

**MARTA**  
**NON-REPRESENTED**  
**DEFINED CONTRIBUTION PLAN**

**As Amended and Restated January 1, 2013**

# MARTA NON-REPRESENTED DEFINED CONTRIBUTION PLAN

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## **ARTICLE I**

### **Purpose**

The MARTA Non-Represented Defined Contribution Plan and Trust (the "Plan") was initially adopted effective January 1, 2005, by the Metropolitan Atlanta Rapid Transit Authority, or MARTA (the "Employer") for the benefit of certain of its employees. The Plan has subsequently been amended at various times. The Plan, as set forth in this document, is intended and should be construed as a restatement and continuation of the Plan as previously in effect. This restatement is intended to (i) consolidate various amendments to the Plan, (ii) clarify and modify certain provisions of the Plan, and (iii) bring the Plan into compliance with laws and regulations enacted or issued prior to the effective date of this restatement.

The purpose of the Plan is to provide funds at retirement for certain employees of MARTA and, in the event of death, to provide funds for the beneficiaries of participants in the Plan. Such benefits shall be provided through an arrangement by which contributions are made to the Plan by Employees and the Employer.

This Plan is intended to be a governmental profit sharing plan and trust qualified under the applicable requirements of Sections 401(a), 414(h) and 501(a) of the Internal Revenue Code of 1986, as amended (the "Code").

## ARTICLE II

### Definitions

Wherever used herein, unless the context clearly indicates otherwise, the following words shall have the following meanings:

- 2.1 Account shall mean, with respect to a Participant or Beneficiary, the amount of money or other property in the Trust Fund, evidenced by the last balance posted to the account established for such individual. The Committee may establish and maintain separate subaccounts for each such individual. "Account" shall refer to the aggregate of all separate subaccounts or to individual, separate subaccounts, as may be appropriate in context.
- 2.2 Affiliate shall mean MARTA and any entity required to be aggregated with MARTA for purposes of Code Section 415.
- 2.3 Annual Addition shall mean the sum of the amounts described in Section 5.3(c).
- 2.4 Beneficiary shall mean the person or entity designated by a Participant or Former Participant pursuant to Article VII to receive the balance remaining in such Participant's or Former Participant's Account upon his death. The Participant's or Former Participant's estate will be the Beneficiary if one is not designated by the Participant or Former Participant.
- 2.5 Board of Directors shall mean the Board of Directors of MARTA.
- 2.6 Code shall mean the Internal Revenue Code of 1986, as amended.
- 2.7 Committee shall mean the DC Plan Committee which is responsible for administering the Plan as described in Article X.
- 2.8 Compensation shall mean, for any period, a Participant's salary [before reduction for all salary deferral or salary reduction contributions made to this Plan or any Code Section 457 and 125 plans of MARTA, including any contributions made under Code Section 414(h), and including elective amounts that are not includable in the gross income of a Participant by reason of Code Section 132(f)(4), the qualified transportation fringes], bonuses, overtime pay, vacation pay and paid sick leave, but shall not include non-cash benefits under this or any other pension or welfare benefit plan.

For any Employee whose employment date is on or after January 1, 1996, Compensation shall not exceed the applicable limits under Code Section 401(a)(17). The Code Section 401(a)(17) limitation is two hundred thousand dollars (\$200,000) as adjusted by the Secretary of the Treasury for cost-of-living increases.

Effective for Limitation Years beginning on or after July 1, 2007, for purposes of Section 5.3., "Compensation" shall include compensation paid to the Participant by the later of (i) 2½ months after the Participant's severance from employment with the Employer, or (ii) the end of the limitation year that includes the date of the Participant's severance from employment with the Employer, if such compensation 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 and shift differential), commissions, bonuses, or other similar payments, and the compensation would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer. Compensation shall include compensation paid after a Participant's severance from employment if the payment is for unused bona fide sick, vacation, or other leave (but only if the Participant would have been able to use the leave if employment had continued) or the payment is received by a Participant pursuant to a nonqualified unfunded deferred compensation plan (but only if the payment would have been paid to the Participant at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includible in the Participant's gross income).

Effective January 1, 2009, in accordance with Code Section 414(u)(12), for purposes of Section 5.3, Compensation shall include any differential wage payment (within the meaning of Code Section 3401(h)(2)) made by an Employer to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(5)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer.

Notwithstanding the foregoing, for purposes of determining contributions under Article IV, Compensation shall not include any ad hoc, one-time lump sum payments to Participants in 2013.

- 2.9 Custodian shall mean the party responsible for maintaining the assets of the Trust Fund.
- 2.10 Disabled or Disability shall mean a Participant's inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration.
- 2.11 Distributee means an Employee or former Employee who specifies a direct rollover payment of an Eligible Rollover Distribution to an Eligible Retirement Plan. 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 Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse. Effective for distributions on and after January 1, 2010, a non-spouse Beneficiary of a deceased Participant shall be a Distributee with regard to the interest of the deceased Participant, but only if the Eligible Rollover Distribution is transferred in a direct trustee-to-trustee transfer to an eligible retirement plan which is an individual retirement account described in Code Section 408(a) or an individual retirement account described in Code Section 408(b) (other than an endowment contract).
- 2.12 Effective Date shall mean the original effective date of the Plan, January 1, 2013.
- 2.13 Eligible Employee shall mean any Employee other than:
  - (a) an Employee who is an active participant in the MARTA I ATU Local 732 Employees Retirement Plan;

- (b) an Employee whose Employment Date is prior to January 1, 2005 and who is a participant in the Pension Plan; and
  - (c) all Employees who are Transit Police.
- 2.14 Eligible Retirement Plan shall mean any of the following, the terms of which permit the acceptance of Eligible Rollover Distributions: (a) an individual retirement account described in Code Section 408(a); (b) an individual retirement annuity described in Code Section 408(b) (other than an endowment contract); (c) a qualified trust described in Code Section 401(a) and exempt from taxation under Code Section 501(a); (d) an annuity plan described in Code Section 403(a); (e) an annuity contract described in Code Section 403(b); (f) an eligible plan under Code Section 457(b) 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 to such plan from this Plan; or (g) effective January 1, 2008, to the extent permitted and in accordance with the rules applicable under Code Section 408A, a Roth individual retirement account described in Code Section 408A.
- 2.15 Eligible Rollover Distribution shall mean any distribution of all or any portion of the balance to the credit of a Distributee, except that an Eligible Rollover Distribution shall not include (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 expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more; (b) any distribution to the extent such distribution is required under Code Section 401(a)(9); (c) any hardship distribution; and (d) the portion of any distribution that is not includable in gross income.
- 2.16 Employee shall mean any regular, full-time employee of MARTA and shall expressly exclude:
- (a) an employee who is a "leased employee" within the meaning of Code Section 414(n), unless MARTA has approved the participation of such employee in the Plan; and
  - (b) an employee who is classified under MARTA's regular employment classification practices as a contract, part-time, co-op or temporary employee.
- 2.17 Employee Contribution shall mean the amounts deducted from the Compensation of Participants and paid by the Employer to the Trust Fund on behalf of each Participant under the terms of the Plan pursuant to Section 4.1.
- 2.18 Employee Contribution Account shall mean the separate subaccount established and maintained on behalf of a Participant or his Beneficiary to reflect his interest in the Trust Fund attributable to Employee Contributions.
- 2.19 Employer shall mean the Metropolitan Atlanta Rapid Transit Authority (MARTA) and any Affiliate, successor or assign which adopts the Plan.
- 2.20 Employer Contribution shall mean the contributions made by the Employer on behalf of Participants under the terms of the Plan pursuant to Section 4.2.

