

**AMALGAMATED TRANSIT UNION  
DIVISION 757 - C-TRAN  
RETIRED EMPLOYEES HEALTH AND WELFARE TRUST  
AGREEMENT**

**TRUST AGREEMENT DESCRIPTION**

**ORIGINALLY EFFECTIVE JULY 1, 2008 – REVISED JANUARY 1, 2018**

*HEALTH & WELFARE TRUST AGREEMENT*

**THIS TRUST AGREEMENT**, effective October 1, 2000, was executed by Amalgamated Transit Union, Division 757, a labor organization, having their place of business in the City of Portland, County of Multnomah, State of Oregon, hereinafter referred to as the "Union" or "ATU." It has been duly amended by the Trustees and the amended Trust Agreement is effective as of January 1, 2018.

**WITNESSETH:**

**WHEREAS**, the Union and C-Tran have been parties to various collective bargaining agreements;

**WHEREAS**, the Union and C-Tran have established, through their various collective bargaining agreements, provisions for payment to the Amalgamated Transit Union, Division 757 C-Tran Retired Employees Health and Welfare Trust (Trust) of amounts covered by those collective bargaining agreements for providing medical, hospital, and other benefits to retired employees;

**WHEREAS**, the Union and C-Tran have agreed that all money previously paid but unapplied for such purposes and such future sums as may be agreed upon shall be payable and deposited in this Trust Fund; and

**NOW, THEREFORE**, the Board of Trustees adopts the following Trust Agreement to govern the operations and administration of the Trust.

**ARTICLE I**

**DEFINITIONS**

The following definitions shall govern in this Declaration of Trust:

**Section 1.1 Union**

The term "Union" means the Amalgamated Transit Union, Division 757 ("ATU") and any other labor organization whom the Trustees accept and who agree to be bound by the terms and conditions of this declaration of Trust.

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## **Section 1.2 Beneficiary**

The term "Beneficiary" means any person designated by a Participant or by the terms of the Plan who is or may become entitled to a benefit.

## **Section 1.3 Board of Trustees**

The term "Board of Trustees" means the Board of Trustees established by this Trust Agreement.

## **Section 1.4 Retired Employee**

The term "Retired Employee" shall mean any former employee of C-Tran who has retired on or after July 1, 1999 and at the time of such retirement was eligible for pension benefits under the State of Washington Public Employees Retirement System, and who, during employment was engaged in performing bargaining unit work under a collective bargaining agreement between C-Tran and the Union which provides for payments to this Trust Fund.

## **Section 1.5 Employee**

The term "Employee" shall mean any employee of C-Tran who is engaged in performing bargaining unit work under a collective bargaining agreement between C-Tran and the Union which provides for payments to this Trust Fund.

## **Section 1.6 Employer**

The term "Employer" means C-Tran, and any successor entity bound by a collective bargaining agreement with the Union which provides for payment to this Trust Fund.

## **Section 1.7 Investment Sub-Committee**

The term "Investment Sub-Committee" means a Sub-Committee made up of at least three (3) Trustees who collectively oversee investments of the Trust. The Sub-Committee shall:

- (a) Make recommendation to the Trust to acquire or dispose of any asset of the Trust Fund;
- (b) Make recommendations to the Trust as to who the Trustees will hire and/or terminate as the Investment Adviser. The Investment Adviser shall be either registered as an investment advisor under the Investment Advisers Act of 1940 or is a bank, brokerage firm, or an insurance company qualified to manage the investments under the laws of more than one state; and
- (c) Have the Investment Adviser acknowledge in writing that he/she or it has is a fiduciary duty to the Plan and Trust Fund assets under its control.

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### **Section 1.8 Participant**

The term "Participant" means any person who is a Participant pursuant to the terms of the Amalgamated Transit Union, Division 757 — C-Tran Retired Employees Health and Welfare Trust.

### **Section 1.9 Plan**

The term "Plan" means the "Amalgamated Transit Union, Division 757 — C-Tran Retired Employees Health and Welfare Trust." It is recognized that the funding of the Plan is established through a collective bargaining agreement between Amalgamated Transit Union, Division 757 and C-Tran and that the Plan is a governmental plan under 29 USC Section 1002(32).

### **Section 1.10 Trust Agreement**

The term "Trust Agreement" means this instrument, including all amendments and modifications as they may be made.

### **Section 1.11 Trustees**

The term "Trustees" means the Trustees signatory to this Trust Agreement, together with their successors designated and appointed in accordance with the terms of this Trust Agreement.

### **Section 1.12 Trust Fund**

The term "Trust Fund" means the entire trust estate of this Trust as it may, from time to time, be constituted, including, but not limited to, policies of insurance, investments, and the income from any and all investments, Employer's contributions and any and all other assets, property or money received by or held by the Trustees for the uses and purposes of this Trust.

## **ARTICLE II**

### **CREATION AND PURPOSES OF TRUST FUND**

The Trust Fund is created, established and maintained, and the Trustees agree to receive, hold and administer the Trust Fund, for the purpose of providing health and welfare benefits as now are, or hereafter may be, permitted by law and authorized by the Trustees for the Participants and their Beneficiaries and in accordance with the provisions herein set forth and the Plan.

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## ARTICLE III

### BOARD OF TRUSTEES

#### Section 3.1 Number; Appointment; Removal; Term Limits

The Trust Fund shall be administered by the Board of Trustees which shall consist of no more than seven (7) persons. Each Trustee shall serve until the term limits are reached, termination of his/her appointment/election, his/her death or his/her resignation.

The President of the Union or his or her designee, the Union Executive Board Officer and the C-Tran Liaison Officer shall be appointed to the Board of Trustees so long as they hold Union office. The President shall hold Trustee position #1, with the Executive Board Officer and the C-Tran Liaison Officer holding Trustee positions #2 and #3 respectively.

