



EMPLOYEE TRUSTEES  
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EMPLOYER TRUSTEES  
GARY F. CALDWELL  
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EXECUTIVE DIRECTOR  
THOMAS C. NYHAN

October 20, 2020

Phil Pumphrey  
General Manager  
Duluth Transit Authority  
2402 West Michigan Street  
Duluth, MN 55806-1988

VIA ELECTRONIC MAIL  
[ppumphrey@duluthtransit.com](mailto:ppumphrey@duluthtransit.com)

RE: CONTROL GROUP NAME: First Group PLC  
CONTROL GROUP NO: 2751753  
ACCOUNT NAME: A T E Management Duluth, Inc.  
ACCOUNT NO: 0039900-0105

Dear Mr. Pumphrey:

In response to your request, I have enclosed an Estimated Withdrawal Liability Worksheet and Past Contributions for Employer Liabilities Report for the above referenced Employer. The calculation yields a liability of \$136,885,139.85, based upon a 2020 withdrawal date. Please note that the Pension Fund's Unfunded Vested Benefit ("UVB") as of year-end 2019 increased by approximately 12.5% in comparison to the UVB as of year-end 2018. This increase was attributed to the Fund's actuary reducing the assumed rate of return on future investments from 3.0% to 2.0%.

For purposes of withdrawal liability, ERISA Section 4001(b) defines the term employer to include all trades or businesses, whether or not incorporated, which are under common control within the meaning of the applicable sections of the Internal Revenue Code.

The enclosed estimate is based upon contribution amounts listed in the enclosed Past Contributions for Employer Liabilities Report. It may not include all contributing accounts of any controlled group of trades or businesses of which A T E Management Duluth Inc. is a member. If A T E Management Duluth Inc. is a member of a controlled group employer which includes other entities that have made contributions to the Fund, the enclosed estimate may grossly understate the Employer's potential withdrawal liability. Additionally, withdrawal liability estimates may be substantially different depending on the year of withdrawal due to changes to the unfunded vested benefits. Therefore, an estimate for one plan year should be used with caution in determining the amount of withdrawal liability in a subsequent plan year. If there are additional contribution amounts which should be included or if there are any other omissions or errors, please let us know in writing and we will gladly correct our records and provide you with a revised estimate.

For your information, included is some additional updated information regarding the Hybrid Withdrawal Liability Method for your review, as well as a copy of Appendix E to the Central States, Southeast and Southwest Areas Pension Plan "Rules and Regulations Pertaining to Employer Withdrawal Liability." Should you have any further questions, please feel free to contact me at [acullinan@centralstatesfunds.org](mailto:acullinan@centralstatesfunds.org) or, by phone at (847) 232-5720.

Sincerely,

Andrea Cullinan  
Withdrawal Liability Analyst

Enclosures

cc: Local Union No. 364

Controlling Employer Name: First Group PLC  
 Assessment Number: (Estimate Only)  
 Withdrawn Company Name: ATE Management Duluth Inc.

Type of Calculation: 2020 Complete Withdrawal

Date Prepared: October 20, 2020

**Section I - Pre-1980 Pool**

a) All Employers' Contributions  
 (1975 - 1979)

Year	Contributions	CBUs
1975	0.00	0.00
1976	0.00	0.00
1977	0.00	0.00
1978	0.00	0.00
1979	0.00	0.00
Total	0.00	

b) All Employers' Contributions (1975 - 1979) 1,993,217,854

c) Allocation Fraction 0.0000000000

d) Unamortized 12/31/79 UVB 0.00

e) Pre-1980 Pool Liability 0.00

**Section II - Post-1979 Pool**

a) Withdrawn Employer's Contributions  
 Last 10 Years

Year	Contributions	CBUs
2010	228,964.50	1,095.00
2011	1,205,456.80	5,346.00
2012	1,268,523.90	5,201.00
2013	1,336,445.00	5,170.00
2014	1,386,739.20	5,159.00
2015	1,466,841.60	5,250.00
2016	1,553,286.40	5,349.00
2017	1,719,820.20	5,691.00
2018	1,866,627.70	5,939.00
2019	1,963,034.50	6,005.00
Total	13,995,739.80	50,205.00

b) All Employers' Contributions (Last 10 Years) 4,613,374,769

c) Allocation Fraction 0.0030337314

d) Net Change in UVB (12/31/19) 45,121,048,224

e) Post-1979 Pool Liability 136,885,139.85

**Section III - Adjustments to Liability**

a) Unadjusted Liability	136,885,139.85
b) De Minimis Rule	0.00
c) Prior Assessment(s) Credit	0.00
d) Partial Prorate	0.00
e) Section 4225 Limitations	0.00
f) Adjusted Liability	136,885,139.85

**Section IV - Partial Prorate**

a) CBUs in Next Year	0.00
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b) 5-Year Average (CBUs)

Year	CBUs
2015	5,250.00
2016	5,349.00
2017	5,691.00
2018	5,939.00
2019	6,005.00
Total	28,234.00

5-Year Average	5,646.80
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c) Prorate Fraction	1.0000000000
d) Remaining Liability	136,885,139.85
e) Partial Prorate	0.00

**CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS**

Employer : FIRST GROUP PLC - 2751753

Pension Fund

PERIOD : 10/10/2010 - 12/28/2019

Controlled Group as of: 10/10/2020

**PAST CONTRIBUTIONS FOR EMPLOYER LIABILITIES - SUMMARY**

EMPLOYER NAME AND E-T-L-C 2751753 - FIRST GROUP PLC	Year	Amount	Weeks	Casual	Days	Hours	CBUs
	2010	\$ 228,964.50	1095	0	0	0.00	1,095.00
	2011	\$ 1,205,456.80	5346	0	0	0.00	5,346.00
	2012	\$ 1,268,523.90	5201	0	0	0.00	5,201.00
	2013	\$ 1,336,445.00	5170	0	0	0.00	5,170.00
	2014	\$ 1,386,739.20	5159	0	0	0.00	5,159.00
	2015	\$ 1,466,841.60	5250	0	0	0.00	5,250.00
	2016	\$ 1,553,286.40	5349	0	0	0.00	5,349.00
	2017	\$ 1,719,820.20	5691	0	0	0.00	5,691.00
	2018	\$ 1,866,627.70	5939	0	0	0.00	5,939.00
	2019	\$ 1,963,034.50	6005	0	0	0.00	6,005.00
<b>Totals for Employer:</b>		<b>\$ 13,995,739.80</b>	<b>50205</b>	<b>0</b>	<b>0</b>	<b>0.00</b>	<b>50,205.00</b>

**CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS**

Employer : FIRST GROUP PLC - 2751753

Pension Fund

PERIOD : 10/10/2010 - 12/28/2019

Controlled Group as of: 10/10/2020

**PAST CONTRIBUTIONS FOR EMPLOYER LIABILITIES - DETAIL**

EMPLOYER NAME AND E-T-L-C	Year	Amount	Weeks	Casual	Days	Hours	CBUS
2751753 - FIRST GROUP PLC							
0039900-0106-00346A	2010	\$ 228,964.50	1095	0	0	0.00	1,095.00
A T E MANAGEMENT DULUTH INC	2011	\$ 1,205,456.80	5346	0	0	0.00	5,346.00
	2012	\$ 1,268,523.90	5201	0	0	0.00	5,201.00
	2013	\$ 1,336,445.00	5170	0	0	0.00	5,170.00
	2014	\$ 1,386,739.20	5159	0	0	0.00	5,159.00
	2015	\$ 1,466,841.60	5250	0	0	0.00	5,250.00
	2016	\$ 1,553,286.40	5349	0	0	0.00	5,349.00
	2017	\$ 1,719,820.20	5691	0	0	0.00	5,691.00
	2018	\$ 1,866,627.70	5939	0	0	0.00	5,939.00
	2019	\$ 1,963,034.50	6005	0	0	0.00	6,005.00
<b>Total for Employer</b>		<b>\$ 13,995,739.80</b>	<b>50205</b>	<b>0</b>	<b>0</b>	<b>0.00</b>	<b>50,205.00</b>
<b>Total for Employer</b>		<b>\$ 13,995,739.80</b>	<b>50205</b>	<b>0</b>	<b>0</b>	<b>0.00</b>	<b>50,205.00</b>



**INDEPENDENT SPECIAL COUNSEL**  
**DESCRIPTION OF HYBRID WITHDRAWAL LIABILITY METHOD**

This description of the Central States Pension Fund's hybrid withdrawal liability method is taken from pp. 10-11 of the July 30, 2014 letter of the Independent Special Counsel (retired Federal Judge David Coar) to the U.S. District Court for the Northern District of Illinois. The full text of this letter is available on the Central States Pension Fund's website ([www.MyCentralStatesPension.org](http://www.MyCentralStatesPension.org)):

Under this method, new employers joining the Pension Fund will have their withdrawal liability measured based upon the "direct attribution" method; employers who already participate in the Fund can also be treated as new employers for withdrawal liability purposes on a prospective basis (and become eligible for the "direct attribution" method) by satisfying their existing withdrawal liability under the method historically employed by the Pension Fund (*i.e.*, the "modified presumptive method"), and then agreeing to continue to contribute to the Fund. Because the Fund will apply the historic modified presumptive method to the "old" employers, but apply direct attribution to "new" employers (including "old" employers who satisfy their existing withdrawal liability), this recently approved formula is referred to as a "hybrid" withdrawal liability method.

An employer subject to the direct attribution wing of the hybrid method will have its withdrawal liability determined based on any potential shortfall between the contributions the employer has made on behalf of the employer's own employees and the pension benefits directly attributable to the employees' service with that same employer. All the employers subject to the direct attribution method will form a new withdrawal liability pool, but the Fund's Staff reports that in light of the Fund's current benefit structure, it is unlikely that this pool, or any of the individual employers in the pool, will ever have any actual or potential exposure to withdrawal liability. That is, Staff reports that current levels of contributions are more than sufficient to fund current benefit accruals, and that, therefore, there appears to be only a remote and theoretical possibility of "direct attribution" withdrawal liability. Staff also reports that it believes the hybrid method will offer a means for employers who are concerned about the potential for future growth in their exposure to withdrawal liability to cap their liability at its present level while continuing to participate in the Fund with little or no risk of withdrawal liability in the future. Staff also anticipates that this arrangement will in some cases help avoid the benefit adjustments imposed, pursuant to the Fund's Rehabilitation Plan, upon bargaining units associated with withdrawn employers, while at the same time securing a stream of contribution revenue from employers who would otherwise have withdrawn and completely ceased contributing to the Fund.

Staff reports that to date approximately 68 old employers have satisfied their existing liability and qualified as new employers under the hybrid plan, or have made commitments to do so. This has resulted in the payment of . . . approximately \$124 million in withdrawal liability to the Pension Fund while the employers in question also continue to contribute to the Fund pursuant to their collective bargaining agreements at guaranteed participation levels.

.....

NOTE: Pension Fund Staff report that as of August 31, 2020, 99 old employers have converted to new employer status, resulting in approximately \$294.7 million in withdrawal liability paid in to the Pension Fund.

## Section 2: Actuarial Valuation Results

### Determination of Unfunded Vested Liability

December 31  
2018                      2019

	2018	2019
<b>Total Plan</b>		
1. Present value of vested benefits at funding investment return rate	\$53,454,049,172	\$59,130,146,591
2. Present value of vested benefits at PBGC rates, including allowance for expenses	54,994,187,384	55,498,224,373
3. Market value of assets	13,168,043,720	12,309,907,060
4. Ratio funded at PBGC interest rates [(3) ÷ (2), not greater than 1.0]	0.239444	0.221807
5. Present value of vested benefits for withdrawal liability purposes [(4) × (2) + (1.0 - (4)) × (1)]	\$53,822,826,461	\$58,324,560,008
6. Unfunded vested liability* [(5) - (3), not less than zero]	40,654,782,741	46,014,652,948
<b>New Employer Pool</b>		
7. Present value of vested benefits at funding investment return rate	\$59,072,558	\$89,869,108
8. Present value of vested benefits at PBGC rates, including allowance for expenses	62,016,954	81,663,749
9. Present value of vested benefits for withdrawal liability purposes [(4) × (8) + (1.0 - (4)) × (7)]	59,777,577	** 88,049,100
10. Market value of assets	92,521,263	** 117,994,977
11. Unfunded vested liability [(9) - (10), not less than zero]	0	0
<b>Old Employer Pool</b>		
12. Unfunded vested liability* [(6) - (11)]	\$40,654,782,741	\$46,014,652,948

\* Amounts are prior to reduction for the value of outstanding claims for withdrawal liability that can reasonably be expected to be collected.