- 2.21 Employer Contribution Account shall mean the separate subaccount established and maintained on behalf of a Participant or his Beneficiary to reflect his interest in the Trust Fund attributable to Employer Contributions and any earnings or losses thereon.
- 2.22 Employment Date shall mean the date on which an Employee first performs an Hour of Service for the Employer.
- 2.23 Forfeiture shall mean, for any Plan Year, the dollar amount of an Account of a Former Participant which is removed from the Account during the Plan Year and used first to reduce Restoration Contributions and then to reduce future Employer Contributions.
- 2.24 Former Participant shall mean a Participant whose employment with the Employer has terminated but who has a Vested Account balance under the Plan which has not been paid in full and who, therefore, is continuing to participate in the allocation of earnings or losses under the Trust Fund.
- 2.25 Hour of Service shall mean each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer.
- 2.26 Investment Fund or Funds shall mean those funds identified and established by the Committee from time to time pursuant to the terms of Section 9.2.
- 2.27 Leave of Absence shall mean:
- (a) An absence due to sickness or injury; or
  - (b) Any leave duly authorized by the Employer for an approved purpose, which authorization shall be in writing if the leave is longer than one month; or
  - (c) Any authorized absence for service in the armed forces of the United States in accordance with federal law governing reemployment of veterans.
  - (d) Except to the extent otherwise required by law, a Participant shall not be credited with service during any period of authorized or unauthorized Leave of Absence without pay, or disciplinary suspension without pay. Notwithstanding the foregoing, any Participant granted leave under the Family and Medical Leave Act of 1993 and the regulations thereunder shall be credited with service during the term of such leave, provided that the Participant makes all required Participant Contributions in respect of the term of such leave in the manner prescribed by the Committee.
- The above named absences shall be authorized on a nondiscriminatory basis, and all Employees in similar circumstances will receive uniform and consistent treatment.
- 2.28 Limitation Year shall mean the twelve-month period ending on December 31, which period shall be the "Limitation Year" for purposes of Code Section 415. Limitation Year is the same period as the Plan Year.
- 2.29 Maternity or Paternity Leave shall mean any period during which an Employee is absent from work as an employee of the Employer (a) because of the pregnancy of such Employee; (b) because of the birth of a child of such Employee; (c) because of the

placement of a child with such Employee in connection with the adoption of such child by such Employee; or (d) for purposes of such Employee caring for a child immediately after the birth or placement of such child.

- 2.30 Normal Retirement Age shall mean age 65.
- 2.31 Normal Retirement Date shall mean the first day of the month coincident with or next following the date a Participant attains Normal Retirement Age.
- 2.32 OCGA shall mean the Official Code of Georgia Annotated.
- 2.33 Participant shall mean an Eligible Employee who qualifies to participate in the Plan, as provided in Article III. "Participant" shall include Active Participants and Former Participants who have an Account under the Plan.
- 2.34 Participation Date shall mean the date on which a Participant first participates in the Plan, either automatically through becoming an Eligible Employee after December 31, 2004, or by election to transfer to the Plan from the Pension Plan pursuant to Section 3.1(c).
- 2.35 Pension Plan shall mean the MARTA Non-Represented Pension Plan effective January 1, 1958, as amended, maintained by MARTA for Employees who are not represented by ATU Local 732 under the MARTA Labor Agreement and who have Employment Dates prior to January 1, 2005 (except Transit Police).
- 2.36 Period of Service shall mean the aggregate of all service performed by the Employee for the Employer commencing with the Employee's Employment Date and ending with the first date a Period of Severance begins.
- 2.37 Period of Severance shall mean a continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, terminates employment or if earlier, the 12-month anniversary of the date on which the Employee was first absent from service. A one year Period of Severance shall be a Period of Severance of at least 12 consecutive months. A Period of Severance shall not be deemed to have occurred during any period for which he is granted a Leave of Absence if he returns to the service of the Employer within the time permitted as set forth in the Plan.
  - (a) Maternity or Paternity Leave. In the case of an Employee absent from work due to a Maternity or Paternity Leave, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Period of Severance.
  - (b) Family and Medical Leave Act. For purposes of determining whether an Employee has incurred a Period of Severance, and solely for the purpose of avoiding a Period of Severance, to the extent required under the Family and Medical Leave Act of 1993 and the regulations thereunder, an Employee shall be deemed to be performing services for the Employer during any period the Employee is granted leave under such Act (i) for the birth of a child, (ii) for the placement with the Employee of a child for adoption or foster care, (iii) to care for a spouse, child or parent of the Employee with a serious health condition, or (iv)

for a serious health condition that makes the Employee unable to perform the functions of the Employee's job.

- 2.38 Plan shall mean the MARTA Non-Represented Defined Contribution Plan and Trust as set forth in and by this document, and all amendments hereto.
- 2.39 Plan Administrator shall mean the administrator appointed by the Committee to assist in the administration of the Plan.
- 2.40 Plan Year shall mean the period commencing January 1 and ending on the following December 31.
- 2.41 Reemployment Date shall mean the date on which the Employee first performs an Hour of Service following a one year Period of Severance.
- 2.42 Restoration Contributions shall mean the amounts paid to the Trust Fund by or on behalf of a rehired individual pursuant to the terms of Section 4.6.
- 2.43 Rollover Account shall mean the separate subaccount established and maintained on behalf of a Participant or his Beneficiary to reflect his interest in the Trust Fund attributable to Rollover Contributions and any earnings or losses thereon.
- 2.44 Rollover Contributions shall mean the amounts contributed to the Plan (and received and accepted by the Trustee) as "rollover" contributions as defined in Code Section 402 as Eligible Rollover Distributions. An amount shall be treated as a Rollover Contribution only to the extent that its acceptance by the Trustee is permitted under the Code (including the regulations and rulings promulgated thereunder).
- 2.45 Severance from Service Date shall mean the date on which an Employee terminates employment, retires, dies or otherwise ceases to be employed by the Employer.
- 2.46 Transfer Account shall mean the separate subaccount established and maintained on behalf of a Participant or his Beneficiary to reflect his interest in the Trust Fund attributable to amounts transferred to the Plan on behalf of the Participant from the Pension Plan or the Union Plan.
- 2.47 Transit Police shall mean all Employees who are sworn police personnel acting as police officers for MARTA whose job description requires them to be certified by the Peace Officers Standards and Training Council.
- 2.48 Trustee shall mean the Committee or any successor appointed by the Committee to act as Trustee.
- 2.49 Trust Fund shall mean all funds received and held by the Trustee or the Custodian as provided for in the Plan.
- 2.50 Union Plan shall mean the MARTA I ATU Local 732 Employees Retirement Plan effective June 22, 1950, as amended, maintained for certain Employees who are represented by Local Division 732, Amalgamated Transit Union, under the MARTA Labor Agreement.

- 2.51 USERRA shall mean the Uniformed Services Employment and Reemployment Act of 1994, Public Law 103-353.
- 2.52 Valuation Date shall mean each business day on which all of the United States capital markets are open.
- 2.53 Vested and Percent(age) Vested shall mean the percentage of a Participant's Account to which there is a non-forfeitable right based on the Participant's Years of Service.
- 2.54 Year of Service shall mean a period of twelve (12) consecutive months during which an Employee completes at least one (1) Hour of Service with the Employer during each such month. For vesting purposes, Participants shall receive credit for any Period of Severance of less than 12 consecutive months.

## ARTICLE III

### Participation and Service

#### 3.1 Participation

- (a) Except as provided below, each Eligible Employee whose Employment Date is on or after January 1, 2005, shall automatically become a Participant in this Plan effective upon his Employment Date and shall be required to participate in the Plan.
- (b) Except for the continuing participation in earnings and losses of the Account of a Former Participant, participation in the Plan shall cease upon termination of employment with the Employer.
- (c) Each Eligible Employee whose Employment Date or Reemployment Date is prior to January 1, 2005, may elect to participate in the Plan or may elect to remain a Participant in the Pension Plan. The requirements with respect to such election are set forth in Appendix A.