The four (4) remaining Trustee positions shall be elected from their respective employee's groups as follows: Position #4 – One (1) from the Participants (retired C-Tran bargaining unit employee); Starting in January 2018, the primary trustee Position # 4 (retired) may have one alternate trustee from the retired C-Tran participants. The alternate trustee position 4 shall be appointed by the trustees with a term of office to run concurrently with the primary trustee position #4's. The alternate trustee position # 4 shall be a full trustee with all the responsibilities and privileges of a trustee only in the absence of the primary trustee position # 4. Position #5 – One (1) from any current bargaining group or Participant (retired C-Tran bargaining unit); Position #6 – One (1) from either the Paratransit Dispatchers or the Clerical employees; and, Position #7 – One (1) from the Fixed Route Operator or Paratransit Operator.

Starting in 2018 and each year thereafter one (1) Trustee shall be elected to the Board of Trustees as follows: Trustee Position #4 – October 2018, Trustee Position #5 – October 2019, Trustee Position #6 – October 2020, Trustee Position #7 – October 2021. The newly elected Trustee will take office on January 1<sup>st</sup> of the following year. The term limit shall be four (4) years. Any employee may hold consecutive terms of office as a Trustee.

Trustees elected to the Board of Trustees may be removed by a majority vote of the employee group that they were elected from (i.e., Participants, Clerical and Dispatchers, or Operators). If a Trustee dies, resigns or is removed from office, a successor Trustee shall be elected as provided below and the Chair of the Election Committee shall provide written notice of such action and it shall be delivered to the Secretary-Treasurer of the Trustees serving at that time.

#### Section 3.2 Resignation

A Trustee may resign his or her position by providing a written notice of resignation to the other Trustees stating the date of the resignation.

### **Section 3.3 Election Committee**

In April 2018 and each year thereafter, the Board of Trustees will by appointment select a chairperson for the Election Committee. In October 2018 and each year thereafter, the Board of Trustees will by appointment select and convene an Election Committee made up of one (1) Trustee (the Chair) and two (2) employees. The term of office shall be one (1) year. Any employee in good standing may serve on the Election Committee. The Chair of the Election Committee shall be the Trustee. Employees interested in being appointed for the Election Committee must be present at the October meeting. The Chair of the Election Committee shall have full supervision of the election. The Election Committee shall be provided with all necessary equipment and shall receive all votes of the election.

The Election Committee shall work until all ballots are counted and elected candidates are known.

### **Section 3.4 Trustee Elections**

Those Trustees that are elected shall be elected by the employees at C-Tran within their respective employee groups as outlined in Section 3.1. Regular elections shall be held no later than October 31<sup>st</sup> as outlined in Section 3.1 with the new Trustee taking office on January 1<sup>st</sup> of the following year.

The nominations for the Trustee's position shall be held in the month of July, with the nominations being closed on September 1<sup>st</sup> of that same year. The names of nominated members shall be recorded at the time of nomination by the Election Committee and shall be placed on the ballot in alphabetical order. The election for Trustees shall be held at the quarterly meeting in October (i.e., Election Committee appointed in April, nominations in July, nominations closed September 1<sup>st</sup>, with the election in October). The Election Committee shall post the notice indicating the Position that is open and that nominations will be open on July 1 of each year. The voting shall be done by secret ballot.

In order to qualify and run for a position on the Board of Trustees a nominee must be working in the employee group, or in compliance with the ATU Constitution as listed in Section 3.1 at the time of nomination. To serve on the Board of Trustees a nominee must be working in that respective employee group throughout his/her term of office, or in compliance with the ATU Constitution. To be eligible to be nominated to a position on the Board of Trustees nominated employees shall be in compliance with this Trust Agreement. Employees interested in being elected as a Trustee but who are not present must submit their request and acceptance to the Chair of the Election Committee or the Trust Manager in writing prior to September 1<sup>st</sup>.

If only one candidate is nominated for any Trustee position, the Secretary-Treasurer of the Trust shall be instructed to cast a unanimous ballot for the candidate. The Chair shall then declare him/her duly and legally elected. No employee's name shall be placed on the ballot unless that employee was in attendance at the meeting, or has signified in writing their willingness to accept the nomination for the position for which he/she was nominated.

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It shall be the duty of the Election Committee to post the names of nominees and the date of the election at C-Tran not less than twenty (20) days before the election.

When two (2) or more employees are nominated for a position on the Trust, the employee receiving the most votes shall be declared elected. Any candidate or employee may witness the counting of ballots in person or by a representative.

In the event of a tie, a recount will be conducted by two new counters. If at the end of the recount the election remains a tie, a coin toss shall determine the outcome. The election committee chair shall be the one conducting the coin toss. The coin toss shall be conducted in the following manner:

1. Any coin can be used as long as it has two distinct sides.
2. The Election committee chair shall show the nominees which side is heads and which side is tails
3. The election committee chair shall select one nominee to make the call.
4. Before the coin is tossed into the air the nominee who was selected to make the call shall pick either "heads" or "tails".
5. The election committee chair shall then toss the coin in the air as it rotates edge over edge several times. The coin shall be allowed to land on the ground/floor. When the coin comes to rest the toss is complete and the party who either called it correctly or was assigned the upper side is declared the winner and will be the elected trustee.

### **Section 3.5 Successor Trustees; Assumption of Office**

If a vacancy occurs, nomination(s) for a Successor Trustee shall be held at the next regular scheduled quarterly meeting of the Board of Trustees, with the election being held at the following regular scheduled quarterly meeting. The Successor Trustee will only serve on the Board of Trustees for the remainder of the term limit as outlined in Section 3.1. The Successor Trustee shall take office upon being declared elected by the Chair of the Election Committee. The Election Committee shall conduct the election per Section 3.4.

