payment of benefit liabilities of all plan participants and a Participant in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the Participant's benefits under the terminated plan at each possible Annuity Starting Date shall be taken into account in applying the limitations of this Article. If there are not sufficient assets for the payment of all Participants' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Participant under the terminated plan.

(ii) Benefits Transferred From the Plan. If a Participant's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant Treas. Reg. §1.411(d)-4, Q&A-3(c), then the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a Participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan that is not maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant to Treas. Reg. §1.411(d)-4, Q&A-3(c), then the transferred benefits are treated by the Employer's Plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the Employer that terminated immediately prior to the transfer with sufficient assets to pay all Participants' benefit liabilities under the plan. If a Participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant to Treas. Reg. §1.411(d)-4, Q&A-3(c), the amount transferred is treated as a benefit paid from the transferor plan.

(iii) Formerly Affiliated Plans of the Employer. A Formerly Affiliated Plan of an Employer shall be treated as a plan maintained by the Employer, but the formerly affiliated plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay Participants' benefit liabilities under the Plan and had purchased annuities to provide benefits.

(iv) Plans of a Predecessor Employer. If the Employer maintains a defined benefit plan that provides benefits accrued by a Participant while performing services for a Predecessor Employer, then the Participant's benefits under a plan maintained by the Predecessor Employer shall be treated as provided under a plan maintained by the Employer. However, for this purpose, the plan of the Predecessor Employer shall be treated as if it had terminated immediately prior to the event giving rise to the Predecessor Employer relationship with sufficient assets to pay Participants' benefit liabilities under the plan, and had purchased annuities to provide benefits; the Employer and the Predecessor Employer shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provide under the plan of the Predecessor Employer.

(v) Application of Rules. The limitations of this Article shall be determined and applied taking into account the rules in Treas. Reg. §1.415(b)-1 and §1.415(f)-1(d), (e) and (h), which are incorporated herein.

5.7 Latest Date for Payment. Payments of all benefits under the Plan shall commence no later than 60 days following the close of the Plan Year during which the latest of the following events occurs:

- A. the Participant attains normal retirement age under this Plan;
- B. the Participant terminates employment with the Employer.

Furthermore, payment of a Participant's benefits shall commence no later than April 1 of the calendar year following the calendar year in which the Participant terminates employment with the Employer or attains age 70-1/2, whichever occurs later.

If a Participant dies after distributions to him or her have commenced under the Plan but before his or her entire interest has been distributed to him or her, the undistributed portion of such interest shall be distributed not less rapidly than within the period provided under the method of distribution in use by the Participant at the date of his or her death. If a Participant dies before distributions to him or her have commenced under the Plan, the entire interest of the Participant shall be distributed within five years after the Participant's death; provided, however, that distributions to a beneficiary designated by the Participant may be distributed over the life of the designated beneficiary or over any period not exceeding the life expectancy of the designated beneficiary if such distributions commence not later than one year after the Participant's death or such later date as the regulations under the Code may prescribe (but, if the designated beneficiary is the Participant's surviving spouse, not earlier than the date on which the Participant would have attained age 70-1/2). If the spouse whom the Participant has designated as his or her beneficiary dies before distributions to such spouse begin, all provisions of this Section 5.7 following clause (b) above shall apply as if the surviving spouse were the Participant.

5.8 No Duplication of Benefits. In no event shall benefits be duplicated with respect to former Participants who have recommenced participation in the Plan. Subject to the provisions of Section 3.4, if a Participant resumes active employment with the Employer after having received a distribution of all or a portion of his or her Accrued Benefit, all of his or her Years of Service shall be considered in computing his or her Accrued Benefit. However, such Participant's Accrued Benefit shall be offset by his or her Accrued Benefit attributable to any distribution received other than a distribution for which repayment is made under Section 3.4.

5.9 USERRA/HEART. Effective on and after December 12, 1994, notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credits with respect to qualified military service shall be provided in accordance with Section 414(u) of the Code.

In the case of a death or disability occurring on or after January 1, 2007, if a participant dies while performing qualified military service (as defined in Code Section 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the participant had resumed and then terminated employment on account of death.

For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), shall be treated as an Employee of the Employer making the payment, (ii) the differential wage payment shall be treated as compensation, and (iii) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

Continued benefit accruals pursuant to the Heroes Earnings Assistance and Tax Relief Act are not provided.

5.10 Transfer of Interest.

A. Transfer of Interest. 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 Retirement Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. At the direction of the Retirement Committee, the Trustee shall effect transfers elected by distributees hereunder.

B. Definitions.

(i) Eligible rollover distribution shall mean 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 the following: (a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (b) any distribution to the extent such distribution is required under §401(a)(9) of the Code; and (c) 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).

(ii) Eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and 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. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code.

(iii) Distributee shall mean 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 §414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

(iv) Direct rollover shall be a payment by the Plan to the eligible retirement plan specified by the distributee.

(v) Direct Rollover of Non-Spousal Distribution.

(A) *Non-spouse Beneficiary Rollover Right.* For distributions after December 31, 2009, a non-spouse beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under Code Section 401(a)(31).

(B) *Trust Beneficiary.* If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA

on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).

(C) *Required Minimum Distributions Not Eligible for Rollover.* A non-spouse beneficiary may not roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulations Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

#### **ARTICLE VI - CESSATION OF PARTICIPATION - DEFERRED VESTED BENEFITS**

6.1 Vested Accumulated Contributions. A Participant shall always be fully vested in his or her Accumulated Contributions.

6.2 Years of Service for Vesting. For purposes of determining the Participant's number of Years of Service under this Article VI, the following Years of Service shall not be taken into account:

The Years of Service prior to consecutive Breaks in Service if the Participant has no vested rights under this Plan and the number of such consecutive Breaks in Service equals or exceeds the greater of five or the aggregate number of Years of Service prior to such Breaks in Service.

6.3 Termination of Employment - No Vesting. In the event a Participant incurs a Break in Service before having completed five Years of Service, determined in accordance with Section 6.2, all rights under this Plan with respect to the Participant's employment preceding the Break in Service shall end, except as provided in Section 3.4. The Participant's Accumulated Contributions determined as of such Break in Service shall be paid to the Participant; or in the event of his or her death, such payment shall be made as provided in Section 7.1.

6.4 Termination of Employment - Vesting. In the event a Participant incurs a Break in Service after completing at least five Years of Service but before being eligible for early or disability retirement, the Participant shall be fully vested in his or her Accumulated Contributions, or the deferred pension attributable thereto, and shall be



vested in the deferred pension attributable to the Employer's contributions in accordance with the following schedule:

<u>Years of Service</u>	<u>Vesting Percentage</u>
Less than 5	0%
5	50%
6	60%
7	70%
8	80%
9	90%
10	100%

6.5 Deferred Vested Retirement Income Amount. If a Participant is eligible for a deferred vested pension under Section 6.4, and does not withdraw his or her Accumulated Contributions, the pension payable commencing on the Participant's normal retirement date shall be the pension amount attributable to the Participant's Accumulated Contributions plus the vested percentage of the pension amount attributable to the Employer's contributions.

The amount attributable to the Employer's contribution shall be determined by calculating the Participant's Accrued Benefit and then subtracting the Participant's Accumulated Contributions in accordance with the actuarial assumptions of the Plan and federal regulations.

A Participant who is eligible for vested benefits under Section 6.4 may have his or her Accumulated Contributions paid out as a single sum if the Participant files a written election of withdrawal with the Employer. If the Participant's Accumulated Contributions are paid to the Participant, such payment shall be in lieu of any deferred vested pension attributable to the Participant's Accumulated Contributions and only the deferred vested pension attributable to the Employer's contributions will thereafter be payable.

A Participant who is hired as an Employee prior to January 1, 2018, and who is eligible for a deferred vested pension under Section 6.4 may, by filing a written election with the Employer prior to the time payments are to commence, have his or her pension commence at the first of any month following the later of the Participant's 58th birthday or the termination of employment, provided that the Participant would have had at least 20 Years of Service had he or she remained in employment until attaining age 58. If benefits do commence prior to the Participant's normal retirement date, the benefits payable shall be reduced according to Section 5.2. The election set forth in this paragraph shall not be applicable to Participants who are hired as an employee on or after January 1, 2018.

Benefits under Section 6.4 shall be payable monthly from the date of commencement and shall be paid according to the optional method in effect pursuant to Section 5.1.

If this Section is applicable to a Participant, the benefits provided by this Section are in lieu of all other benefits under this Plan.

## **ARTICLE VII - DEATH BENEFITS**

7.1 Preretirement Survivor Annuity. The surviving spouse of a vested Participant who dies before his or her Annuity Starting Date shall be entitled to receive the survivor annuity benefits such spouse would have received under Section 5.5.C if

A. in the case of a Participant who dies after the earliest date he or she could have elected to receive retirement benefits under the Plan ("earliest retirement date"), such Participant had retired with an immediate joint and survivor annuity as provided in Section 5.5.C on the day before the Participant's date of death; or

B. in the case of a Participant who dies on or before his or her earliest retirement date, such Participant had separated from service on the date of death, survived to his or her earliest retirement date, retired with an immediate joint and survivor annuity as provided in Section 5.5.C at his or her earliest retirement date, and died on the date after his or her earliest retirement date.

Survivor benefits under this Section shall commence no later than the month following the Participant's death and during which occurs the Participant's earliest retirement date.

The Retirement Committee shall provide to the Participant a written explanation (comparable to the written notice provided under Section 5.5.C) regarding the preretirement survivor Annuity within the notice period which shall begin with the first day of the Plan Year in which the Participant attains age 32 and end with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35 (consistent with such regulations as may be prescribed under the Code). A Participant may elect (or revoke an election) to waive the preretirement survivor annuity anytime after the close of the notice period (or with respect to a Participant's benefits accrued before his date of separation from service, after such date of separation) but no later than the date of the Participant's death. Such election (or revocation) shall be filed with the Retirement Committee and shall be in writing and in such form with such information as the Retirement Committee may require. No election to waive the preretirement survivor annuity shall be effective with respect to any surviving spouse unless the same

conditions for spousal consent as those provided in Section 5.5.C are met with respect to such waiver.

7.2 Other Preretirement Death Benefits. The benefits provided by Section 7.1 shall be in lieu of any other benefits under the Plan. In the event a Participant is not eligible for a benefit under Section 7.1 or waives said benefit, the Participant's Accumulated Contributions shall be paid as a single sum to the Participant's Beneficiary.

7.3 Death Benefits After Commencement or Retirement Benefits. If a Participant dies after his Annuity Starting Date, any further benefits from the Plan shall depend on the retirement income form selected by the Participant. If the Participant was receiving a life annuity, all payments shall cease. If the Participant was receiving a joint annuity, payments shall be continued to the remaining joint annuitant, if any, in accordance with the Participant's election. If payments are to be made for a term certain, death benefits will be continued accordingly.

7.4 Minimum Distribution Requirements. Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall be made in accordance with the following requirements and shall otherwise comply with Code §401(a)(9) and the regulations thereunder. The requirements of Code §401(a)(9), including the minimum incidental death benefit requirements of Code §401(a)(9)(G), are incorporated herein by reference. If the death benefit is paid in the form of a Pre-retirement Survivor Annuity, then distributions to the Participant's surviving spouse must commence on or before the later of: (1) December 31<sup>st</sup> of the calendar year immediately following the calendar year in which the Participant died; or (2) December 31<sup>st</sup> of the calendar year in which the Participant would have attained age 70-1/2. If it is determined pursuant to regulations that the distribution of a Participant's interest has begun and the Participant dies before his entire interest has been distributed to him, the remaining portion of such interest shall be distributed t at least as rapidly as under the method of distribution selected pursuant to Article VII as of his date of death.

## **ARTICLE VIII - APPLICATION FOR BENEFITS**

8.1 Application for Benefits. Each person eligible for benefits under this Plan, other than a person entitled to benefits solely as the joint annuitant of a Participant, shall apply for such benefits by signing an application form to be furnished by the Employer. Each such person shall also furnish the Employer with such documents, evidence, data or information in support of such application as the Employer considers necessary or desirable. It shall be the duty of each person receiving benefits, or eligible to receive benefits at some time, to keep the Employer informed as to his or her whereabouts and where benefits should be sent or delivered.

## ARTICLE IX - FINANCING

9.1 Funding. A retirement fund shall be established to receive and hold contributions from the Employer and Participants, interest and other income, and to pay the benefits provided by the Plan. All benefits under the Plan shall be payable only from such fund. The fund shall be held under a trust agreement and/or insurance contract selected by the Retirement Committee subject to confirmation by the Board. The Retirement Committee shall, based on recommendations by the Plan Administrator, modify any trust agreement or insurance contract, remove any trustee or change insurance companies whenever such actions are deemed appropriate by the Committee. Such modification, removal or change shall be subject to confirmation by the Board.

9.2 Funding Policy. The Retirement Committee shall establish a Funding Policy subject to approval by the Board of Directors, and in accordance therewith the Employer shall make such contributions to any insurance company or trustee as shall be required under accepted actuarial principles to provide the benefits under the Plan, provided that in no event shall the Employer's contribution be greater than 4.525% of active Participants' Compensation for Participants of this Plan. In the event that the Plan's independent Actuary using reasonable actuarial assumptions determines that the amount of Employer contributions required to maintain retirement benefits set forth in Article V are greater than 4.525% of active Participants' Compensation, then the Committee will recommend enforcement of the guidelines set forth in the funding policy to bring the Plan back into an adequately funded status within a timeframe acceptable to the Committee.

Notwithstanding the foregoing, the Employer's contribution as measured as a percentage of active Participants' Compensation shall be the following for the periods set forth below:

<u>Period</u>	<u>Rate of Employer Contribution as a Percentage of Active Participant Compensation</u>
July 1, 2007 through June 30, 2008	6.5%
July 1, 2008 through June 30, 2009	6.5%
July 1, 2009 through June 30, 2010	6.5%
July 1, 2010 through June 30, 2013	6.5%
July 1, 2013 through August 31, 2017	6.5%
September 1, 2017 through December 31, 2019	7.5%
January 1, 2020 <del>and through</del> <del>thereafter</del> <u>December 31, 2023</u>	7.75%
<u>January 1, 2024 and thereafter</u>	<u>8.25%</u>

In addition, notwithstanding the foregoing, on or before September 1, 2017, the Employer shall make a one-time lump sum contribution in an amount equal to 1% of the total of the active Participants' Compensation during the period beginning on July 1, 2016 and ending on August 31, 2017.

9.3 Non-Reversion. The Employer shall have no right, title or interest in the contributions made by it under the Plan and no part of the retirement fund shall revert to the Employer, except that any funds remaining in the fund because of an erroneous actuarial computation and after the complete satisfaction of all fixed and contingent

liabilities under the Plan upon termination of the Plan and the allocation and distribution of any fund as provided herein, may revert to the Employer.

9.4 Participant Contributions. An Employee who is a Participant on July 1, 1979, or who thereafter becomes eligible to participate, shall contribute to this Plan as provided in this subsection.

During the time that a Participant is contributing, the contribution shall be a percent of the Participant's Compensation. The percent shall be 3.05% of the Participant's Compensation for periods prior to November 1, 2001, and 3.30% for periods November 1, 2001 through October 27, 2005, and 3.8% for periods thereafter, with Compensation limited as provided for in Section 2.1(I).

Notwithstanding the foregoing, Participants shall contribute a percentage of their Compensation for the periods set forth below in accordance with the following schedules:

<u>Period</u>	<u>Rate of Participant Contribution as a Percentage of Participant Compensation</u>
July 1, 2007 through June 30, 2008	4.55%
July 1, 2008 through June 30, 2009	5.30%
July 1, 2009 through June 30, 2010	6.00%
July 1, 2010 through June 30, 2013	6.00%
July 1, 2013 through August 31, 2017	6.00%
September 1, 2017 through	6.50%

December 31, 2017	
January 1, 2018 through December 31, 2019	7.00%
January 1, 2020 through December 31, 2020	7.25%
January 1, 2021 through December 31, 2021	7.50%
<u>January 1, 2020 through December 31, 2023</u>	<u>7.75%</u>
<u>January 1, 2024 and thereafter</u>	<u>8.25%</u>
<del>January 1, 2022 through December 31, 2022</del>	<del>7.75%</del>

#### ARTICLE X - TEMPORARY LIMITATIONS ON BENEFITS

10.1 Limitation of Benefits. Notwithstanding any provision in this Plan to the contrary, during the first ten years after July 1, 1979 the benefits provided for Participants whose anticipated monthly retirement income provided by such contributions will exceed \$125, but applicable only to the 25 highest paid Participants as of the Effective Date, shall be subject to the following limitations:

A. There shall be paid in full those benefits, including any death or survivor's benefits on behalf of a Participant who dies after retirement, which have been provided by Employer contributions not exceeding the larger of:

(i) \$20,000; or

(ii) an amount equal to 20% of the first \$50,000 of the Participant's average regular annual Compensation multiplied by the number of years between July 1, 1979 and the earlier of (a) the date of the termination of the Plan, or (b) if the benefits of the Participant become payable within ten years after establishment of the Plan, the date such benefits become payable, or (c) if the full current costs for the first ten

years of the Plan have not been funded, the date of the failure to meet the full current costs.

B. If this Plan terminates and the full current costs of the Plan have not been met by the end of the first ten years after July 1, 1979, any benefits which any Participants described in Section 10.1 of this Article X may receive shall not exceed the benefits set forth in subsection A of said Section.

C. If a Participant described in Section 10.1 of this Article X leaves the employ of the Employer when the full current costs have been met, the benefits which may be received shall not at any time within ten years after July 1, 1979 exceed the benefits set forth in subsection A of said Section.

10.2 When Limitations Do Not Apply. These limitations shall not restrict payment of death benefits of a Participant who dies during a period when the Plan is in effect and its full current costs shall have been met nor shall the limitations set forth herein restrict the current payment of full retirement benefits called for by this Plan if its current costs shall have been met for any retired Participant while this Plan is in effect; provided, however, that the restricted Employer contributions be applied either

A. To provide level amounts of annuity in the basic form of benefit provided under the Plan, or

B. To provide level amounts of annuity in an optional form of benefit provided under the Plan if the level amount of annuity under such optional form of benefit is not greater than the level amount of annuity under the basic form of benefit provided under the Plan.

10.3 Further Limitations. Notwithstanding anything to the contrary contained in this Article X, if at the end of the first ten years after July 1, 1979 the full current costs are not met, the limitations on benefits will continue to apply until the full current costs are met for the first time.

10.4 Limitations Applicable to Amended Plan. If the Plan has been changed so as to increase substantially the extent of possible discrimination as to contributions and as to benefits actually payable in event of the subsequent termination of the Plan or the subsequent discontinuance of contributions thereunder, then the provisions of this Article shall be applied to the Plan as so changed as if it were a new plan established on the date of such change.

10.5 Limitations on Restrictions. Notwithstanding the above sections of this Article, in the event of the termination of the Plan and Trust during a period in which the above restrictions on the 25 highest paid Employees would otherwise be applicable, such restrictions will not apply if it can be demonstrated to the Internal Revenue Service



that the payment of the anticipated benefits under the Plan, absent the restrictions, would not result in the prohibited discrimination. Moreover, such restrictions shall not apply if on the date of termination the present value of the Plan assets is not less than the present value of all Accrued Benefits as of such date.

## ARTICLE XI - ADMINISTRATION

11.1 Plan Administrator and Retirement Committee. There shall be appointed a committee known as the Retirement Committee for the purpose of administering the Plan assisted by the Plan Administrator. The Retirement Committee shall consist of six members, appointed as follows: (i) Two members shall be appointed by the Transport Workers Union of America, Local 223, one from among the Local membership and one from the International Union. (ii) Two members shall be appointed by the Employer's Board of Directors, one from among the management personnel of the Employer and one from the Employer's Board of Directors. (iii) Two members shall be appointed from among the citizens of Omaha who are businessmen qualified in financial affairs, not otherwise connected with this Plan, the Union or the Employer. One such member shall be appointed by the Union and the other by the Employer's Board of Directors.