\*\* Note from Staff at Central States Pension Fund

The New Employer Pool is Funded by 134%  
117,994,977 / 88,049,100 = 134%

## **Section 2. SCHEDULES OF CONTRIBUTIONS AND BENEFITS.**

With the PPA requirements outlined above in mind, the Fund's Board of Trustees hereby provides the following PPA Schedules to the parties charged with bargaining over agreements requiring contributions to the Fund.

### **A. PRIMARY SCHEDULE (EXCEPT AS NOTED, PRESERVES ALL CURRENT BENEFITS).**

#### **1. Benefits**

With regard to Bargaining Units (and any non-Bargaining Unit employee groups participating in the Fund) whose Contributing Employers are in compliance with this Primary Schedule, there will be no change in benefit formulas, levels or payment options in effect on January 1, 2008, *except that* as provided in Section 2(J) below, Participants who (i) have not submitted a retirement application on or before July 1, 2011 and (ii) do not have a benefit commencement date (within the meaning of ERISA § 305(i)(10)) on or before July 1, 2011, will not be granted a Retirement Date prior to their 57th birthday and will not be eligible to receive retirement benefit payments of any type until after achieving age 57.

Further, subject to the notice requirements of the PPA and other applicable law, any Bargaining Units (and any non-Bargaining Unit employee groups participating in the Fund) whose Contributing Employers incur a Rehabilitation Plan Withdrawal on or after March 26, 2008 shall have their Adjustable Benefits listed in Section 2(H) below eliminated or reduced to the extent indicated in Section 2(B)(1) below.

#### **2. Contributions**

Compliance with the Primary Schedule requires annually compounded contribution rate increases in accordance with Exhibit A effective immediately after the expiration of the Collective Bargaining Agreement (or other agreement requiring contributions to the Fund) and each agreement anniversary date (or reallocation anniversary, where applicable) during the term of the new bargaining agreement to the extent indicated in Exhibit A, depending on the year that the new agreement is effective. Note that all contribution rate increases are annually compounded on the total contribution rate (including any reallocations of employee benefit contributions or agreed mid-contract contribution increases) immediately prior to the increase.

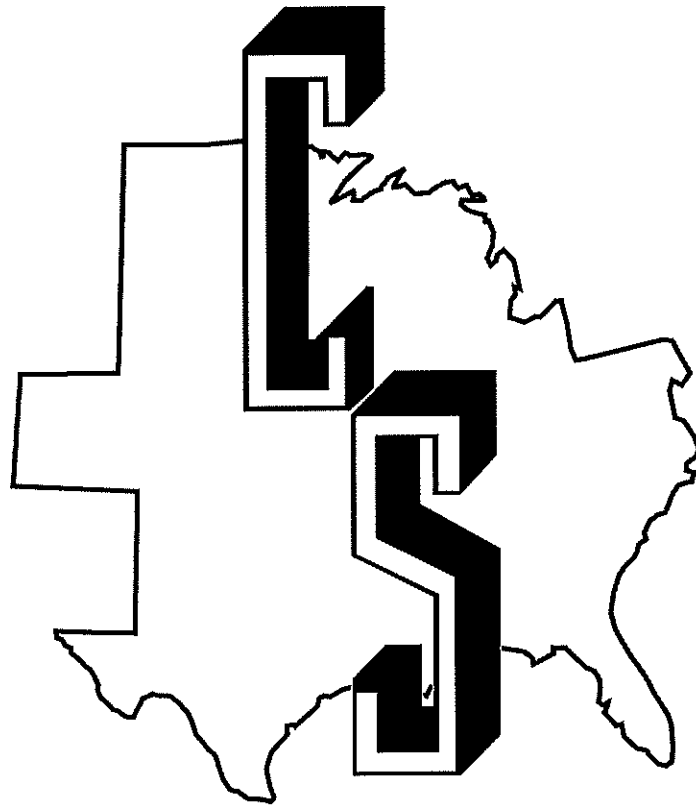
The required annual rate increase may be provided through annual allocations to pension contributions of general and aggregate employee benefit contribution increases that were negotiated at the outset of an agreement, but were not specifically allocated to pension contributions until subsequent contract years. The Primary Schedule requires 8% per year contribution rate increases for the first 5 years, 6% per year contribution rate increases for the next 3 years and 4% per year contribution rate increases each year thereafter for 2008 agreements under the Primary Schedule and comparable rate increases over time for all other agreements under the Primary Schedule (see Exhibit A).



*Provided, however,* that absent further amendment to this rehabilitation plan, as of June 1, 2011, any Collective Bargaining Agreement requiring contributions of (1) \$348 per week for each full-time employee with respect to Participants covered by the National Master Automobile Transporter Agreement, and (2) \$342 per week for each full-time employee with respect to all other Participants, will be deemed to be in compliance with the Primary Schedule *without* the need for additional annual rate increases.

***Provided further that any Employer that qualifies as a New Employer under § 2.2(b) of Appendix E of the Pension Plan will be deemed, as of the date it qualifies as a New Employer, to be in compliance with the Primary Schedule without the need for additional contribution rate increases.***

# Central States, Southeast and Southwest Areas Pension Plan



RESTATED PLAN EFFECTIVE JANUARY 1, 1985  
AS AMENDED THROUGH JANUARY 1, 2020

## APPENDIX E. RULES AND REGULATIONS PERTAINING TO EMPLOYER WITHDRAWAL LIABILITY

### Section 1. PREAMBLE

This APPENDIX E to the Central States, Southeast and Southwest Areas Pension Plan (the "Plan") sets forth and describes rules and regulations applicable to the determination and payment of Employer Withdrawal Liability pursuant to the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (the "1980 Act"). The term Employer, as used herein, shall be defined as in ERISA and trades and businesses under common control shall constitute a single Employer as provided under ERISA Section 4001(b). Further, the term Employer refers to both Old Employers and New Employers (as defined in Sections 2.2(a) and 2.2(b), respectively) unless otherwise indicated.