Any successor Trustee shall immediately, upon his/her appointment/election as a Successor Trustee and his/her acceptance of the Trusteeship in writing, as provided in Section 3.6, become vested with all the property rights, powers and duties of a Trustee hereunder with like effect as if originally named a Trustee without the necessity of any formal conveyance or other instrument of title.

### **Section 3.6 Acceptance of the Trust by Trustees**

A Trustee shall execute a written acceptance in a form satisfactory to the Trustees and thereby shall be deemed to have accepted the Trust created and established by this Trust Agreement and to have consented to act as Trustee and to have agreed to administer the Trust Fund as provided herein.

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### **Section 3.7 Status of Trustees and Defense of Actions**

Each Trustee shall discharge his or her duty solely in the interest of the Participants and their Beneficiaries and for the exclusive purposes of providing benefits to Participants and Beneficiaries and to defraying the reasonable costs of administration. In carrying out their duties, the Trustees shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity would use in conducting an enterprise of a like character and with like aims.

The Trustees shall have the authority to defend all legal actions, claims involving potential legal actions, and investigatory proceedings initiated against the Trust Fund or against one or more of the Trustees, former Trustees, administrative agents or against one or more of the employees of the Trust Fund (if any) that relate to the administration of the Trust Fund or the benefit plans. Except as stated below, the defense of such actions, claims and proceedings shall be at the expense of the Trust Fund unless the Trustees determine otherwise.

If the final court decree establishes personal liability on the part of specified Trustees, administrative agents, or employees (if any) for breach of their fiduciary responsibilities and orders that the specified persons are to bear the expenses of their own defense, their attorney fees shall not be chargeable to the Trust Fund. If attorney fees and costs have already been charged to the Trust Fund, the specified persons shall be obligated to repay the Trust Fund for their pro-rata share of such fees and costs.

### **Section 3.8 Office of the Trust Fund**

The principal office of the Trust Fund shall, as long as such location is feasible, be located and maintained in Portland, Oregon. The location of the principal office shall be made known to the parties interested in the Trust Fund. At such office, and at such other places as may be required by law, there shall be maintained the books and records pertaining to the Trust Fund and its administration.

### **Section 3.9 Officers**

During the month of October of each year, the Trustees shall elect from among themselves a Chairperson, a Vice-Chairperson and a Secretary-Treasurer to serve for a term of one year commencing January 1<sup>st</sup> of each year, or until his/her or their successors have been elected. The Secretary-Treasurer or administrative agent, or such other person as the Trustees may designate, shall keep minutes and records of all meetings, proceedings and acts of the Trustees and shall, with reasonable promptness, send copies of such minutes and records of all meetings, proceedings and acts of the Trustees and shall, with reasonable promptness, send copies of such minutes and records to all Trustees. The Chairperson and in his/her absence, the Vice-Chairperson, shall preside at all meetings of the Trustees. The Chairperson shall have the authority to appoint members to committees.

### **Section 3.10 Power to Act in Case of Vacancy**

No vacancy or vacancies on the Board of Trustees shall impair the power of the remaining Trustees, acting in the manner provided by this Trust Agreement, to administer the affairs of the Trust Fund notwithstanding the existence of such vacancy or vacancies.

### **Section 3.11 Meetings; Notices**

The Trustees shall meet at least quarterly and at such times as they deem it necessary to transact their business. The Chairperson or the Secretary-Treasurer of the Board of Trustees may, and upon written request of any two (2) Trustees, shall call a meeting of the Trustees at any time by giving at least five days' written notice of the time and place thereof to the remaining Trustees. A meeting of the Trustees may be held at any time without notice if all the Trustees consent thereto in writing. Whenever possible, it shall be posted at C-Tran as to when and where the Board of Trustees is scheduled to meet.

### **Section 3.12 Attendance at Meetings; Minutes**

All official meetings of the Trustees shall be attended only by the Trustees and shall not be open to any other person, except that there may attend such other persons as may be designated by the Trustees or when invited to do so, and as many may be otherwise required by law. Written minutes, a copy of which shall be furnished with reasonable promptness to each Trustee, shall be kept of all business transacted and of all matters upon which voting shall have occurred. Such minutes shall be approved by the signature of the Secretary-Treasurer.

### **Section 3.13 Quorum; Voting; Action Without Meeting**

- (a) To constitute a quorum at any regular or special meeting of the Board of Trustees, there must be present a majority of the Trustees.
- (b) An action must be passed by a majority of the Trustees;
- (c) Action by the Trustees on any proposition may also be taken without a meeting if all the Trustees agree thereon in writing. Because of the nature of the business that the Trustees deal with and the importance to conduct business from time to time outside of the quarterly business meetings, the Chair person may from time to time poll the board of Trustees electronically/email.
- (d) Because of the nature of the business that the Trustees deal with and the importance for the need of a quorum at every meeting, any elected Trustee that has three (3) consecutive unexcused absences can be removed as a Trustee by a vote of the Board of Trustees.
- (e) No sub-committee shall have more than three (3) Trustees on it.

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## ARTICLE IV

### POWERS AND DUTIES OF TRUSTEES

#### Section 4.1 Conduct of Trust Fund Business

The Trustees shall have general supervision independent of the Union membership of the operation of this Trust Fund and shall conduct the business and activities of the Trust Fund in accordance with this Trust Agreement and applicable law. The Trustees shall hold, manage and protect the Trust Fund and collect the income therefrom and payments thereto. The Trustees may, in the course of conducting business of the Trust Fund, execute all instruments in the name of the Trust Fund, which instruments shall be signed by at least two (2) Trustees.