#### 3.2 Reemployment

- (a) Upon the reemployment of an Eligible Employee, the following rules shall apply in determining his participation in the Plan under Section 3.1:
- (b) A rehired Eligible Employee who was previously a Participant shall participate in the Plan as of his Reemployment Date.
- (c) A rehired Eligible Employee who previously participated in the Pension Plan but elects not to repay any cash refund or benefit payments to the Pension Plan or is otherwise not eligible to participate in the Pension Plan shall participate in the Plan as of his Reemployment Date.
- (d) A rehired Eligible Employee who previously participated in the Pension Plan and who is eligible to participate in the Pension Plan upon his Reemployment Date will not be eligible to become a Participant in this Plan unless such Eligible Employee elects to participate in this Plan pursuant to the election procedure set forth in Appendix A.

#### 3.3 Transfers

If a Participant becomes a participant in the Union Plan as a result of a change in employment status, his participation under the Plan will be suspended; provided, however, that during the period of his employment in such ineligible position: (a) he shall continue to participate in allocations of earnings and losses pursuant to Section 5.2(d); (b) his Employer Account shall receive no Employer Contributions; (c) he shall make no Employee Contributions to the Plan and (d) the applicable provisions of Articles V, VI and VII shall continue to apply.

#### 3.4 Omission of Eligible Employee

In the event an Eligible Employee is erroneously excluded as a Participant in the Plan during a Plan Year and discovery of such omission occurs after the Employer Contribution has been made and allocated for such Plan Year, the Employer shall make a subsequent contribution with respect to the omitted Eligible Employee in the amount which would have been contributed had the omitted Eligible Employee been included.

#### 3.5 Inclusion of Ineligible Employee

If, in any Plan Year, any person who should not have been included as a Participant in the Plan is included erroneously, and discovery of such incorrect inclusion is not made until after a contribution by the Employer has been made and allocated for such year, the Employer shall not be entitled to recover the contribution made with respect to the ineligible person. In such event, the amount contributed with respect to the ineligible person shall constitute a Forfeiture for the Plan Year in which the discovery is made and shall be used to reduce subsequent Employer Contributions due under the Plan.

## ARTICLE IV

### Contributions

#### 4.1 Employee Contributions

- (a) Employee Contributions. There shall be deducted from the Compensation paid by the Employer to each Eligible Employee who becomes a Participant in the Plan the sum of six percent (6%) of such Compensation as an Employee Contribution to the Plan.
- (b) Employer Pick-Up Contributions. As of each payroll period, the Employer shall contribute to the Plan the amount of Employee Contributions required for participation on behalf of each Participant. No Participant shall be entitled to receive such contributions in cash in lieu of having them contributed to the Plan by the Employer in accordance with the preceding sentence. Such contributions shall be made pursuant to Code Section 414(h) and shall be treated as employer contributions in determining their federal income tax treatment.

The Employer may reduce the Compensation payable to a Participant in an amount not exceeding the amount of the contribution paid by it on behalf of such individual pursuant to this subsection.

#### 4.2 Employer Contributions

- (a) Formula for Determining Employer Contribution. For each pay period, the Employer shall contribute to the Plan on behalf of each Participant the sum of three percent (3%) of such Participant's Compensation paid or accrued for such pay period. From time to time, the Employer may also contribute additional sums to the Plan to be determined in the sole discretion of the Employer.
- (b) Failure to Make Contribution for a Plan Year. Should the Employer, for any reason, fail to make a contribution for any pay period or should the Employer fail to make a required contribution as provided herein, such deficiency shall be corrected in subsequent pay periods. Such contribution shall be paid by the Employer to the Trust Fund and shall equal the amount of the deficiency plus interest at a reasonable rate from the date the contribution was due until the date the deficiency was corrected.

#### 4.3 Timing of Contributions

The Employer shall pay to the Trustee all Employee Contributions and Employer Contributions as soon as possible following each payroll period and in no event later than the time prescribed by law.

#### 4.4 Rollover Amount From Other Plans

- (a) All Participants are eligible to transfer an Eligible Rollover Distribution to the Plan. The procedures approved by the Committee shall provide that such a transfer may be made only if the following conditions are met:

- (i) the amount is received directly from an Eligible Retirement Plan or the transfer occurs on or before the 60th day following the Participant's receipt of the distribution from the Eligible Retirement Plan; and
  - (ii) the amount transferred is equal to any portion of the distribution the Participant received from the Eligible Retirement Plan, subject to the maximum rollover provisions of Code Section 402(c)(2).
- (b) Notwithstanding the foregoing, if the Participant had deposited an Eligible Rollover Distribution previously received from an Eligible Retirement Plan into an individual retirement account ("IRA"), as defined in Code Section 408, and that IRA contains no other money from any other source, such Participant may transfer the amount of such distribution, plus earnings thereon, from the IRA to this Plan; provided, that such rollover amount is deposited with the Trustee on or before the 60th day following receipt thereof from the IRA.
- (c) The Committee shall develop such procedures, and may require such information from a Participant as it deems necessary to determine that the proposed transfer will meet the requirements of this Section. Upon approval by the Committee, the amount transferred shall be deposited in the Plan and shall be credited to a Rollover Account. All Rollover Accounts shall be one hundred percent (100%) Vested and shall share in earnings and losses (net appreciation or net depreciation) in accordance with Section 5.2(d). Upon termination of employment, the total amount of the Participant's Rollover Account shall be distributed in accordance with Article VI.

#### 4.5 Transfer Contributions

- (a) Pension Plan. Each Eligible Employee who elects to participate in this Plan in accordance with Section 3.1(c) shall have an amount transferred to this Plan from the Pension Plan at the time specified by the Committee. Such amount shall be determined under the guidelines specified in the Pension Plan document and Appendix B hereof and shall be one hundred percent (100%) Vested. As of the date specified by the Committee, such amount shall be credited to the Transfer Account of the Participant and shall share in earnings and losses (net appreciation or net depreciation) in accordance with Section 5.2(d).
- (b) Union Plan. In the event an amount representing the lump sum actuarial equivalent of an Employee's accrued benefit in the Union Plan is transferred to this Plan for the benefit of an Eligible Employee, such amount shall become one hundred percent (100%) Vested upon transfer. As of the date specified by the Committee, such amount shall be credited to the Transfer Account of the Participant and shall share in earnings and losses (net appreciation or net depreciation) in accordance with Section 5.2(d).

#### 4.6 Restoration Contributions

- (a) Restoration Upon Buy-Back. If a Participant who is not fully Vested in his Account received a distribution of the entire Vested portion of his Account (such that he forfeited the nonvested portion of his Account in accordance with the terms of Section 6.3), and the Participant subsequently is rehired as an Eligible

Employee prior to the occurrence of 5 consecutive one year Periods of Severance, such Participant may repay the full amount of the distribution to the Trustee (unadjusted for gains or losses), prior to the earlier of (i) 5 years after his Reemployment Date or (ii) the close of the first period of 5 consecutive one year Periods of Severance commencing after the distribution. Upon such repayment, his Account will be credited with (i) all of the benefits (unadjusted for gains or losses) which were forfeited, and (ii) the amount of the repayment.

- (b) Restoration of Other Forfeitures. If a Participant has forfeited the nonvested portion of his Account and such Participant subsequently is rehired as an Eligible Employee prior to the occurrence of 5 consecutive one year Periods of Severance, his Account shall be credited with all of the benefits (unadjusted for gains or losses) which were forfeited.
- (c) Restoration Contribution. The assets necessary to fund the Account of a rehired Eligible Employee in excess of the amount of the repayment shall be provided no later than the end of the Plan Year following the Plan Year in which repayment occurs (if subsection (a) applies) or in which the Eligible Employee is rehired (if subsection (b) applies), and shall be provided, in the discretion of the Committee, from (i) income or gain to the Trust Fund, (ii) Forfeitures or (iii) contributions by the Employer.
- (d) Notice of Buy-Back Rights. The Committee shall give timely notice to any rehired Eligible Employee of his right to repay any distribution in accordance with this Section by the time required in subsection (a) hereof, and of the consequences of failure to repay the distribution (that the nonvested portion of his Account forfeited upon his previous termination of employment will remain forfeited and will not become Vested despite his performance of additional Years of Service).