The three Retirement Committee members appointed by the Union shall serve at the pleasure of the Union, and the three members appointed by Employer's Board of Directors shall serve at the pleasure of the Board.

The Retirement Committee shall choose from its members a Chairman and a Secretary. The Secretary shall keep minutes of the Retirement Committee's proceedings, and shall keep all data, records and documents pertaining to the Plan Administrator's and the Retirement Committee's administration of the Plan. The Chairman and Secretary shall serve for one year terms, selecting one from the Union appointees and the other from the Employer appointees, and alternating the selection process each year thereafter.

The Retirement Committee may employ and suitably compensate such attorneys, actuaries, advisory, clerical and other employees as it may deem necessary to the performance of administrative duties. Such compensation shall be paid from the pension fund.

Any action of the Retirement Committee shall be determined by the vote or other affirmative expression of a majority of its members. Any proposed action on which the Committee is deadlocked shall be handled in accordance with the Article referring to Arbitration and Mediation of the Agreement between the Transport Workers Union of America and the Employer.

A member of the Retirement Committee who is a Participant shall not vote on any question relating specifically to him or her.

The Plan Administrator and members of the Retirement Committee shall serve without compensation for their services as such. All expenses of the Plan Administrator and Retirement Committee shall be paid by the pension fund.

The Plan Administrator and each member of the Retirement Committee shall be indemnified against any and all expenses and liabilities, including provision for defense, arising out of service as Plan Administrator or out of membership on the Retirement Committee, excepting only expenses and liabilities arising out of a person's own willful misconduct. Payment of such expenses and liabilities shall be made from the pension fund as they come due.

The Plan Administrator shall make available to Participants, and their Surviving Spouses and Beneficiaries, for examination during business hours, such records as pertain to the person wishing to examine the same.

The Retirement Committee, on behalf of the Participants and their Surviving Spouses and Beneficiaries, shall enforce the Plan in accordance with the terms of the Plan and shall have all powers necessary to accomplish that purpose including, but not by way of limitation, the following:

- A. To determine all questions relating to the eligibility of Participants to become Participants.
- B. To determine and certify to the funding agency the amount and kind of benefits payable to Participants and their Surviving Spouses and Beneficiaries.
- C. To appoint an actuary to make any necessary actuarial valuations of the contingent assets and liabilities of the Plan; to adopt, upon the recommendation of the actuary, interest, mortality and other tables for use in all actuarial calculations; and, relying upon the valuations and certifications of the actuary, to determine and certify to the Employer the amount of contributions to be made from time to time by the Employer in order to provide the benefits provided by the Plan, subject to the limitation and requirements stated in Section 9.2 on Funding Policy.
- D. To authorize disbursements from the Plan fund.
- E. To make and publish such rules for the regulation of the Plan as are not inconsistent with the terms thereof.

F. To, in its discretion, construe and interpret the Plan, to supply any omissions therein, to reconcile and correct any errors or inconsistencies, to make and publish rules for regulation of the Plan, to decide any questions in the administration and application of the Plan, including all questions relating to the individual rights or Participants, and to make equitable adjustments for any mistakes or errors in the administration of the Plan.

To enable the Plan Administrator and Retirement Committee to perform administrative functions, the Employer shall supply full and timely information of all matters relating to the pay of all Participants, their retirement, death or other cause for termination of employment, and such other pertinent facts as the Plan Administrator or Retirement Committee may require; and the Plan Administrator or Retirement Committee shall advise the funding agency of such of the foregoing facts as may be pertinent to the administration of the Plan.

All actions by the Plan Administrator, pursuant to the terms of this Plan, shall be subject to approval by the Retirement Committee.

## **ARTICLE XII - AMENDMENT AND TERMINATION**

12.1 Amendment and Termination. The Employer expects the Plan, which is for the exclusive benefit of the Participants and their Surviving Spouses and Beneficiaries, to be permanent. However, the Employer reserves the right to amend, suspend or terminate the Plan at any time by action of the Board of Directors of the Employer; provided, that if the Plan is terminated or partially terminated all Participants shall be fully vested in their benefits accrued to the date of termination; and provided further that no amendment shall be effective unless the Plan, as so amended, shall be for the exclusive benefit of the Participants and their Surviving Spouses and Beneficiaries and no amendment shall operate to deprive any Participant of any rights or benefits irrevocably vested in him or her under the Plan prior to such amendment, except that the Employer may make any and all changes or modifications necessary to comply with governmental laws and regulations.

12.2 Plan of Termination. In event of termination of this Plan, the assets in the pension fund as of the date of Plan termination shall be allocated among the Participants in accordance with the following priorities:

(1) All Participants shall receive their net Accumulated Contributions as of the date of Plan termination. Net Accumulated Contributions are the Participant's Accumulated Contributions as of the date of Plan termination less benefits received, if any.

(2) All Participants who retired three years or more prior to date of Plan termination or could have retired three years or more prior to such date shall be allocated the present value of future benefits based on the form and monthly benefit payable on date of Plan termination.

(3) All other Participants eligible for retirement benefits on date of Plan termination but not included previously shall be allocated assets in the same manner as in (2).

(4) All Participants who are partially or wholly vested but are not eligible for retirement prior to termination of the Plan shall be allocated the present value of vested accrued benefits as of date of Plan termination.

(5) All other Participants who have accrued benefits under their Plan shall be allocated the remaining assets but not to exceed their present value of accrued benefits.

If assets are insufficient to provide for all benefits in a priority category, then benefits in that category will be prorated based on the applicable present values.

If all assets are greater than required to provide all the benefits in all five priority categories as listed above, the excess assets will be returned to the Employer. Implementation of the foregoing plan of termination shall be subject to approval by the Internal Revenue Service.

12.3 Effect of Bankruptcy and Other Contingencies Affecting the Employer. In the event the Employer terminates its connection with the Plan, or in the event the Employer is dissolved or liquidated, or shall by appropriate legal proceedings be adjudged a bankrupt, or in the event judicial proceedings of any kind result in the involuntary dissolution of such Employer, the Plan shall be terminated and the fund shall be distributed as provided heretofore.

### **ARTICLE XIII - MISCELLANEOUS PROVISIONS**

13.1 Non-Alienation. No benefit payable at any time under the Plan shall be subject to any manner to alienation, sale, transfer, assignment, pledge, attachment, garnishment or encumbrance of any kind. Any attempt to alienate, sell, transfer, assign, pledge, or otherwise encumber any such benefit, whether presently or thereafter payable, shall be void. The retirement funds shall not in any manner be liable for or subject to the debts or liabilities of any person entitled to any benefits under this Plan. The foregoing limitations shall not apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant pursuant to a qualified domestic relations order; provided, however, the Plan shall not recognize any qualified

domestic relations order unless required under the terms of the Employee Retirement Income Security Act.

13.2 Payment of Small Amounts. Any other provision of the Plan notwithstanding, if the monthly retirement or disability benefit payable is less than \$10, the Retirement Committee in its discretion, may direct such payments to be made annually in advance or in a lump sum of Equivalent Actuarial Value. In no event shall a lump sum payment be made under this Section if the Equivalent Actuarial Value of the payment has ever exceeded \$1,000 (\$3,500 for periods prior to January 1, 1988, and \$5,000 for Plan Years beginning after December 31, 1987 and before January 1, 2006). Present value shall be determined using the applicable mortality table and applicable interest rate under Section 417(e)(3) of the Code.

In the event of a mandatory distribution greater than \$1,000 in accordance with the provisions of this Section 13.2, if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly in accordance with Section 5.11, then the Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator.

13.3 Incompetency. In the event any payment becomes payable to a person under legal disability or to a person adjudicated incompetent, the payment may be made as directed by proper legal authority. Any such payment shall be a payment for the account of the retired Participant, Surviving Spouse or Beneficiary and shall be a complete discharge of any liability of the Plan.

13.4 Retirement While Absent from Work. A Participant otherwise eligible to retire under the Plan may do so without returning to active employment with the Employer if he is absent from work and such absence does not constitute a termination of employment.

13.5 Employment Rights. The Employer's rights to discipline any Participant or to terminate his employment shall not be affected by reason of any of the provisions of the Plan.

13.6 Vested Right. No Participant, Surviving Spouse or Beneficiary shall have any vested right under the Plan except such rights, if any, as may accrue to him as provided in Articles V, VI and VII.

13.7 Agent for Service of Process. The Plan Administrator shall be authorized to accept service of process on behalf of the Plan.

13.8 Prohibited Transactions. No activity is permitted which is a prohibited transaction within the meaning of any applicable law or regulation.

13.9 Claims Review Procedure. Any Employee, former Employee or Beneficiary who has been denied a benefit, or feels aggrieved by any other action of the Retirement Committee, the Plan Administrator, the Employer, or the funding agent, shall be entitled, upon request to the Plan Administrator, and if he has not already done so, to receive a written notice of such action, together with a full and clear statement of the reasons for the action.

If the claimant wishes further consideration of his position, he may obtain a form from the Plan Administrator on which to request a hearing. Such form, together with a written statement of the claimant's position, shall be filed with the Plan Administrator no later than 90 days after receipt of the Plan Administrator's written notification of action. The Plan Administrator shall schedule an opportunity for a full and fair hearing of the issue within the next 30 days. The decision following such hearing shall be made within 30 days and shall be communicated in writing to the claimant.

13.10 Plan Merger. In the case of any merger or consolidation with or transfer of assets or liabilities to, any other plan, each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit the Participant would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).

**METRO AREA TRANSIT  
HOURLY EMPLOYEES' PENSION PLAN  
(AS AMENDED AND RESTATED EFFECTIVE JANUARY 1, 2021)**

**METRO AREA TRANSIT**  
**HOURLY EMPLOYEES' PENSION PLAN**  
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**METRO AREA TRANSIT  
HOURLY EMPLOYEES' PENSION PLAN**

**ARTICLE I - PRELIMINARY MATTERS**

1.1 Name of Plan. The name of this retirement plan shall be the Metro Area Transit Hourly Employees' Pension Plan (hereinafter referred to as the Plan).

1.2 Establishment and Purpose. This Plan, established in the United States, is for the exclusive benefit of the Plan Participants and their Beneficiaries, and shall be interpreted and administered in a manner consistent with the requirements of applicable Federal law and regulations or of any provisions of any future Federal law or regulations of similar scope and purpose.

1.3 Collective Bargaining. This Plan was created pursuant to collective bargaining procedures in accordance with the Agreement between Metro Area Transit and Transport Workers Union of America, Local 223 dated July 1, 1979.

1.4 Construction. This Plan shall be construed according to the laws of the State of Nebraska where it is made and where it shall be enforced.

1.5 Restatement. This Plan amends and restates the Plan amended and restated January 1, 2010, and is effective January 1, 2021, or as otherwise provided herein or required by law.

**ARTICLE II - DEFINITIONS**

2.1 Definitions. Terms defined in this Article shall have the meanings shown unless the context requires otherwise.

A. Employer shall mean the Metro Area Transit owned by the Transit Authority of the City of Omaha, Nebraska.

B. Employee shall mean individuals employed by the Employer who is covered by a collective bargaining agreement between the Employer and the Transport Workers of America, Local 223, including leased employees (as defined in Section 414(n) of the Code) who perform services for the Employer, except leased employees who are covered by a plan maintained by the leasing organization as described in Section 414(n)(5) of the Code. Employees of a controlled group of corporations or trades or businesses which are under common control (within the meaning of Section 414(b) and (c) of the Code) and

Employees of the members of an affiliated service group (within the meaning of Section 414(m)) will be treated as employed by a single Employer for purposes of participation, vesting, and for purposes of Sections 5.5 and 5.6 of this Plan (except that Sections 414(b) and (c) of the Code shall be modified by Code Section 415(h) for purposes of Sections 5.5 and 5.6 of the Plan). Persons who first commence service with the Employer after their attaining age 60 shall not be considered Employees. Persons determined by the Employer to be independent contractors shall not be considered Employees for purposes of benefit accrual under the Plan.

The Plan treats a leased Employee as an Employee of the Employer. A leased Employee is an individual (who otherwise is not an Employee of the Employer) who, pursuant to a leasing agreement between the Employer and any other person, has performed for the Employer (or for the Employer and any persons related to the Employer within the meaning of Code §144(a)(3)) on a substantially full-time basis for at least one year and who performs services under the primary direction or control of the service recipient. If a leased Employee is treated as an Employee by reason of this paragraph of the Plan, "Compensation" includes compensation from the leasing organization which is attributable to services performed for the Employer.

The Plan does not treat a leased Employee as an Employee of the leasing organization if the leasing organization covers the Employee in a safe harbor plan and, prior to application of the safe harbor plan exception, twenty percent (20%) or less of the Employer's Employees (other than Highly Compensated Employees) are leased Employees. A safe harbor plan is a money purchase pension plan providing immediate participation, full and immediate vesting, and a non-integrated contribution formula equal to at least ten percent (10%) of the Employee's compensation without regard to employment by the leasing organization on a specified date. The safe harbor plan must determine the ten percent (10%) contribution on the basis of compensation as defined in Code §415(c)(3), plus elective contributions.

The Retirement Committee must apply this paragraph in a manner consistent with Code §§414(n) and 414(o) and the regulations issued thereunder. The Retirement Committee will reduce a leased Employee's allocation of Employer contributions under this Plan by the leased Employee's allocation under the leasing organization's plan, but only to the extent that allocation is attributable to the leased Employee's service provided to the Employer. The leasing organization's plan must be a money purchase plan which would satisfy the definition under this paragraph of a safe harbor plan.

C. Hour of Service shall mean:

(i) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer (these hours shall be credited to the Employee for the computation period or periods in which the duties are performed); and

(ii) each hour for which an employee is 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 has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty or military duty; provided that no more than 501 Hours of Service shall be credited under this item (2) for any single continuous period (whether or not such period occurs in a single computation period) (hours under this item (ii) shall be calculated and credited pursuant to Section 2530.200(b)-2 of the Department of Labor Regulations which are incorporated herein by this reference); and

(iii) hours during which an Employee is on an Authorized Leave of Absence, whether or not the Employee is paid or entitled to payment, for that period; and

(iv) each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer, but the same Hour of Service shall not be credited under this item (4) if it is credited under one of the other items (these hours shall be credited to the Employee for the computation period or period to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made); and

(v) hours during which an Employee is on long-term illness leave with his or her name being retained on the Employer's seniority list and duty attendance roster.

For those Employees not receiving an hourly wage, the number of hours credited for any particular period of time shall be based on the number of hours that the Employee would customarily have worked according to his or her regular schedule for work during that period.

Employees will also be given credit for Hours of Service for other hours when required by Federal laws other than the Employee Retirement Income Security Act of 1974.

D. Year of Service shall mean, for all purposes under the Plan, each twelve consecutive month period (beginning with the person's employment date and any subsequent twelve consecutive month period measured from

employment date anniversary) in which that person has not less than 1,000 Hours of Service.

E. Break in Service shall mean any twelve consecutive month period, as described in subsection D of this Section, in which that person has not more than 500 Hours of Service.

F. Participant shall mean an Employee of the Employer who has met the participation requirements specified in Section 3.1 of this Plan.

G. Surviving Spouse shall mean that person to whom a Participant was married at the time of the Participant's death.

H. Beneficiary shall mean that person designated by the Participant to receive any benefits (other than joint and survivor, contingent annuitant or surviving spouses benefits) under this Plan payable after the Participant's death; provided, however, that if no such designation is made and any such benefits become payable, the Beneficiary shall be the Participant's estate.

I. Compensation shall mean for purposes of Sections 5.5 and 5.6 of this Plan, all wages, salaries, fees for professional services, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses and other amounts received for personal services actually rendered in the course of employment with the Employer maintaining the Plan. "Compensation" shall include amounts excludable from gross income under Sections 402(a)(8), 402(b), 132(f)(4), 125 and 403(b) of the Code. For the aforesaid purposes, Compensation shall exclude the following:

(i) Employer contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation;

(ii) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option;

(iv) Reimbursement for expenses incurred by an Employee; and

(v) Other amounts which receive special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Section 403(b) of the Internal Revenue Code ("Code") (whether or not the amounts are actually excludable from the gross income of the Employee).

For all other purposes under this Plan, Compensation shall mean the basic annual compensation of the Participant plus overtime, but exclusive of bonuses and other non-recurring compensation, not exceeding \$30,000 in any calendar year. Compensation shall include the salary paid by the Union to any Union officer of Local 223 who is off duty for authorized Union business directly related to his duties and relationship with the Employer and the Union shall remit contributions to this Plan from such salary as required by Section 9.4.

Effective January 1, 1994, the salary cap on contributions and benefits was raised from \$30,000 to \$35,000. Then effective for calendar year 1996 the salary cap from pension contributions and earnings has been removed. From and after January 1, 1996, all compensation will be subject to the 3.05% contribution.

Only compensation that is under the pension plan compensation caps can be used to calculate a pension. Compensation from prior to 1994 that is used to calculate pension benefits is limited to \$30,000 or total gross pay whichever is lower. Compensation from 1994 or 1995 to be used in calculating a benefit is limited to \$35,000 or total gross pay if it is lower than the cap. Compensation from years 1996 and forward to be used in calculating benefits will be equal to gross pay, subject to the limits of the Code.

In addition to other limitations set forth in the Plan and notwithstanding any other provision of the Plan to the contrary, for Plan Years beginning on or after January 1, 1994, the annual compensation of each Employee taken into account under the Plan shall not exceed the Omnibus Budget Reconciliation Act of 1993 ("OBRA '93") annual compensation limit. The OBRA '93 annual compensation limit is \$150,000 as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue 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 OBRA '93 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.

For Plan Years beginning on or after January 1, 1994, any reference in this Plan to the limitation under Section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit set forth in this provision.

If compensation for any prior determination period is taken into account in determining an employee's benefit accruing in the current Plan Year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the Plan Year beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is \$150,000.

Effective January 1, 2002, for Plan Years beginning after December 31, 2001, the annual Compensation of each Participant taken into account in determining benefit accruals for such Plan Years shall not exceed \$200,000. The \$200,000 limit on annual Compensation shall be adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code.

Family aggregation under former provisions of the Internal Revenue Code shall be eliminated effective January 1, 1997.

For all Plan Years, Compensation shall include basic compensation and overtime, earned vacation and other paid time off pay that are after the Participant terminates employment, provided the payments are made within the later of 2½ months after the Participant terminates employment or the end of the Plan Year that includes the date of such termination; and provided further said amounts would have been paid or been able to have been used had the Participant continued employment.

J. Average Monthly Compensation shall mean a Participant's monthly compensation received by a Participant during his period of employment and averaged over the highest consecutive five years during the ten years of employment immediately prior to the date of the event that gives rise to the determination of benefits, or the date, if any, specified in the Plan, except that for Participants and beneficiaries who become entitled to a benefit before January 1, 1983, the Average Monthly Compensation shall be based on Compensation records back to January 1, 1973, the earliest date for which complete Compensation records are available for all Employees.

K. Plan Administrator shall mean an employee of Metro Area Transit selected by the Employer.

L. Named Fiduciary or Board shall mean the Board of Directors of the Metro Area Transit.

M. Plan Year shall mean January 1 through December 31.

N. Effective Date of this Plan shall mean July 1, 1979.

O. Authorized Leave of Absence means a leave of absence granted as such by the Employer. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414 (u) of the Code. Authorized Leaves of Absence shall be granted in a uniform manner under similar circumstances. Authorized Leave of Absence shall include times when any Union officer of Local 223 is off duty for authorized Union business directly related to his duties and relationship with the Employer.