### Section 2. CALCULATION OF WITHDRAWAL LIABILITY

#### Section 2.1 Effective Date

The amount of the unfunded vested benefits allocable to an Employer who withdraws from the Plan on or after October 14, 2011 and who is defined as an "Old Employer" under Section 2.2(a) shall be determined in accordance with Section 2.3. The amount of the unfunded vested benefits allocable to an Employer who withdraws from the Plan on or after October 14, 2011 and who is defined as a "New Employer" under Section 2.2(b) shall be determined in accordance with Section 2.4. The amount of unfunded vested benefits allocable to an Employer who withdraws from the Plan at any time before October 14, 2011 shall be determined in accordance with Section 2 of this Appendix E as in effect on October 13, 2011.

#### Section 2.2 Definitions

- (a) **Old Employer** means any Employer who had an obligation to contribute to the Plan for any period prior to October 14, 2011 and all other trades or businesses under common control with said Employer at any time such that together they constituted a single employer within the meaning of Section 4001(b)(1) of ERISA, 29 U.S.C. § 1301(b)(1), and the regulations promulgated thereunder. The term "Old Employer" includes an Employer and all other trades or businesses who withdrew from the Plan prior to October 14, 2011.
- (b) **New Employer** means any Employer who satisfies either of the conditions set forth in paragraphs (1) or (2) below:
  - (1) The Employer has never been an Old Employer or a trade or business under common control with an Old Employer at any time such that together they constituted a single employer within the meaning of Section 4001(b)(1) of ERISA, 29 U.S.C. § 1301(b)(1), and the regulations promulgated thereunder; or
  - (2) To the extent the Employer first had an obligation to contribute to the Plan before October 14, 2011 or has ever been considered an Old Employer, the Employer has completely satisfied all withdrawal liability related to its past participation in a lump sum or has provided the Pension Fund with a bond issued by a corporate surety company that is an acceptable surety for purposes of ERISA section 412, or an amount held in escrow by a bank

or similar financial institution satisfactory to the Pension Fund for the full amount of the outstanding withdrawal liability.

- (3) An Employer satisfying paragraph (1) of this subsection shall be a New Employer on the date its obligation to contribute to the Plan begins. An Employer satisfying paragraph (2) of this subsection shall cease being an Old Employer and shall become a New Employer on the date all of the conditions specified in paragraph (2) are met.
  - (4) An Old Employer who is or may be obligated under Section 4204 of ERISA, 29 U.S.C. § 1384, as a seller or purchaser, including without limitation the bonding or escrow requirements of Sections 4204(a)(1)(B) and 4204(a)(3) of ERISA, 29 U.S.C. §§ 1384(a)(1)(B) and 1384(a)(3), as well as the liability provisions of Section 4204(a)(1)(C) and 4204(a)(2), 29 U.S.C. §§ 1384(a)(1)(C) and 1384(a)(2), remains subject to those obligations notwithstanding the fact that the Old Employer becomes a New Employer.
- (c) **Modified Presumptive Pool** means the pool of assets and associated benefit liabilities relating to Contributions from Old Employers.
  - (d) **Direct Attribution Pool** means the pool of assets and associated benefit liabilities relating to New Employer Contributions.
  - (e) **New Employer Contributions** means contributions made by New Employers which are attributable to Participants' service with such Employer for periods during which the Employer qualifies as a New Employer under Section 2.2(b) plus contributions made by an Old Employer during the Plan Year in which such Old Employer becomes a New Employer.
  - (f) **Modified Presumptive Pool Unfunded Vested Benefits** means all unfunded vested benefits under the Plan minus the Direct Attribution Pool Unfunded Vested Benefits minus the sum of all New Employer's Directly Attributable Unfunded Vested Benefits as calculated under Section 2.4(b).
  - (g) **Direct Attribution Pool Unfunded Vested Benefits** means all unfunded vested benefits in the Direct Attribution Pool as calculated in Section 2.4(e).
  - (h) **Plan Year** means the calendar year beginning and including January 1<sup>st</sup> through and including December 31<sup>st</sup>.
  - (i) The definitions applicable to the Appendix E include all definitions stated in Article I and other definitions of the Pension Plan, except to the extent those definitions are contrary to those expressly stated in this Appendix E.

### **Section 2.3      Calculation of Withdrawal Liability of an Old Employer**

The amount of the unfunded vested benefits allocable to an Old Employer who withdraws from the Plan shall be the product of:

- (a) an amount equal to:
  - (1) the Modified Presumptive Pool Unfunded Vested Benefits as of the end of the Plan Year preceding the Plan Year in which the Old Employer withdraws; less

- (2) the sum of the value as of such date of all outstanding claims for withdrawal liability of Old Employers which can reasonably be expected to be collected, with respect to Old Employers withdrawing before such Plan Year; multiplied by
- (b) a fraction:
- (1) the numerator of which is the total amount required to be contributed under the Plan by the Old Employer for the last 10 Plan Years ending before the date on which the Old Employer withdraws; and
  - (2) the denominator of which is the total amount contributed under the Plan by all Old Employers for the last 10 Plan Years ending before the date on which the Old Employer withdraws, increased by the amount of any Old Employer Contributions owed with respect to earlier periods which were collected in those Plan Years, and decreased by any amount contributed by an Old Employer who withdrew from the Plan during those Plan Years;

