

**INTERCITY TRANSIT  
RESOLUTION NO. 02-2024  
AMENDING THE  
INTERCITY TRANSIT EMPLOYEES' RETIREMENT PLAN AND TRUST**

WHEREAS, Management has recommended to the Transit Authority of Intercity Transit (the "Board") that the Intercity Transit Employees' Retirement Plan and Trust (the "Plan") be amended (1) to provide that a Roth 401(k) Contribution feature be added to the Plan as of a date determined by Management that follows the establishment of such a feature by the Plan Administrator and communication to Plan Participants, including adding an in-Plan Roth conversion feature, and (2) to add procedures to the Plan regarding the treatment of missing participants;

WHEREAS, the Board has determined that this recommendation should be approved and implemented;

NOW, THEREFORE, BE IT RESOLVED, that the amendment to the Plan, attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby adopted as of the date stated therein.

BE IT FURTHER RESOLVED, that any authorized officer is hereby authorized to execute such amendment on behalf of the Employer.

**ADOPTED: This 19th day of June 2024.**

**INTERCITY TRANSIT AUTHORITY**

*Clark Gilman*

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**Clark Gilman, Chair**

**ATTEST:**

*Patricia Messmer*

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**Pat Messmer**  
**Executive Assistant/Clerk of the Board**

**APPROVED AS TO FORM**

**Jeff Myers**

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**Jeffrey S. Myers**  
**Legal Counsel**

**EXHIBIT A**  
**AMENDMENT TO THE**  
**INTERCITY TRANSIT**  
**EMPLOYEES' RETIREMENT PLAN AND TRUST**

Intercity Transit (the “Employer”), pursuant to Article XVII, Section 17.1, of the Intercity Transit Employees’ Retirement Plan and Trust (the “Plan”), does hereby amend the Plan in the following respects, to add a Roth 401(k) Contribution feature and an in-Plan Roth conversion feature to the Plan, to add procedures to the Plan regarding the treatment of missing participants, and to make other related changes, effective July 1, 2024:

1. Article II, Section 2.17, is hereby amended to in its entirety to read as follows:

**2.17 Participant Elected Contribution.**

Participant Elected Contribution means the contribution made by the Employer from salary or wage deferrals elected by the Participant in accordance with this Plan. Participant Elected Contributions may be made either on a pre-tax basis as Tax-Deferred Contributions (as defined in Article 4.1(A)(1)) or on an after-tax basis as Roth 401(k) Contributions (as defined in Article 4.1(A)(2)).

2. Article IV, Section 4.1, is hereby amended in its entirety to read as follows:

**4.1 Plan Contributions.**

**A. Participant Elected Contribution Definitions.** The types of Participant Elected Contributions permitted under this Plan are defined as follows:

**1. Tax-Deferred Contributions.**

The term “Tax-Deferred Contributions” means the portion of a Participant’s Participant Elected Contribution (as defined in Section 2.17) that is withheld from the Participant’s pay before federal income taxes have been computed, in accordance with the Participant’s election. A Participant’s Tax-Deferred Contributions and withdrawals thereof will be separately accounted for, as will gains and losses attributable to those Tax-Deferred Contributions and shall be held in that Participant’s Tax-Deferred

Contributions Account. Forfeitures may not be allocated to such account. No contributions other than Tax-Deferred Contributions and properly attributable earnings thereon will be credited to each Participant's Tax-Deferred Contributions Account.

**2. Roth 401(k) Contributions**

The term "Roth 401(k) Contributions" means the portion of a Participant's Participant Elected Contribution (as defined in Section 2.17) that is withheld from the Participant's pay on an after-tax basis, are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth 401(k) Contributions by the Participant in his or her deferral election. A Participant's Roth 401(k) Contributions and withdrawals thereof will be separately accounted for, as will gains and losses attributable to those Roth 401(k) Contributions and shall be held in that Participant's Roth 401(k) Contributions Account. Forfeitures may not be allocated to such account. No contributions other than Roth 401(k) Contributions and properly attributable earnings thereon will be credited to each Participant's Roth 401(k) Contributions Account. Notwithstanding any provision of this Plan to the contrary, Roth 401(k) Contributions shall be available under the Plan only after the establishment by the Committee and communication to Participants

