

**ALAMEDA-CONTRA COSTA TRANSIT DISTRICT  
RESOLUTION NO. 13-006**

**A RESOLUTION APPROVING AMENDMENT 13-A-16 TO THE ALAMEDA-CONTRA COSTA  
TRANSIT DISTRICT EMPLOYEES' RETIREMENT PLAN TO COMPLY WITH THE PUBLIC  
EMPLOYEES' PENSION REFORM ACT OF 2013 ALSO KNOWN AS ASSEMBLY BILL NO. 340**

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**WHEREAS**, the Alameda-Contra Costa Transit District Board of Directors (the District) is authorized by the California Public Utilities Code to establish a retirement system; and

**WHEREAS**, the District has created a retirement system known as the AC Transit Employees' Retirement Plan (the Plan), which Plan may be amended from time to time; and

**WHEREAS**, the California Legislature sent the Public Employees' Pension Reform Act of 2013 (AB 340 or PEPR) to Governor Brown on or about August 31, 2012, which he signed on or about September 12, 2012 with an effective date of January 1, 2013; and

**WHEREAS**, the District has been advised by legal counsel that it is necessary to amend the District's Plan to comply with AB 340; and

**WHEREAS**, a proposed amendment of the District's Plan (the Plan Amendment) to comply with AB 340 has been prepared by legal counsel as set forth in Attachment A; and

**WHEREAS**, in accordance with California Government Code Section 7507, the District's actuarial consultant prepared a report, dated December 11, 2012 and a revised report dated January 2, 2013 (the Reports) to estimate the effect on the District's current and future unfunded actuarial accrued liabilities and Annual Required Contributions resulting from PEPR and by extension the Plan Amendment; and

**WHEREAS**, the initial Report was placed on the District's website for public review and comment on December 13, 2012 and was available until January 2, 2013. The revised Report was posted to the District's website on January 12, 2013 and was available for public review and comment from that date to the present; and

**WHEREAS**, no public comments on the Report have been received; and

**WHEREAS**, in accordance with Board Policy No. 170, the Plan Amendment has been provided to Retirement Board staff, the affected unions (ATU, Local 192, AFSCME, Local 3916 and IBEW, Local 1245) and the Retirement Board for review and comment; and

**WHEREAS**, in early December 2012, the District offered to engage in good faith negotiations with the aforementioned unions concerning the proposed Plan Amendment; and

**WHEREAS**, the District on December 21, 2012, received a letter from ATU, Local 192's counsel contending that PEPRA removes mandatory and/or traditional subjects of collective bargaining from consideration by the District and ATU under the provisions of section 13(c) of the Federal Transit Act (49 U.S.C. sec. 5333(b)(2)(B)), case law and the doctrine of federal preemption; and

**WHEREAS**, by letter of January 7, 2013, to ATU's counsel, the District reaffirmed its readiness to bargain in good faith with ATU regarding the Plan Amendment and identified with specificity issues under PEPRA that require discussion and good faith negotiations; and

**WHEREAS**, in early January 2013, the Board was advised that authorized representatives of AFSCME Local 3916 and IBEW Local 1245 informed the District that said labor unions were in agreement with the Plan Amendment; and

**WHEREAS**, the Retirement Board on January 14 and on February 14, 2013 authorized its staff to provide comments on the proposed Plan Amendment; and

**WHEREAS**, Retirement Board staff provided comments on the proposed Plan Amendment to the District's legal counsel and District staff on January 16, 2013, and additional comments on February 14, 2013; said comments were provided to and duly considered by the District's Board of Directors prior to the consideration and adoption of the Plan Amendment;

**NOW, THEREFORE**, after giving due consideration to the information provided to it, as outlined in the aforementioned Whereas clauses, the Alameda-Contra Costa Transit District Board of Directors does resolve as follows:

**SECTION 1.** Amends the AC Transit Employees' Retirement Plan as set forth in Attachment A hereto, which is incorporated by this reference as though set forth fully in the body of this resolution.

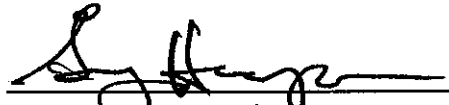
**SECTION 2.** Directs staff to begin implementation of the Plan Amendment.

**SECTION 3.** Directs District staff to engage in good faith negotiations with ATU Local 192 regarding the provisions of PEPRA as required by the Federal Public Transportation Act, codified at 49 U.S.C. Section 5333(b)(commonly referred to as "Section 13(c)" of the Urban Mass Transportation Act of 1964).