**Section 2.4 Calculation of Withdrawal Liability of a New Employer**

- (a) **New Employer's Unfunded Vested Benefit Allocation.** The amount of the unfunded vested benefits allocable to a New Employer who withdraws from the Plan shall be the sum of:
- (1) the New Employer's Unfunded Vested Benefits Attributable to Its Participants' Service (determined as of the end of the Plan Year preceding the Plan Year in which the New Employer withdraws, and as described in subsection (b) below); and
  - (2) the New Employer's Proportionate Share of the Direct Attribution Pool's Unfunded Vested Benefits (determined as of the end of the Plan Year preceding the Plan Year in which the New Employer withdraws) as described in subsection (f) below.
- (b) **New Employer's Unfunded Vested Benefits Attributable to Its Participants' Service.** A New Employer's Unfunded Vested Benefits Attributable to Its Participants' Service is equal to the value of nonforfeitable benefits under the Plan which are attributable to Participants' service with such New Employer (including service based upon contributions deemed New Employer Contributions under Section 2.2(b)) decreased by the New Employer's Share of the Direct Attribution Plan Assets which is allocated to the New Employer under Section 2.4(d). The amount equal to the value of nonforfeitable benefits under the Plan which are attributable to a Participants' service with such New Employer shall be determined by multiplying the Participant's nonforfeitable benefits by a fraction the numerator of which is the Participant's Contributory Service Credit earned with such New Employer (including Contributory Service Credit earned with an Old Employer during the Plan Year in which such Old Employer becomes a New Employer) and the denominator of which is the Participant's total years of Contributory Service Credit earned with all Employers. To the extent that the New Employer's Unfunded Vested Benefits Attributable to Its Participants' Service is less than zero, the New Employer's Directly Attributable Unfunded Vested Benefits shall be deemed to be zero.
- (c) **Direct Attribution Pool Plan Assets.** The value of Direct Attribution Pool Plan Assets determined under this Section 2.4(c) (a portion of which is to be allocated

to the New Employer as provided under Section 2.4(d)) is the sum of: all New Employer Contributions made for each Plan Year preceding the Plan Year in which the New Employer withdraws, plus all withdrawal liability payments made by New Employers for withdrawals occurring as New Employers for each Plan Year preceding the Plan Year in which the New Employer withdraws, plus investment earnings or losses for each Plan Year preceding the Plan Year in which the New Employer withdraws attributable as provided under Section 2.4(c)(1), minus administrative expenses for each Plan Year preceding the Plan Year in which the New Employer withdraws attributable as provided under Section 2.4(c)(2), minus all benefit payments which are made for each Plan Year preceding the Plan Year in which the New Employer withdraws that are attributable to service with New Employers as provided under Section 2.4(c)(3).

- (1) Investment earnings or losses attributable to the Direct Attribution Plan Pool Plan Assets shall be calculated for each Plan Year by applying the rate of return or loss on all Plan assets for each Plan Year beginning after October 14, 2011 and ending with the last day of the Plan Year prior to the Plan Year of the New Employer's withdrawal to the amount of Direct Attribution Plan Pool Plan Assets (after the application of paragraphs (2) and (3) of this subsection (c)) as of the last day of the Plan Year preceding the Plan Year in which the New Employer withdraws. For the Plan Year that includes October 14, 2011, the rate of return or loss shall be applied proportionate to the period after October 14, 2011 as compared to the entire Plan Year.
  - (2) Administrative expenses attributable to the Direct Attribution Pool Plan Assets shall be calculated for each Plan Year beginning after October 14, 2011 and ending with the last day of the Plan Year prior to the Plan Year of the New Employer's withdrawal by multiplying the total Plan administrative expenses for a Plan Year by a fraction the numerator of which is the total number of Participants whose last Contributory Service Credit earned under the Plan as of the last day of the Plan Year was earned with a New Employer and the denominator is the total number of Participants in the Plan as of the last day of the Plan Year. For the Plan Year that includes October 14, 2011, the administrative expenses shall be applied proportionate to the period after October 14, 2011 as compared to the entire Plan Year.
  - (3) Benefit payments that are attributable to service with New Employers shall mean the pro rata portion of a Participant's benefits determined by multiplying the benefit payments by a fraction the numerator of which is the Participant's years of Contributory Service Credit earned with New Employers (including a Participant's Contributory Service Credit with an Old Employer during the Plan Year in which such Participant's Old Employer becomes a New Employer) and the denominator of which is the Participant's total years of Contributory Service Credit earned with all Employers.
- (d) **New Employer's Share of Direct Attribution Pool Plan Assets.** The New Employer's Share of Direct Attribution Pool Plan Assets shall be determined by multiplying the value of the Direct Attribution Pool Plan Assets determined under Section 2.4(c) by the fractions in subparagraphs (d)(1) and (d)(2) of this subsection -

- (1) The first fraction –
  - (i) the numerator of which is the value of nonforfeitable benefits (including such benefits attributable to contributions deemed New Employer Contributions under Section 2.2(b)) which are attributable to Participants' service with all New Employers who have an obligation to contribute under the Plan in the Plan Year preceding the Plan Year in which the New Employer withdraws, and
  - (ii) the denominator of which is the value of all nonforfeitable benefits (including such benefits attributable to contributions deemed New Employer Contributions under Section 2.2(b)) attributable to all New Employers under the Plan; and
  
- (2) The second fraction –
  - (i) the numerator of which is the value of the nonforfeitable benefits (including such benefits attributable to contributions deemed New Employer Contributions under Section 2.2(b)) which are attributable to the New Employer, and
  - (ii) the denominator of which is the value of the nonforfeitable benefits (including such benefits attributable to contributions deemed New Employer Contributions under Section 2.2(b)) which are attributable to service with all New Employers who have an obligation to contribute under the Plan in the Plan Year preceding the Plan Year in which the New Employer withdraws.
  
- (e) **Direct Attribution Pool's Unfunded Vested Benefits.** The amount of the Direct Attribution Pool's Unfunded Vested Benefits for a Plan Year preceding the Plan Year in which a New Employer withdraws is equal to:
  - (1) an amount equal to –
    - (i) The value of all nonforfeitable benefits attributable to service with all New Employers (including such benefits attributable to contributions deemed New Employer Contributions under Section 2.2(b)) under the Plan at the end of such Plan Year; reduced by
    - (ii) The value of nonforfeitable benefits under the Plan at the end of such Plan Year which are attributable to Participants' service with New Employers (including such benefits attributable to contributions deemed New Employer Contributions under Section 2.2(b)) who have an obligation to contribute under the Plan for such Plan Year; reduced by
  
  - (2) an amount equal to –
    - (i) The value of the Direct Attribution Pool Plan Assets as of the end of such Plan Year as determined under Section 2.4(c), reduced by
    - (ii) The value of the Direct Attribution Pool Plan Assets as of the end of such Plan Year as determined under Section 2.4(c) multiplied by the fraction in Section 2.4(d)(1); reduced by

- (3) The value of all outstanding claims for withdrawal liability which can reasonably be expected to be collected with respect to New Employers withdrawing before the Plan Year preceding the Plan Year in which the New Employer withdraws.