P. Accumulated Contributions shall mean, at any determination date at or prior to the commencement of retirement income under this Plan, the aggregate of a Participant's own contributions to this Plan, pursuant to Section 9.4 hereof, plus interest compounded annually to the date employment terminates. The interest rate shall be that established by the Retirement Committee for this purpose, but in no event shall the rate of interest for the same purpose be less than that required by Federal laws or regulations.

Q. Total and Permanent Disability shall mean disability of an Employee resulting from a medically determinable physical or mental impairment, originating after the Employee has become a Participant under this Plan, and which disability can be expected to result in death or to be of long-continued and indefinite duration and prevents the Employee from engaging in any occupational duties for which he or she is qualified; provided, however, it shall not include disability resulting from (1) intentionally self-inflicted injury, whether sane or insane, (2) commissions of a felony, or (3) habitual drunkenness or addiction to narcotics.

R. Accrued Benefit shall mean a Participant's normal retirement benefit set forth in Section 5.1 based on actual Years of Service and Compensation at the date of determination.

S. Equivalent Actuarial Value shall mean a benefit of equal value using the 1971 Group Annuity Table with 7% interest per annum, compounded annually.

Notwithstanding anything to the contrary, in the case of the determination of an Equivalent Actuarial Value single sum payment (lump sum) under the Plan, which is payable after January 1, 1998, the single sum shall be the Actuarial Equivalence determined by using the Applicable Mortality Table and

the Applicable Interest Rate. For purposes of the foregoing, those terms shall have the following meaning:

(i) The “Applicable Mortality Table” shall mean the table prescribed by the Secretary of Treasury that utilizes the prevailing commissioners standard table for determining reserves for group annuity contracts issued on the date as of which the present value is determined (currently defined as the 83 Group Annuity Mortality Table). Notwithstanding the foregoing, the Applicable Mortality Table used for purposes of adjusting any benefit or limitation under Section 415(b)(2)(B), (C), or (D) of the Internal Revenue Code, and the Applicable Mortality Table used for purposes of satisfying the requirements of Section 417(e) of the Internal Revenue Code, is the table prescribed in Rev. Rul. 2001-62. Effective January 1, 2008, for purposes of the Plan’s provisions relating to the calculation of the present value of a benefit payment that is subject to Code § 417(e), any provision directly or indirectly prescribing the use of the mortality table described in Revenue Ruling 2001-62 shall be amended to prescribe the use of the Applicable Mortality Table within the meaning of Code § 417(e)(3)(B), as initially described in Revenue Ruling 2007-67; and

(ii) The “Applicable Interest Rate” shall mean the annual interest rate on 30-year Treasury securities for the second month preceding the first day of the stability period in which such distribution occurs. The Applicable Interest Rate will remain constant during the stability period, which is the plan year. Effective January 1, 2008, for purposes of the Plan’s provisions relating to the calculation of the present value of a benefit payment that is subject to Code § 417(e), any provision prescribing the use of the annual rate of interest on 30-year U.S. Treasury securities shall be implemented by instead using the rate of interest determined by applicable interest rate described in Code § 417(e) after its amendment by the Pension Protection Act. Specifically, the applicable interest rate shall be adjusted first, second and third segment rates applied under the rules similar to the rules of Code § 430(h)(2)(C) for the calendar year (lookback month) before the first day of the Plan Year in which the annuity starting date occurs (stability period). For this purpose, the first, second and third segment rates are the first, second and third segment rates which would be determined under Code § 430(h)(2)(C) if:

(A) Code § 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section, and



(B) Code § 430(h)(2)(G)(i)(II) were applied by substituting “Section 417(e)(3)(A)(ii)(II)” for “Section 412(b)(5)(B)(ii)(II),” and

(C) The applicable percentage under Code § 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.

T. Annuity Starting Date shall mean the first day of the first period for which an amount is received as an annuity.

U. Highly Compensated Employee, effective January 1, 1997, shall mean an Employee described in Section 414(q) of the Code and the Regulations thereunder, and generally means an Employee who performed services for the Employer during the calendar year and is in one or more of the following groups:

(i) Employees who at any time during the calendar year or preceding calendar year were “five percent owners.”

(ii) Employees who received “415 Compensation” during the preceding calendar year from the Employer in excess of \$80,000 - as adjusted - and were in the Top Paid Group of Employees for such preceding calendar year.

A “five percent owner” shall mean any person who owns (or is considered as owning within the meaning of Code §318) more than five percent (5%) of the outstanding stock of the Employer or stock possessing more than five percent (5%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than five percent (5%) of the capital or profits interest in the Employer. In determining percentage ownership hereunder, employers that would otherwise be aggregated under Sections 414(b), (c), (m) and (o) of the Code shall be treated as separate employers.

“Top paid group” means the top twenty percent (20%) of Employees who performed services for the Employer during the applicable year, ranked according to the amount of “415 Compensation” received from the Employer during such year. All affiliated employers shall be taken into account as a single employer, and leased employees within the meaning of Sections 414(n)(2) and 414(o)(2) of the Code shall be considered Employees unless such leased employees are covered by a plan described in Section 414(n)(5) of the Code and are not covered in any qualified plan maintained by the Employer. Employees who are non-resident aliens and who received no earned income (within the meaning of Section 911(d)(2) of the Code) from the Employer constituting United

States source income within the meaning of Section 861(a)(3) of the Code shall not be treated as Employees. Additionally, for the purpose of determining the number of active Employees in any year, the following additional Employees shall still be considered for the purpose of identifying the particular Employees in the top paid group:

- (i) Employees with less than six (6) months of service;
- (ii) Employees who normally work less than seventeen and one-half (17 ½) hours per week.
- (iii) Employees who normally work less than six (6) months during a year; and
- (iv) Employees who have not yet attained age 21 (age 19 for Plan Years beginning on or after January 1, 1998).

In addition, if ninety percent (90%) or more of the Employees of the Employer are covered under agreements the Secretary of Labor finds to be collective bargaining agreements between Employee representative and the Employer, and the Plan covers only Employees who are not covered under such agreements, then Employees covered by such agreements shall be excluded from both the total number of active Employees as well as from the identification of particular Employees in the top paid group.

In determining who is a Highly Compensated Employee, Employees who are non-resident aliens and who received no earned income (within the meaning of Section 911(d)(2) of the Code) from the Employer constituting United States source income within the meaning of Section 861(a)(3) of the Code shall not be treated as Employees. Additionally, all affiliated employers shall be taken into account as a single employer and leased employees within the meaning of Sections 414(n)(2) and 414(o)(2) of the Code shall be considered Employees unless such leased employees are covered by a plan described in Section 414(n)(5) of the Code and are not covered in any qualified plan maintained by the Employer. The exclusion of leased employees for this purpose shall be applied on a uniform and consistent basis for all of the Employer's retirement plans.

### **ARTICLE III - PARTICIPATION**

3.1 Employees on July 1, 1979. Any Employee who was an Employee on July 1, 1979 shall become a Participant under this Plan as of such date and shall continue to be a Participant until participation ceases in accordance with the provisions of the Plan.

3.2 Participation After July 1, 1979. Any Employee hired after July 1, 1979, shall become a Participant on the first day of the pay period after a probation period of service with the Employer. Effective for any Employee hired after July 1, 2012, said participation date shall be the first day of the month next following the completion of a 120 day probation period. An Employee hired after his or her 60<sup>th</sup> birthday shall not become a Participant under the Plan.

3.3 Participation After Terminating Employment Without Participation. An Employee whose employment terminates before becoming a Participant and who is subsequently reemployed by the Employer shall become a Participant in accordance with the provisions of Section 3.2, and the Plan shall treat that person as a new Employee on the date the Employee first performs an Hour of Service for the Employer after reemployment.

3.4 Participation After Break in Service. If a Participant who is not vested in benefits attributable to Employer contributions under this Plan has a number of consecutive Breaks in Service that equals or exceeds the aggregate number of Years of Service prior to such Breaks in Service, any employment by the Employer after such Breaks in Service will be treated under this Plan as if the person was a new Employee with no previous employment by the Employer.

If a Participant who is not vested in benefits attributable to Employer contributions under this Plan returns to employment by the Employer but had a number of consecutive Breaks in Service less than the aggregate number of Years of Service prior to such Breaks in Service, the Participant shall again become a Participant on the date of his or her reemployment. If such a person within two years after returning to such employment returns any accumulated Contributions paid to that Participant plus interest (at the rate specified by Federal law or regulation) from the date of refund to the date of repayment, the Years of Service before and after the break shall be considered together for purposes of this Plan.

If a Participant who was vested in benefits attributable to Employer contributions under this Plan has any number of Breaks in Service but returns to employment by the Employer, the Participant shall again become a Participant on the date of his or her reemployment. The percent of vesting and benefits accrued after the Break of Service shall be based on Years of Service before and after the Break in Service, subject to the application of Section 6.2 and Section 6.5. Withdrawn contributions may be repaid as provided in the immediately preceding paragraph, in which event benefits attributable to the Employee's contributions shall be restored.

3.5 Employees Retired Between June 30, 1977 and July 1, 1979. Each employee who retired between June 30, 1977 and July 1, 1979 shall be entitled to receive a monthly pension from this Plan, commencing on July 1, 1979. The amount of such

pension shall be the monthly pension determined in accordance with Sections 5.1, 5.2 and 5.4 of this Plan reduced by the monthly pension already being paid to the retired employee by the Employer outside the terms of this Plan.

#### ARTICLE IV - RETIREMENT DATES

##### 4.1 Normal.

A. For each person who is hired as an Employee prior to January 1, 2018, the normal retirement date shall be the first day of the month coincidental with or next following the Participant's 65th birthday. A Participant shall have a fully vested Accrued Benefit upon attaining age 65.

B. For each person who is hired as an Employee on or after January 1, 2018, the normal retirement date shall be the first day of the month coincidental with or next following the date the Participant reaches full retirement age for purposes of receiving unreduced old-age, wife's or husband's benefits as determined by the Social Security Administration and set forth in 20 CFR § 404.409 (or any such successor regulations thereto). A Participant shall have a fully vested Accrued Benefit upon attaining such full retirement age.

##### 4.2 Early.

A. For each person who is hired as an Employee prior to January 1, 2018, the early retirement date shall be either of the following dates, as selected by the Participant:

(i) The first day of any month before Participant's normal retirement date but after his termination of employment (other than for disability) and completion of 20 Years of Service and after the Participant's 58th birthday.

(ii) The first day of any month before the Participant's normal retirement date but after his termination of employment and completion of 30 years of continuous employment. For this purpose, a year of continuous employment shall mean a year (measured from the Participant's employment commencement date) during which the Participant has completed at least one Hour of Service.

B. For each person who is hired as an Employee on or after January 1, 2018, no early retirement date shall be available.

4.3 Late. If a Participant has remained in employment without a Break in Service after his normal retirement date, the late retirement date shall be the first day of the month next following the termination of employment of that Participant which shall be no later than his or her seventieth birthday except with approval of the Employer.

4.4 Disability. The disability retirement date shall be the first day of the month next following or coincidental with the commencement of Total and Permanent Disability of a Participant and after his completion of fifteen or more Years of Service.

## **ARTICLE V - RETIREMENT BENEFITS**

5.1 Normal Retirement. Each person who is a Participant on his or her normal retirement date and retires at that time shall be entitled to receive a fully vested monthly pension.

A. For each person who is hired as an Employee prior to January 1, 2018, the amount of said pension, payable as a life annuity on the Participant's life with a return of the Participant's Accumulated Contributions guaranteed, shall be determined as follows:

1.25% of the Participant's Average Monthly Compensation multiplied by the Participant's number of Years of Service. If employment does not terminate at the end of a Year of Service, credit for the last fractional Year of Service shall be given in proportion to time during that year that the Participant was employed. The retirement benefit herein provided shall be subject to adjustment as provided in Section 9.2, as determined by the Plan actuary.

Effective January 1, 1994, the benefit factor used in the pension benefit formula was raised from 1.25% to 1.30%. This was not a retroactive increase and affects only pension benefits earned after January 1, 1994. For participants employed prior to the increase, pension benefits will be calculated in two parts - the old factor for years prior to 1994 and the new factor for years after.

Effective December 21, 1999, the benefit factor used in the pension benefit formula was raised from 1.30% to 1.40% for all Participants terminating employment after December 21, 1999. The increase applies to all Years of Service of such Participants.

B. For each person who is hired as an Employee on or after January 1, 2018, the amount of said pension, payable as a life annuity on the Participant's life with a return of the Participant's Accumulated Contributions guaranteed, shall be determined as follows:

Benefit factors used in the pension benefit formula shall be tiered based on the Years of Service of such Participant since the Participant became an Employee, as set forth below. Benefit factors shall remain fixed for the Years of Service of the Participant in each tier. The sum of the amounts calculated in each of the tiers applicable to such Participant shall be the amount of said pension, payable as a life annuity on the Participant's life with a return of the Participant's Accumulated Contributions guaranteed, determined as follows:

Tier 1: For Years of Service through the end of tenth (10th) Year of Service, 1.2% of the Participant's Average Monthly Compensation multiplied by the Participant's number of Years of Service during said period. If employment does not terminate at the end of a Year of Service, credit for the last fractional Year of Service shall be given in proportion to time during that year that the Participant was employed. The retirement benefit herein provided shall be subject to adjustment as provided in Section 9.2, as determined by the Plan actuary.

Tier 2: For Years of Service beginning on the eleventh (11th) Year of Service and through the end of the twentieth (20th) Year of Service, 1.3% of the Participant's Average Monthly Compensation multiplied by the Participant's number of Years of Service during said period. If employment does not terminate at the end of a Year of Service, credit for the last fractional Year of Service shall be given in proportion to time during that year that the Participant was employed. The retirement benefit herein provided shall be subject to adjustment as provided in Section 9.2, as determined by the Plan actuary.

Tier 3: For Years of Service beginning on the twenty-first (21st) Year of Service and continuing thereafter, 1.4% of the Participant's Average Monthly Compensation multiplied by the Participant's number of Years of Service during said period. If employment does not terminate at the end of a Year of Service, credit for the last fractional Year of Service shall be given in proportion to time during that year that the Participant was employed. The retirement benefit herein provided shall be subject to adjustment as provided in Section 9.2, as determined by the Plan actuary.

As examples of the calculation, if a Participant has 17 Years of Service, the Tier 1 benefit factor for Years of Service 0 through 10 is 1.2% and the Tier 2 benefit factor for Years of Service 11 through 17 is 1.3%. The amount calculated in Tier 1 is added to the amount calculated in Tier 2, with the result being the amount of said pension. If a Participant has 24 Years of Service, the Tier 1 benefit factor for Years of Service 0 through 10 is 1.2%, the Tier 2 benefit factor for Years of Service 11 through 20 is 1.3%, and the Tier 3 benefit factor for Years of Service 21 through 24 is 1.4%. The

amounts calculated in Tier 1, Tier 2 and Tier 3 are added together, with the result being the amount of said pension.

5.2 Early Retirement. A Participant who elects to retire on an early retirement date shall be entitled to a monthly pension determined in the manner prescribed in Section 5.1, based on the Participant's Years of Service and Average Monthly Compensation on the date his or her employment terminated, and then reduced by 1/2% for each month that the early retirement date precedes normal retirement date.

5.3 Late Retirement. A Participant who retires on a late retirement date shall be entitled to a fully vested monthly pension in an amount equal to what the Participant would have received had retirement been on the Participant's normal retirement date.

5.4 Disability Benefits. A Participant who retires because of Total and Permanent Disability shall be entitled to a fully vested monthly pension determined as provided for in Section 5.1 for Normal Retirement, based on the Participant's Years of Service and Average Monthly Compensation on his or her disability retirement date as provided for in Section 4.4.

5.5 Commencement and Form of Payment. Any pension due a Participant under this Plan shall be payable monthly commencing on the normal, early or late retirement date, whichever is applicable. Payments shall be made under one of the following options:

A. A single-life annuity on the Participant's life, with a payment to the Participant's Beneficiary equal to the excess, if any, of the Participant's Accumulated Contributions over the benefits paid to the Participant.

B. A ten-year certain period with payments thereafter as long as the Participant lives. If payments have started and the Participant dies before 120 monthly payments have been made, the monthly payments shall continue to his Beneficiary for the remainder of the 120 monthly payments. If no Beneficiary survives the Participant, such remainder shall continue to be paid to the Participant's estate or, at the election of the Plan Administrator, the commuted value of any such remainder shall be paid to the Participant's estate. If payments become payable to a Beneficiary pursuant to this paragraph and the Beneficiary dies before a total of 120 monthly payments have been made to the Participant and the Beneficiary, any remainder of the 120 monthly payments shall continue to be paid to the Beneficiary's estate or, at the election of the Plan Administrator, the commuted value of any such remainder shall be paid to the Beneficiary's estate. Any commuted value determined in accordance with this paragraph shall be calculated using the rate of interest specified by the Plan Administrator for this purpose.

C. A contingent annuitant form of annuity with the Participant's spouse, with either 100%, 75%(effective January 1, 2008), 66-2/3% or 50% of the amount payable to the Participant (while both the Participant and the spouse are alive) being payable to the spouse for life after the Participant's death.

All forms of payment under the Plan shall be the Equivalent Actuarial Value of a Participant's Accrued Benefit.

The Participant may specify which of the above options is to apply by filing a written election with the Plan Administrator in accordance with the rules established by the Plan Administrator governing such elections. Such rules shall provide the Participant with a reasonable opportunity in accordance with any applicable law or governmental regulation, to make such written elections and shall provide for a written explanation of the options and the effect of the options on the benefits payable.

Unless the Participant otherwise elects as provided herein, payment of a pension to a married Participant shall be in the form of an annuity for the life of the Participant with a survivor annuity for the life of his or her spouse which is 100% of the amount of the annuity payable during the joint lives of the Participant and his or her spouse and which is of Equivalent Actuarial Value of the form set forth in Option A.

The Retirement Committee shall notify each Participant in writing at least 180 days prior to the date payments are to commence under the Plan of (i) the terms and conditions of the joint and survivor annuity, (ii) the Participant's right to make, and the effect of a waiver election and a revocation of a waiver, (iii) the spousal consent requirements regarding the election, and (iv) the right of the Participant to revoke with election and the effect of such revocations.

Any distribution provided for in this Section 5.4C may commence less than 30 days after the notice required by Section 417(a)(3) of the Code is given, provided that:

(i) the Administrative Committee clearly informs the Participant that the Participant has a right to a period of 30 days after receiving the notice to consider whether to waive the joint and survivor annuity and consent to a form of distribution other than a joint and survivor annuity,

(ii) the Participant is permitted to revoke an affirmative distribution election at least until the annuity starting date, or, if later, at any time prior to the expiration of the 7-day period that begins the day



after the explanation of the joint and survivor annuity is provided to the Participant,

(iii) the annuity starting date is after the date that the explanation of the joint and survivor annuity is provided to the Participant. However, the annuity starting date may be before the date that any affirmative distribution election is made by the Participant and before the date that the distribution is permitted to commence under (iv) below, and

(iv) distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins the day after the explanation of the joint and survivor annuity is provided to the Participant.

Any Participant may at any time within the 90 day period ending on his or her Annuity Starting Date elect to waive the form of benefit provided under this section and to receive his or her retirement benefits in one of the optional forms listed above. An election may be revoked at any time during the election period and a new election may also be made at any time during such period. Said election (or revocation) shall be filed with the Retirement Committee and shall be in writing and in such form with such information as the Retirement Committee may require. No election which waives a Participant's joint and survivor form of benefit shall be effective with respect to any spouse unless either (i) the Participant's spouse consents to the election in a writing which acknowledges the effect of such election and which is witnessed by a member of the Retirement Committee or notary public, or (ii) it is established to the satisfaction of the Retirement Committee that the consent under (i) cannot be obtained because there is no spouse, because the spouse cannot be located or because of other circumstances as may be prescribed in regulations under Section 417(a)(2) of the Code.