#### 4.7 Reemployed Veterans

- (a) To the extent and in the manner required under USERRA, a Participant who is absent from employment for service in the uniformed services and returns to employment with the Employer shall be permitted to make Employee Contributions to the Plan with respect to such period of uniformed service, and the Employer shall make any Employer Contributions required to be made under USERRA on behalf of such Employee for the period of absence, based on the contribution rates in effect for the Plan Years in which the Employee was in qualified military service. The Employee shall designate the Plan Years to which Employee Contributions made-up by such Employee relate. Such contributions may be made during the period beginning on the Reemployment Date of such Employee, and must be made by the end of the period that is the lesser of (i) the product of 3 and the period of qualified military service, or (ii) five years following the Reemployment Date. No Employee shall be entitled to retroactive earnings on Employee Contributions made pursuant to this Section.
- (b) Any Employee who returns to employment with the Employer following a period of qualified military service shall, for purposes of this Section, be treated as receiving Compensation equal to the Compensation the Employee would have received during such period if the Employee were not in qualified military service; provided, however if the Compensation the Employee would have received

during such period is not reasonably certain, Compensation for this purpose shall equal the Employee's average Compensation during the 12 months immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

- (c) Any contributions made pursuant to subsection (a) are not subject to the limits under Code Section 415 in the Plan Years in which made; rather, such contributions are subject to such limits in the Plan Years to which the contributions relate as determined according to the Employee's election under subsection (a).

#### 4.8 Form of Contributions

All contributions shall be paid to the Trustee in the form of cash or cash equivalents.

#### 4.9 Return of Employer Contributions

A contribution by the Employer to the Trust Fund made by a mistake of fact shall be returned to the Employer. Any such contribution shall be returned within one year after the mistaken payment of the contribution. The amount of the contribution that may be returned to the Employer is the excess of (i) the amount contributed over (ii) the amount that would have been contributed had there not occurred a mistake of fact. Earnings attributable to the excess contribution may not be returned to the Employer, but losses attributable thereto must reduce the amount to be so returned.

#### 4.10 Employer's Right To Discontinue Contributions

Notwithstanding anything contained herein to the contrary, the Employer shall have the right in its sole and final discretion, at any time or from time to time, to discontinue or temporarily suspend for a definite or indefinite period, its contributions under the Plan without any liability whatsoever. Upon the complete discontinuance of contributions by the Employer, the rights of Participants shall be nonforfeitable in accordance with and to the extent provided in Section 11.2(b).

#### 4.11 Additional Contributions

Notwithstanding Sections 4.1 and 4.2, the Employer may make such additional contributions for certain Eligible Employees as specified in an employment agreement or similar agreement with the Employer.

## ARTICLE V

### Allocation To Participants' Accounts

#### 5.1 Individual Accounts

To the extent appropriate, the Committee shall establish and maintain, on behalf of each Participant or Beneficiary, an Account which shall be divided into segregated subaccounts. The subaccounts shall include Employee Contribution, Employer Contribution, Transfer and Rollover Accounts, and such other subaccounts as the Committee shall deem appropriate. Each Account shall be credited with Contributions or transfers allocated to such Account and generally shall be credited with earnings and losses on investments derived from the assets of such Accounts. Each Account of a Participant or Beneficiary shall be maintained until the value thereof has been distributed to or on behalf of such person.

#### 5.2 Allocations

The Accounts of Participants, Former Participants and Beneficiaries shall be adjusted, subject to the provisions of Sections 5.3 and 5.4, in accordance with the following:

- (a) Employee Contributions. As of each payroll for which Employee Contributions are made, such Employee Contributions shall be allocated and credited directly to the Participants' Employee Contribution Accounts.
- (b) Employer Contributions. As of each payroll period for which Employer Contributions are made, the Employer shall provide the Committee with all information required to make a proper allocation of the Employer Contribution for that period. After payment of Plan expenses, the Committee shall allocate the remaining Employer Contributions to each Participant's Employer Contribution Account in the same proportion that each such Participant's Compensation bears to the total Compensation of all Participants; provided, however, that any Employer Contributions made to the Plan in excess of three percent (3%) of the Compensation of all Participants for such period shall be allocated to Participants' Employer Contribution Accounts as determined in the sole discretion of the Employer.
- (c) Restoration Contribution. As of the date on which a Restoration Contribution is received from a Participant, such Contribution (together with the nonvested benefits restored by the Plan as a result of such Contribution) shall be credited to the appropriate Employee, Employer, Rollover and Transfer Accounts of the Participant, in the amounts held by such Accounts immediately prior to the earlier distribution to such Participant.
- (d) Income. As of each Valuation Date, any earnings or losses (net appreciation or net depreciation) shall be allocated to each Participant's Account. Each segregated Account maintained on behalf of a Participant shall be credited or charged with its separate earnings and losses.

### 5.3 Code Section 415 Limitations on Contributions

- (a) General Limit on Annual Additions. In no event shall the Annual Addition to a Participant's Account for any Limitation Year, under the Plan and any other defined contribution plan maintained by the Employer or an Affiliate, exceed the lesser of:
  - (i) \$40,000, as adjusted for increases in the cost-of-living under Code Section 415(d) or
  - (ii) one hundred percent (100%) of such Participant's Compensation as measured for purposes of Code Section 415 for the Limitation Year.
- (b) Correction of Excess Annual Additions. In the event that the amounts which would otherwise be allocated to a Participant's Account must be reduced by reason of the limitations set forth in this Section, any such reduction shall only be made in accordance with correction methods permitted under the Employee Plans Compliance Resolution System (Revenue Procedure 2013-12) or any subsequent guidance issued by the Internal Revenue Service.
- (c) Special Definitions Applicable to Code Section 415 Limitations. For purposes of this Section, the term "Annual Addition" for any Participant means the sum for any Limitation Year of:
  - (i) contributions made by the Employer on behalf of the Participant to this Plan and under all other defined contribution plans of the Employer;
  - (ii) contributions made by the Participant to this Plan and under all defined contribution plans of the Employer [excluding rollover contributions as defined in Code Sections 402(a)(5), 403(a)(4), 403(b)(8), 408(d)(3) and 414(h) and contributions of previously distributed benefits which result in such a plan's restoration of previously forfeited benefits pursuant to Treasury Regulations Section 1-411(a)-7(d)];
  - (iii) forfeitures allocated to the Participant under this Plan and under all other defined contribution plans of the Employer; and
  - (iv) amounts allocated for the benefit of the Participant to an individual medical account established under a pension or annuity plan maintained by the Employer, as described in Code Section 415(1).
- (d) Compliance with Code Section 415. The limitations in this Section are intended to comply with the provisions of Code Section 415 so that the maximum benefits permitted under the Plan shall be exactly equal to the maximum amounts allowed under Code Section 415 and the regulations promulgated thereunder. If there is any discrepancy between the provisions of this Section and the provisions of Code Section 415 and the regulations promulgated thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of the Code; further, Code Section 415 and the regulations promulgated thereunder are hereby incorporated into this Plan by reference and made a part hereof.

#### 5.4 Construction of Limitations and Requirements

The descriptions of the limitations and requirements set forth in this Article are intended to serve as statements of the minimum legal requirements necessary for the Plan to remain qualified under the applicable terms of the Code. The Employer does not desire or intend, and the terms of this Article shall not be construed, to impose any more restrictions on the operation of the Plan than required by law. Therefore, the terms of this Article and any related terms and definitions in the Plan shall be interpreted and operated in a manner which imposes the least restrictions on the Plan. For example, if use of a more liberal definition of "Compensation" is permissible at any time under the law, then the more liberal provisions may be applied as if such provisions were included in the Plan.