#### Section 4.2 Use of Trust Fund

The Trustees shall have the power and authority to use and apply the Trust Fund for the following purposes:

- (a) To pay or provide for the payment of all reasonable and necessary expenses of administering the affairs of this Trust Fund, including the employment of such administrative, legal, expert and clerical assistance, the purchase or lease of such premises, materials, supplies and equipment and the performance if such other acts as the Trustees in their discretion, find necessary or appropriate in the performance of their duties.
- (b) To provide health and welfare and related benefits to eligible Participants and Beneficiaries in accordance with a plan of benefits provided through policies of insurance or other health programs and facilities in accordance with Section 4.3 or established and administered as provided in Section 4.2(e). Such health and welfare and related benefits shall be limited to those which can be financed from the Trust Fund after payment of authorized and accrued expenses.
- (c) To establish and accumulate such reserve funds as the Trustees, in their sole discretion, deem necessary and desirable for the proper execution of the Trust herein created.
- (d) To pay all other proper and necessary expenses incurred by any Trustee not specified above, including the cost of defense in litigation arising out of the Trusteeship of the Trust Fund, to the extent permitted by law.
- (e) To provide for a plan of payment of authorized benefits out of the Trust Fund itself; provided, however, that such payments can be legally made and that the same are in full compliance with all statutory and legal requirements.

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- (f) To pay or provide for the payment of premiums on the contracts or policies of insurance or health service agreements mentioned in Section 4.3, which contracts or policies of insurance or health service agreements may be contracted for in the name of and issued to the Trustees, or to the Trust Fund, as they may determine.

### **Section 4.3 Procurement of Insurance of Health Service**

The Trustees are expressly authorized to negotiate for, obtain and maintain policies of group life, group accident, group health and group disability insurance (including group hospital, medical and surgical insurance), or such other insurance coverage or health service coverage as may be determined by the Trustees, for the payment to eligible Participants and Beneficiaries, by an insurance company or companies or health service carriers licensed to transact business in the State of Washington, of such benefits as now or hereafter may be authorized or permitted by law and as the Trustees may, from time to time, determine. Such policies of insurance or health service agreement shall be in such forms and in such amounts and may contain such provisions and be subject to such limitations and conditions as the Trustees, in their discretion, may from time to time determine and shall cover such Participants and Beneficiaries as the Trustees, pursuant to the provisions hereof, shall from time to time determine eligible for benefits as herein provided. The Trustees may exercise all rights and privileges granted to the policyholder or agreement holder by the provisions of each policy of insurance or health service agreement and may agree with the insurance carrier or health service carrier to any alteration, modification or amendment of such policy or agreement, and may take any action respecting each such policy or agreement and the insurance or coverage provided thereunder, which they, in their discretion, may deem necessary or advisable and such carrier shall not be required to insure into the authority of the Trustees with regard to any dealings in connection with such policy or agreement. The Trustees are expressly authorized, by a two-thirds (2/3) majority vote, to establish and maintain a plan or plans to provide any and all the health and welfare benefits, as the Trustees in their discretion may determine, directly out of the Trust Fund in accordance and upon compliance with Section 4.2(e), in lieu of, or in combination with, coverage provided by insurance carriers or health service carriers.

### **Section 4.4 Investments**

The Trustees shall invest all contributions or other monies not required for the payment of current benefits and expenses in accordance with an Investment Guideline Policy. The Policy shall be consistent with the Trust's funding needs and shall diversify such investments as to minimize the risk of loss. The monies of the Trust Fund may be invested in: (a) a common or collective trust fund or pooled investment fund, maintained by a bank or trust company supervised by the United States or a state; or, (b) in a pooled investment fund of an insurance company, title all investment or other assets shall be maintained in the name of the Trust, except that for convenience in transferring stocks, bonds or other negotiable securities, titles for such securities may be held in the name of the trust fund's custodial bank or its nominee.

#### **Section 4.5 Deposits and Disbursements**

The Board of Trustees shall have the power to retain in cash and not invest such amounts of the assets of the Trust Fund as it shall find necessary or advisable to meet the cash disbursements and operating reserve requirements of the Trust.

#### **Section 4.6 Allocation and Delegation of Fiduciary Responsibilities**

The Trustees may, by resolution or bylaw or by provisions of this Trust Agreement, allocate fiduciary responsibilities and various administrative duties to committees or subcommittees of the Board of Trustees, and they may delegate such responsibilities and duties to other individuals as they may deem appropriate or necessary in their sole discretion consistent with applicable law.

#### **Section 4.7 Committees of the Board of Trustees**

The Standing Committees of the Board of Trustees may, in the discretion of the Trustees, consist of an Executive Committee, an Eligibility Committee, a Finance Committee, a Delinquency Committee, Investment Committee, Election Committee, and such other standing committees as the Trustees may wish to create by bylaw or resolution.

#### **Section 4.8 Administrative Agent**

The Trustees may employ or contract for the services of an individual, firm or corporation, to be known as "Administrative Agent," who shall, under the direction of the Trustees or under the direction of any appropriate committee of the Trustees, administer the office or offices of the Trust Fund and of the Trustees, coordinate and administer the accounting, bookkeeping and clerical services, provide for the coordination of any actuarial services furnished by a consulting actuary, prepare (in cooperation, where appropriate, with a consulting actuary and independent auditor) all reports and other documents to be prepared, filed or disseminated by or on behalf of the Trust Fund in accordance with law, assist in the collection of payments required to be paid to the Trust Fund by Employers and perform such other duties and furnish such other services as may be assigned, delegated or directed or as may be contracted by or on behalf of the Trustees. The Administrative Agent shall be the custodian on behalf of the Trustees of all documents and other records of the Trustees and of the Trust Fund.