**B. Participant Elected Contribution Amount and Procedures.**

**1. Election to Defer Compensation.**

A Participant may elect to defer a portion of his or her Compensation as Participant Elected Contributions on a pre-tax basis as Tax-Deferred Contributions, on an after-tax basis as Roth 401(k) Contributions, or a combination of both by signing a Salary Deferral Agreement or through such other means as designated by the Committee, which shall provide for contribution of the minimum required amount as follows:

- (a) Participants Not Contributing to Medicare.** The minimum required Participant Elected Contributions for a Participant who is not contributing for hospital insurance under the Social Security Act as determined under Section 3121(u) of the Internal Revenue Code shall be equal to the

sum of the percentage required for old age survivors and disability insurance under Section 3101(a) of the Code and the percentage required for hospital insurance under Section 3101(b) of the Code without regard to the social security wage base. Notwithstanding the foregoing, effective January 1, 2011, the percentage required for old age survivors and disability insurance under Section 3101(a) of the Code shall not be less than 6.2%.

- (b) Participants Contributing to Medicare.** The minimum required Participant Elected Contributions for a Participant who is contributing for hospital insurance under the Social Security Act as determined under Section 3121(u) of the Internal Revenue Code shall equal the percentage required for old age survivors and disability insurance under Section 3101(a) of the Code without regard to the social security wage base. Notwithstanding the foregoing, effective January 1, 2011, the percentage required for old age survivors and disability insurance under Section 3101(a) of the Code shall not be less than 6.2%.

**2. Additional Contributions.**

A Participant may elect to contribute an additional amount of Participant Elected Contributions up to the maximum amount permitted by law. No Participant shall be permitted to have Participant Elected Contributions made under this Plan, or any other qualified plan maintained by the Employer during any taxable year, in excess of the dollar limitation contained in Section 402(g) of the Code in effect for such taxable year (e.g., \$23,000 for 2024 and as adjusted by the Secretary of the Treasury and applicable law in future years), except to the extent permitted under Article 4.1(B)(4) and under Section 414(v) of the Code, if applicable.

A Participant may increase, decrease or suspend his or her contributions by notification to the Committee pursuant to such procedures as the Committee shall adopt and communicate to Participants from time to time.

**3. Excess Deferrals.**

A Participant who makes contributions to more than one eligible retirement plan in a calendar year in excess of this dollar limit must submit to the Committee by March 1 of the year following the year of the excess deferrals a written statement including the amount of the excess deferrals to be allocated to this Plan. Any excess deferrals allocated to this Plan shall be distributed, together with income attributable thereto, by April 15 of the year following the year of the excess deferrals.

Gap period income shall not be distributed. Income or loss allocable to excess deferrals distributed in a taxable year, shall be computed through the end of the Plan Year to which the excess deferral related, using any reasonable allocation method(s); provided, however, that the process for calculating the income or loss must be used consistently for all Participants and for all corrective distributions for the Plan Year.

Notwithstanding the foregoing, a Participant may elect the order in which Tax-Deferred Contributions and Roth 401(k) Contributions are to be distributed in the event the Participant makes excess deferrals for a Plan Year. If the Participant makes no such election, then the Participant's Tax-Deferred Contributions shall be distributed first.

**4. Catch-up Contributions.**

All employees who are eligible to make Participant Elected Contributions under this Plan and who have attained age 50 before the close of the taxable year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Section 414(v) of the Code (i.e., \$7,500 for 2024). Such catch-up contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Sections 402(g) and 415 of the Code. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Section 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416 of the Code, as applicable, by reason of the making of such catch-up contributions.

**5. Payment to Trustee.**

The Employer shall transmit the Participant Elected Contributions to the Trustee as soon as administratively

possible and, in any event, not later than the date required by applicable law.