If the Participant is not married at the time benefits are to commence but makes no written election of an option as provided above, the retirement benefits shall be paid in the option A form of payment.

D. Minimum Distribution Requirements. The Retirement Committee may not direct the Trustee to distribute the Participant's Nonforfeitable Accrued Benefit, nor may the Participant elect to have the Trustee distribute his Nonforfeitable Accrued Benefit, under a method of payment which, as of the Required Beginning Date, does not satisfy the minimum distribution requirements under Section 401(a)(9) of the Code and the applicable Treasury regulations, including regulation Section 1.401(a)(9)-6, the provisions of which are incorporated herein by reference. A Participant's Required Beginning Date is

the later April 1 following the close of the calendar year in which Participant attains age 70 1/2, or April 1 of the calendar year following the calendar year in which the Employee retires.

If the Participant's spouse is not his or her designated Beneficiary, a method of payment to the Participant (whether by Participant election or by Retirement Committee direction) may not provide more than incidental benefits to the Beneficiary. For Plan Years beginning after December 31, 1988, the Plan must satisfy the minimum distribution incidental benefit ("MDIB") requirement in the Treasury regulations issued under Code §401(a)(9) for distributions made on or after the Participant's Beginning Date and before the Participant's death. For Plan Years beginning prior to January 1, 1989, the Plan satisfies the incidental benefits requirement if the distributions to the Participant satisfied the MDIB requirement or if the present value of the retirement benefits payable solely to the Participant greater than 50% of the present value of the total benefits payable to the Participant and his Beneficiaries. The Retirement Committee must determine whether benefits to the Beneficiary are incidental as of the date the Trustee is to commence payment of the retirement benefits to the Participant, or as of any date the Trustee redetermines the payment period to the Participant.

The minimum distribution for the first distribution calendar year is due by the Participant's Required Beginning Date. The minimum distribution for each subsequent distribution calendar year, including the calendar year in which the Participant's Required Beginning Date falls, is due by December 31 of that year.

With respect to distributions under the Plan for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with Treasury regulations under Section 401(a)(9) that were proposed on January 17, 2001.

E. Minimum Distribution Requirements for Beneficiaries. The method of distribution to the Participant's Beneficiary must satisfy Code §401(a)(9) and the applicable Treasury regulations, including Treas. Reg. §1.401(a)(9)-6, the provisions of which are incorporated herein by reference.

## 5.6 Limitation on Benefits.

A. Effective Date. The limitations of this section apply in Limitation Years beginning on or after January 1, 2008, except as otherwise provided herein. Section 5.6 of this Plan in effect prior to January 1, 2008, shall apply prior to that date to the extent not superseded herein.

B. Annual Benefit. The Annual Benefit otherwise payable to a Participant under the Plan at any time shall not exceed the Maximum

Permissible Benefit. If the benefit the Participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, then the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Maximum Permissible Benefit.

Compensation for purposes of computing the Maximum Permissible Benefit shall be adjusted, as set forth herein, for the following types of compensation paid after a Participant's Severance from Employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code § 414(b), (c), (m) or (o)). However, amounts described in subsections (a) and (b) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2½ months after Severance from Employment or by the end of the Limitation Year that includes the date of such Severance from Employment. Any other payment of compensation paid after Severance from Employment that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code § 415(c)(3), even if payment is made within the time period specified above.

(a) Regular pay. 415 compensation shall include regular pay after Severance from Employment if:

(1) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(2) The payment would have been paid to the Participant prior to a Severance from Employment if the Participant had continued in employment with the Employer.

(b) Leave cashouts. Leave cashouts shall be included in 415 Compensation if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's Severance from Employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other paid time off, but only if the Participant would have been able to use the leave if employment had continued.

If, in connection with the adoption of this restatement, the definition of Compensation has been modified, then, for Plan Years prior to the Plan Year which includes the adoption date of this restatement, Compensation means compensation determined pursuant to the Plan then in effect.

C. Adjustment if in Two Defined Benefit Plans. If the Participant is, or has ever been, a Participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the Employer or a Predecessor Employer, the sum of the Participant's Annual Benefits from all such plans may not exceed the Maximum Permissible Benefit. Where the Participant's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the Maximum Permissible Benefit applicable at that age, the Employer shall limit a Participant's benefit in accordance with the terms of the Plans.

D. Grandfather of Limits Prior to January 1, 2008. The application of the provisions of this Article shall not cause the Maximum Permissible Benefit for any Participant to be less than the Participant's Accrued Benefit under all the defined benefit plans of the Employer or a Predecessor Employer as of the end of the last Limitation Year beginning before January 1, 2008 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, Regulations, and other published guidance relating to Code §415 in effect as of the end of the last Limitation Year beginning before January 1, 2008, as described in Treas. Reg. §1.415(a)-1(g)(4).

E. Other Rules Applicable. The limitations of this Article shall be determined and applied taking into account the rules in Section 5.6G.

F. Definitions. For purposes of this Section 5.6, the following definitions apply:

(i) Annual Benefit. Annual Benefit means a benefit that is payable annually in the form of a Straight Life Annuity. Except as provided below, where a benefit is payable in a form other than a Straight Life Annuity, the benefit shall be adjusted to an actuarially equivalent Straight Life Annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Article. 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 Article 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 Annuity Starting Date has occurred shall be made without regard to Treas. Reg. §1.401(a)-20, Q&A 10(d), and with regard to Treas. Reg. §1.415(b)1(b)(1)(iii)(B) and (C).

No actuarial adjustment to the benefit shall be made for (a) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Participant's benefit were paid in another form; (b) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (c) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code §417(e)(3) and would otherwise satisfy the limitations of this Article, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Article applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code §415(d). 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.

The determination of the Annual Benefit shall take into account Social Security supplements described in Code §411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant to Treas. Reg. §1.411(d)-4, Q&A-3(c), but shall disregard benefits attributable to Employee contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a Straight Life Annuity shall be made in accordance with (i) or (ii) below.

(A) *Benefit forms not subject to Code §417(e)(3).* The Straight Life Annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this subsection (i) if the form of the Participant's benefit is either (a) a nondecreasing annuity (other than a Straight Life Annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse), or (b) an annuity that decreases during the life of the Participant merely because of (1) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (2) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code §401(a)(11)).

i. Limitation Years beginning before January 1, 2008. For Limitation Years beginning before January 1, 2008, the actuarially equivalent Straight Life Annuity is equal to the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and (II) 5% interest rate assumption and the applicable mortality table defined in the Plan for that Annuity Starting Date.

ii. Limitation Years beginning on or after January 1, 2008. For Limitation Years beginning on or after January 1, 2008, the actuarially equivalent Straight Life Annuity is equal to the greater 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 Participant's form of benefit; and (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 Participant's form of benefit, computed using a 5% interest rate assumption and the applicable mortality table defined in the Plan for that Annuity Starting Date.

(B) *Benefit Forms Subject to Code §417(e)(3).* The Straight Life Annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this paragraph if the form of the Participant's benefit is other than a benefit form described in Section 3A.02(a)(i) above. In this case, the actuarially equivalent Straight Life Annuity shall be determined as follows:

i. Annuity Starting Date in Plan Years Beginning After 2005. If the Annuity Starting Date of the Participant's form of benefit is in a Plan Year beginning after 2005, the actuarially equivalent Straight Life Annuity is equal to the greatest of (I) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; (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 Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in the Plan; and (III) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate and applicable mortality table defined in the Plan, divided by 1.05.

ii. Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the Annuity Starting Date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent Straight Life Annuity is equal to the annual amount of the Straight Life Annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and (II) a 5.5% interest rate assumption and the applicable mortality table defined in the Plan.

(ii) Defined Benefit Dollar Limitation. Defined Benefit Dollar Limitation means, effective for Limitation Years ending after December 31, 2001, \$160,000, automatically adjusted under Code §415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a Straight Life Annuity. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

(iii) Employer. Employer means, for purposes of this Article, the Employer that has adopted the Plan, and all members of a controlled group of corporations, as defined in Code §414(b), as modified by Code §415(h)), all commonly controlled trades or businesses (as defined in Code §414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Code §415(h)), or affiliated service groups (as defined in Code §414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the employer pursuant to Code §414(o).

(iv) Formerly Affiliated Plan of the Employer. Formerly Affiliated Plan of the Employer means a plan that, immediately prior to the cessation of affiliation, was actually maintained by the Employer and, immediately after the cessation of affiliation, is not actually maintained by the Employer. For this purpose, cessation of affiliation means the event that (i) causes an entity to no longer be considered the Employer, such as the sale of a member of a controlled group of corporations, as defined in Code §414(b), as modified by Code §415(h), to an unrelated corporation, or (ii) causes a plan to not actually be maintained by the Employer, such as transfer of plan sponsorship outside a controlled group.

(v) Limitation Year. Limitation Year means the period specified in the Plan that is used to apply the Code §415 limitations (i.e., the calendar year).

(vi) Maximum Permissible Benefit. Maximum Permissible Benefit means the Defined Benefit Dollar Limitation (adjusted where required, as provided below).

(A) *Adjustment for Less Than 10 Years of Participation or Service.* If the Participant has less than 10 years of participation in the Plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction -- (i) the numerator of which is the number of Years of Participation in the Plan (or part thereof, but not less than one year), and (ii) the denominator of which is ten (10).

(B) *Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or After Age 65.* Effective for benefits commencing in Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation shall be adjusted if the Annuity Starting Date of the Participant's benefit is before age 62 or after age 65 as provided below.

i. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62:

(aa) *Limitation Years Beginning Before January 1, 2008.* If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning before January 1, 2008, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting



Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 5.6.F(vi)(A) for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table (or other tabular factor) specified in the Plan; or (2) a five percent (5%) interest rate assumption and the applicable mortality table as defined in the Plan.

(bb) *Limitation Years Beginning on or After January 1, 2008.*

1. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after January 1, 2008, and the Plan does not have an immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 5.6.F(vi)(A) for years of participation less than ten (10), if required) with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for the Annuity Starting Date as defined in the Plan (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

2. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date

for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after January 1, 2008, and the Plan has an immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the lesser of the limitation determined under Amendment Section 3A.2(h)(II)(A) and the Defined Benefit Dollar Limitation (adjusted under Section 5.6.F(vi)(A) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing Straight Life Annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing Straight Life Annuity under the Plan at age 62, both determined without applying the limitations of this article.

ii. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65.

(aa) *Limitation Years Beginning Before January 1, 2008.* If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning before January 1, 2008, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 5.6.F(vi)(A) for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table (or other tabular factor) specified in the Plan; or (2) a five percent (5%) interest rate assumption and the applicable mortality table as defined in the Plan.

(bb) *Limitation Years Beginning After January 1, 2008.*

1. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after January 1, 2008, and the Plan does not have an immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 5.6.F(vi)(A) for years of participation less than 10, if required), with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for that Annuity Starting Date as defined in the Plan (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

2. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after January 1, 2008, and the plan has an immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting Date is the lesser of the limitation determined under Section 5.6.F(vi)(B)i(bb)1 and the Defined Benefit Dollar Limitation (adjusted under Section 5.6.F(vi)(A) for years

of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing Straight Life Annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing Straight Life Annuity under the Plan at age 65, both determined without applying the limitations of this Article. For this purpose, the adjusted immediately commencing Straight Life Annuity under the Plan at the Participant's Annuity Starting Date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing Straight Life Annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

iii. Notwithstanding the other requirements of this Section, no adjustment shall be made to the Defined Benefit Dollar Limitation to reflect the probability of a Participant's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, as defined in Code §417(c), upon the Participant's death.

(aa) *Minimum benefit permitted.* Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:

1. the retirement benefits payable for a Limitation Year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Employer do not exceed \$10,000 multiplied by a fraction - (I) the numerator of which is the Participant's number of Years (or part thereof, but not less than one year) of Service (not to exceed ten (10)) with the Employer, and (II) the denominator of which is ten (10); and

2. the Employer (or a Predecessor Employer) has not at any time maintained a defined contribution plan in which the Participant participated (for this purpose, mandatory Employee contributions under a defined benefit plan, individual medical accounts under Code §401(h), and accounts for post-retirement medical benefits established under Code §419A(d)(1) are not considered a separate defined contribution plan).

(vii) Predecessor Employer. Predecessor Employer means, with respect to a Participant, a former employer of such Participant if the Employer maintains a Plan that provides a benefit which the Participant accrued while performing services for the former employer. A former entity that antedates the Employer is also a Predecessor Employer with respect to a Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity. For this purpose, the formerly affiliated plan rules in Treas. Reg. §1.415(f)-1(b)(2) apply as if the Employer and Predecessor Employer constituted a single employer under the rules described in Treas. Reg. §1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Treas. Reg. §1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the Predecessor Employer relationship, such as a transfer of benefits or plan sponsorship.

(viii) Severance from Employment. Severance from Employment means, with respect to any individual, cessation from being an Employee of the Employer maintaining the Plan. An Employee does not have a

Severance from Employment if, in connection with a change of employment, the Employee's new employer maintains the Plan with respect to the Employee.

(ix) Straight Life Annuity. Straight Life Annuity means an annuity payable in equal installments for the life of a Participant that terminates upon the Participant's death.

(x) Year of Participation. Year of Participation means, with respect to a Participant, each accrual computation period (computed to fractional parts of a year) for which the following conditions are met: (1) the Participant is credited with at least the number of Hours of Service (or Period of Service if the Elapsed Time Method is used) for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual computation period, and (2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a Year of Participation credited to the Participant shall equal the amount of benefit accrual service credited to the Participant for such accrual computation period. A Participant who is permanently and totally disabled within the meaning of Code §415(c)(3)(C)(i) for an accrual computation period shall receive a Year of Participation with respect to that period.

In addition, for a Participant to receive a Year of Participation (or part thereof) for an accrual computation period, the Plan must be established no later than the last day of such accrual computation period. In no event shall more than one Year of Participation be credited for any 12-month period.

G. Other Rules.

(i) Benefits Under Terminated Plans. If a defined benefit plan maintained by the Employer has terminated with sufficient assets for the payment of benefit liabilities of all plan participants and a Participant in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the Participant's benefits under the terminated plan at each possible Annuity Starting Date shall be taken into account in applying the limitations of this Article. If there are not sufficient assets for the payment of all Participants' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Participant under the terminated plan.

(ii) Benefits Transferred From the Plan. If a Participant's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant Treas. Reg. §1.411(d)-4, Q&A-3(c), then the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a Participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan that is not maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant to Treas. Reg. §1.411(d)-4, Q&A-3(c), then the transferred benefits are treated by the Employer's Plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the Employer that terminated immediately prior to the transfer with sufficient assets to pay all Participants' benefit liabilities under the plan. If a Participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant to Treas. Reg. §1.411(d)-4, Q&A-3(c), the amount transferred is treated as a benefit paid from the transferor plan.

(iii) Formerly Affiliated Plans of the Employer. A Formerly Affiliated Plan of an Employer shall be treated as a plan maintained by the Employer, but the formerly affiliated plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay Participants' benefit liabilities under the Plan and had purchased annuities to provide benefits.

(iv) Plans of a Predecessor Employer. If the Employer maintains a defined benefit plan that provides benefits accrued by a Participant while performing services for a Predecessor Employer, then the Participant's benefits under a plan maintained by the Predecessor Employer shall be treated as provided under a plan maintained by the Employer. However, for this purpose, the plan of the Predecessor Employer shall be treated as if it had terminated immediately prior to the event giving rise to the Predecessor Employer relationship with sufficient assets to pay Participants' benefit liabilities under the plan, and had purchased annuities to provide benefits; the Employer and the Predecessor Employer shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provide under the plan of the Predecessor Employer.

(v) Application of Rules. The limitations of this Article shall be determined and applied taking into account the rules in Treas. Reg. §1.415(b)-1 and §1.415(f)-1(d), (e) and (h), which are incorporated herein.

5.7 Latest Date for Payment. Payments of all benefits under the Plan shall commence no later than 60 days following the close of the Plan Year during which the latest of the following events occurs:

- A. the Participant attains normal retirement age under this Plan;
- B. the Participant terminates employment with the Employer.

Furthermore, payment of a Participant's benefits shall commence no later than April 1 of the calendar year following the calendar year in which the Participant terminates employment with the Employer or attains age 70-1/2, whichever occurs later.

If a Participant dies after distributions to him or her have commenced under the Plan but before his or her entire interest has been distributed to him or her, the undistributed portion of such interest shall be distributed not less rapidly than within the period provided under the method of distribution in use by the Participant at the date of his or her death. If a Participant dies before distributions to him or her have commenced under the Plan, the entire interest of the Participant shall be distributed within five years after the Participant's death; provided, however, that distributions to a beneficiary designated by the Participant may be distributed over the life of the designated beneficiary or over any period not exceeding the life expectancy of the designated beneficiary if such distributions commence not later than one year after the Participant's death or such later date as the regulations under the Code may prescribe (but, if the designated beneficiary is the Participant's surviving spouse, not earlier than the date on which the Participant would have attained age 70-1/2). If the spouse whom the Participant has designated as his or her beneficiary dies before distributions to such spouse begin, all provisions of this Section 5.7 following clause (b) above shall apply as if the surviving spouse were the Participant.

5.8 No Duplication of Benefits. In no event shall benefits be duplicated with respect to former Participants who have recommenced participation in the Plan. Subject to the provisions of Section 3.4, if a Participant resumes active employment with the Employer after having received a distribution of all or a portion of his or her Accrued Benefit, all of his or her Years of Service shall be considered in computing his or her Accrued Benefit. However, such Participant's Accrued Benefit shall be offset by his or her Accrued Benefit attributable to any distribution received other than a distribution for which repayment is made under Section 3.4.



5.9 USERRA/HEART. Effective on and after December 12, 1994, notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credits with respect to qualified military service shall be provided in accordance with Section 414(u) of the Code.

In the case of a death or disability occurring on or after January 1, 2007, if a participant dies while performing qualified military service (as defined in Code Section 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the participant had resumed and then terminated employment on account of death.

For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), shall be treated as an Employee of the Employer making the payment, (ii) the differential wage payment shall be treated as compensation, and (iii) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

Continued benefit accruals pursuant to the Heroes Earnings Assistance and Tax Relief Act are not provided.

5.10 Transfer of Interest.

A. Transfer of Interest. 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 Retirement Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. At the direction of the Retirement Committee, the Trustee shall effect transfers elected by distributees hereunder.

B. Definitions.

(i) Eligible rollover distribution shall mean 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 the following: (a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (b) any distribution to the extent such distribution is required under §401(a)(9) of the Code; and (c) 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).

(ii) Eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and 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. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code.

(iii) Distributee shall mean 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 §414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

(iv) Direct rollover shall be a payment by the Plan to the eligible retirement plan specified by the distributee.

(v) Direct Rollover of Non-Spousal Distribution.

(A) *Non-spouse Beneficiary Rollover Right.* For distributions after December 31, 2009, a non-spouse beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under Code Section 401(a)(31).

(B) *Trust Beneficiary.* If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA

on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).

(C) *Required Minimum Distributions Not Eligible for Rollover.* A non-spouse beneficiary may not roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulations Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

## **ARTICLE VI - CESSATION OF PARTICIPATION - DEFERRED VESTED BENEFITS**

6.1 Vested Accumulated Contributions. A Participant shall always be fully vested in his or her Accumulated Contributions.

6.2 Years of Service for Vesting. For purposes of determining the Participant's number of Years of Service under this Article VI, the following Years of Service shall not be taken into account:

The Years of Service prior to consecutive Breaks in Service if the Participant has no vested rights under this Plan and the number of such consecutive Breaks in Service equals or exceeds the greater of five or the aggregate number of Years of Service prior to such Breaks in Service.