#### 5.5 Notice to Participants of Account Balances

At least once each calendar year, the Committee shall cause a written statement of a Participant's Account balance to be distributed to the Participant.

#### 5.6 Good Faith Valuation Binding

In determining the value of the Trust Fund and the Accounts, the Trustee and the Committee shall exercise their best judgment, and all such determinations of value (in the absence of bad faith) shall be binding upon all Participants and Beneficiaries.

#### 5.7 Errors and Omissions in Accounts

If an error or omission is discovered in the Account of a Participant or Beneficiary, the Committee shall cause appropriate, equitable adjustments to be made as soon as practical.

## ARTICLE VI

### Retirement Benefits and Benefits Upon Termination of Employment

#### 6.1 Retirement

If a Participant's employment with the Employer is terminated on or after his Normal Retirement Date, he shall be entitled to receive one hundred percent (100%) of his Account credited as of his Normal Retirement Date. However, a Participant may postpone the termination of his employment with the Employer to a later date, in which event the participation of such Participant in the Plan shall continue until his actual retirement date. Upon a Participant's actual retirement date, or as soon thereafter as is practicable, the Trustee shall distribute all amounts credited to such Participant's Account in accordance with this Article VI.

#### 6.2 Termination for Other Reasons

- (a) If a Participant's employment with the Employer is terminated before his Normal Retirement Date for any reason other than death, he shall be entitled to receive the Vested portion of his Account as of the date that the Plan Administrator processes his distribution request.
- (b) All Participants shall at all times be fully Vested in their Employee Contribution Account, Rollover Account and Transfer Account. Except as provided below, the Employer Contribution Account of a Participant shall vest in accordance with the following Vesting schedule, based on the total of the Participant's Years of Service:

<u>Years of Service</u>	<u>Percent Vested</u>
Fewer than one (1) year	0%
At least one (1) but fewer than two (2) years	20%
At least two (2) but fewer than three (3) years	60%
Three (3) or more years	100%

Notwithstanding the rules above, a Participant's Employer Contribution Account shall become 100 percent Vested and not subject to Forfeiture upon the occurrence of any of the following events:

- (i) The Participant's attainment of Normal Retirement Age while an Employee;
- (ii) The Participant's death while an Employee; or
- (iii) The Participant's becoming Disabled while an Employee.

#### 6.3 Forfeitures; Vesting After Restoration Contributions

If a Participant who is not fully Vested in his Employer Contribution Account terminates employment with the Employer and receives an immediate distribution of the Vested portion of his Employer Contribution Account, the nonvested portion of his Employer Contribution Account

shall become a Forfeiture as of the last day of the Plan Year in which the distribution is made. If a Participant has no Vested interest in his Account at the time his employment terminates, he shall be deemed to have received a cash-out distribution at the time his employment terminates, and the forfeiture provisions of this Section shall apply. Forfeitures shall be used first to reduce Restoration Contributions and second to reduce Employer Contributions or reduce Plan expenses. If such a Participant resumes employment with the Employer after he has incurred 5 or more consecutive one year Periods of Severance, the Forfeiture shall not be restored. If such a Participant resumes employment with the Employer before he has incurred 5 consecutive one year Periods of Severance, the Forfeiture shall be restored as follows:

- (a) Reemployment And Vesting After Cash-Out Distribution. If by the Date of Reemployment a terminated Participant has received a distribution of the entire Vested portion of his Account not later than the close of the second Plan Year following the Plan Year in which his employment with the Employer terminated, the provisions of Section 4.6(a) shall apply (requiring repayment by the Participant as a condition for restoration of the Forfeiture). Upon such repayment, the Participant shall be credited with all previously earned Years of Service for Vesting purposes.
- (b) Reemployment And Vesting Before Distribution. If by the Date of Reemployment a terminated Participant has not received any distributions of the Vested portion of his Account, or if he has no Vested interest in his Account, the nonvested portion of his Account shall be restored pursuant to the terms of Section 4.6(b). The Participant's Account then shall be subject to the Vesting provisions in this Article as if no Forfeiture had occurred.
- (c) Reemployment And Vesting After Other Distribution. If by the Date of Reemployment a terminated Participant has received a distribution of the entire Vested portion of his Account later than the close of the second Plan Year following the Plan Year in which his employment with the Employer terminated, then the nonvested portion of his Account shall be restored pursuant to the terms of Section 4.6(b), and the total amount of his Account (including the restored amount) shall be credited to his Account. The Vested interest of such Participant in such Accounts prior to the date such Participant (i) again terminates his employment with the Employer, (ii) incurs 5 consecutive one year Periods of Severance (such that the nonvested portion of his Accounts are forfeited), or (iii) becomes 100 percent Vested pursuant to the terms of Section 6.2 hereof (whichever is earliest), shall be determined pursuant to the following formula:

$$X \text{ equals } P(AB+[RxD])-(RxD)$$

where X is the Vested interest at the relevant time (that is, the time at which the Percentage Vested in such Account cannot increase); P is the Percentage Vested at the relevant time; AB is the balance of his Account at the relevant time; D is the amount of the distribution; and R is the ratio of his Account balance at the relevant time to such Account balance immediately after the distribution.

#### 6.4 Benefit Payments

- (a) Application for Benefit. Before payment of any benefit hereunder, the Committee shall require that the Participant or Beneficiary make an application for such

benefit and submit the application to the Plan Administrator in such form and manner as the Committee shall uniformly prescribe.

- (b) Effect of Payment. Any payment made in accordance with the provisions of the Plan to a Participant or Beneficiary, or to his legal representative, shall, as to the method of computation and the amount thereof, constitute full satisfaction of claims hereunder against the Trustee, the Committee and the Employer, any of whom may require such Participant, Beneficiary or legal representative to execute a receipt and release as a condition precedent to such payment.

#### 6.5 Normal Payment Forms

Except as otherwise provided herein, a benefit described in this Article VI shall be paid in one lump sum payment.

#### 6.6 Assets Distributed

Any distribution to a Participant or his Beneficiary shall be made in the form of cash paid directly from the Trust Fund.

#### 6.7 Time of Payment

- (a) Except as provided below, benefits payable to a Participant under this Section shall be distributed, or shall commence to be distributed, as soon as administratively feasible after the date the benefits are requested by the Participant following such Participant's termination of employment for any reason other than death.
- (b) Notwithstanding the foregoing, in the event that the value of the Participant's Account exceeds \$1,000 at the time of distribution, benefits shall not be distributed to such Participant at the time set forth in subsection (a) hereof without the Participant's written election, on a form provided by the Committee. Such Participant's election must be filed with the Plan Administrator within the 90-day period beginning on the date of actual termination of employment, and the Plan Administrator (no later than 30 days and no earlier than 90 days before the distribution) must have provided the Participant a notice explaining the Participant's right to defer his distribution. If the Participant does not consent in writing to the current distribution of his benefit, his benefit shall be distributed as soon as administratively feasible after he files an election with the Plan Administrator requesting such payment. If a Participant fails to file an election specifying the time of payment, his benefit shall be distributed as soon as administratively feasible after the end of the Plan Year in which he attains Normal Retirement Age, but in no event later than the 60th day after the end of such Plan Year.
- (c) Notwithstanding anything in the Plan to the contrary, in no event shall payment of a Participant's benefit be made later than 60 days after the end of the Plan Year which includes the latest of (i) the date on which the Participant attained Normal Retirement Age, (ii) the date which is the 10th anniversary of the date the Participant commenced participation in the Plan, or (iii) the date the Participant terminates employment with the Employer; provided, that if the amount of the

payment cannot be ascertained by the date as of which payments are scheduled to be made hereunder, payment shall be made no later than 60 days after the earliest date on which such payment can be ascertained under the Plan; and, provided further, that the Participant's benefit shall be paid no later than the later of April 1 following the calendar year (i) in which the Participant attains age 70½, or (ii) in which the Participant terminates employment. All distributions shall be made in accordance with Code Section 401(a)(9), the regulations promulgated thereunder, including Treasury Regulations 1.401(a)(9)-2 through 1.401(a)(9)-9 of the Final and Temporary 401(a)(9) Regulations published April 17, 2002 (relating to incidental benefit limitations) and any other provisions and Regulation reflecting the requirements of Code Section 401(a)(9) and prescribed by the Internal Revenue Service, all of which are hereby incorporated by reference and any other provisions reflecting the requirements of Code Section 401(a)(9) and prescribed by the Internal Revenue Service; and the terms of the Plan reflecting the requirements of Code Section 401(a)(9) override any distribution options in the Plan which are inconsistent with those requirements.