If the Direct Attribution Pool's Unfunded Vested Benefits is less than zero, it shall be deemed to be zero.

- (f) **New Employer's Proportionate Share of the Direct Attribution Pool's Unfunded Vested Benefits.** The New Employer's Proportionate Share of the Direct Attribution Pool Unfunded Vested Benefits described in Section 2.4(a)(2) for a Plan Year is the amount determined under Section 2.4(e) multiplied by a fraction-
  - (1) the numerator of which is the value of the nonforfeitable benefits (including such benefits attributable to contributions deemed New Employer Contributions under Section 2.2(b)) which are attributable to the New Employer, and
  - (2) the denominator of which is the value of the nonforfeitable benefits (including such benefits attributable to contributions deemed New Employer Contributions under Section 2.2(b)) which are attributable to service with all New Employers who have an obligation to contribute under the Plan in the Plan Year preceding the Plan Year in which the New Employer withdraws.

#### **Section 2.5      Effect of Complete Withdrawal of All Old Employers**

If all Old Employers completely withdraw from the Pension Fund, the Direct Attribution Pool and the Modified Presumptive Pool shall be discontinued and the amount of unfunded vested benefits allocable to an Employer that withdraws from the Pension Fund at any time beginning with the first day of the Plan Year in which all Old Employers cease to be obligated to contribute to the Fund shall be determined in accordance with Section 2 of this Appendix E as in effect on October 13, 2011 (the "Pre-2011 Methodology").

#### **Section 2.6      Effect of Complete Withdrawal of All New Employers**

If in any Plan Year all New Employers completely withdraw from the Pension Fund, the Direct Attribution Pool and the Modified Presumptive Pool shall be discontinued and the amount of unfunded vested benefits allocable to an Employer that withdraws in the following Plan Year shall be determined in accordance with Section 2 of this Appendix E as in effect on October 13, 2011 (the "Pre-2011 Methodology").

#### **Section 2.7      Allocation of Reallocation Liability in the Event of Mass Withdrawal**

In the event that, within the meaning of ERISA § 4219(c)(1)(D), every Employer withdraws from the Plan or substantially all Employers withdraw from the Plan pursuant to an arrangement to withdraw (thus triggering a "Mass Withdrawal"), any Employers who are subject to Mass Withdrawal reallocation liability within the meaning of 29 C.F.R. § 4219.2(b)(2):

- (a) Shall have their initial allocable share of such reallocation liability determined as follows:



**Initial allocable share.** Except as otherwise provided in subsection (c) below, an Employer's initial allocable share shall be equal to the product of the plan's unfunded vested benefits to be reallocated, multiplied by a fraction--

- (1) The numerator of which is the sum of the Employer's initial withdrawal liability and the Employer's redetermination liability, if any; and
- (2) The denominator of which is the sum of all initial withdrawal liabilities and all the redetermination liabilities of all Employers liable for reallocation liability; and

(b) Shall have their allocation of unassessable amounts determined as follows:

**Allocation of unassessable amounts.** If after computing each Employer's initial allocable share of unfunded vested benefits related to the Mass Withdrawal, the Trustees determine that any portion of an Employer's initial allocable share is unassessable as withdrawal liability because of the limitations in ERISA § 4225, the Trustees shall allocate any such unassessable amounts among all other liable Employers. This allocation shall be done by prorating the unassessable amounts on the basis of each such Employer's initial allocable share. No Employer shall be liable for unfunded vested benefits allocated under subsection (a) or this subsection (b) to another Employer that are determined to be unassessable or uncollectible subsequent to the Trustees' demand for payment of reallocation liability.

(c) **Special rule for certain Employers with no or reduced initial withdrawal liability due to application of the free-look or *de minimis* rules.** If an Employer has no initial withdrawal liability because of the application of the free-look rule in ERISA § 4210, then, in computing the fraction prescribed in subsection (b), the Plan shall use the Employer's allocable share of unfunded vested benefits, determined under ERISA § 4211 at the time of the Employer's withdrawal and adjusted in accordance with ERISA § 4225, if applicable. If an Employer's initial withdrawal liability was reduced pursuant to ERISA § 4209 (a) or (b) and the Employer is not liable for *de minimis* amounts, then, in computing the fraction prescribed in subsection (b), the Plan shall use the Employer's allocable share of unfunded vested benefits, determined under ERISA § 4211 at the time of the Employer's withdrawal and adjusted in accordance with ERISA § 4225, if applicable.

(d) **Special rule for determining the Initial withdrawal liability of certain New Employers.**

- (1) In the event of a Mass Withdrawal occurring on or before the end of the second full Plan year after the date on which a New Employer has qualified for New Employer status by meeting the requirements of Para. 2.2(b)(2) of this Appendix E and satisfying its withdrawal liability related to its past participation in the Plan, such New Employer's initial withdrawal liability (for purposes of any allocations of reallocation liability to be made under subsection (a), (b) and (c) of this section 2.7) shall be equal to the greater of (A) the amount of withdrawal liability that the Employer is deemed to have satisfied in order to qualify as a New Employer, and (B) the New Employer's initial withdrawal liability upon its actual withdrawal from the Plan in connection with such Mass Withdrawal.

- (2) In the event of a Mass Withdrawal occurring after the end of the second full Plan year after the date on which a New Employer has qualified for New Employer status by meeting the requirements of Para. 2.2(b)(2) of this Appendix E and satisfying its withdrawal liability related to its past participation in the Plan, any such New Employer's initial withdrawal liability (for purposes of any allocations of reallocation liability to be made under subsection (a), (b) and (c) of this section 2.7) shall be equal to the amount (if any) of the New Employer's initial withdrawal liability upon its actual withdrawal from the Plan in connection with such Mass Withdrawal.