**6. Limitation on Deferral of Compensation.**

A Participant Elected Contribution shall be taken into account for a Plan Year only if the Participant Elected Contributions of the Participant under the Plan is allocated as of a date within that Plan Year. A Participant Elected Contributions is considered allocated as of a date within the Plan Year only if:

- (i) The allocation is not contingent upon the Participant's participation in the Plan or performance of Services on any date subsequent to that date, and
- (ii) The Participant Elected Contributions are actually paid to the Trust no later than the end of the twelve-month period immediately following the Plan Year to which the contribution relates.

Participant Elected Contributions shall be taken into account only if it relates to Compensation that either:

- (i) Would have been received by the Participant in the Plan Year but for the Participant's election to defer; or
- (ii) Is attributable to services performed by the Participant in the Plan Year and, but for the Participant's election to defer, would have been received by the Participant within two and one-half months after the close of the Plan Year.

**C. Special Rules Applicable to Roth 401(k) Contributions.**

Upon the establishment by the Committee and communication to Participants, a Participant may designate all or a portion of his or her Participant Elected Contributions to this Plan as Roth 401(k) Contributions.

**1. Catch-up Contributions.**

A Participant who is eligible to make catch-up contributions pursuant to Article 4.1(B)(4) of this Plan may

designate all or a portion of his or her catch-up contributions as Roth 401(k) Contributions.

2. **Ordering Rules for Total Distributions.** In the case of a Participant who receives a total distribution from this Plan, the Roth 401(k) Contributions will be distributed last.
3. **Employer Matching Contributions.** Roth 401(k) Contributions will be eligible for Employer Matching Contributions in the same manner as Tax-Deferred Contributions are eligible for such Employer Matching Contributions, pursuant to Article 4.1(E) of this Plan, provided that the limit on the amount of such Employer Matching Contributions shall be applied to the Participant's combined Tax-Deferred Contributions and Roth 401(k) Contributions.
4. **Other Distribution Provisions.** Earnings distributed from a Participant's Roth 401(k) Contributions Account are not taxed if the distribution is made at least five taxable years after the first Roth 401(k) Contributions are made by the Participant, and if the distributions occur after the Participant's attainment of age 59½, death, or disability.
5. **Loans.** For purposes of loans to Participants as set forth in Article XXI of this Plan, a Participant may elect to take a loan from any portion of their Roth 401(k) Contributions Account.
6. **In-Service Withdrawals.** For purposes of any in-service withdrawals permitted under this Plan pursuant to Article 4.3, a Participant may not elect to take any portion of the in-service withdrawal from his or her Roth 401(k) Contributions Account.
7. **Direct Rollover Provisions.** A Participant who is entitled to receive a Plan distribution (other than a hardship withdrawal) may elect a direct rollover of his or her Roth 401(k) Contributions Account to a Roth 401(k) Contribution Rollover Account in another employer's Eligible Retirement Plan or to a Roth IRA in accordance with the applicable provisions of Article XX of this Plan, applying the limits for minimum rollover amounts separately to the Roth 401(k) Contributions Account. The Committee shall establish terms and conditions upon which this Plan will accept direct rollovers from a Participant's Roth 401(k) Contributions Account in another employer's

Eligible Retirement Plan to the extent permitted under Code Section 402(c). The five-year period referenced in Paragraph 4 above shall commence to run as of the first taxable year for which the Participant made the Roth 401(k) contribution to such previously established account of the other plan. A separate Roth 401(k) Contribution Rollover Account shall be established in this Plan on behalf of the Participant for such a Roth 401(k) Contributions Account rollover.

- 8. Operational Compliance.** The Committee will administer Roth 401(k) Contributions in accordance with applicable regulations or other binding authority not reflected in this Article 4.1. Any applicable regulations or other binding authority shall supersede any contrary provisions of this Section 4.1.
- 9. Changes to Deferral Elections.** A Participant may change his or her Roth 401(k) Contribution deferral election in accordance with the same procedures and timeframes as set forth in Article 4.1(B)(2), as amended.