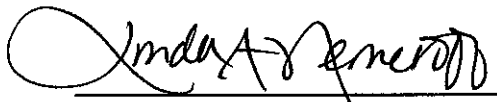
**SECTION 4.** Further directs staff to continue to monitor any legislation amending PEPRA, and decisions of the United States Department of Labor interpreting the application of Section 13(c) to PEPRA and, as the result of such monitoring, bring to the Board's attention the need to take any action to modify the Plan Amendment as adopted.

**SECTION 5.** This resolution shall become effective immediately upon its passage by four affirmative votes of the Board of Directors.

**PASSED AND ADOPTED** this 27<sup>th</sup> day of February, 2013.

  
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Greg Harper, President

Attest:

  
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Linda A. Nemeroff, District Secretary

I, Linda A. Nemeroff, District Secretary for the Alameda-Contra Costa Transit District, do hereby certify that the foregoing Resolution was passed and adopted at a regular meeting of the Board of Directors held on the 27th day of February, 2013, by the following roll call vote:

AYES: VICE PRESIDENT WALLACE, PRESIDENT HARPER, DIRECTORS ORTIZ, PEEPLES, DAVIS

NOES: DIRECTORS WILLIAMS, YOUNG

ABSENT: NONE

ABSTAIN: NONE

  
\_\_\_\_\_  
Linda A. Nemeroff, District Secretary

Approved as to Form and Content:

  
\_\_\_\_\_  
Kenneth C. Scheidig, Interim General Counsel

**AMENDMENT 13-A-16**

**AC TRANSIT EMPLOYEES' RETIREMENT PLAN**

The AC Transit Employees' Retirement Plan (the "Plan") hereby is amended by adding a new Article XIII as set forth below. Capitalized terms not defined in this amendment have the same definitions as in the Plan.

**ARTICLE XIII**

**PUBLIC EMPLOYEES' PENSION REFORM ACT**

**13.1 Construction.**

(a) Effective Date. The provisions of this Article XIII are effective as of the dates set forth below.

(b) Application and Interpretation. As of the applicable effective date, this Article XIII takes precedence over any conflicting provision of the Plan; all other Plan provisions remain in full force and effect. Article XIII will be interpreted and administered in accordance with the applicable requirements of the California Public Employees' Pension Reform Act of 2013, which are codified in Article 4, Chapter 21 of Division 7 of Title 1 of the California Government Code, as amended from time to time ("PEPRA").

(c) Authority to Amend. The District reserves the right to retroactively or prospectively amend this Article XIII as appropriate to (1) incorporate provisions reflecting the District's 2012 collective bargaining agreements (CBA) with the bargaining units represented by IBEW and AFSCME, subject to any collective-bargaining obligations, (2) incorporate the terms of the 2012 resolution of the District's Board of Directors ("District Board") concerning Participants who are Non-Represented Employees, and (3) reflect any amendments to or authoritative guidance under PEPRA affecting the Plan.

**13.2 Provisions Applicable to All Participants.** This Section 13.2 is effective January 1, 2013, for every Participant, regardless of when his or her participation in the Plan begins.

(a) No Retroactive Benefit Enhancements. Any enhancement to a Participant's Benefit that is adopted on or after January 1, 2013, or that results from a change to the Participant's classification or employment on or after that date, will apply only to Service performed on or after the operative date (as defined in section 7522.44 of the California Government Code) of the enhancement, and will not be applied to any Service performed prior to the operative date of the enhancement.

(b) Purchases of Nonqualified Service Credit Prohibited. The purchase of nonqualified service credit, as defined by section 415(n)(3)(C) of the Internal Revenue Code, is not permitted.

(c) Reinstatement of Retired Participants. Except as provided under Section 13.2(d), if a retired Participant who is receiving a Benefit serves the District, or is employed by, or employed through a contract directly by the District, he or she will be reinstated. If a Participant is reinstated, payment of the Participant's Benefit will cease; and, the Participant will resume participation in the Plan, but only if he or she is eligible to participate under Section 2.1. This Section 13.2(c) applies only to retired Participants who return to employment or service on or after January 1, 2013.

(d) Exception to Reinstatement. A retired Participant will not be reinstated under Section 13.2(c) if all of the following conditions are satisfied:

(1) The District Board appoints the Participant either during an emergency to prevent stoppage of public business or because he or she has skills needed to perform work of a limited duration.

(2) The appointment does not exceed a total of 960 hours in a Plan Year.

(3) The monthly rate of pay for the appointment is neither less than the minimum nor more than the maximum paid by the District to other Employees performing comparable duties, divided by 173.333 to equal an hourly rate.

(4) The Participant does not earn any benefit under the Plan during the appointment.

(5) Upon accepting the appointment, the Participant certifies in writing that he or she did not, during the 12 months preceding the appointment, receive any unemployment-insurance compensation arising out of the Participant's prior employment with the District. If the Participant accepts the appointment after receiving that type of compensation, the District must terminate the Participant's employment or service on the last day of the current pay period; and, this Section 13.2(d) will not apply to the Participant for 12 months after the termination date.