6.3 Termination of Employment - No Vesting. In the event a Participant incurs a Break in Service before having completed five Years of Service, determined in accordance with Section 6.2, all rights under this Plan with respect to the Participant's employment preceding the Break in Service shall end, except as provided in Section 3.4. The Participant's Accumulated Contributions determined as of such Break in Service shall be paid to the Participant; or in the event of his or her death, such payment shall be made as provided in Section 7.1.

6.4 Termination of Employment - Vesting. In the event a Participant incurs a Break in Service after completing at least five Years of Service but before being eligible for early or disability retirement, the Participant shall be fully vested in his or her Accumulated Contributions, or the deferred pension attributable thereto, and shall be

vested in the deferred pension attributable to the Employer's contributions in accordance with the following schedule:

<u>Years of Service</u>	<u>Vesting Percentage</u>
Less than 5	0%
5	50%
6	60%
7	70%
8	80%
9	90%
10	100%

6.5 Deferred Vested Retirement Income Amount. If a Participant is eligible for a deferred vested pension under Section 6.4, and does not withdraw his or her Accumulated Contributions, the pension payable commencing on the Participant's normal retirement date shall be the pension amount attributable to the Participant's Accumulated Contributions plus the vested percentage of the pension amount attributable to the Employer's contributions.

The amount attributable to the Employer's contribution shall be determined by calculating the Participant's Accrued Benefit and then subtracting the Participant's Accumulated Contributions in accordance with the actuarial assumptions of the Plan and federal regulations.

A Participant who is eligible for vested benefits under Section 6.4 may have his or her Accumulated Contributions paid out as a single sum if the Participant files a written election of withdrawal with the Employer. If the Participant's Accumulated Contributions are paid to the Participant, such payment shall be in lieu of any deferred vested pension attributable to the Participant's Accumulated Contributions and only the deferred vested pension attributable to the Employer's contributions will thereafter be payable.

A Participant who is hired as an Employee prior to January 1, 2018, and who is eligible for a deferred vested pension under Section 6.4 may, by filing a written election with the Employer prior to the time payments are to commence, have his or her pension commence at the first of any month following the later of the Participant's 58th birthday or the termination of employment, provided that the Participant would have had at least 20 Years of Service had he or she remained in employment until attaining age 58. If benefits do commence prior to the Participant's normal retirement date, the benefits payable shall be reduced according to Section 5.2. The election set forth in this paragraph shall not be applicable to Participants who are hired as an employee on or after January 1, 2018.

Benefits under Section 6.4 shall be payable monthly from the date of commencement and shall be paid according to the optional method in effect pursuant to Section 5.1.

If this Section is applicable to a Participant, the benefits provided by this Section are in lieu of all other benefits under this Plan.

## ARTICLE VII - DEATH BENEFITS

7.1 Preretirement Survivor Annuity. The surviving spouse of a vested Participant who dies before his or her Annuity Starting Date shall be entitled to receive the survivor annuity benefits such spouse would have received under Section 5.5.C if

A. in the case of a Participant who dies after the earliest date he or she could have elected to receive retirement benefits under the Plan ("earliest retirement date"), such Participant had retired with an immediate joint and survivor annuity as provided in Section 5.5.C on the day before the Participant's date of death; or

B. in the case of a Participant who dies on or before his or her earliest retirement date, such Participant had separated from service on the date of death, survived to his or her earliest retirement date, retired with an immediate joint and survivor annuity as provided in Section 5.5.C at his or her earliest retirement date, and died on the date after his or her earliest retirement date.

Survivor benefits under this Section shall commence no later than the month following the Participant's death and during which occurs the Participant's earliest retirement date.

The Retirement Committee shall provide to the Participant a written explanation (comparable to the written notice provided under Section 5.5.C) regarding the preretirement survivor Annuity within the notice period which shall begin with the first day of the Plan Year in which the Participant attains age 32 and end with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35 (consistent with such regulations as may be prescribed under the Code). A Participant may elect (or revoke an election) to waive the preretirement survivor annuity anytime after the close of the notice period (or with respect to a Participant's benefits accrued before his date of separation from service, after such date of separation) but no later than the date of the Participant's death. Such election (or revocation) shall be filed with the Retirement Committee and shall be in writing and in such form with such information as the Retirement Committee may require. No election to waive the preretirement survivor annuity shall be effective with respect to any surviving spouse unless the same

conditions for spousal consent as those provided in Section 5.5.C are met with respect to such waiver.

7.2 Other Preretirement Death Benefits. The benefits provided by Section 7.1 shall be in lieu of any other benefits under the Plan. In the event a Participant is not eligible for a benefit under Section 7.1 or waives said benefit, the Participant's Accumulated Contributions shall be paid as a single sum to the Participant's Beneficiary.

7.3 Death Benefits After Commencement or Retirement Benefits. If a Participant dies after his Annuity Starting Date, any further benefits from the Plan shall depend on the retirement income form selected by the Participant. If the Participant was receiving a life annuity, all payments shall cease. If the Participant was receiving a joint annuity, payments shall be continued to the remaining joint annuitant, if any, in accordance with the Participant's election. If payments are to be made for a term certain, death benefits will be continued accordingly.

7.4 Minimum Distribution Requirements. Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall be made in accordance with the following requirements and shall otherwise comply with Code §401(a)(9) and the regulations thereunder. The requirements of Code §401(a)(9), including the minimum incidental death benefit requirements of Code §401(a)(9)(G), are incorporated herein by reference. If the death benefit is paid in the form of a Pre-retirement Survivor Annuity, then distributions to the Participant's surviving spouse must commence on or before the later of: (1) December 31<sup>st</sup> of the calendar year immediately following the calendar year in which the Participant died; or (2) December 31<sup>st</sup> of the calendar year in which the Participant would have attained age 70-1/2. If it is determined pursuant to regulations that the distribution of a Participant's interest has begun and the Participant dies before his entire interest has been distributed to him, the remaining portion of such interest shall be distributed t at least as rapidly as under the method of distribution selected pursuant to Article VII as of his date of death.

## **ARTICLE VIII - APPLICATION FOR BENEFITS**

8.1 Application for Benefits. Each person eligible for benefits under this Plan, other than a person entitled to benefits solely as the joint annuitant of a Participant, shall apply for such benefits by signing an application form to be furnished by the Employer. Each such person shall also furnish the Employer with such documents, evidence, data or information in support of such application as the Employer considers necessary or desirable. It shall be the duty of each person receiving benefits, or eligible to receive benefits at some time, to keep the Employer informed as to his or her whereabouts and where benefits should be sent or delivered.

## ARTICLE IX - FINANCING

9.1 Funding. A retirement fund shall be established to receive and hold contributions from the Employer and Participants, interest and other income, and to pay the benefits provided by the Plan. All benefits under the Plan shall be payable only from such fund. The fund shall be held under a trust agreement and/or insurance contract selected by the Retirement Committee subject to confirmation by the Board. The Retirement Committee shall, based on recommendations by the Plan Administrator, modify any trust agreement or insurance contract, remove any trustee or change insurance companies whenever such actions are deemed appropriate by the Committee. Such modification, removal or change shall be subject to confirmation by the Board.

9.2 Funding Policy. The Retirement Committee shall establish a Funding Policy subject to approval by the Board of Directors, and in accordance therewith the Employer shall make such contributions to any insurance company or trustee as shall be required under accepted actuarial principles to provide the benefits under the Plan, provided that in no event shall the Employer's contribution be greater than 4.525% of active Participants' Compensation for Participants of this Plan. In the event that the Plan's independent Actuary using reasonable actuarial assumptions determines that the amount of Employer contributions required to maintain retirement benefits set forth in Article V are greater than 4.525% of active Participants' Compensation, then the Committee will recommend enforcement of the guidelines set forth in the funding policy to bring the Plan back into an adequately funded status within a timeframe acceptable to the Committee.

Notwithstanding the foregoing, the Employer's contribution as measured as a percentage of active Participants' Compensation shall be the following for the periods set forth below:

<u>Period</u>	<u>Rate of Employer Contribution as a Percentage of Active Participant Compensation</u>
July 1, 2007 through June 30, 2008	6.5%
July 1, 2008 through June 30, 2009	6.5%
July 1, 2009 through June 30, 2010	6.5%
July 1, 2010 through June 30, 2013	6.5%
July 1, 2013 through August 31, 2017	6.5%
September 1, 2017 through December 31, 2019	7.5%
January 1, 2020 through December 31, 2023	7.75%
January 1, 2024 and thereafter	8.25%

In addition, notwithstanding the foregoing, on or before September 1, 2017, the Employer shall make a one-time lump sum contribution in an amount equal to 1% of the total of the active Participants' Compensation during the period beginning on July 1, 2016 and ending on August 31, 2017.

9.3 Non-Reversion. The Employer shall have no right, title or interest in the contributions made by it under the Plan and no part of the retirement fund shall revert to the Employer, except that any funds remaining in the fund because of an erroneous actuarial computation and after the complete satisfaction of all fixed and contingent



liabilities under the Plan upon termination of the Plan and the allocation and distribution of any fund as provided herein, may revert to the Employer.

9.4 Participant Contributions. An Employee who is a Participant on July 1, 1979, or who thereafter becomes eligible to participate, shall contribute to this Plan as provided in this subsection.

During the time that a Participant is contributing, the contribution shall be a percent of the Participant's Compensation. The percent shall be 3.05% of the Participant's Compensation for periods prior to November 1, 2001, and 3.30% for periods November 1, 2001 through October 27, 2005, and 3.8% for periods thereafter, with Compensation limited as provided for in Section 2.1(I).

Notwithstanding the foregoing, Participants shall contribute a percentage of their Compensation for the periods set forth below in accordance with the following schedules:

<u>Period</u>	<u>Rate of Participant Contribution as a Percentage of Participant Compensation</u>
July 1, 2007 through June 30, 2008	4.55%
July 1, 2008 through June 30, 2009	5.30%
July 1, 2009 through June 30, 2010	6.00%
July 1, 2010 through June 30, 2013	6.00%
July 1, 2013 through August 31, 2017	6.00%
September 1, 2017 through	6.50%

December 31, 2017	
January 1, 2018 through December 31, 2019	7.00%
January 1, 2020 through December 31, 2020	7.25%
January 1, 2021 through December 31, 2021	7.50%
January 1, 2020 through December 31, 2023	7.75%
January 1, 2024 and thereafter	8.25%

#### ARTICLE X - TEMPORARY LIMITATIONS ON BENEFITS

10.1 Limitation of Benefits. Notwithstanding any provision in this Plan to the contrary, during the first ten years after July 1, 1979 the benefits provided for Participants whose anticipated monthly retirement income provided by such contributions will exceed \$125, but applicable only to the 25 highest paid Participants as of the Effective Date, shall be subject to the following limitations:

A. There shall be paid in full those benefits, including any death or survivor's benefits on behalf of a Participant who dies after retirement, which have been provided by Employer contributions not exceeding the larger of:

(i) \$20,000; or

(ii) an amount equal to 20% of the first \$50,000 of the Participant's average regular annual Compensation multiplied by the number of years between July 1, 1979 and the earlier of (a) the date of the termination of the Plan, or (b) if the benefits of the Participant become payable within ten years after establishment of the Plan, the date such benefits become payable, or (c) if the full current costs for the first ten years of the Plan have not been funded, the date of the failure to meet the full current costs.

B. If this Plan terminates and the full current costs of the Plan have not been met by the end of the first ten years after July 1, 1979, any benefits which any Participants described in Section 10.1 of this Article X may receive shall not exceed the benefits set forth in subsection A of said Section.

C. If a Participant described in Section 10.1 of this Article X leaves the employ of the Employer when the full current costs have been met, the benefits which may be received shall not at any time within ten years after July 1, 1979 exceed the benefits set forth in subsection A of said Section.

10.2 When Limitations Do Not Apply. These limitations shall not restrict payment of death benefits of a Participant who dies during a period when the Plan is in effect and its full current costs shall have been met nor shall the limitations set forth herein restrict the current payment of full retirement benefits called for by this Plan if its current costs shall have been met for any retired Participant while this Plan is in effect; provided, however, that the restricted Employer contributions be applied either

A. To provide level amounts of annuity in the basic form of benefit provided under the Plan, or

B. To provide level amounts of annuity in an optional form of benefit provided under the Plan if the level amount of annuity under such optional form of benefit is not greater than the level amount of annuity under the basic form of benefit provided under the Plan.

10.3 Further Limitations. Notwithstanding anything to the contrary contained in this Article X, if at the end of the first ten years after July 1, 1979 the full current costs are not met, the limitations on benefits will continue to apply until the full current costs are met for the first time.

10.4 Limitations Applicable to Amended Plan. If the Plan has been changed so as to increase substantially the extent of possible discrimination as to contributions and as to benefits actually payable in event of the subsequent termination of the Plan or the subsequent discontinuance of contributions thereunder, then the provisions of this Article shall be applied to the Plan as so changed as if it were a new plan established on the date of such change.

10.5 Limitations on Restrictions. Notwithstanding the above sections of this Article, in the event of the termination of the Plan and Trust during a period in which the above restrictions on the 25 highest paid Employees would otherwise be applicable, such restrictions will not apply if it can be demonstrated to the Internal Revenue Service that the payment of the anticipated benefits under the Plan, absent the restrictions, would not result in the prohibited discrimination. Moreover, such restrictions shall not

apply if on the date of termination the present value of the Plan assets is not less than the present value of all Accrued Benefits as of such date.

## ARTICLE XI - ADMINISTRATION

11.1 Plan Administrator and Retirement Committee. There shall be appointed a committee known as the Retirement Committee for the purpose of administering the Plan assisted by the Plan Administrator. The Retirement Committee shall consist of six members, appointed as follows: (i) Two members shall be appointed by the Transport Workers Union of America, Local 223, one from among the Local membership and one from the International Union. (ii) Two members shall be appointed by the Employer's Board of Directors, one from among the management personnel of the Employer and one from the Employer's Board of Directors. (iii) Two members shall be appointed from among the citizens of Omaha who are businessmen qualified in financial affairs, not otherwise connected with this Plan, the Union or the Employer. One such member shall be appointed by the Union and the other by the Employer's Board of Directors.

The three Retirement Committee members appointed by the Union shall serve at the pleasure of the Union, and the three members appointed by Employer's Board of Directors shall serve at the pleasure of the Board.

The Retirement Committee shall choose from its members a Chairman and a Secretary. The Secretary shall keep minutes of the Retirement Committee's proceedings, and shall keep all data, records and documents pertaining to the Plan Administrator's and the Retirement Committee's administration of the Plan. The Chairman and Secretary shall serve for one year terms, selecting one from the Union appointees and the other from the Employer appointees, and alternating the selection process each year thereafter.

The Retirement Committee may employ and suitably compensate such attorneys, actuaries, advisory, clerical and other employees as it may deem necessary to the performance of administrative duties. Such compensation shall be paid from the pension fund.

Any action of the Retirement Committee shall be determined by the vote or other affirmative expression of a majority of its members. Any proposed action on which the Committee is deadlocked shall be handled in accordance with the Article referring to Arbitration and Mediation of the Agreement between the Transport Workers Union of America and the Employer.

A member of the Retirement Committee who is a Participant shall not vote on any question relating specifically to him or her.

The Plan Administrator and members of the Retirement Committee shall serve without compensation for their services as such. All expenses of the Plan Administrator and Retirement Committee shall be paid by the pension fund.

The Plan Administrator and each member of the Retirement Committee shall be indemnified against any and all expenses and liabilities, including provision for defense, arising out of service as Plan Administrator or out of membership on the Retirement Committee, excepting only expenses and liabilities arising out of a person's own willful misconduct. Payment of such expenses and liabilities shall be made from the pension fund as they come due.

The Plan Administrator shall make available to Participants, and their Surviving Spouses and Beneficiaries, for examination during business hours, such records as pertain to the person wishing to examine the same.

The Retirement Committee, on behalf of the Participants and their Surviving Spouses and Beneficiaries, shall enforce the Plan in accordance with the terms of the Plan and shall have all powers necessary to accomplish that purpose including, but not by way of limitation, the following:

- A. To determine all questions relating to the eligibility of Participants to become Participants.
- B. To determine and certify to the funding agency the amount and kind of benefits payable to Participants and their Surviving Spouses and Beneficiaries.
- C. To appoint an actuary to make any necessary actuarial valuations of the contingent assets and liabilities of the Plan; to adopt, upon the recommendation of the actuary, interest, mortality and other tables for use in all actuarial calculations; and, relying upon the valuations and certifications of the actuary, to determine and certify to the Employer the amount of contributions to be made from time to time by the Employer in order to provide the benefits provided by the Plan, subject to the limitation and requirements stated in Section 9.2 on Funding Policy.
- D. To authorize disbursements from the Plan fund.
- E. To make and publish such rules for the regulation of the Plan as are not inconsistent with the terms thereof.
- F. To, in its discretion, construe and interpret the Plan, to supply any omissions therein, to reconcile and correct any errors or inconsistencies, to make and publish rules for regulation of the Plan, to decide any questions in the

administration and application of the Plan, including all questions relating to the individual rights of Participants, and to make equitable adjustments for any mistakes or errors in the administration of the Plan.

To enable the Plan Administrator and Retirement Committee to perform administrative functions, the Employer shall supply full and timely information of all matters relating to the pay of all Participants, their retirement, death or other cause for termination of employment, and such other pertinent facts as the Plan Administrator or Retirement Committee may require; and the Plan Administrator or Retirement Committee shall advise the funding agency of such of the foregoing facts as may be pertinent to the administration of the Plan.

All actions by the Plan Administrator, pursuant to the terms of this Plan, shall be subject to approval by the Retirement Committee.

## ARTICLE XII - AMENDMENT AND TERMINATION

12.1 Amendment and Termination. The Employer expects the Plan, which is for the exclusive benefit of the Participants and their Surviving Spouses and Beneficiaries, to be permanent. However, the Employer reserves the right to amend, suspend or terminate the Plan at any time by action of the Board of Directors of the Employer; provided, that if the Plan is terminated or partially terminated all Participants shall be fully vested in their benefits accrued to the date of termination; and provided further that no amendment shall be effective unless the Plan, as so amended, shall be for the exclusive benefit of the Participants and their Surviving Spouses and Beneficiaries and no amendment shall operate to deprive any Participant of any rights or benefits irrevocably vested in him or her under the Plan prior to such amendment, except that the Employer may make any and all changes or modifications necessary to comply with governmental laws and regulations.

12.2 Plan of Termination. In event of termination of this Plan, the assets in the pension fund as of the date of Plan termination shall be allocated among the Participants in accordance with the following priorities:

(1) All Participants shall receive their net Accumulated Contributions as of the date of Plan termination. Net Accumulated Contributions are the Participant's Accumulated Contributions as of the date of Plan termination less benefits received, if any.

(2) All Participants who retired three years or more prior to date of Plan termination or could have retired three years or more prior to such date shall be allocated the present value of future benefits based on the form and monthly benefit payable on date of Plan termination.

(3) All other Participants eligible for retirement benefits on date of Plan termination but not included previously shall be allocated assets in the same manner as in (2).

(4) All Participants who are partially or wholly vested but are not eligible for retirement prior to termination of the Plan shall be allocated the present value of vested accrued benefits as of date of Plan termination.

(5) All other Participants who have accrued benefits under their Plan shall be allocated the remaining assets but not to exceed their present value of accrued benefits.

If assets are insufficient to provide for all benefits in a priority category, then benefits in that category will be prorated based on the applicable present values.

If all assets are greater than required to provide all the benefits in all five priority categories as listed above, the excess assets will be returned to the Employer. Implementation of the foregoing plan of termination shall be subject to approval by the Internal Revenue Service.

12.3 Effect of Bankruptcy and Other Contingencies Affecting the Employer. In the event the Employer terminates its connection with the Plan, or in the event the Employer is dissolved or liquidated, or shall by appropriate legal proceedings be adjudged a bankrupt, or in the event judicial proceedings of any kind result in the involuntary dissolution of such Employer, the Plan shall be terminated and the fund shall be distributed as provided heretofore.