## **Section 2.8      Trustee Determinations**

The determinations pursuant to Section 2 of this Appendix E and Section 4202 of ERISA shall be based upon authorization by the Board of Trustees, except that any such determination may be initially authorized between board meetings by action of at least one Employer Trustee and at least one Employee Trustee (which action is to be recorded in a written document) provided such action is ratified by the Board of Trustees at its next meeting.

## **Section 3.      SPECIAL RULES WITH RESPECT TO EMPLOYER CONTRIBUTIONS**

For purposes of determining the denominator defined at Sections 2.3(b)(2), 2.4(d)(2), 2.4(e)(3)(ii), and 2.4(f)(2), the amount of Employer Contributions "made" or "contributed" with respect to a Plan Year shall be based upon the amount of Employer Contributions reported on the Form 5500 filed by the Plan for such Plan Year.

## **Section 4.      ACTUARIAL ASSUMPTIONS**

The actuarial assumptions used to determine the unfunded vested benefits of the Plan shall be determined by the Plan actuary based on his/her best estimate and in accordance with ERISA § 4213.

## **Section 5.      PAYMENT OF WITHDRAWAL LIABILITY**

- (a) The amount of payment shall be calculated as follows:
  - (1) Except as provided in (2) and (4) below, and in (c) and (d) below; the Employer shall pay the amount determined under Section 2 of this Appendix E appropriately adjusted for partial withdrawal and de minimis reductions of \$50,000 or less as provided in ERISA Sections 4206 and 4209(a), over the period of years required to amortize the amount in level annual payments determined under (3) below, calculated as if the first payment were made on the first day of the Plan year following the Plan Year in which the withdrawal occurs and as if each subsequent payment were made on the first day of each subsequent Plan Year. Such amortization period shall be determined based on actuarial assumptions used in the most recent actuarial valuation of the Plan.
  - (2) If the amortization period described in (1) above exceeds 20 years, the liability of the Employer shall be limited to the first 20 annual payments determined in (3) below.
  - (3) Except as provided in (5) below, the amount of each annual payment shall be the product of:
    - (A) the average number of weeks of contributions for the three consecutive Plan Years, during the 10 consecutive Plan Years ending

before the date of withdrawal, in which the Employer had an obligation to contribute to the Plan for the greatest number of weeks of contributions; and

- (B) the highest contribution rate at which the Employer had an obligation to contribute to the Plan during the 10 Plan Years ending with the Plan Year in which the withdrawal occurs.
- (4) In the event of a withdrawal of all or substantially all Employers which contribute to the Plan (as described in Section 4219(c)(1)(D) of ERISA) (2) above shall not apply, and total unfunded vested benefits shall be allocated among all such Employers according to regulations established by the Pension Benefit Guaranty Corporation (the "PBGC").
  - (5) As described in Section 4219(c)(1)(E) of ERISA, the amount of annual payment may be adjusted in the event of a partial withdrawal.
- (b) Withdrawal liability shall be payable monthly, according to the schedule determined by the Trustees. Payment of withdrawal liability shall commence no later than 60 days after demand is made therefore by the Trustees.
  - (c) An Employer shall be entitled to prepay his withdrawal liability and accrued interest without penalty.
  - (d) Non-payment by an Employer of any amounts due shall not relieve any other Employer from its obligation to make payment. In addition to any other remedies to which the parties may be entitled, an Employer shall be obligated to pay interest on withdrawal liability owed to the Fund from the date when the payment was due to the date when the payment is made together with all expenses of collection incurred by the Trustees, including but not limited to attorneys' fees and such fees for late payment as the Trustees determine and as permitted by law. The interest payable by an Employer, in accordance with the preceding sentence, shall be computed and charged to the Employer at an annualized interest rate equal to two percent (2%) plus the prime interest rate established by JPMorgan Chase Bank, NA (New York, New York) for the fifteenth (15th) day of the month for which the interest is charged. Any judgment against an Employer for withdrawal liability payments owed to this Fund, shall include the greater of (a) a doubling of interest computed and charged in accordance with this section or (b) single interest computed and charged in accordance with this section plus liquidated damages in the amount of 20% of the unpaid withdrawal liability payments. The interest rate after entry of a judgment against an Employer for withdrawal liability shall be due from the date the judgment is entered until the date of payment, shall be computed and charged to the Employer on the entire judgment balance at an annualized interest rate equal to two percent (2%) plus the prime interest rate established by JPMorgan Chase Bank, NA (New York, New York) for the fifteenth (15th) day of the month for which the interest is charged and shall be compounded annually.
  - (e) In the event of a default, the outstanding amount of the withdrawal liability shall immediately become due and payable. A default occurs if:
    - (1) the Employer fails to make, when due, any payments of withdrawal liability, if such failure is not cured within 60 days after such Employer receives written notification from the Fund of such failure; or

- (2) the Trustees, in their discretion, deem the Fund insecure as a result of any of the following events with respect to the Employer:
- (A) the Employer's insolvency, or any assignment by the Employer for the benefit of creditors, or the Employer's calling of a meeting of creditors for the purpose of offering a composition or extension to such creditors, or the Employer's appointment of a committee of creditors or liquidating agent, or the Employer's offer of a composition or extension to creditors,
  - (B) the Employer's failure or inability to pay its debts as they become due;
  - (C) the commencement of any proceedings by or against the Employer (with or without the Employer's consent) pursuant to any bankruptcy or insolvency laws or any laws relating to the relief of debtors, or the readjustment, composition or extension of indebtedness, or to the liquidation, receivership, dissolution or reorganization of debtors;
  - (D) the withdrawal, revocation or suspension, by any governmental or judicial entity or by any national securities exchange or association, of any charter, license, authorization, or registration required by the Employer in the conduct of its business;
  - (E) the cessation of all or substantially all of an Employer's operations, or the liquidation of all or substantially all of an Employer's assets;
  - (F) the existence of a delinquency in any amount owed to the Pension Fund including, without limitation, the payment of contributions or prior withdrawal liability; or
  - (G) any other event or circumstance which in the judgment of the Trustees materially impairs the Employer's credit worthiness or the Employer's ability to pay its withdrawal liability when due.

