SUBJECT: Consider the Adoption of Resolution No. 10-057 Approving Amendment 10-A-15 to the AC Transit Employee's Retirement Plan and Approving the Filing of Necessary Applications with the United States Internal Revenue Service

RECOMMENDED ACTION:

☐ Briefing Item  ☑ Recommended Motion

Adopt Resolution No. 10-057

Budget/Fiscal Impact:

The legal services provided by Ice Miller LLP are paid for by the Retirement Board. The filing fees of $15,000 and $1,000 can either be paid by the District or by the Retirement Board. The resolution has been drafted to have the District pay the filing fees since it is the applicant.

It is not anticipated that there will be any specific impacts on the District’s budget by adoption of the proposed amendments, seeking a Determination Letter and filing of a Voluntary Compliance Program application. These actions would protect the District from any IRS assertion that the terms of the AC Transit Employees Retirement Plan (the Plan), as modified by the proposed amendments, do not conform to the tax laws.

Background/Discussion:

The Board of Directors may recall at the March 17, 2010, joint meeting with the Retirement Board it received a report regarding the retention by the Retirement Board of the law firm of Ice Miller LLP for the purpose of analyzing the AC Transit Employees' Retirement Plan (the Plan) for compliance with IRS regulations, the filing of a determination letter for the District’s plan and possibly submitting a Voluntary Compliance Program (VCP) application, all prior to January 31, 2011.

On September 29, 2010, the Board received the attached September 15, 2010 letter from Terry Mumford of Ice Miller LLP explaining the changes required to the Plan as well as the proposed Plan amendments to bring the Plan into compliance with applicable IRS regulations for a qualified plan.

In accordance with Board Policy No. 170, the attachments were provided to the District's retirement counsel (Hanson Bridgett) and sent to the District's three bargaining unions (ATU Local 192, AFSCME Local 3916 and IBEW Local 1245) for their consideration during the month of October, with comments due by November 1, 2010. No comments regarding the
proposed amendments have been received from any of these recipients. The Retirement Board has seen the proposed amendments and also has not expressed any concern regarding them.

By letter of November 9, 2010, Ms. Mumford provided the necessary documents for filing with the IRS. (See attached letter without the attachments) These documents have been reviewed by our retirement counsel, staff/counsel to the Retirement Board and the General Counsel. They will be considered by the Retirement Board on December 10, 2010. The Retirement Board’s comments will be provided to the District Board at your meeting.

The applications have been prepared for signature by the District’s Interim General Manager. Although this review of the Plan was initiated by the Retirement Board, the review has been a joint effort. Since the Plan is the District’s Plan it was determined that it would be appropriate for the District to submit the proposed amendments and applications to the IRS, together with the necessary filing fees.

In addition to staff, Ms. Mumford will be available by phone at the December 15th Board meeting to answer any questions the Board may have.

Prior Relevant Board Actions/Policies:  
N/A

Attachments:
A. September 15, 2010 Ice Miller LLP Letter  
B. November 9, 2010 Ice Miller LLP Letter  
C. Draft Resolution No. 10-057

Approved by:  
Kenneth C. Scheidig, General Counsel
Prepared by:  
Kenneth C. Scheidig, General Counsel
Date Prepared:  
December 6, 2010
September 15, 2010

Via Electronic Delivery

Mr. Hugo Wildmann
Retirement System Manager
AC Transit Employees' Retirement Board
1600 Franklin Street
Oakland, CA 94612

Mr. Russell Richeda
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44 Montgomery Street
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San Francisco, CA 94104

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Oakland, CA 94612

RE: Proposed Amendments to AC Transit Employees' Retirement Plan and Voluntary Correction Program

Dear Hugo, Russ, and Ken:

This letter provides a detailed description of the Proposed Amendments to the AC Transit Employees' Retirement Plan, as restated effective January 1, 2005, and amended thereafter ("Plan"). The Proposed Amendments are being drafted to bring the Plan into compliance with the Internal Revenue Code ("Code") so that the Plan can be submitted in Cycle E (that is, on or before January 31, 2011) for a favorable determination letter by the Internal Revenue Service ("IRS"). The Proposed Amendments do not change benefits under the Plan. This letter also explains the Voluntary Correction Program ("VCP") process that we will be recommending for the Plan.

I will be prepared to preliminarily discuss the contents of this letter and the attached Proposed Amendments at the Retirement Board's meeting on September 20, 2010, and to more fully discuss the amendments at any subsequent meeting as desired by the Retirement Board.

I. DESCRIPTION OF PROPOSED AMENDMENTS

A. Proposed Amendment 1 – Compliance with Code Section 413 (Collectively Bargained Plans)

Code Section 413 permits certain union employees to be treated as employees of a governmental employer for plan qualification purposes.
Proposed Amendment 1 amends the Preamble to the Plan to clarify the intent of the Plan to be a collectively bargained plan under Code Section 413.