### ARTICLE XIII - MISCELLANEOUS PROVISIONS

13.1 Non-Alienation. No benefit payable at any time under the Plan shall be subject to any manner to alienation, sale, transfer, assignment, pledge, attachment, garnishment or encumbrance of any kind. Any attempt to alienate, sell, transfer, assign, pledge, or otherwise encumber any such benefit, whether presently or thereafter payable, shall be void. The retirement funds shall not in any manner be liable for or subject to the debts or liabilities of any person entitled to any benefits under this Plan. The foregoing limitations shall not apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant pursuant to a qualified domestic relations order; provided, however, the Plan shall not recognize any qualified domestic relations order unless required under the terms of the Employee Retirement Income Security Act.

13.2 Payment of Small Amounts. Any other provision of the Plan notwithstanding, if the monthly retirement or disability benefit payable is less than \$10, the Retirement Committee in its discretion, may direct such payments to be made annually in advance or in a lump sum of Equivalent Actuarial Value. In no event shall a lump sum payment be made under this Section if the Equivalent Actuarial Value of the payment has ever exceeded \$1,000 (\$3,500 for periods prior to January 1, 1988, and \$5,000 for Plan Years beginning after December 31, 1987 and before January 1, 2006). Present value shall be determined using the applicable mortality table and applicable interest rate under Section 417(e)(3) of the Code.

In the event of a mandatory distribution greater than \$1,000 in accordance with the provisions of this Section 13.2, if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly in accordance with Section 5.11, then the Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator.

13.3 Incompetency. In the event any payment becomes payable to a person under legal disability or to a person adjudicated incompetent, the payment may be made as directed by proper legal authority. Any such payment shall be a payment for the account of the retired Participant, Surviving Spouse or Beneficiary and shall be a complete discharge of any liability of the Plan.

13.4 Retirement While Absent from Work. A Participant otherwise eligible to retire under the Plan may do so without returning to active employment with the Employer if he is absent from work and such absence does not constitute a termination of employment.

13.5 Employment Rights. The Employer's rights to discipline any Participant or to terminate his employment shall not be affected by reason of any of the provisions of the Plan.

13.6 Vested Right. No Participant, Surviving Spouse or Beneficiary shall have any vested right under the Plan except such rights, if any, as may accrue to him as provided in Articles V, VI and VII.

13.7 Agent for Service of Process. The Plan Administrator shall be authorized to accept service of process on behalf of the Plan.

13.8 Prohibited Transactions. No activity is permitted which is a prohibited transaction within the meaning of any applicable law or regulation.



13.9 Claims Review Procedure. Any Employee, former Employee or Beneficiary who has been denied a benefit, or feels aggrieved by any other action of the Retirement Committee, the Plan Administrator, the Employer, or the funding agent, shall be entitled, upon request to the Plan Administrator, and if he has not already done so, to receive a written notice of such action, together with a full and clear statement of the reasons for the action.

If the claimant wishes further consideration of his position, he may obtain a form from the Plan Administrator on which to request a hearing. Such form, together with a written statement of the claimant's position, shall be filed with the Plan Administrator no later than 90 days after receipt of the Plan Administrator's written notification of action. The Plan Administrator shall schedule an opportunity for a full and fair hearing of the issue within the next 30 days. The decision following such hearing shall be made within 30 days and shall be communicated in writing to the claimant.

13.10 Plan Merger. In the case of any merger or consolidation with or transfer of assets or liabilities to, any other plan, each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit the Participant would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).

**RESOLUTION:** 2024-03 Request Approval for the Revision of Operating Policy 3, “Disadvantaged Business Enterprise.”

**EXPLANATION:** Staff recommends the revision of Operating Policy 3, which addresses Metro’s Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Operating Policy 3 was last amended in March 2011. The proposed revisions include updating the Disadvantaged Business Enterprise Liaison Officer (DBELO) to the Civil Rights and Inclusion Director and noting Metro’s participation in the Nebraska Uniform Certification Program. Redlined and clean copies of the proposed policy are included in the Board packet. The proposed revisions to Operating Policy 3 were discussed with the Planning & Policy Committee.

Staff Recommends Approval.

The foregoing resolution was duly adopted by the Board of Regional Metropolitan Transit Authority of Omaha at a meeting held on the 22nd day of February 2024, and the undersigned hereby certifies the adoption of this resolution.

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Daniel Lawse, Board Chair

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Selina Perry, Board Secretary

## OPERATING POLICY

**Subject:**

**Number**

**DISADVANTAGED  
BUSINESS  
ENTERPRISE**

Adopted: March 27, 1986  
Revised: August 25, 1988  
September 24, 1998  
March 19, 2008  
March 31, 2011  
February 22, 2024

**3**

**Purpose:**

The Regional Metropolitan Transit Authority of Omaha (d/b/a METRO Metro) has established a Disadvantaged Business Enterprise (DBE) ppProgram in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. METRO Metro has received Federal financial assistance from the Department of Transportation DOT, and as a condition of receiving this assistance, has signed an assurance that it will comply with 49 CFR Part 26.

**Policy:**

It is the policy of the METRO Metro to ensure that DBEs as defined in Part 26 have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To participate as a member of the Nebraska Uniform Certification Program for Disadvantaged Business Enterprises maintained by the Nebraska Department of Transportation who ensures that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE program.

The Administration/Human Resources Civil Rights and Inclusion Director has been delegated as the DBE Liaison Officer. In that capacity, the Civil Rights and Inclusion Administration/Human Resources Director is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other

legal obligations incurred by ~~the METRO~~ [Metro](#) in its financial assistance agreements with the Department of Transportation.

~~METRO's~~ [Metro's](#) Board of Directors has adopted this policy statement to demonstrate its commitment to the DBE Program. ~~The DBE Policy Statement~~ [This policy statement](#) and [the DBE Program](#) has been disseminated internally to support personnel who share the responsibility for ensuring effective implementation of the DBE Program. ~~The~~ [is](#) [policy statement](#) is posted on ~~company internal~~ bulletin boards and is disseminated to DBE and non-DBE community and business organizations by including ~~the~~ [is](#) [policy statement](#) in bid-solicitation documents for DOT-assisted contracts and through posting on ~~METRO's~~ [Metro's](#) website.

## OPERATING POLICY

**Subject:**

**Number**

**DISADVANTAGED  
BUSINESS  
ENTERPRISE**

Adopted: March 27, 1986  
Revised: August 25, 1988  
September 24, 1998  
March 19, 2008  
March 31, 2011  
February 22, 2024

**3**

**Purpose:**

The Regional Metropolitan Transit Authority of Omaha, d/b/a Metro has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Metro has received Federal financial assistance from the DOT, and as a condition of receiving this assistance, has signed an assurance that it will comply with 49 CFR Part 26.

**Policy:**

It is the policy of Metro to ensure that DBEs as defined in Part 26 have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To participate as a member of the Nebraska Uniform Certification Program for Disadvantaged Business Enterprises maintained by the Nebraska Department of Transportation who ensures that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE program.

The Civil Rights and Inclusion Director has been delegated as the DBE Liaison Officer. In that capacity, the Civil Rights and Inclusion Director is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by Metro in its financial assistance agreements with the DOT.

Metro's Board of Directors has adopted this policy statement to demonstrate its commitment to the DBE Program. This policy statement and the DBE Program has been disseminated internally to support personnel who share the responsibility for ensuring effective implementation of the DBE Program. This policy statement shall be posted on internal bulletin boards and is disseminated to DBE and non-DBE community and business organizations by including this policy statement in bid-solicitation documents for DOT-assisted contracts and through posting on Metro's website.

## PURPOSE

The Omaha metro area needs reliable, quality public transportation to grow sustainably and serve the diverse needs of our residents.

## MISSION

Metro connects people, places and opportunities through quality transit services.

## VISION

Metro is a valued transportation choice for all members of our community and a vital partner in Omaha's future.

*Metro aims to realize this vision by cultivating and investing in:*

- Collaborative communication
- Well-maintained equipment & facilities
- Collaborative partnerships to improve our service
- Employee empowerment
- Up-to-date technology & processes
- Outstanding rider communication & experience
- Culture of respect & appreciation
- Ongoing training & safety efforts
- Recognition of Metro's value to the community

## VALUES

**Unity:** We are a team with a common purpose.

**Responsibility:** We take pride in our work and are committed to going above and beyond.

**Care:** We care about our customers and each other.

**Resourcefulness:** We are adaptable and driven to overcome challenges.

**Learning:** We are always training for tomorrow.

**Appreciation:** We are motivated to provide a quality of life for those we love through competitive wages and compensation.

# VISION:

METRO IS A VALUED TRANSPORTATION CHOICE FOR ALL MEMBERS OF OUR COMMUNITY AND A VITAL PARTNER IN OMAHA'S FUTURE.

**Project Phoenix** aims to make Metro a great place to work by creating a stronger culture and improving the way we work together



SERVICE COLLABORATIONS,  
RIDER EXPERIENCE

RECOGNITION  
OF METRO'S  
VALUE TO THE  
COMMUNITY

COLLABORATIVE  
PARTNERSHIPS  
TO IMPROVE OUR  
SERVICE

OUTSTANDING RIDER  
COMMUNICATION AND  
EXPERIENCE -  
"THE RIDER COMES  
FIRST"

MAINTENANCE, EQUIPMENT,  
AND TRAINING

CLEAN,  
FUNCTIONING,  
WELL-MAINTAINED  
EQUIPMENT &  
FACILITIES

UP-TO-DATE  
TECHNOLOGY AND  
PROCESSES TO ENSURE  
QUALITY EQUIPMENT  
AND SERVICE

ONGOING  
TRAINING &  
SAFETY EFFORTS  
FOR ALL  
DEPARTMENTS

COMMUNICATION,  
CULTURE, AND  
CAREERS

TRANSPARENT  
2-WAY  
COLLABORATIVE  
COMMUNICATION

EMPLOYEE  
EMPOWERMENT  
THROUGH CAREER  
ADVANCEMENT  
AND REWARD

A CULTURE OF  
MUTUAL RESPECT,  
APPRECIATION, AND  
TEAMWORK



**REGULAR BOARD MEETING  
REGIONAL METROPOLITAN TRANSIT AUTHORITY OF OMAHA  
2222 Cuming Street  
Omaha, Nebraska, 68102  
January 25, 2024  
8:30 a.m.**

**MINUTES**

The Regional Metropolitan Transit Authority of Omaha Board met on Thursday, January 25, 2024, at 8:30 a.m., in person at the Authority’s Administration Building, 2222 Cuming Street, Omaha, Nebraska 68102, and virtually. Notice was published in the Omaha Daily Record on January 19, 2024, in advance of the meeting. For the benefit of the public in attendance, a copy of the Open Meetings Law is posted in the meeting room and the Agenda is published on the display in the facility lobby. The following persons were in attendance at the meeting:

**Authority Board:**

Mr. Daniel Lawse, Chair  
Mr. Othello Meadows, Vice Chair (Absent)  
Mr. Jay Lund (Absent)  
Ms. Amy Haase  
Ms. Julia Plucker

**Authority Staff:**

L. Cencic, CEO/Executive Director  
I. Maldonado, Deputy Executive Officer (Absent)  
D. Grant, Human Capital, and Talent Development Director  
E. Simpson, Legal Director (Absent)  
K. Pendland, IT Director (Virtually)  
W. Clingman, Finance Director  
D. Kelsey, Operations Director (Absent)  
J. Willoughby, Senior Project Manager (Absent)  
R. Sherping, Safety Director  
A. Johnson, Civil Rights & Inclusion Director  
J. Beverage, Maintenance Director (Absent)  
N. Ebat, Sr. Manager of Communications & Community Relations  
S. Perry, Executive Administrator & Board Secretary

**Others Present:**

Other Metro staff  
Members of the public

*Metro connects people, places, and opportunities through quality transit services.*

**Agenda Item #1 Call to Order at 8:31 am**

*Notice of the Regular Meeting was published in the Omaha Daily Record on January 19, 2024. For the benefit of the public in attendance, a copy of the Open Meeting Law is posted in the meeting room, and the Agenda is published on the display located in the facility lobby and online at ometro.com.*

**Agenda Item #2 Approval of Minutes of Previous Meeting:**

The first item of business is the approval of minutes from the previous meeting.

Regular Meeting: December 21, 2023

**Motioned by Plucker; Seconded by Haase**

**ROLL CALL:**

**UNANIMOUS (LUND ABSENT, MEADOWS ABSENT), MOTION CARRIES**

**Agenda Item #3 General Public Comment Period**

*This is an opportunity for members of the audience to be heard regarding topics related to the Regional Metropolitan Transit Authority of Omaha, not on the agenda for a maximum of 2 minutes.*

No comments were communicated before the board.

**Agenda Item #4 Administrative Report**

(L. Cencic)

Ms. Cencic began her administrative report pointing out that the new IT Configurations in the boardroom were being used for the first time at this board meeting. She also further explained that new IT will be implemented in the downstairs training room. This will enhance Metro's ability to conduct better training and quality hybrid and community engagement interactions with the public.

**Ridership in January**

There was slightly lower ridership anticipated and experienced due to the extreme weather events that occurred. Acknowledgment and appreciation were extended for how hard the staff (all departments) worked during the weather events. Some adjustments had to be made during these events and consisted of late starts, early pull-ins, and some cancellations of express services due to freezing temperatures. However, with the weather, Metro still saw significant ridership. Martin Luther King, Jr. Day there were no express routes, routes started at 8 am and ended at 6 pm still carried 2,400 riders and on the following day carried over 5,000 riders during those same service hours.

There was never a day when services were completely canceled despite the weather.

Mr. Lawse asked about the customer's response.

Ms. Cencic indicated there were negative comments but more positive feedback regarding getting the information out to the public.

During the last board meeting, Ms. Cencic informed the Board of the start of the Leadership Academy the following month. Metro Leadership Academy a/k/a MLA started on January 24th. MLA received 35 applications but was only able to accept 15 participants which was about a 40% acceptance rate. The first-cohort participants come from different perspectives and experiences which include 2 Mechanics, 2 Fixed Operators, 1 Moby Operator, 10 Administrative staff including 2 Managers. 2 Dispatch Supervisors, 1 Moby Dispatch Supervisor, 1 Communications Specialist, 1 Civil Rights and Inclusion, 1 HR, and 2 from Training.

Mr. Lawse said that he was sad that everyone could not be in this first cohort and thanked all the staff who were involved. He further explained that as a rider of transit service himself, he appreciates the safe driving of the drivers, the mechanics, and the administration who are keeping the buses running.

The Administrative Report and follow-up were concluded.

The meeting was moved back to Agenda Item #3 for public comment due to Mr. Foltz's difficulty unmuting during the applicable time.

### **Agenda Item #3 General Public Comment Period**

Benny Foltz, CEO of Roam Share Non-Profit Local Bike Share Operation to include Heartland Bike Share and Bike Link in Lincoln and Valentine NE 1144 N 11<sup>th</sup> Street 68102

LB 1250 has been pushed to the Transportation and Telecommunications Committee. Mr. Foltz is asking for support. It is a bike share bill, the first for Nebraska the 2<sup>nd</sup> in the country. This would be providing financial support through a grant process.

It is not currently open for public comment yet, but he indicates he will let Metro know.

Mr. Lawse asked if this would be offered as state funding under a competitive grant.

Mr. Foltz's response was it's currently under the Economic Development Department and at this time it's very vague by design. The Economic Development Department will determine who is eligible, but the criteria is still being determined. Mr. Foltz is also hoping that the funds can cover operational costs, which is vital for his organization.

Further exchange between Metro and Mr. Foltz

Metro has partnered with bike share in the past with ORBT stations and is a good first and last-mile option to the bus stops.

Both are regional and every new bus stop Metro considers bike share, and the holistic partnership is working out great for this community and region.

### **Agenda Item #5 Administrative Reports**

#### a. Administration/Human Resources

(D. Grant)

Updates regarding December recruiting were as follows: 11 new roles began including 7 Transit Operators, 2 Building Facility Personnel, 1 Project Manager, and 1 Mechanic Supervisor. Mr. Grant said that Metro is excited to see the new faces.

Metro has posted for Safety and Security Specialists, Community Mobility Coordinator, Inventory Specialist, and Transit Field Supervisor in addition to the current openings for Operators and Custodians.

Mr. Grant concluded his report and opened the floor to additional questions.

Mr. Lawse asked if operator training and onboarding had picked up or remained steady during the winter months. Does it have an impact on applicants?

Mr. Grant responded that during the winter months, it remains steady and has a consistent number of applicants starting. The Training Department has been revamping some of their training which is making improvements to the process and how many are graduating.

b. Programs/Operation

(I. Maldonado)

Mr. Sherping provided the report on behalf of Maldonado.

Quarterly Safety Training in December was held.

Pick started on the 14<sup>th</sup> of January, at this time not able to gauge the effect of the new pick on Operator absences, as Metro has been operating in snow emergency protocols since the start of the pick.

Weather-related service interruptions, late starts, and a few buses were delayed due to towing waits. Mr. Sherping acknowledged the Maintenance staff for their work during these events.

Now having the new TWU president and union stewards in place the safety committee is equal with Metro and Union leadership.

Departments worked together to make sure all were on the same page to communicate with customers regarding interruptions.

MUD injects propane into CNG lines. Buses must go over to Council Bluffs Sapp Brothers to fuel up which takes time. Volunteers from various departments have come in during off time to help get buses fueled.

Moby services do not operate on snow routes due to customers being picked up in various neighborhoods; therefore, a meeting was held on how to handle them during snow services. Communications informed Moby staff of all the changes.

While the Omaha Metropolitan Area experienced various days with below-zero temperatures the proactive efforts of the maintenance team to add anti-gelling additive to all diesel buses, resulted in zero diesel buses experiencing the effect of fuel gelling which occurs during extremely cold temperatures. Proper planning and preparations helped reduce the number of Metro vehicles being stuck in the snow and the number of accidents and safety incidents.

Maintenance and Purchasing staff continue to report experiencing long delays in the delivery of parts which has affected the timely repair of buses and the number of buses available for daily services. As of the present time we have three buses with extensive mechanical repairs being repaired by external vendors, we also have seven buses that are waiting for critical parts and eight buses needing considerable repairs due to accidents.

Mr. Sherping concluded the report and opened the floor for additional questions.

Mr. Lawse extended a thank you for the coordinated efforts to fuel and keep buses in service during extreme weather. He appreciates the proactive training provided for all levels of drivers during the winter months.

c. Communications

(N. Ebat)

During the weather events between the Communications and Dispatch departments 122 MyRide Alerts were pushed out to the community regarding service interruptions and frequency reduction.

Being proactive to give the best notice to customers, Communications utilized various avenues to alert Metro customers e.g. MyRide, GoMetro.

During the recent weather events, Communications shared information on social media with 15 Facebook posts, 32 tweets, and 16 news stories, but the department is reviewing for more news stories. Communications remained active in the comments on social media platforms to respond to and answer any additional comments posted by the community.

The Omaha World-Herald wrote a good story on the Metro staff which consisted of the operators and mechanics driving buses and cleaning shelters in -40-degree weather.

Now that school is back from winter break, outreach has continued to bring awareness to students regarding passes and free fares.

K-12 student rider responsibility will be a part of that focused awareness.

Ms. Ebat concluded her report and opened the floor to questions. There were none.

**Agenda Item #6 Resolution 2024-01: Request Approval of Title VI Fare Equity Analysis for the K-12 Rides Free Program**

(A. Johnson)

In compliance with Metro's Title VI Program, a Fare Equity Analysis was conducted on the K-12 Rides Free Pass Program to identify the impact of the proposed changes on low-income and minority populations. The program provides free bus, MOBY, and ORBT rides during Metro's regular service hours for any K-12 student in Omaha and the surrounding area. Initially started as a pilot program (May 10, 2021, through June 1, 2022), the program has continued in the pilot phase with temporary funding. On January 11, 2024, the Omaha Public Schools Board of Education approved a contract to provide funding through July 31, 2025.