## **Section 6. RESOLUTION OF DISPUTES**

Any dispute concerning whether a complete or partial withdrawal has occurred, concerning the amount and/or payment of any withdrawal liability or any other matter pertaining to ERISA Sections 4201 through 4219 and ERISA Section 4225 will be resolved in the following manner:

- (a) **REVIEW BY THE FUND:** If, within ninety (90) days after an Employer receives a notice and demand for payment of withdrawal liability from the Fund, such Employer in writing to the Fund (i) requests a review of any specific matter relating to the determination of such liability and the schedule of payments, (ii) identifies any inaccuracy in the determination of the amount of the unfunded vested benefits allocable to the Employer, or (iii) furnishes any additional relevant information to the Fund, a review may be conducted by the Withdrawal Liability Review Committee. The Withdrawal Liability Review Committee consists of members of Staff of the Fund selected by the Executive Director of the Fund. The Withdrawal Liability Review Committee is responsible for the review of any matter pertaining to withdrawal liability which is timely made and the recommendation for decisions on such matters to the Trustees. This Committee acts by a majority of its members present and voting in making recommendations regarding the action which the Trustees may follow in determining questions of withdrawal liability. The decision of the Trustees may be communicated in writing

to the Employer including the basis for the decision and the reason(s) for any change in the determination of an Employer's liability or schedule for liability payments.

- (b) **ARBITRATION:** Within 60 days following the earlier of receipt of a written decision from the Trustees in accordance with subparagraph (a) above, or 120 days after an Employer has made a timely written request for a review of such withdrawal liability matters specified above, either the Employer or the Fund may initiate an arbitration proceeding as provided herein.
- (1) **Manner of Initiation:** Arbitration is initiated by written notice to the Chicago Regional Office of the American Arbitration Association ("AAA") with copies to the Fund (or if initiated by the Fund to the Employer) and the bargaining representative (if any) of the affected employees of the Employer. Such arbitration will be conducted, except as otherwise provided in these rules, in accordance with the "Multiemployer Pension Plan Arbitration Rules" (the "AAA Rules") administered by the AAA. The initial filing fee is to be paid by the party initiating the arbitration proceeding. Arbitration is timely initiated if received by the AAA along with the initial filing fee within the time period prescribed by ERISA Section 4221(a)(1).
- (2) **Venue:** All arbitrations under this Section shall be conducted in Chicago, Illinois. Any actions pursuant to ERISA §4221(b)(2), 29 U.S.C. §1401(b)(2), to enforce, vacate or modify any awards entered in such arbitrations shall be filed in the United States District Court for the Northern District of Illinois, Eastern Division.
- (3) **Preliminary Statements:** The Employer shall file with the AAA and serve upon the Fund at least 21 days prior to the hearing a Preliminary Statement. The Plan shall file with the AAA and serve upon the Employer a responsive Preliminary Statement at least seven days prior to the hearing. Each preliminary statement shall contain: (1) a statement of the factual and legal contentions of the party with respect to each of the issues before the arbitrator; (2) a list identifying the name, address, and occupation of each witness to be called by the party at the hearing and a specific description of the matters upon which the witness will testify; (3) a list describing each exhibit which the party will offer in evidence; and (4) a statement of the relief sought by the party.
- (c) **LITIGATION:** Section 43(c) of the AAA Rules shall not apply. Within 30 days after the issuance of a final award by an arbitrator in accordance with these procedures, any party to such arbitration proceeding may bring an action in an appropriate United States district court to enforce, modify, or vacate the arbitration award, in accordance with ERISA Sections 4221 and 4301.

## **Section 7 CONSTRUCTION INDUSTRY EXEMPTION**

ERISA section 4203(b) shall apply to those Employers described in ERISA section 4203(b)(1).

## **Section 8 FIVE-YEAR FREE LOOK RULE**

- (a) Pursuant to ERISA Section 4210, 29 U.S.C. §1390, an employer who withdraws from the Plan in a complete or partial withdrawal is not liable to the Plan if the Employer:

- (1) first had an obligation to contribute to the Plan after September 26, 1980;
  - (2) had an obligation to contribute to the Plan for no more than 5 consecutive plan years preceding the date of its withdrawal;
  - (3) was required to make contributions to the Plan for each such plan year in an amount equal to less than 2 percent of the sum of all employer contributions made to the Plan for each such year as reported on the Form 5500 filed by the Plan for each such year; and
  - (4) has never avoided withdrawal liability because of the application of this Section 8 of Appendix E.
- (b) Paragraph (a) of this section shall apply to an Employer with respect to the plan only if -
- (1) the plan is not a plan which primarily covers employees in the building and construction industry;
  - (2) the plan makes this exception applicable (as it has in paragraph (a) of this section);
  - (3) the plan provides (as it does in Appendix G, section (a)(5)) that the reduction under §411(a)(3)(E) of the Internal Revenue Code of 1954 applies with respect to the employees of the Employer; and
  - (4) the ratio of the assets of the plan for the plan year preceding the first plan year for which the Employer was required to contribute to the plan to the benefit payments made during that plan year was at least 8 to 1.

**Section 9. ADJUSTMENT OF LIABILITY FOR WITHDRAWAL SUBSEQUENT TO PARTIAL WITHDRAWAL**

The amount of credit an Employer receives for payment of a prior year's partial withdrawal liability is determined in accordance with applicable regulations (29 CFR §4206). Pursuant to 29 CFR §4206, the amortization period defined at 29 CFR §4206.9 shall be ten years. A New Employer shall not be entitled to credit for any prior withdrawal liability incurred as an Old Employer.

**Section 10. NO REDUCTION OR WAIVER OF LIABILITY FOR NEW EMPLOYER**

An Employer shall not be entitled to a reduction or waiver of withdrawal liability under ERISA sections 4207 or 4208 based upon the payment of withdrawal liability as an Old Employer for its resumption or continuation of participation in the Pension Fund as a New Employer.