#### 6.8 Forfeiture of Benefits

Notwithstanding any other provision to the contrary, a Participant's Employer Contribution Account under the Plan shall be forfeited in the manner and to the extent provided under O.C.G.A. Section 47-1-21 through Section 47-1-24, if such Participant is convicted of a public employment, drug related or other covered crime.

#### 6.9 Unclaimed Benefits

In the event the Committee (after such diligent efforts as the Committee in its sole discretion deems appropriate) is unable to locate a Participant within one year from the date upon which a Participant becomes entitled to Plan benefits (other than death benefits), the Committee shall direct that such benefits be paid to the Participant's designated Beneficiary or, if none, to the Beneficiary identified by operation of the Plan; and, provided further, if the distribution is payable upon termination of the Plan, the Committee shall not be required to wait until the end of such 1-year period. If neither the Participant nor his Beneficiary can be located and no claim is filed for such benefits by the end of the fifth Plan Year following the Plan year in which such Participant becomes entitled to such benefits, then the Account of the Participant shall be deemed abandoned and treated as a Forfeiture; provided, in the event such Participant or Beneficiary is located or files a claim subsequent to the allocation of the abandoned Account but prior to the expiration of the time within which any such person's claim to the Account would expire under appropriate state law, then the amount of the abandoned Account (unadjusted for any investment gains or losses from the time of abandonment) shall be restored (from abandoned Accounts, Trust Fund earnings or Employer Contributions) to such Participant or Beneficiary; and, provided further, the Committee, in its sole discretion, may delay the deemed date of abandonment of any such Account for a period longer than the prescribed five Plan Years.

#### 6.10 Maintenance of Account

Upon the occurrence of circumstances which entitle a Participant or his Beneficiary to benefit payments under the Plan, the amount of such benefits, computed in accordance with the provisions of the Plan, may be retained in the Trust Fund as such Participant's Account. Any such Account shall continue to be invested pursuant to the investment elections made by the

Participant (or Beneficiary) pursuant to Section 9.3. The Account balance shall be distributed to the Participant or his Beneficiary at such time and in such manner as provided in the Plan.

#### 6.11 Rollover Distributions

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 Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover. Effective January 1, 2010, if the Distributee is a non-spouse Beneficiary of a deceased Participant and a direct trustee-to-trustee transfer is made to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) (other than an endowment contract): (a) the transfer shall be treated as an Eligible Rollover Distribution; (b) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of Code Section 408(d)(3)(C)); and (c) Code Section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

## **ARTICLE VII**

### **Death Benefits**

#### **7.1 Death of Participant or Former Participant**

If a Participant dies prior to retirement or other termination of employment, or if a Former Participant dies before he receives a distribution of his Account (a deceased Participant or Former Participant shall be referred to in this Article as a "Decedent"), a death benefit equal to one hundred percent (100%) of the Decedent's Account shall be payable to the Decedent's Beneficiary in one lump sum payment. The Decedent's Account will continue to be invested in the same manner provided under the terms of the most recent election affecting such Account until the date of distribution. The Committee may require such proper proof of death and evidence of the right of any person to receive payment of the Account of a Decedent as the Committee deems appropriate. The Committee's determination of death and the right of a Beneficiary to receive payment shall be final.

#### **7.2 Designation of Beneficiary**

- (a) Each Participant shall make a designation of Beneficiary on a form satisfactory to the Committee which will be filed with the Plan Administrator. A Participant or Former Participant may at any time revoke a designation of Beneficiary or change a designation of Beneficiary by filing a written notice (in form satisfactory to the Committee) of such revocation or change with the Plan Administrator.
- (b) In the event no valid designation of Beneficiary exists or if the Beneficiary is not alive at the time of the Decedent's death or at the time of distribution of the death benefit, the death benefit will be paid to the Decedent's estate.

#### **7.3 Payment of Death Benefit**

Payment of benefits due under this Section shall be made as soon as administratively feasible following the Decedent's date of Death, and the Decedent's Account shall be valued as of the Valuation Date immediately preceding the date of distribution.

#### **7.4 Minimum Benefit Rules**

All distributions shall be made in accordance with Code Section 401(a)(9), the regulations promulgated thereunder, including Treasury Regulations Section 1.401(a)(9)-2 (relating to incidental benefit limitations) through Section 1.401(a)(9)-9, and any other provisions reflecting the requirements of Code Section 401(a)(9) and prescribed by the Internal Revenue Service, all of which are hereby incorporated by reference; and the terms of the Plan reflecting the requirements of Code Section 401(a)(9) shall override the distribution options which are inconsistent with those requirements.

A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the

Participant's designated Beneficiary, or for a period of at least 10 years, will receive those distributions for 2009 unless the Participant or Beneficiary chooses to suspend such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to suspend the distributions described in the preceding sentence. In addition, 2009 RMDs will be treated as Eligible Rollover Distributions.

#### 7.5 Distribution for Minor Beneficiary

In the event a distribution is to be made to a minor, then the Committee may, in its sole discretion, direct that such distribution be paid to the Beneficiary's parent or legal guardian, to a responsible adult with whom the Beneficiary maintains his residence, or to a custodian for such Beneficiary under the Uniform Gift to Minors Act or similar statute, if such is permitted by the laws of the state in which the Beneficiary resides. Any payment to the parent, legal guardian or custodian of a minor Beneficiary shall fully discharge the Trustee, Employer and Plan from further liability for such distribution.

#### 7.6 Death During Military Service

Effective January 1, 2007, if a Participant dies while performing "qualified military service" (as defined in Code Section 414(u)(5)), 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, if any, had the Participant resumed and then terminated employment on account of death.

## **ARTICLE VIII**

### **Application For Benefits and Claims Review**

#### **8.1 Application for Benefits**

- (a) A Participant seeking benefits from the Plan, hereinafter referred to as a Claim, must apply in writing on a form provided by the Plan Administrator, which must be filed with the Committee. The Participant shall furnish, at the request of the Committee, any information or proof reasonably required to determine his benefit.
- (b) The Committee shall have the right to recover any benefits paid in reliance on any false statement, information, or proof submitted by a claimant (including withholding of material fact), and may seek recovery through offset of benefit payments.

#### **8.2 Claims Denial**

In the event that a Participant's Claim is denied, a written denial shall be provided. A written denial will provide:

- (a) Specific reasons for denial;
- (b) Reference to the specific Plan provisions on which the denial is based;
- (c) Description of any additional materials or information necessary to perfect the Claim and the reason why such material or information is needed; and,
- (d) Explanation of the Claims Review Procedure.

Further, if the Participant's Claim is not resolved within sixty (60) days (or one hundred twenty (120) days if requested), the Participant may presume the Claim has been denied.

#### **8.3 Claims Review Procedure**

In the event that a Participant's Claim is denied, the Participant may appeal as provided in the Claims Review Procedure as follows:

- (a) Within sixty (60) days (or one hundred twenty (120) days if requested) after the Participant's Claim has been denied, the Participant or his representative shall make a written request for review to the Committee.
- (b) The Participant may review all pertinent documents relating to the denial and may submit issues and comments in writing.
- (c) The Committee shall decide within sixty (60) days (or one hundred twenty (120) days if requested) following receipt of the written request for review. The Committee's decision shall be in writing, shall include specific reasons for the decision and shall be final and binding.