#### **Section 4.9 Bylaws, Rules and Regulations**

- (a) The Trustees, in their discretion, are empowered and authorized to adopt bylaws and to promulgate any and all necessary rules, regulations and resolutions which they deem necessary or desirable to facilitate the proper administration of the Trust Fund, provided the same are not inconsistent with the terms of this Trust Agreement. All bylaws, rules, regulations and resolutions adopted by action of the Trustees shall be binding upon all parties hereto, all parties dealing with the Trust Fund and all persons claiming any benefits hereunder.

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- (b) No bylaw, regulation, rule, action or determination made or adopted by the Trustees, shall in any manner conflict or be inconsistent (1) with any provision of the applicable current collective bargaining agreement; (2) with this Trust Agreement, and (3) with any applicable federal, state or local law.

#### **Section 4.10 Additional Authority**

The Trustees are hereby empowered, in addition to such other powers as are set forth herein or conferred by law:

- (a) To enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration of the Trust Fund, and to do all acts as they, in their discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be binding and conclusive on the parties hereto and on the Participants involved;
- (b) To keep property and securities registered in the name of the Trust Fund or entity duly designated by the Trustees;
- (c) To establish and accumulate as part of the Trust Fund such reasonable reserve funds as the Trustees, in their sole discretion, deem necessary or desirable to carry out the purposes of the Trust Fund;
- (d) To pay out of the Trust Fund all real and personal property taxes, income taxes and other of any and all kinds levied or assessed under existing or future laws upon or in respect to the Trust Fund, or any money, property or securities forming a part thereof;
- (e) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder; and
- (f) To sell, exchange, lease, convey, mortgage or dispose of any property, whether real or personal, at any time forming a part of the Trust Fund upon such terms as they may deem proper, and to execute and deliver any and all instruments of conveyance, lease, mortgage and transfer connection therewith.

#### **Section 4.11 Bonds**

The Trustees shall obtain from any authorized surety company such bonds as may be required by law, covering such persons and in such amounts (but not less than required by law) as the Trustees, in their discretion, may determine. The cost of premiums for such bonds shall be paid out of the Trust Fund.

#### **Section 4.12 Insurance**

The Trustees may in their discretion obtain and maintain policies of insurance, to the extent permitted by law, to insure themselves, the Trust Fund as such, as well as employees or agents of the Trustees and of the Trust Fund, while engaged in business and related activities for and on behalf of the Trust Fund (a) with respect to liability to others as a result of acts, errors or omissions of such Trustee or Trustees, employees or agents, respectively, provided such insurance policy shall provide recourse by the insurer against Trustees as may be required by law, and (b) with respect to injuries received or property damage suffered by them. The cost of the premiums for such policies of insurance shall be paid out of the Trust Fund.

#### **Section 4.13 Information to Participants and Beneficiaries**

The Trustees shall provide Participants and Beneficiaries such information as may be required by law.

#### **Section 4.14 Accountants and Attorneys**

The Trustees shall engage one or more independent qualified public accountants or a independent qualified government finance manager and one or more attorneys to perform all services as may be required by applicable law and such other services as the Trustees may deem necessary.

#### **Section 4.15 Reimbursement of Expenses and Lost Hourly Wages**

Each Trustee shall be eligible to be reimbursed for reasonable expenses actually and properly incurred in the performances of Trust business. Any claim for reimbursement shall be in writing, identify the Trust business involved and document the expense for which reimbursement is sought. Trustees' requests for reimbursement of expenses shall be distributed to all Trustees before payment is made.

Trustees shall not be compensated for their services except that an hourly paid employee who misses scheduled hours of employment and suffers a loss of income as a result of service as a Trustee may seek reimbursement for such lost wages. The Trustee shall document the hours missed, the hourly rate and the Trust business involved. Such requests shall be in writing and distributed to all Trustees before payment is made.

#### **Section 4.16 Records of Trustee Transactions**

The Trustees shall keep true and accurate books of accounts and a record of all their transactions and meetings (including actions taken at such meetings and by consent without a meeting), which records and books shall be audited at least once every five years by a certified public accountant, with the trustees deciding at the time of the audit as to the amount of years to be audited. The individual performing the audit shall meet with the Board of Trustees or a Committee thereof to review the audit. A copy of each audit report shall be furnished to all

Trustees and the Union and shall be available for inspection by interested persons at the office of the Trustees and the respective offices of the Union.

#### **Section 4.17 Construction and Determinations by Trustees**

Subject to the stated purpose of the Trust Fund and the provisions of this Trust Agreement, the Trustees shall have full and exclusive authority and discretion to determine all questions of coverage and eligibility, methods of providing or arranging for benefits and all other related matters. They shall have full power to construe the provisions of this Trust Agreement, the terms used herein, and the bylaws, regulations, and resolutions issued thereunder. Any such determination and any such construction adopted by the Trustees in good faith shall be binding upon all the parties hereto and the Participants and Beneficiaries hereof subject to the claim review procedures set forth in this Trust Agreement.

#### **Section 4.18 Liability**

The Trustees, to the extent permitted by applicable law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, electronic medium or other paper/electronic document believed by them to be genuine and to contain a true statement of facts, and to be signed by the proper person.

#### **Section 4.19 Reliance on Written Instruments**

Any Trustee, to the extent permitted by applicable law, may rely upon any instrument in writing purporting to have been signed by a majority of the Trustees as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been taken in such instrument.