Metro's Title VI Policy requires a Fare Equity Analysis to be completed for any proposed increases, decreases, or elimination of a fare type to determine if the proposal has a discriminatory impact on minority and/or low-income populations.

The Title VI Fare Equity Analysis found:

- No disparate impact on minority riders.
- No disproportionate burden on low-income riders.
- Minority and/or low-income riders will not be limited by or denied the benefits of the proposed fare change.

Board approval will ensure Metro's continued compliance with the Federal Transit Administration's Title VI requirements.

Staff Recommends Approval.

The Planning and Policy Committee reviewed the policy prior to the board meeting.

**Motioned by Haase; Seconded by Plucker**

**ROLL CALL:**

**UNANIMOUS (LUND ABSENT, MEADOWS ABSENT), MOTION CARRIES**

**Agenda Item #7 Board Chair Report**

(D. Lawse)

The Metro CEO is in the process of her annual review. The Board will be addressing that at the February board meeting.

Appreciation for keeping everything running during the weather conditions.

Metro is recruiting potential candidates for the elected board. The filing deadline is mid-February for incumbents and early March for new candidates. You must file to be a candidate and then meet with your constituents for their vote.

**Agenda Item #8 Date, Time, and Place of Next Regular Board Meeting**

February 2024 Board Meeting will be held Thursday, February 22, 2024, at 8:30 a.m. at the Regional Metropolitan Transit Authority's - Administrative Building

**Agenda Item #9 Adjournment at 9:07 am**

**Motioned by Haase; Seconded by Plucker**

**ROLL CALL:**

**UNANIMOUS (LUND ABSENT, MEADOWS ABSENT), MOTION CARRIES**

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**Daniel Lawse, Board Chair**

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**Selina Perry, Board Secretary**

**Jan**

**Recruiting Report**

	Monthly Hires	Proj. Remaining Need	Recruiting Activity Notes
<b>All Roles</b>	11	25	11 people started new roles at Metro in the month of January. In addition, Metro posted a need for a Network Security Techn.

Operations			
<b>Bus Operators - Omaha</b>	9	8	7 New Hires started Feb 12th. Continuing to review and interview candidates.
<b>Paratransit Operators</b>		1	Currently reviewing and interviewing candidates.

Maintenance			
<b>Mechanic</b>	1	7	Currently reviewing and interviewing candidates.
<b>Body Shop Mechanic</b>		1	Candidate expected to start Feb 19th

BG&E			
<b>BG&amp;E - Field</b>		1	New Hire started Feb 12th

Custodial			
<b>Custodian</b>	1	7	4 custodians are expected to start in Feb

Jan	Recruiting Report		
Role	Hires	Proj. Remaining Need	Recruiting Activity Notes
<b>Admin Staff</b>	<b>0</b>	<b>7</b>	
Mechanic Supervisor		1	Currently reviewing candidates.
Safety & Security Specialist		1	Currently reviewing and interviewing candidates.
Transit Field Supervisor		1	Currently reviewing candidates.
Inventory Specialist		1	Currently reviewing and interviewing candidates.
Community Mobility Specialist		1	Currently reviewing and interviewing candidates.
HR Generalist		1	Currently reviewing and interviewing candidates.
Network Security Tech		1	Currently reviewing candidates.

Jobs are posted internally, on Indeed, NEworks, LinkedIn, CareerLink, print ads, social media, www.ometro.com, exterior bus signage, and hood signs.



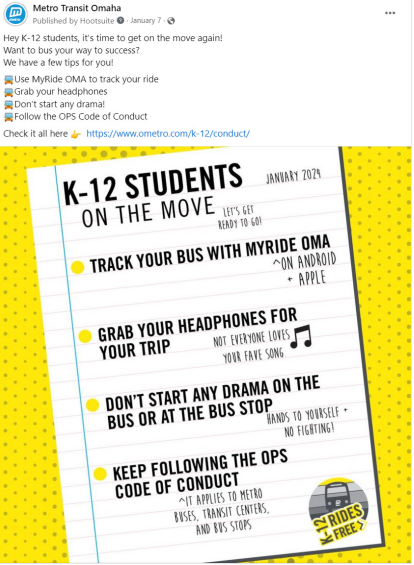
# SOCIAL MEDIA SUMMARY

1.1.24 - 1.31.24



## Facebook: **Metro Transit Omaha**

Posts: 24  
Reach: 16,661  
Reactions: 292  
Comments: 81  
Shares: 150  
50 new followers | 1.82% increase



## Twitter: **@rideORBT**

Tweets: 26  
Impressions: 69,200  
Avg. 2,662 impressions/post for the year  
Likes: 161  
Retweets: 44  
Replies: 28  
17 new followers | 1.48% increase



## Instagram: **@metrotransitoma**

Posts: 9  
Likes: 217  
Avg. 24.1 likes/post for the year  
Comments: 9  
0 new followers | 0% increase



# EARNED MEDIA SUMMARY

15 stories | 3 outlets

1.1.24 - 1.31.24

Omaha's Metro Transit service to run on modified routes Monday



KETV - Weather service

Icy Omaha-metro roads cause crashes, push buses to snow routes



WOVW - Weather service

Snowplows making progress on Omaha streets, Nebraska roads



Omaha World Herald - Weather service

## OUTREACH

1.1.24 - 1.31.24



Metro held an orientation meeting for its new Transit Advisory Committee to prepare them for the first official meeting in February.

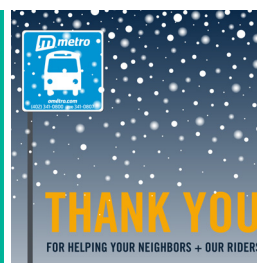


Staff from the Communications, Planning, and Civil Rights & Engagement department heard from a graduate student at UNO about their Urban Studies capstone project regarding bus stops around Omaha, what riders think about them, and how they interact with them.

## WEATHER ALERTS

1.1.24 - 1.31.24

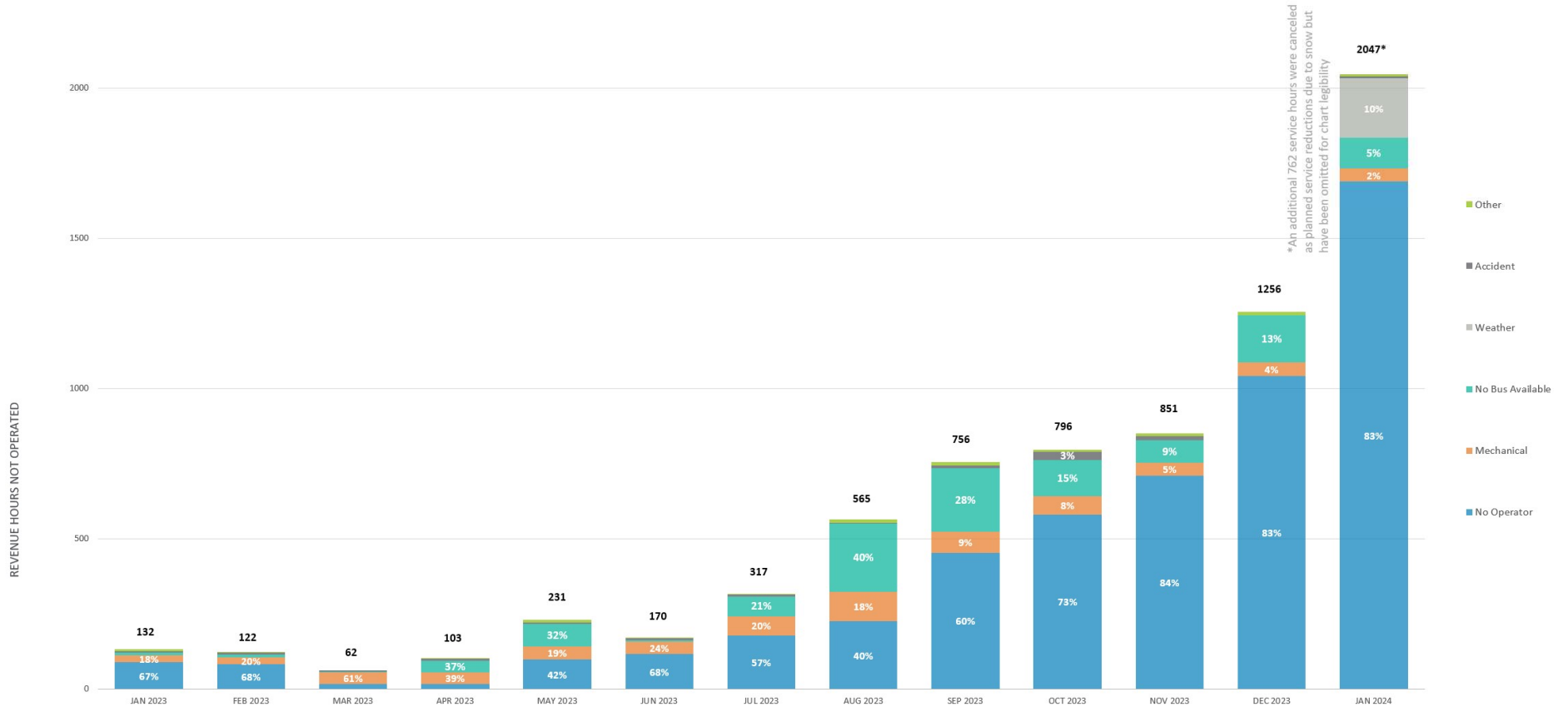
122 MYRIDE OMA POSTS  
15 FACEBOOK POSTS  
32 TWEETS



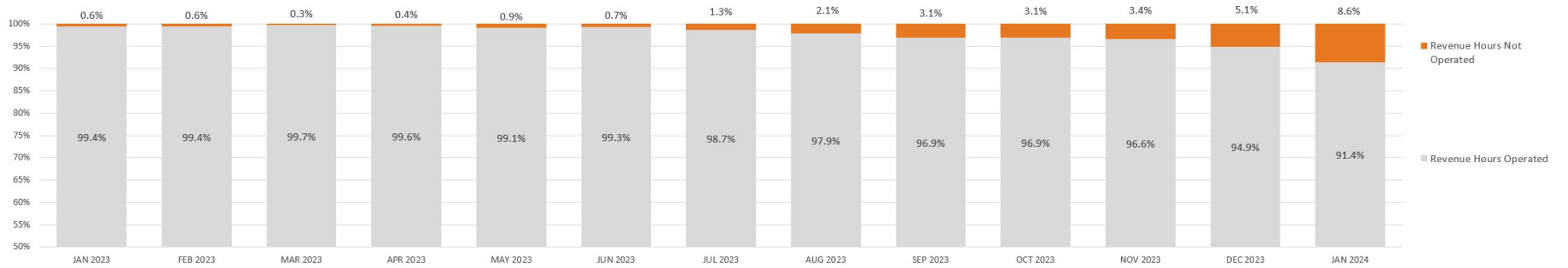
## COMMUNICATIONS



## MONTHLY SERVICE INTERRUPTIONS REVENUE HOURS NOT OPERATED BY TYPE

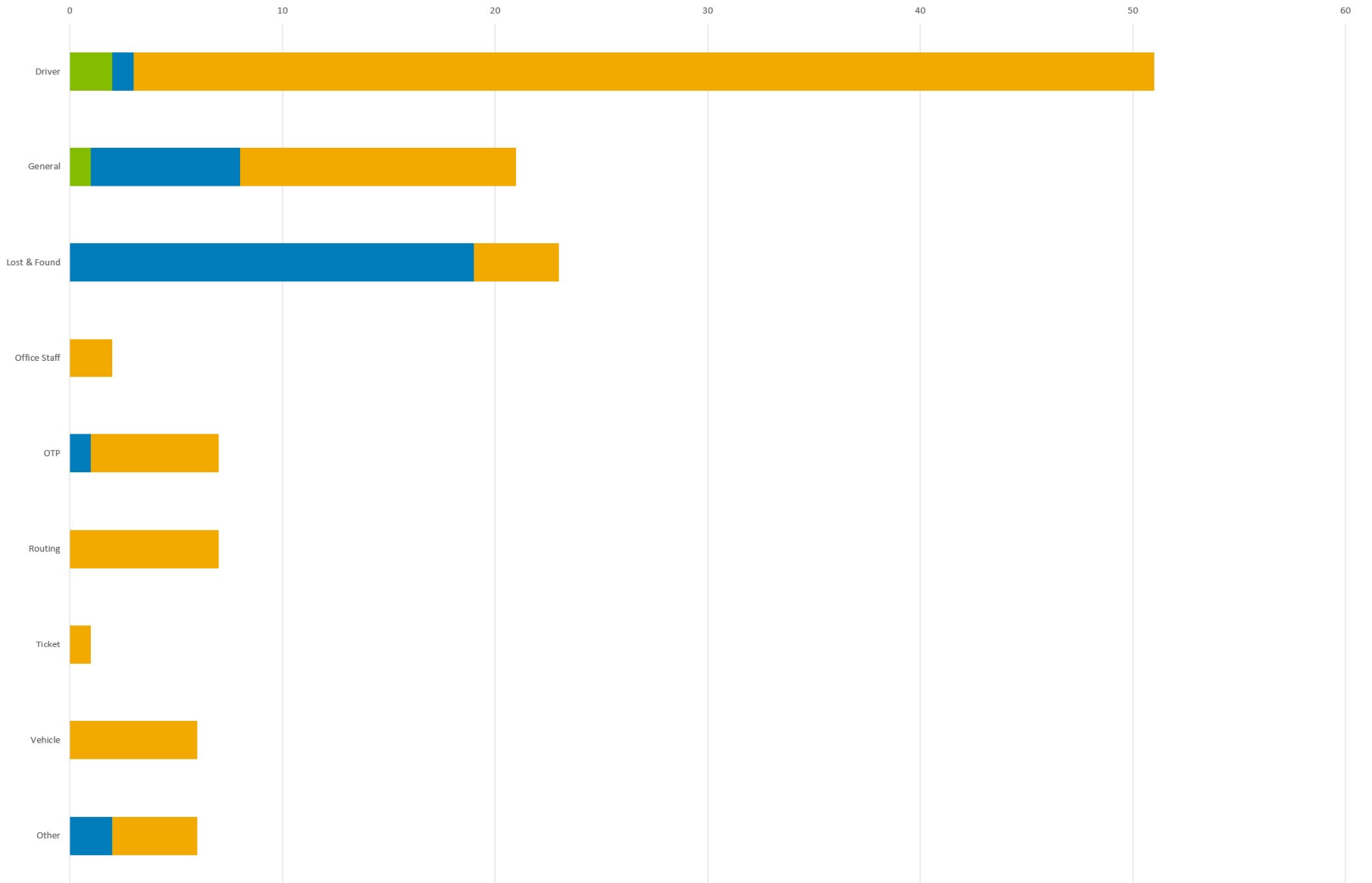


### Percent of Total Revenue Hours

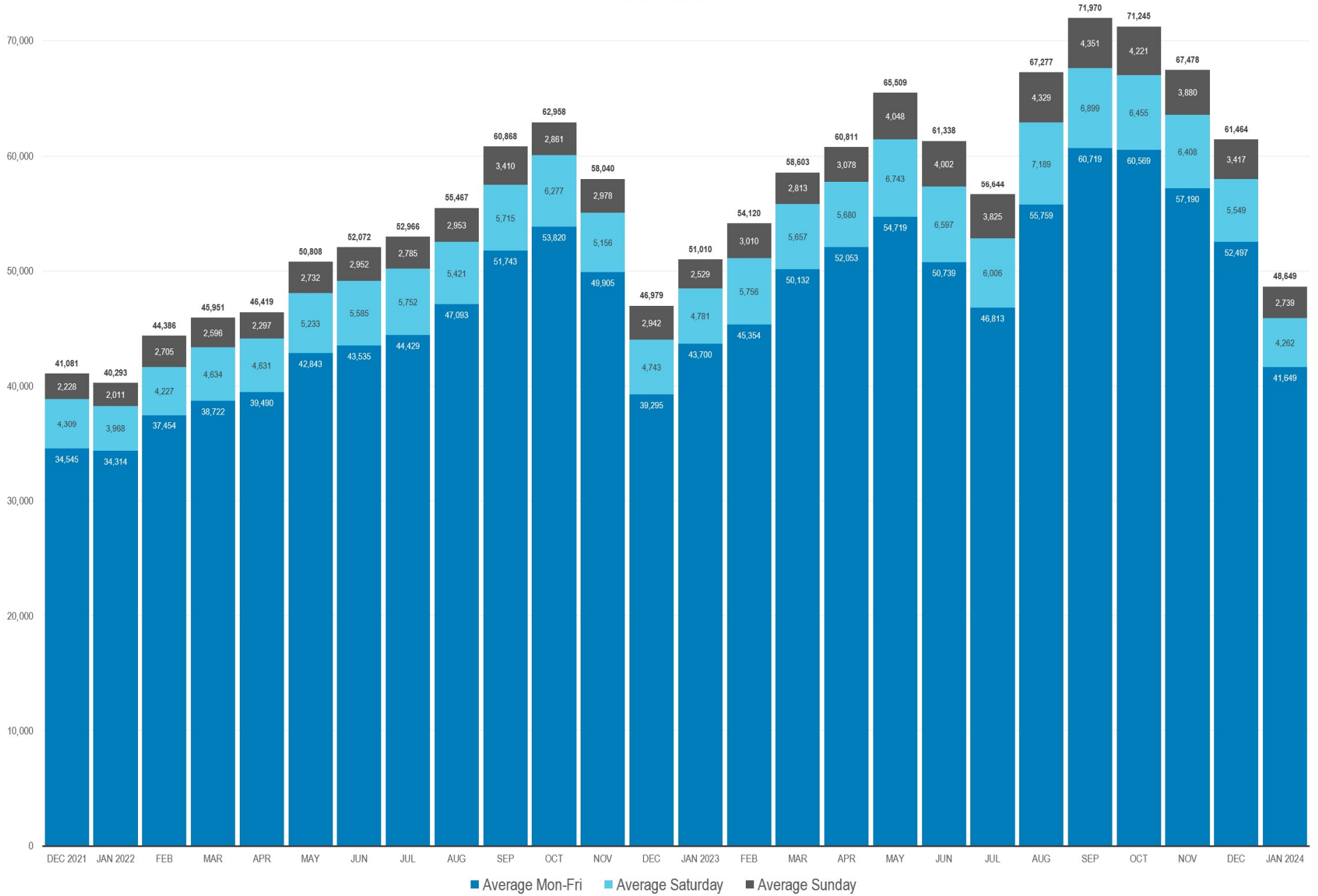


January 2024  
Fixed Route Registered Customer Service Concerns by Category

■ Positive ■ Neutral ■ Negative



## Average Weekly Ridership 2021 - 2023

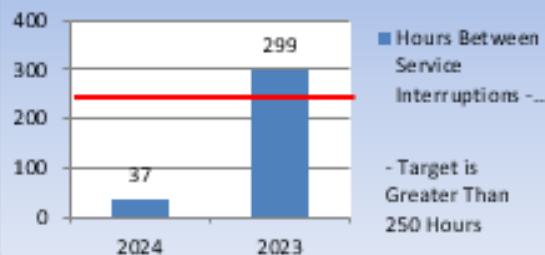


## Metro Transit Operations Report

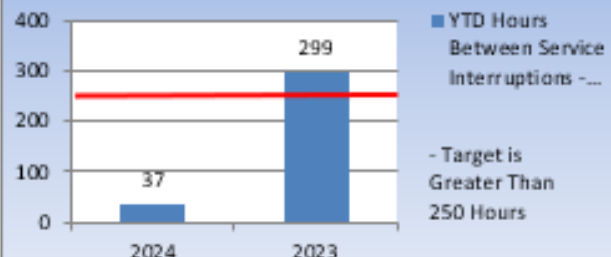
January 2024

Current Month	2024	2023	Variance	Year to Date	YTD 2024	YTD 2023	YTD Variance
<b>Service</b>				<b>Service</b>			
Service Hours	21879	23316	-6.16%	Service Hours	21879	23316	-6.16%
Service Miles	302387	324310	-6.76%	Service Miles	302387	324310	-6.76%
<b>Interruptions</b>	592	78	658.97%	<b>Interruptions</b>	592	78	658.97%
Hours Between Interruptions	37	299	-87.64%	Hours Between Interruptions	37	299	-87.64%
Miles Between Interruptions	511	4158	-87.71%	Miles Between Interruptions	511	4158	-87.71%
Target Miles	3350	3350		Target Miles	3350	3350	
<b>Road Calls</b>	38	37	2.70%	<b>Road Calls</b>	38	37	2.70%
Miles Between Road Calls	7958	8765	-9.21%	Miles Between Road Calls	7958	8765	-9.21%
<b>Paratransit</b>							
Total Van Trips	6526	6909	-5.54%	Total Van Trips	6526	6909	-5.54%
Passenger Hours	4297	4452	-3.48%	Passenger Hours	4297	4452	-3.48%
Trips per Hour	1.52	1.55	-2.14%	Trips per Hour	1.52	1.55	-2.14%
Passenger Miles	44613	49801	-10.42%	Passenger Miles	44613	49801	-10.42%
Trips per Mile	0.1463	0.1387	5.44%	Trips per Mile	0.1463	0.1387	#REF!
Taxi Trips		0	#DIV/0!	Taxi Trips		0	#DIV/0!
Total Trips - Van & Taxi	6526	6909	-5.54%	Total Trips - Van & Taxi	6526	6909	-5.54%