#### 8.4 Claims Arbitration

If a Claim is denied on appeal, the Participant's exclusive remedy shall be to submit the claim to arbitration administered under the rules of the American Arbitration Association Commercial Arbitration Rules or other comparable rules agreeable to the Committee and the Participant instead of filing a lawsuit. The Participant's request for arbitration must be submitted within ninety (90) days after receiving written notice that the appeal was denied. The Participant or his representative shall make a written request for arbitration to the Committee. The arbitrator may grant the appeal, in whole or in part, only if the arbitrator determines that the appeal is justified pursuant to the express terms and provisions of the Plan because there was an error on an issue of law, the Committee acted arbitrarily or capriciously in denying the Claim, or there was no evidence to support denial of the Claim.

## ARTICLE IX

### Trust Fund

#### 9.1 Establishment of Trust Fund

All Contributions are to be paid over to the Trustee to be held in the Trust Fund and invested in accordance with the terms of the Plan.

#### 9.2 Investment Funds

- (a) Named Investment Funds. In accordance with the terms of the Plan and instructions from the Committee, the Trustee shall establish Investment Funds for the investment of Contributions and Accounts, which may include but are not limited to collective investment funds or trusts. Such Investment Funds may be established, modified or eliminated from time to time without necessity of amendment to the Plan and shall have the investment objectives prescribed by the Committee.
- (b) Reinvestment of Cash Earnings. Any investment earnings received in the form of cash with respect to any Investment Fund shall be reinvested in such Investment Fund.
- (c) Accounts Prior To Establishment of Investment Funds. In the event Employer and Employee Contributions are allocated to Employer Contribution and Employee Contribution Accounts prior to the establishment of Investment Funds, the amounts in Employer Contribution and Employee Contribution Accounts shall be held by the Trustee and shall earn interest at the rate of five percent (5%) per annum until such time as the Committee establishes Investment Funds and Participants direct their Accounts to be invested in and among such Investment Funds.

#### 9.3 Participant Direction of Investments

Each Participant or Beneficiary generally may direct the manner in which his Accounts shall be invested in and among the Investment Funds; provided, however, that such investment directions shall be made in accordance with the following terms:

- (a) Investment of Account. Following transfer to the Trustee, all Contributions and other money held in a Participant's Account shall be allocated to the Investment Funds in the proportion designated by such Participant pursuant to his most recent election, as described below. If the Participant does not make an investment election, his Accounts shall be allocated to the investment fund determined by the Committee as the "default" fund.
- (b) Investment Elections. Effective as of each Valuation Date following his Participation Date, each Participant (or Beneficiary) may elect the percentage of his Account that will be invested in each Investment Fund. Each such election shall remain in effect until changed by such Participant or Beneficiary. If a Participant or Beneficiary fails to make an election for his Accounts pursuant to the terms of this provision or if an investment election is incomplete or insufficient

in some manner, the Accounts will continue to be invested in the same manner provided under the terms of the most recent election affecting such Accounts.

- (c) Conditions Applicable to Elections. Allocations of investments in the various Investment Funds, as described above, shall be made in whole percentages as directed by the Participant or Beneficiary. The Committee shall have complete discretion to adopt and revise procedures to be followed in making investment elections. Such procedures may include, without limitation, format of election forms, use of interactive telephone or data systems, deadlines for filing elections and effective dates of elections. Any procedures adopted by the Committee that are inconsistent with the deadlines specified in this Section shall supersede such provisions of this Section without the necessity of a Plan amendment.

#### 9.4 Investment Funds--Voting and Tender Offer Rights

Participants and Beneficiaries shall be given the opportunity to vote and tender their interests in Investment Funds only if permitted by the Plan and any documents establishing or governing any of the Investment Funds. Otherwise, such interests shall be voted and tendered by the Investment Manager or other fiduciary that controls such Investment Fund, as may be provided in the governing documents.

#### 9.5 Appointment of Investment Manager

- (a) Investment Advisor. The Committee may appoint any one or more individuals or entities to serve as an Investment Advisor to aid the Committee in the selection of Investment Funds and to monitor their performance.
- (b) Investment Manager. The Committee may appoint any one or more individuals or entities to serve as the Investment Manager or Managers of the entire Trust Fund or of all or any designated portion of a particular Investment Fund or Investment Funds. Each Investment Manager shall certify that it is qualified to act as an "investment manager" within the meaning of Section 3(38) of ERISA and shall acknowledge in writing its fiduciary status with respect to the assets placed under its control. The appointment of an Investment Manager shall be effective upon execution of an agreement between the Committee and the Investment Manager (or such later effective date as may be contained therein), and the appointment shall continue in effect until terminated by the Committee pursuant to the terms of such agreement. If an Investment Manager is appointed, the Investment Manager shall have the power to manage, acquire and dispose of those assets of the Trust Fund which have been placed under its control.

#### 9.6 Life Insurance

Life Insurance contracts shall not be purchased by the Trust Fund.

## **ARTICLE X**

### **Administration**

#### **10.1 Appointment, Resignation, Removal of Committee Members**

The General Manager/CEO of MARTA shall appoint, and the Board of Directors shall approve, members to the Committee to manage and administer the Plan. The Committee shall consist of not less than three members, nor more than ten, who may but need not be Directors, officers, or Employees of MARTA, or Participants. The members of the Committee shall serve at the pleasure of the General Manager/CEO and any or all members may be removed by the General Manager/CEO at any time, with or without cause or notice. Upon the death, resignation, removal, or inability to serve of any member of the Committee, as now or hereafter constituted (and of such inability the General Manager/CEO shall be sole judge), the General Manager/CEO shall name the successor of such member, which shall be approved by the Board of Directors. The members of the Committee shall serve without compensation for their services, and shall be entitled to receive reimbursement of their reasonable expenses incurred in administering the Plan.

#### **10.2 Procedure**

The Committee may elect a Chairman from among its members and a Secretary who may but need not be a Committee member. In addition to those powers set forth elsewhere in the Plan, the Committee may appoint such agents, who need not be members of the Committee, as it may deem necessary for the effective performance of its duties and may delegate to such agents such powers and duties, whether ministerial or discretionary, as the Committee may deem expedient or appropriate. The Committee shall act by majority vote either at a meeting or in writing without a meeting. By such action, it may authorize one or more of its members or the Plan Administrator to execute documents on its behalf. A member of the Committee who is also a Participant shall not vote or act upon any matter directly affecting any of his benefits under the Plan.

#### **10.3 Powers and Duties**

The Committee shall have complete control of the administration of the Plan hereunder, with all powers necessary or appropriate to effect the intent and purpose of the Plan whether or not such powers and duties are specifically set forth herein and, not in limitation but in amplification of the foregoing, shall have power:

- (a) to construe the Plan and to determine all questions arising thereunder;
- (b) to select, compensate and remove all service providers necessary to manage and administer the Plan, including without limitation the Trustee, Custodian, recordkeeper, attorney, accountant, brokers, investment managers, investment advisor and all other assistants and advisors;
- (c) to decide all questions relating to the eligibility of Employees to participate in the Plan;
- (d) to determine the benefits of the Plan to which any Participant or Beneficiary may be entitled;

- (e) to maintain and retain records relating to Participants and Beneficiaries;
- (f) to prepare and furnish to Participants all information required by the Plan or under state or federal law to be furnished to them;
- (g) to prepare and furnish to the recordkeeper and Custodian sufficient data concerning Employees and Contributions to permit the recordkeeper and Custodian to maintain separate accounts for Participants and Beneficiaries and to make required payments of benefits;
- (h) to prepare and file all reports and other information required by law;
- (i) to arrange for fiduciary bonding, if necessary; and
- (j) to delegate any or all of these responsibilities.