#### **Section 4.20 Reliance by Others**

No party dealing with the Trustees shall be obligated:

- (a) to see the application to the stated Trust Fund proposal of any funds or property of the Trust Fund;
- (b) to see that the terms of this Trust Agreement have been complied with; or,
- (c) to inquire into the necessity or expediency of any act of the Trustees. Every instrument executed by the Trustees shall be conclusive evidence in favor of every person relying thereon:
  - (1) that, at the time of the execution of said instrument, the Trust was in full force and effect;
  - (2) that the instrument was executed in accordance with the terms and conditions of this Trust Agreement; and,

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- (3) that the Trustees were duly authorized and empowered to execute the instrument.

#### **Section 4.21 Discharge of Liability**

The receipt by the Trustees for any money or property or checks (after such checks are unconditionally honored at the bank and paid to the Trust Fund) shall discharge the person or persons paying or transferring the same.

#### **Section 4.22 Education for the Board of Trustees**

Since it is necessary that a person who holds a position on the Board of Trustees not only know but understand their duties and responsibilities to the Trust Fund, the Board of Trustees shall receive ongoing training as to their duties and responsibilities. The type of training shall be solely at the discretion of the Board of Trustees.

All Trustees shall receive a Trustee handbook which will include but not limited to the following;

- (a) Trust Agreement
- (b) Trust Bylaws
- (c) All Trust Policy

### **ARTICLE V**

#### **PAYMENTS AND COLLECTIONS**

##### **Section 5.1 Employer Payments**

C-Tran shall make prompt payments to the Trust Fund in such amounts and under the terms as are provided for in the applicable collective bargaining agreement or written agreement. The Employer agrees that such payment constitutes an absolute obligation to the Trust Fund, and such obligation shall not be subject to setoff or counterclaim which C-Tran may have for any liability of an Employee or a Retired Employee. Each payment shall be accompanied by a report in a form prescribed by the Trustees. Payments to the Trust Fund shall be paid to the Administrative Agent only by check, bank draft, electronic funds transfer (EFT), or other recognized written method of transmitting money or its equivalent, made payable to the order of the Trust Fund.

##### **Section 5.2 Determination and Resolution of Delinquent Contributions**

- (a) If the Trustees believe C-Tran is delinquent in the payment of contributions, they shall notify C-Tran of the claimed delinquency and the general bases for the claim. If, after such notice, C-Tran does not agree that a delinquency exists or does not pay the claimed delinquency, and the Trustees still believe a delinquency

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exists, the Trustees may take all appropriate legal action to collect any delinquency.

- (b) In the event an attorney and or collection agency is utilized to collect such delinquency payments referred to in subparagraphs (a) above, or to compel the filing of reports or to compel an audit, C-Tran shall be liable for the Trust's reasonable attorneys' fees, collection fees and court costs through and including any appeals.

### **Section 5.3 Credit for Employees or Retired Employees of Delinquent Employer**

If the Employer shall fail to make the required payments hereunder, the Trustees, if they believe the facts justify such action, shall have the right and power in their discretion, upon proof of the amounts that should have been paid, to regard all or part of such payments as having been made and to provide the benefit eligibility to the Employees or Retired Employees for whom such payments should have been made that they would otherwise have been entitled to. Nothing herein shall be construed as releasing the Employer from liability for payments due.

## **ARTICLE VI**

### **CONTROVERSIES AND DISPUTES**

#### **Section 6.1 Reliance on Records**

In any controversy, claim, demand, suit at law or other proceeding between any Participant, Beneficiary or any other person and the Trustees, the Trustees shall be entitled to rely upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, with the Union or with the Employers, any facts certified to the Trustees by the Union or the Employers, any facts which are of public record and any other evidence pertinent to the issue involved.

#### **Section 6.2 Submission to Trustees**

No Employee, Retired Employee, Participant or Beneficiary shall have any right or claim to benefits under the Plan, except as specified in the policy or policies or contract or contracts procured or entered into pursuant to this Trust Agreement, or otherwise specified in the Plan. Any dispute as to eligibility, type, amount or duration of benefit shall be resolved by the Board of Trustees of the appropriate insurance or health service carrier under and pursuant to the Plan, and its decision of the dispute, subject to the arbitration procedure set forth in Section 8.3, shall be final and binding upon all parties thereto. No action may be brought for benefits under the Plan or to enforce any rights thereunder until after the claim therefor has been submitted to and determined by the Board of Trustees and the arbitrator, and thereafter the only action that may be brought is neither any Employer, Union, Association nor any of the Trustees shall be liable for the failure or omission for any reason to pay benefits under the Plan.

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### **Section 6.3 Settling Disputes**

The Trustees may, in their sole discretion, compromise or settle any claim or controversy in such manner as they think best, and any decision made by the Trustees in compromise or settlement of a claim or controversy, or any compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding on all parties interested in this Trust Fund.

### **Section 6.4 Legal Action**

Any legal action or suit may be brought in the name of the Administrative Agent or other assignee designated by the Trustees.

## **ARTICLE VII**

### **BENEFICIAL RIGHTS**

#### **Section 7.1 No Rights, Title or Interest of employers and Union**

No Employer, Union, Association, Employees, Retired Employees or Participants and their Beneficiaries shall have any right, title or interest in or to the Trust Fund or any part thereof other than as specifically provided in this Trust Agreement or in the Plan. Neither the Trust Fund nor any payments to the Trust Fund shall be in any manner liable for or subject to the debts, contracts or liabilities of any Employers or Union, nor any Employees, Retired Employees, Participant or Beneficiary under the Plan. No part of the Trust Fund nor any benefits payable in accordance with the Plan shall be subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and shall be exempt from claim of creditors or other claimants and from all orders, decrees, garnishments, executions or other legal or equitable process or proceedings to the fullest extent permissible by law.