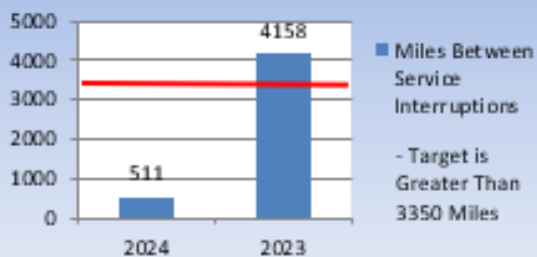
**Hours Between Service Interruptions - January 2023 & 2024**



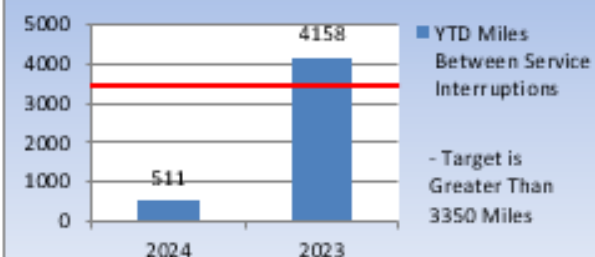
**YTD Hours Between Service Interruptions - 2023 & 2024**

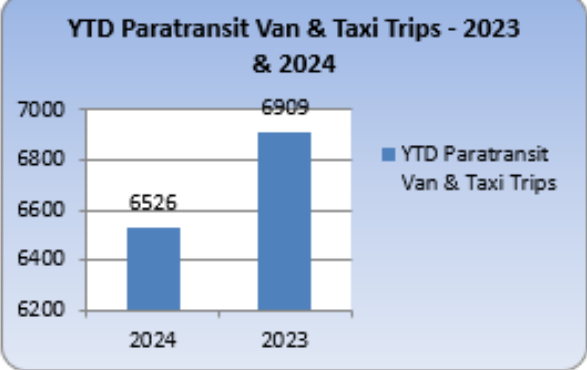
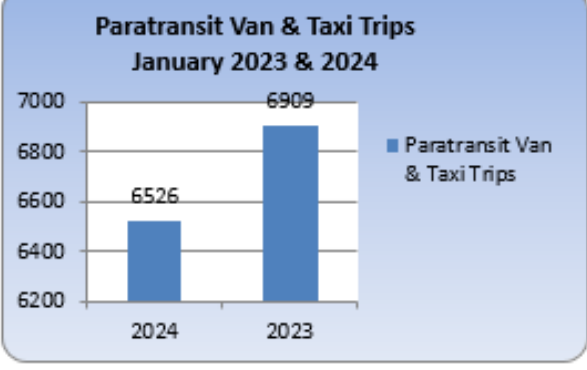
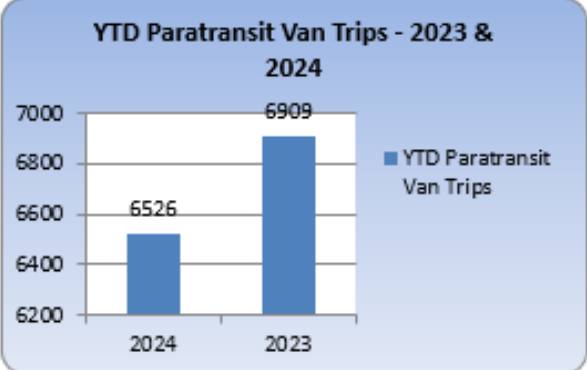
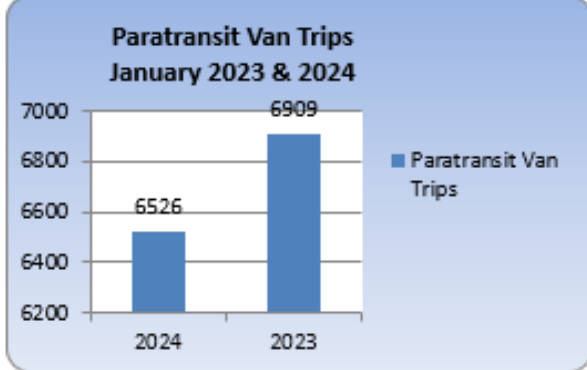
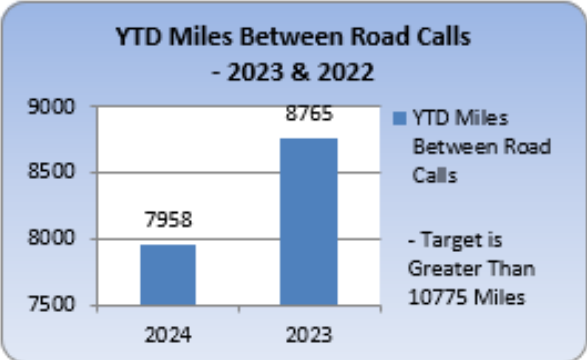


**Miles Between Service Interruptions - January 2023 & 2024**



**YTD Miles Between Service Interruptions - 2023 & 2024**



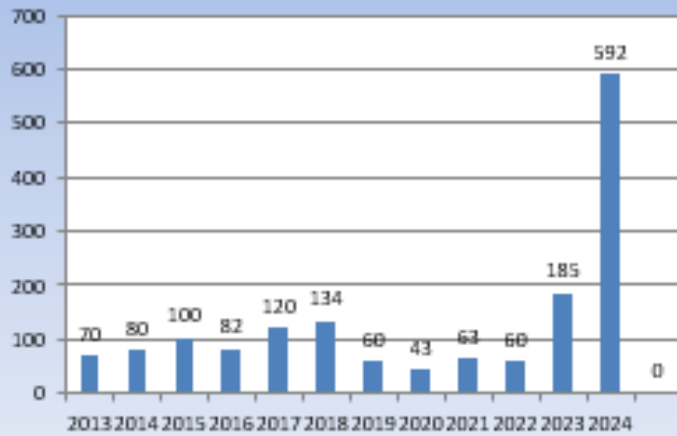


## Service Interruptions Detail

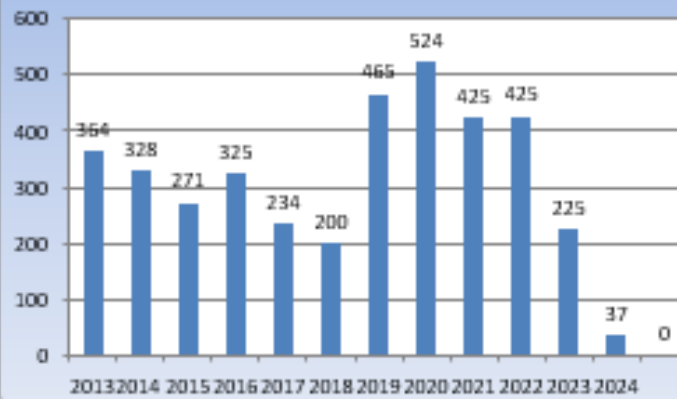
Type	January 2023	January 2024	Difference	2023 YTD	2024 YTD	Difference
Accident	6	5	-1	6	5	-1
Unsanitary Bus	2	1	-1	2	1	-1
Delayed Out Operator	35	384	349	35	384	349
Bus Operator Family Emergen	0	0	0	0	0	0
Drunk on Bus - Police Called	1	0	-1	1	0	-1
Passenger Emergency	0	0	0	0	0	0
Weather	0	113	113	0	113	113
Mechanical	26	48	22	26	48	22
Unknown	1	0	-1	1	0	-1
Vandalism on Bus	0	0	0	0	0	0
Heavy Traffic	0	0	0	0	0	0
No Bus Available	7	41	34	7	41	34
Total	78	592	514	78	592	514
<b>Mechanical Reasons</b>						
Air Conditioner/Heater	0	0	0	0	0	0
Air pressure went down	3	1	-2	3	1	-2
Brake Problem	0	3	3	0	3	3
Broken Belt	0	0	0	0	0	0
Bus Body Problem	0	0	0	0	0	0
Bus shut down	12	20	8	12	20	8
Delayed by Train	0	0	0	0	0	0
Door Problem	0	0	0	0	0	0
Electrical Problem	1	0	-1	1	0	-1
Farebox	0	0	0	0	0	0
Leaking Fluid	0	0	0	0	0	0
Leaking fuel	0	0	0	0	0	0
Lift malfunction	1	0	-1	1	0	-1
Light problem	0	0	0	0	0	0
Low water	0	7	7	0	7	7
Mirror Broke	0	0	0	0	0	0
No power	2	3	1	2	3	1
Power Steering Problem	1	0	-1	1	0	-1
Oil Pressure	0	0	0	0	0	0
Overheated	0	0	0	0	0	0
Radiator Leak	0	0	0	0	0	0
Seat Problem	0	0	0	0	0	0
Starting problem	0	0	0	0	0	0
Suspension problem	1	1	0	1	1	0
Tire problem	3	1	-2	3	1	-2
Transmission malfunction	0	0	0	0	0	0
Unknown Mechanical	2	12	10	2	12	10
Windshield/window	0	0	0	0	0	0
Total	26	48	22	26	48	22



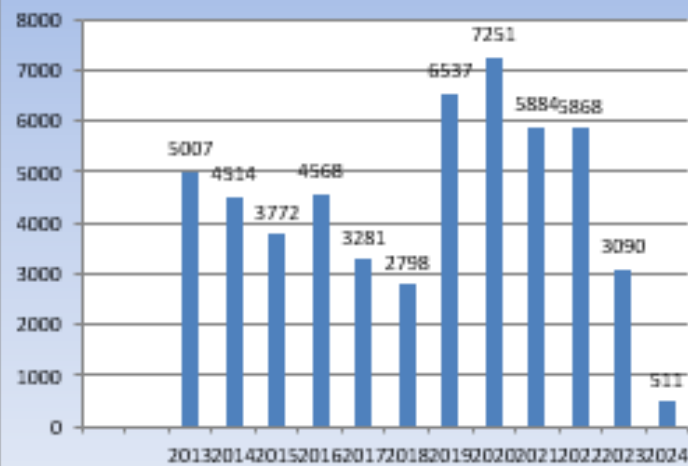
## Service Interruptions



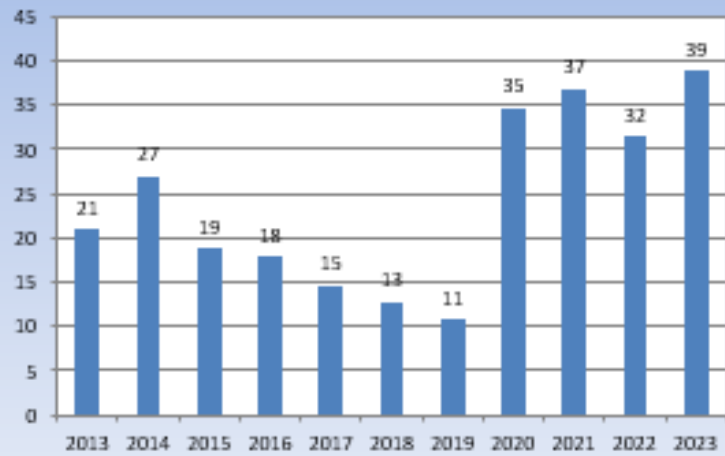
## Hours Between Interruptions



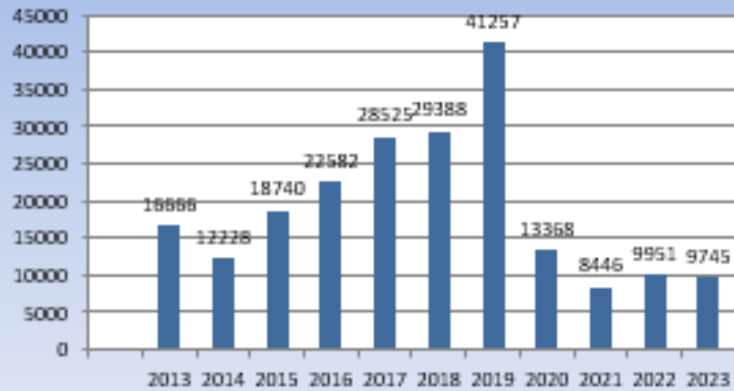
## Miles Between Interruptions



## Roadcalls



## Miles Between Roadcalls



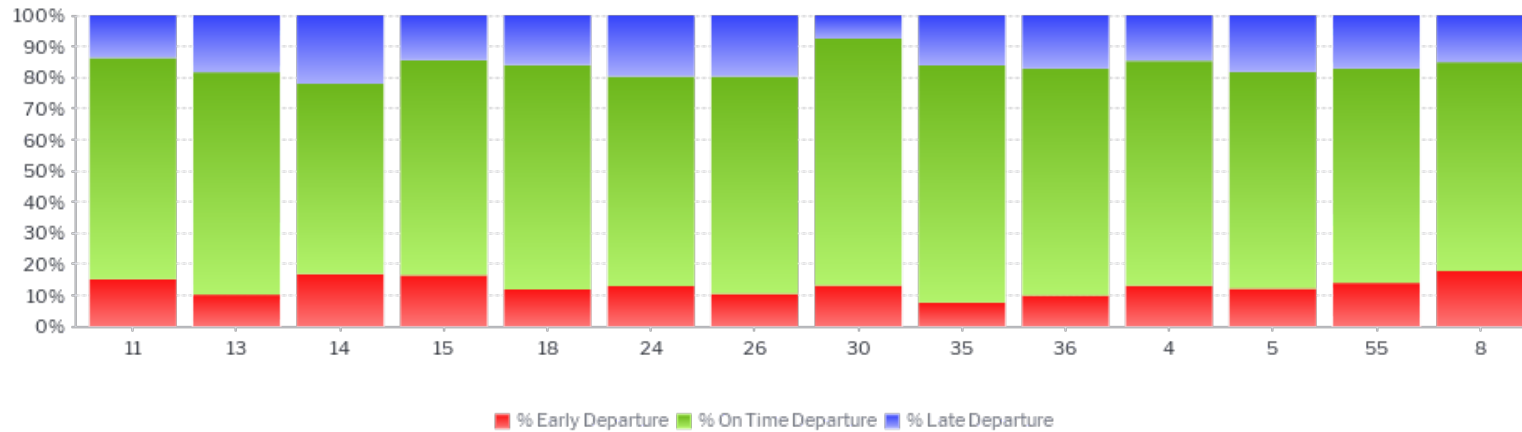
# January 2024 OTP

Departures: On-Time Performance (System Wide)

■ % Early Departure ■ % On Time Departure ■ % Late Departure

Month	Start Date	End Date	Early Departs	% Early Departure	On Time Departs	% On Time Departure	Late Departs	% Late Departure	Total
January	1/2/24	1/31/24	15,610	13.0%	85,433	71.1%	19,134	15.9%	120,177

Departures: On-Time Performance by Route

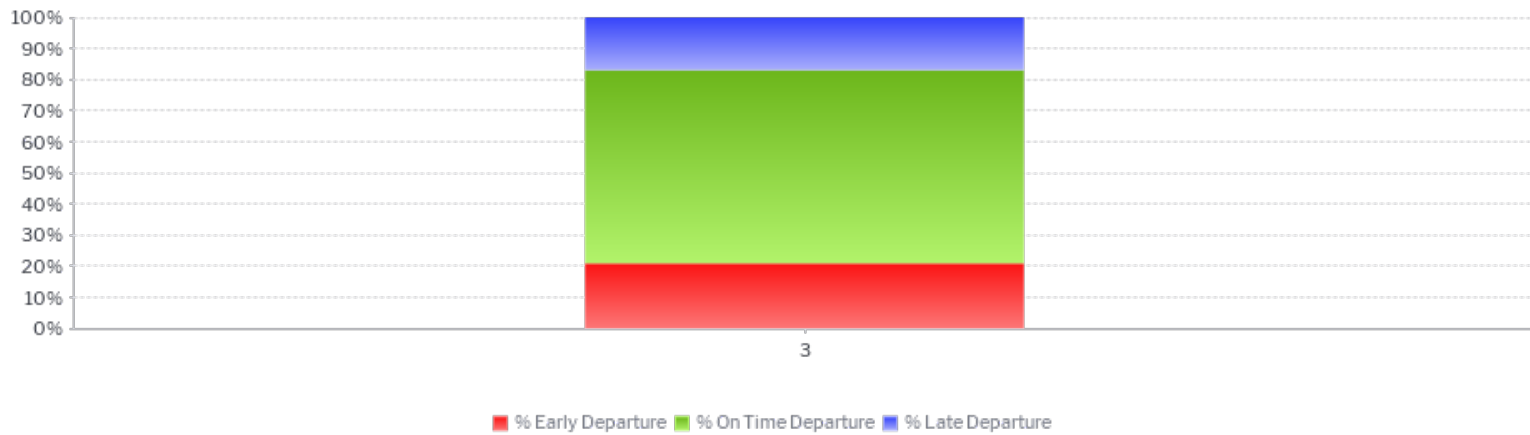


# January 2024 OTP

Route 3 is listed separately to track schedule performance after the opening of the 42<sup>nd</sup> St. bridge.

## Route 3

Departures: On-Time Performance by Route



Start Date	End Date	Route	Route	Early Departs	% Early Departure	On Time Departs	% On Time Departure	Late Departs	% Late Departure	Total
1/2/24	1/31/24	3	North 40th / South 42nd	2,828	20.9%	8,421	62.1%	2,305	17.0%	13,554

# January 2024

## Registered Customer Service Concerns by Category

Total Calls	15934
Bus	8666
MOBY	7268

### Calls by Category

	Total	Positive	Neutral	Negative	Percentage
Driver	55	2	3	50	41.98%
General	21	1	7	13	16.03%
Lost and Found	23	0	22	1	17.56%
Office Staff	2	0	0	2	1.53%
Other	7	0	2	5	5.34%
OTP	7	0	1	6	5.34%
Routing	7	0	0	7	5.34%
Ticket	1	0	0	1	0.76%
Vehicle	8	0	0	8	6.11%
Total	131	3	35	93	100.00%
Percentage	100%	2.29%	26.72%	70.99%	