(6) The appointment may not begin during the 180-day period after the Participant's retirement under the Plan, unless (A) the District certifies the nature of the employment or service and that the appointment is necessary to fill a critically needed position before 180 days has passed, (B) the District Board approves the appointment at a public meeting (the appointment may not be placed on a consent calendar), and (C) the Participant did not receive a retirement incentive at retirement.

(e) Felony Convictions.

(1) If a current or former Participant is convicted on or after January 1, 2013, of a felony, whether in state or federal court, then effective on the conviction date: the Participant will forfeit all rights and benefits accrued under the Plan from the

date the Participant first committed the felony, and the Participant will not accrue further benefits under the Plan.

(2) Unless otherwise ordered by a court or determined by the Retirement Board, any contributions made to the Plan by the Participant on or after the date he or she first committed the Felony will be returned, without interest, to the Participant upon the earliest of the Participant's death, separation from District employment, or Retirement.

(3) "Felony" for purposes of this Section 13.2(e) means any felony under state or federal law for conduct arising out of the Participant's official duties as a public employee, in pursuit of his or her appointment or election as a public employee, or in connection with obtaining salary, disability retirement, service retirement or other benefits associated with his or her public employment.

(4) This Section 13.2(e) will be interpreted and administered in accordance with the requirements of sections 7522.72 and 7522.74 of the California Government Code, including, but not limited to, any applicable rules governing notice and reversal of conviction, which requirements are herein incorporated by this reference.

13.3 Provisions Applicable to New Participants. Except as otherwise specified below, this Section 13.3 is effective for only the following Participants on these dates : January 1, 2013, for each Represented Employee who first becomes a Participant on or after January 1, 2013; and, July 1, 2012, for each Non-Represented Employee who first becomes a Participant on or after July 1, 2012.

(a) Definition of Compensation. For purposes of determining the Participant's Benefit, "Compensation" means the normal monthly rate of pay or base pay of the Participant paid by the District in cash to similarly situated Employees of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. Deferred amounts will be included in Compensation when earned rather than when paid. **The following amounts are excluded from Compensation:**

(1) Any amount that the Board determines has been paid to increase the Participant's Benefit.

(2) Any amount that is (A) paid in kind to the Participant, or was paid directly to a third-party (other than the Plan) for the Participant's benefit, and (B) subsequently converted to and received by the Participant in cash.

(3) Any one-time or ad hoc payments to the Participant.

(4) Severance or any other payment that is granted or awarded to the Participant in connection with, or in anticipation of, a separation from employment, but is received by the Participant while employed.

(5) Any payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated.

(6) Any payments for additional services rendered outside of normal working hours.

(7) Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms.

(8) Compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code.

(9) District contributions to deferred compensation or defined contribution plans.

(10) Any bonus paid in addition to the amounts described in Section 13.3(a).

(11) Any other form of compensation that the Board determines is inconsistent with the requirements of Section 13.3(a).

(12) Any other form of compensation that the Board determines should not be included in Compensation.

(13) For each calendar year, any amount in excess of \$113,700, the contribution and benefit base specified in section 430(b) of Title 42 of the United States Code on January 1, 2013. The Board will adjust the annual Compensation limit described in the preceding sentence after each annual actuarial valuation of the Plan based on changes to the Consumer Price Index for All Urban Consumers. The adjustment will be effective on the January 1 following each such annual valuation.

(b) Definition of Monthly Average Earnings. For purposes of determining the Participant's Benefit, "Monthly Average Earnings" means the highest average annual Compensation earned by the Participant during a period of at least 60 consecutive months (36 consecutive months, in the case of an Eligible Age Employee) immediately preceding his or her Retirement, or during any other period of at least 60 consecutive months (36 consecutive months, in the case of an Eligible Age Employee) during the Participant's applicable service that the Participant designates on the application for retirement.

(c) Participant Contributions.

(1) For a Participant who is a Non-Represented Employee, this Section 13.3(c) is effective January 1, 2013. For a Participant who is a Represented Employee, this Section 13.3(c) is effective on the later of (i) January 1, 2013, or (ii) the date on which the CBA between the District and the Participant's Union, as in effect on January 1, 2013, expires or, if earlier, the renewal, amendment, or other extension of that CBA.

(2) Each Participant must contribute part of his or her Compensation to the Plan. The initial contribution rate will equal 50% of the normal cost rate, rounded to the nearest quarter of 1%. The District may not pay any portion of this contribution for any Participant. The Participant contribution rate will be expressed as a percentage of Compensation.