#### **Section 7.2 Limitations Upon Beneficial Rights of Employees or Retired Employees**

No Employee, Retired Employee, Participant or any Beneficiary of a Participant shall have any right, title or interest in or to the Trust Fund or any part thereof; provided, however, that any Participant who shall be covered by insurance or health service, or his Beneficiaries thereunder, shall be entitled to the benefits in the forms and amounts and subject to the terms and conditions thereunder and of the Plan and this Trust Agreement; provided, further, however, that all of the benefits shall be free from the interference and control of any creditor, and no benefits shall be subject to any assignment or other anticipation, nor to seizure or to sale under any legal, equitable or any other process. In the event that a claim or benefit, because of any debt incurred by or resulting from any other claim or liability against any Employee, Retired Employee, Participant or Beneficiary, by reason of any sale, assignment, transfer, encumbrance, anticipation or other disposition made or attempted by said Participant, Beneficiary, Employee, or Retired Employee, or by reason of any seizure or sale or attempted sale under any legal, equitable or other process, or in any suit or proceeding, shall become payable, or be liable to become payable, to any person other than the Participant or Beneficiary for whom the same is intended, as

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provided herein, the Trustees can withhold payment of such benefit to such Participant or Beneficiary until such assignment, transfer, encumbrance, anticipation or other disposition, writ or legal process is canceled or withdrawn in such manner as shall be satisfactory to the Trustees. Until so canceled or withdrawn, the Trustees can use and apply the benefits, as the Trustees may deem best, directly for the support and maintenance of such Participant or Beneficiary. Notwithstanding any provisions contained in this section to the contrary, any Participant or Beneficiary may assign for the purpose of payment, hospital, surgical, and medical benefits to any hospital or physician rendering services to the Participant or Beneficiary.

### **Section 7.3 Optional Benefits Prohibited**

No Employee, Retired Employee, or Participant shall have the right, privilege or option to receive, instead of the benefits provided hereunder:

- (a) Any part of the payments by the Employer under this Trust Agreement.
- (b) A cash consideration either upon termination of the Plan or benefits provided hereunder or upon such Employee's, Retired Employee's or Participant's withdrawal from coverage under this Trust Fund, either voluntarily or through severance of employment with any particular Employer; or
- (c) The cash surrender value of any policy of insurance in lieu of the benefits provided in said policy.

## **ARTICLE VIII**

### **CLAIMS PROCEDURE**

#### **Section 8.1 Benefits Claims**

Any Employee, Retired Employee, Participant, or Beneficiary ("Claimant") may file a claim for benefits under the Plan, prepared by either the Claimant or his authorized representative, by personally delivering or mailing written communication making the claim for benefits on forms provided by the appropriate insurance or health service carrier or the Trust Fund, if applicable, to the address stated on the forms.

If the claim for benefits is wholly or partially denied by the appropriate insurance or health service carrier, or the Trust Fund, if applicable, the Claimant shall be given written notice of such action within 90 days of the date the claim was filed, unless specific circumstances require an extension of time for processing. If there is an extension, the Claimant will be notified of such within 90 days of the date the Claim was filed. The notice shall indicate the special circumstances and the date by which a decision is expected. The extension will not exceed 90 days from the end of the initial response period. A notice of denial will indicate:

- (a) The specific reason or reasons for the denial;

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- (b) The pertinent provisions of this Plan, Trust Agreement or insurance contract on which the denial is based;
- (c) A description of any additional material of information necessary for the Claimant to perfect the claim and an explanation of why such material or information is necessary; and
- (d) An explanation of the claims review procedure set forth herein.

If written notice of the decision wholly or partially denying the claim has not been furnished within 90 days after the claim is filed or if there has been an extension and no notice of a decision is furnished by the end of the extension period, and if the claim has not been granted within such period, the claim shall be deemed denied as of the end of the 90-day or 180-day period for the purpose of proceeding to the review state described below.

### **Section 8.2 Claims Review Procedure**

If the claim is denied or deemed denied in whole or in part, the Claimant may request that the Board of Trustees review his/her claim. The request for review is made by personally delivering or mailing a written request for review, prepared by either the Claimant or his/her authorized representative, to the Board of Trustees. The Claimant's request for review must be in writing and made not later than 60 days after receipt of the notice of the denial or not later than 60 days after the date on which the claim is deemed denied. A failure to file a written request for review within such 60-day period shall serve as a complete bar to any claim for benefits or for other relief from the Plan. The Claimant or the Claimant's duly authorized representative may, at or after the time of making the request, review all pertinent documents and submit issues and comments in writing.

The Board of Trustees shall hold a meeting to review the appeal and shall act thereon at a meeting. The Board of Trustees may hold a hearing at which the Claimant may provide evidence and argument in writing or orally.

If a hearing is to be held, the Board of Trustees shall notify the Claimant of the date, time, and place of the hearing before a Committee or the full Board of Trustees, as appropriate. The date, time and place of the hearing shall be fixed by the Board of Trustees. Such notice shall be mailed to the Claimant's address of record. A Claimant may, but need not, be represented at his or her expense by an attorney of his or her choice.

A written record shall be made of the proceedings at any such hearing by such method as the Board of Trustees shall determine. In conducting the hearing, the Board of Trustees shall not be bound by the usual common law or statutory rules of evidence. There shall be copies made of all documents and records introduced at the hearing which shall be attached to the record of the hearing and made a part thereof.

If an appeal is timely filed, the Board of Trustees will review the appeal at its next regularly scheduled meeting. If an appeal is received less than 30 days before the next meeting, consideration of the appeal may be postponed (if necessary) until the next meeting following receipt of the appeal. After hearing information, the Trustees or a designated Appeal Committee will provide written notification within the time period set forth in the applicable Plan.

The decision on review shall be in writing and shall set forth the specific reason for the denial of any claim and indicate those portions of this Plan, Trust Agreement or insurance contract or of the rules or regulations upon which the decision is based. A copy of the decision shall be furnished to the Claimant. If the decision on review is not furnished within the applicable time period, the claim shall be deemed denied on review.