**D. In-Plan Roth Conversions.**

Upon the establishment by the Committee and communication to Participants, this Plan permits a Participant to make an election to convert all or a portion of his or her vested and nonforfeitable Plan Accounts (other than amounts held in a Roth 401(k) Contribution Account) to Roth 401(k) Contributions to be held in an In-Plan Roth Conversion Account on behalf of the Participant, in accordance with Code Section 402A(c)(4)(E) and the Treasury Regulations promulgated thereunder. Such conversion shall be known as an In-Plan Roth Conversion and shall be permitted whether or not the Participant is eligible to take a distribution from the Plan as of the date of the transfer. Such conversion shall be treated as a taxable distribution which was rolled over into this Plan as an In-Plan Roth Conversion.

In-Plan Roth Conversions shall remain subject to the respective distribution restrictions that were applicable prior to the In-Plan Roth Conversion. To the extent necessary, the Plan shall establish subaccounts for conversions of different types of contributions within the In-Plan Roth Conversion Account to account for any different distribution restrictions.



The Committee will maintain such records as are necessary for the proper reporting of In-Plan Roth Conversions and will administer the In-Plan Roth Conversion Accounts in accordance with the Code, IRS guidance and Plan provisions.

The Committee shall have the authority to determine whether In-Plan Roth Conversions may include a Plan loan, provided that, if permitted and if a Participant elects an In-Plan Roth Conversion that includes a Plan loan, (1) there will be no change in the loan's repayment schedule, (2) the loan will not be treated as a new loan, and (3) the loan will be subject to the Plan's loan rules and the Plan's loan policy.

For purposes of determining eligibility for In-Plan Roth Conversions, the Plan will treat a Participant's surviving Spouse or alternate payee Spouse or former Spouse as a Participant. A non-spouse beneficiary may not make In-Plan Roth Conversions.

**E. Employer Matching Contributions.**

The Employer shall contribute on behalf of each Participant each pay period an amount equal to that Participant's Participant Elected Contributions described in Article 4.1(B)(1) of the Plan. No matching contribution will be made for a Participant's additional contributions described in Article 4.1(B)(2).

3. A new Article 9.13 is hereby added to the Plan to read as follows:

**9.13 Missing Participants.**

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Committee to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable may, in the sole discretion of the Committee, either be forfeited or be paid directly to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b). In addition, if the value of a Participant's Vested benefit derived from Employer and Employee contributions does not exceed \$1,000, then the amount distributable may, in the sole discretion of the Committee, either be treated as a forfeiture, or be paid directly to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the benefit being forfeited, such benefit shall be restored

unadjusted for earnings or losses. However, regardless of the preceding, a benefit which is lost by reason of escheat under applicable state law is not treated as a forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

The Committee shall endeavor to ascertain the whereabouts of such Participant or Beneficiary by all of the following means as needed: (1) provide a distribution notice to the lost Participant at the Participant's last known address by certified or registered mail; (2) check with other employee benefit plans of the Employer that may have more up-to-date information regarding the Participant's whereabouts; (3) identify and contact the Participant's designated Beneficiary; (4) use free Internet search tools; and (5) use a commercial locator service, credit reporting agencies, other Internet tools or other search method. Regarding search methods (2) and (3) above, if the Plan encounters privacy concerns, the Plan may request that the Employer or other plan fiduciary (under (2)), or the designated Beneficiary (under (3)), contact the Participant or forward a letter requesting that the Participant contact the Plan. The purpose of this Section is to reflect Department of Labor (DOL) Guidance regarding locating missing or unresponsive Participants as of the date the Plan was written, which have changed over time. The Committee should use the search methods which applied and were available at the time of the search.

If the Plan terminates, the accounts of missing participants will be distributed in accordance with Article XVII or handled as permitted by DOL and Pension Benefit Guaranty Corporation (PBGC) Guidance regarding missing or unresponsive Participants as of the date of termination.

4. The last sentence of Article 20.3, as amended, is hereby amended to read as follows:

Notwithstanding any provision of this Plan to the contrary, this Plan will accept rollovers of Roth 401(k) Contributions, following the establishment of terms and conditions for such rollovers by the Committee.

IN WITNESS WHEREOF, the Employer has caused this amendment to be executed as of this 19th day of June 2024.

INTERCITY TRANSIT

By Clark Gilman  
Its Board Chair