(3) Once established, the Participant contribution rate will be adjusted to reflect a change in the normal cost rate, but only if the normal cost rate increases by more than 1% of payroll above or below the normal cost rate in effect on the later of: (i) the date the Participant contribution rate is first established, or (ii) the date of the last adjustment to the Participant contribution rate under this paragraph.

(4) The Participant contribution rate may be more than 50% of the normal cost rate, but only if the requirements of section 7522.30(e) of the Government Code are satisfied.

(5) For purposes of this Section 13.3(c), "normal cost rate" means the total annual actuarially determined normal cost under the entire Plan of Benefits for Participants covered by the Service Retirement Benefit formula under Section 13.3(d), as determined by the Plan's actuary in accordance with the Board's funding policy.

(6) All Participant contributions will be collected by deducting the amounts thereof from the Compensation due to the Participant from the District. Participant contributions will not be deducted from any amount due to a Participant for any calendar year in excess of the limit described in Section 13.3(a)(13).

(7) An individual account will be established for each Participant in order to record the Participant's contributions to the Plan. The account balance will be credited with interest based on the monthly average yield on 13-week (fixed maturity) Treasury bills. If a Participant's District employment terminates before the Participant is Vested, the Participant's entire account balance will be distributed in lump sum as a refund to the Participant as soon as administratively practicable. A Deferred Vested Participant may at any time elect to receive distribution of his or her entire account balance in lump sum, upon which the Deferred Vested Participant's participation in the Plan will cease and he or she will no longer be entitled to any Benefit. Upon Retirement, a Participant will not be entitled to a refund of any part of the Participant's account. This Section 13.3(c)(7) will be subject to negotiations or further District Board action (as appropriate) addressing various topics, including but not limited to the terms and conditions applicable to a Participant who resumes participation in the Plan after receiving a refund or his or her account balance.

(d) Service Retirement Allowance.

(1) Each Participant who has (A) completed at least five complete Years of Service, (B) reached at least age 52, (C) terminated service as an Employee, and (D) completed and submitted an application for benefits, at the time and manner determined by the Board, may retire for service and receive a Service Retirement Benefit.

(2) The Service Retirement Benefit payable to a Participant upon meeting the requirements in Section 13.3(d)(1) will equal the percentage of the Participant's Monthly Average Earnings, as determined in accordance with the following schedule based on the Participant's age at retirement, taken to the preceding quarter year, multiplied by the Participant's Years of Service.



<u>Age at Retirement</u>	<u>Percentage</u>
52	1.000%
52¼	1.025%
52½	1.050%
52¾	1.075%
53	1.100%
53¼	1.125%
53½	1.150%
53¾	1.175%
54	1.200%
54¼	1.225%
54½	1.250%
54¾	1.275%
55	1.300%
55¼	1.325%
55½	1.350%
55¾	1.375%
56	1.400%
56¼	1.425%
56½	1.450%
56¾	1.475%
57	1.500%
57¼	1.525%
57½	1.550%
57¾	1.575%
58	1.600%
58¼	1.625%
58½	1.650%
58¾	1.675%
59	1.700%
59¼	1.725%
59½	1.750%
59¾	1.775%
60	1.800%
60¼	1.825%
60½	1.850%
60¾	1.875%
61	1.900%
61¼	1.925%
61½	1.950%
61¾	1.975%
62	2.000%
62¼	2.025%
62½	2.050%
62¾	2.075%

<u>Age at Retirement</u>	<u>Percentage</u>
63	2.100%
63¼	2.125%
63½	2.150%
63¾	2.175%
64	2.200%
64¼	2.225%
64½	2.250%
64¾	2.275%
65	2.300%
65¼	2.325%
65½	2.350%
65¾	2.375%
66	2.400%
66¼	2.425%
66½	2.450%
66¾	2.475%
67	2.500%

13.4 Funding.

(a) In any Plan Year beginning on or after January 1, 2013, the District's contribution to the Plan, in combination with Participant contributions to the Plan, may not be less than the actuarially determined normal cost of Benefits for all Participants under the entire Plan for the Plan Year.


(b) The Board may suspend contributions only when all of the following occur:

(1) The Plan is funded by more than 120%, based on the computation by the Plan's actuary in accordance with the Governmental Accounting Standards Board requirements that is included in the annual valuation.

(2) The Plan's actuary determines, based on the annual valuation, that continuing to accrue excess earnings could result in disqualification of the Plan's tax exempt status under the Code.

(3) The Board determines that the receipt of any additional contributions required by this section would conflict with its fiduciary responsibility set forth in Section 17 of Article XVI of the California Constitution.

IN WITNESS WHEREOF, the Plan is hereby amended as set forth above on this 27th day of February, 2013.

By:   
 Linda A. Nemeroff, District Secretary