### **Section 8.3 Arbitration Procedure**

If the eligible retiree is dissatisfied with the written decision of the Trustees, he or she shall have the right to appeal the matter to arbitration in accordance with the Labor Arbitration Rules of the American Arbitration Association. A request for arbitration must be filed within 30 days of receipt of the Trustees' written decision. If an appeal to arbitration is requested, the Trustees shall submit to the arbitrator a certified copy of the record upon which the Trustees' decision was made. The question for the arbitration shall be (1) whether the Trustees were in error upon an issue of law; (2) whether they acted arbitrarily or capriciously in the exercise of their discretion; or (3) whether their findings of fact were supported by substantial evidence. A decision of the arbitrator shall be final and binding upon the Trustees, upon the appealing party and the Trust Fund, and upon all others whose interests were adversely affected. Expenses of the arbitration shall be borne equally by the appealing party and the Plan.

## **ARTICLE IX**

### **TERMINATION OF TRUST FUND**

#### **Section 9.1 Right to Termination**

The Board of Trustees shall have the authority and sole discretion to terminate the Trust Fund.

#### **Section 9.2 Conditions of Termination**

In the event of termination, the Trustees shall:

- (a) Make provision out of the Trust Fund for the payment of expenses incurred up to date of termination of the Trust Fund and the expenses incidental to such termination;
- (b) Distribute remaining funds for the continuance of benefits by the plan until such monies and assets have been exhausted, and in accordance with law;

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- (c) Arrange for a final audit and report of their transactions and accounts, for the purpose of termination of their Trusteeship; and
- (d) Give any notice and prepare and file any reports which may be required by law.

## ARTICLE X

### MISCELLANEOUS

#### **Section 10.1 Law Applicable**

This Trust Fund is created and accepted in the State of Oregon and all questions pertaining to the validity or construction of this Trust Agreement and of the acts and transaction of the parties hereto shall be determined in accordance with the laws of the State of Oregon.

#### **Section 10.2 Savings Clause**

Should any provision of this Trust Agreement be held to be unlawful, or unlawful as to any person or instance, such fact shall not adversely affect the other provisions herein contained or the application of said provisions to any other person or instance, unless such illegality shall make impossible the functioning of this Trust Fund.

#### **Section 10.3 No Reciprocity Agreement**

The Trustees shall not enter into such written reciprocity agreement or agreements with other health and welfare funds.

#### **Section 10.4 No Merger**

The Trustees shall not have the power to merge this Trust Fund with any other trust fund.

#### **Section 10.5 Accounting and Judicial Settlements**

- (a) Accounting. The Trustors may, at any time, demand of the Trustees an accounting with respect to any and all accounts, provided that the party demanding such accounting agrees to pay the necessary expenses thereof.
- (b) Judicial Settlements and Action by Trustees. The Trustees shall be entitled, at any time, to have a judicial settlement of their accounts and to seek judicial protection by any action or proceeding they determine necessary and, further, to obtain a judicial determination of declaratory judgment as to any questions of construction of this Trust Agreement or for instruction as to any action thereunder and, further, as to any question relating to the discharge of their duties and obligations under, or in connection with the administration of, this Trust and as to

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the distribution of assets belonging to the Trust. Any such determination, decision or judgment shall be binding upon all parties to, or claiming under, this Trust Agreement.

#### **Section 10.6 Withholding Payment**

In the event any questions or disputes shall arise as to the proper person or persons to whom any payment shall be made hereunder, the Trustees may withhold such payment until there shall have been made an adjudication of such question or dispute which, in the Trustees' judgment, is satisfactory to them, or until the Trustees shall have been fully protected against loss by means of such indemnification agreement or bond as they, in their sole judgment, determine to be adequate.

#### **Section 10.7 Gender**

Whenever any words are used in this Trust Agreement in the masculine gender, they shall also be construed to include the feminine or neuter gender in all situations where they would so apply; and, whenever any words are used in the singular, they shall also be construed to include the plural in all situations where they would so apply and, whenever any words are used in the plural, they shall also be construed to include the singular.

#### **Section 10.8 Amendment of Trust Agreement**

The provisions of this Trust Agreement may be amended at any time by majority vote of the Trustees. However, in no event shall any amendment or modification of this Trust Agreement, or the termination of this Trust Fund or Trust Agreement, cause or result in any portion of the Trust Fund reverting to, or being recoverable by, any Employer or Union, or cause or result in the diversion of any portion of the Trust Fund to any purpose other than the exclusive benefit of Employees, Retired Employees, Participants, and Beneficiaries under the Plan and the payment of the administrative expenses of the Trust Fund and the Plan or an equitable refund of erroneous payments.

#### **Section 10.9 Article and Section Titles**

The article and section titles are included solely for convenience and shall, in no event, be construed to affect or modify any part of the provisions of this Trust Agreement or be construed as part thereof.

#### **Section 10.10 Contract**

This Trust Agreement is a contract and not a mere recital.

IN WITNESS WHEREOF, this Trust Agreement has been executed by the Board of Trustees and has been consented to and approved by the Trustors as of the dates indicated below.

**AMALGAMATED TRANSIT UNION, DIVISION 757 C-TRAN  
RETIRED EMPLOYEES HEALTH AND WELFARE TRUST**

Name: J. F. B... Date: 1-28/2018

Name: Mary Makinst Date: 1-28-18

Name: sheila carder Date: 01/28/2018

Name: [Signature] Date: 1/28/18

Name: Kara S. Oser Date: 1/28/18

Name: Nalima O. Natchool Date: 1/28/14

Name: \_\_\_\_\_ Date: \_\_\_\_\_