#### 10.4 Appointment of Plan Administrator

The Committee shall appoint a Plan Administrator to supervise administrative details of the Plan that the Committee chooses to delegate to the Plan Administrator. The Plan Administrator shall serve at the pleasure of the Committee.

#### 10.5 Expenses

The Committee shall be authorized to pay all expenses in the management and administration of the Plan from the Trust Fund. To the extent not paid from the Trust, such expenses shall be paid by the Employer.

#### 10.6 Examination by Participants

The Committee shall make available to each Participant for examination by him, at the principal office of the Employer, a copy of the Plan and such of its records or copies thereof as may pertain to any benefits of such Participant under the Plan.

#### 10.7 Nondiscriminatory Action

In the exercise of any power or discretion under the Plan, the Committee shall not take any action or direct the Trustee to take any action in respect to any of the rights, benefits, or obligations of a Participant under the Plan which would be discriminatory in favor of some Participants over others in substantially similar situations or under substantially similar sets of facts.

#### 10.8 Liability of Committee

No member of the Committee nor the Plan Administrator (for purposes of this paragraph, references to the "Committee" shall be deemed to include the Plan Administrator) shall be directly or indirectly responsible or under any liability by reason of any action or default by him as a member of the Committee, or the exercise of or failure to exercise any power or discretion as such member, except for his own fraud or willful misconduct; and no member of the Committee shall be liable in any way for the acts or defaults of any other member of the Committee or any of its advisors, agents, or representatives. Without limitation or restriction

upon any other indemnification right at law or otherwise, MARTA shall indemnify and save harmless each member or former member of the Committee against any and all expenses and liabilities arising out of his membership on the Committee, except expenses and liabilities arising out of his own fraud or willful misconduct. The fact that any member of the Committee is a Director, officer, or Employee of MARTA, or a Participant, shall not disqualify him from doing any act or thing which the Plan authorizes or requires him to do as a member of such Committee (except as otherwise provided in Section 10.2 with respect to a member who is a Participant).

## ARTICLE XI

### Amendment and Termination

#### 11.1 Amendment

The provisions of the Plan may be amended at any time and from time to time by written amendment approved by the Employer; provided, however that:

- (a) No amendment shall impair the contract rights of any Eligible Employee; and
- (b) No amendment shall be made which would divert any of the assets of the Trust Fund to any purpose other than the exclusive benefit of Participants and Beneficiaries, except that the Plan may be amended retroactively and to affect the Accounts of Participants and Beneficiaries if necessary to cause the Plan and Trust Fund to be qualified under the Code.

#### 11.2 Termination

- (a) Right to Terminate. The Employer expects the Plan to be continued indefinitely, but it reserves the right to terminate the Plan or to completely discontinue Contributions to the Plan at any time. In either event, the Committee shall be promptly advised of such decision in writing.
- (b) Vesting Upon Complete Termination. If the Plan is terminated by the Employer or Contributions to the Plan are completely discontinued, the Accounts of all Participants and Beneficiaries or other successors in interest as of such date shall become 100 percent Vested and not subject to Forfeiture. Upon termination of the Plan, the Committee, in its sole discretion, shall either (i) continue to manage and administer the assets of the Trust Fund for the benefit of the Participants and Beneficiaries pursuant to the terms and provisions of the Plan, or (ii) pay over to each Participant or Beneficiary the value of his interest in a single sum and thereupon dissolve the Trust Fund.
- (c) Dissolution of Trust. In the event that the Committee elects to dissolve the Trust, as soon as practicable following the termination of the Plan, the assets in the Trust Fund shall be converted to cash or other distributable assets to effect a complete distribution of the Trust Fund. Following completion of the conversion, each individual with an Account shall receive a distribution of the total amount then credited to his Account on a date selected by the Committee. The amount of cash and other property distributable to each such individual shall be determined as of the date of distribution. In the case of a termination distribution as provided herein, the Committee may deal with unclaimed benefits as provided in Section 6.9, except that it shall not be required to hold funds for any period of time stated in such Section. The Committee may use assets of the Trust Fund to pay any due and accrued expenses and liabilities of the Trust and any expenses involved in termination of the Plan.
- (d) Vesting Upon Partial Termination. In the event of a partial termination of the Plan, the Accounts of those Participants and Beneficiaries affected shall become 100 percent Vested and not subject to Forfeiture and, unless transferred to

another qualified plan, shall be distributed in a manner and at a time consistent with the terms of this Section.

## ARTICLE XII

### Miscellaneous

#### 12.1 Plan is Not a Contract with Employees

The adoption and maintenance of the Plan shall not be deemed to be a contract between the Employer and any Employee. Nothing herein contained shall be deemed to give any Employee the right to be retained in the employ of the Employer or to affect the right of the Employer to discharge any Employee, nor will it be deemed to give the Employer the right to require any Employee to remain in its employ, nor shall it interfere with the Employee's right to terminate his employment at any time.

#### 12.2 Benefits Are Not Alienable

- (a) No Participant or Beneficiary shall have any right to assign, transfer, hypothecate, encumber, commute, or anticipate his interest in any Plan benefit or Account and any attempt to do so shall be void. Accounts and benefit payments shall not in any way be subject to any legal process to levy, execution upon, attachment, or garnishment proceeding against the same for the payment of any claim against any Participant or Beneficiary entitled to such Account or benefit, nor shall Accounts or benefits be subject to the jurisdiction of any bankruptcy court or divorce or insolvency proceeding.
- (b) If any Participant or Beneficiary shall become bankrupt or attempt to assign, transfer, hypothecate, encumber, commute, or anticipate his interest in his Account or his Plan benefits, or if such Account or Plan benefits shall be attached, levied upon, or garnished, then such interest shall cease during the time such interest shall be subject to such claim, and the Committee may hold or apply the same or any part thereof to or for the benefit of the Participant's or Beneficiary's spouse, children or other dependents, or any of them, in such manner and in such proportion as the Committee may direct.

#### 12.3 State and Federal Law

This Agreement shall be construed, enforced and administered, and its validity determined, in accordance with the law of the State of Georgia. All provisions of this Agreement shall be subject to applicable state and federal law and in the event of any conflict, such applicable state or federal law shall prevail. If any part, clause, provision, or condition of this Plan is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other clause, provision or condition hereof, and the remainder of this Plan shall be effective as though such clause, provision, or condition had not been contained herein.

#### 12.4 Contributions Made in Error

In the event Employer or Employee Contributions are made in error, the Committee shall refund such contributions to the Employer or Employee; provided however, the Committee and Employer may agree to treat Employer Contributions made in error as a credit to be applied against the Employer's next contribution obligation.

#### 12.5 No Diversion

Irrespective of anything contained in this Agreement, as now expressed or hereafter amended, it shall be impossible for any part of the Trust Fund to be used for or diverted to any purpose not for the exclusive benefit of Participants or their Beneficiaries at any time prior to the satisfaction of all rights and liabilities with respect to Participants or their Beneficiaries hereunder, either by the operation, amendment, revocation, or termination of the Plan.

#### 12.6 Headings for Convenience

The headings of Articles are included solely for convenience of reference, and if there is any conflict between such headings and the text of this Plan, the text shall control.

#### 12.7 Number and Gender

Whenever in the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter shall include the masculine, feminine or neuter, all as the context and meaning of the Plan shall require.

#### 12.8 Executed in Multiple Counterparts

This instrument may be executed in multiple counterparts, each of which shall be considered an original.

IN WITNESS WHEREOF, the Employer has caused this Plan to be effective January 1, 2013, executed as of this 9<sup>th</sup> day of December, 2013.

Metropolitan Atlanta Rapid Transit Authority  
(MARTA)

By:   
AGM of Legal Services and Chief Counsel

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