The proposed amendment will not change benefits under the Plan.

B. Proposed Amendment 2 – Compliance with Code Section 401(a)(17) (Compensation Limits)

Code Section 401(a)(17) imposes a limit on the amount of compensation that can be used in calculating contributions and benefits under a qualified plan. The Plan currently applies those limits.

Proposed Amendment 2 amends Section 1.11 of the Plan to add language that provides further specification as to the following:

1. The language permits the Plan to designate the "determination period" over which the annual limit on compensation under Code Section 401(a)(17) is to apply.

2. The language specifies how the compensation limit is to apply for determination periods that are shorter than 12 months.

3. The language provides that the Code Section 401(a)(17) limit does not apply to "grandfathered" participants who first became participants prior to July 1, 1996. For such participants, the annual compensation limit will not apply to the extent it would cause the Plan to take into account compensation below the amount that was allowed to be taken into account under the Plan as in effect on July 1, 1993.

The proposed amendment will not change benefits under the Plan.

C. Proposed Amendment 3 – Compliance with Code Section 401(a)(9) (Required Distributions)

The current Plan requires compliance with Code Section 401(a)(9), so that benefits must be commenced at a certain time (i.e., "required beginning date").

Proposed Amendment 3 amends Section 5.5 of the Plan to provide additional flexibility in the administration of minimum distribution requirements by providing that the Plan will be administered in compliance with a good faith reasonable interpretation of the Code.

The proposed amendment will not change benefits under the Plan.
D. Proposed Amendment 4 - Compliance with Code Section 401(a)(2) (Exclusive Benefit Rule)

Code Section 401(a)(2) requires that the Plan make it impossible for Plan assets to be diverted or to be used for any purpose other than for the exclusive benefit of participants and their beneficiaries prior to the satisfaction of all liabilities to the participants and beneficiaries.

Proposed Amendment 4 amends Section 9.3 of the Plan to state this requirement with more specificity and to expressly state that there will be no reversions of Plan assets to the AC Transit District, subject to the exception contained in the current Plan regarding reversions due to mistakes of fact.

The proposed amendment will not change benefits under the Plan.

E. Proposed Amendments 5 and 6 - Compliance with Code Section 415 (Limitation on Benefits and Contributions)

Code Section 415(b) limits annual benefits to a dollar amount. The Plan has been compliant with this requirement under the current language.

Proposed Amendment 5 amends Section 11.1 of the Plan to enhance compliance by adding the following:

1. The mortality assumptions used in adjusting optional forms of benefit for purposes of the Code Section 415(b) limitations are updated to those prescribed by the IRS.

2. Benefits commencing before age 62 are adjusted and compared against an actuarially reduced limit. The proposed language provides more specificity as to what limit reduction is required under the Code.

3. Benefits commencing after age 65 are adjusted and compared against an actuarially increased limit. The proposed language provides more specificity as to the assumptions used for this increase.

4. The Plan had elected to "grandfather" certain participants who joined the Plan prior to January 1, 1990 (also known as the "TAMRA election"). The proposed language broadens the scope of the grandfathering election to the full extent permitted under the Code (e.g., the participant is no longer treated as having separated from service before July 1, 1987, permitting the use of all service accrued to the present date of retirement in calculating the "grandfathered" benefit limit).
Proposed Amendment 6 adds a new Section 11.5 that provides the order of priority in which benefits or contributions would be reduced across the AC Transit District's defined benefit plans should there be an excess in benefits under the application of Code Section 415.

The proposed amendments will not change benefits under the Plan.

F. Proposed Amendment 7 – Compliance with USERRA, Code Sections 401(a)(37) and 414(u) (Military Service)

Proposed Amendment 7 adds a new Section 12.9 that will bring the Plan into documentary compliance with USERRA and Code Sections 401(a)(37) and 414(u), as amended by the HEART Act. These provisions provide benefit protection to members in the armed services by restoring benefits upon reemployment and treating participants who die while performing military service as having returned to work and terminated employment on account of death for purposes of active pre-retirement death benefits. This language is required under the Code. The Plan has been complying operationally with these federal laws.

The proposed amendment will not change benefits under the Plan.

G. Proposed Amendment 8 – Miscellaneous Compliance with the Internal Revenue Code

Proposed Amendment 8 adds a new Section 12.10 that contains language aimed at enhancing compliance with a variety of Code provisions that the IRS has specifically requested in its reviews of current determination letter filings, as follows:

1. The participant's rights to a normal retirement benefit are nonforfeitable upon the attainment of retirement age and vested status.

2. The participant's entire interest under the Plan will be distributed over the life of the participant or over the joint lives of the participant and a beneficiary or over a period not extending beyond their life expectancies.

3. The Board is prohibited from engaging in certain transactions with the AC Transit District under Code Section 503(b). Such transactions include issuing loans without receiving adequate security and a reasonable rate of interest, paying unreasonable compensation for personal services, giving preferential treatment in providing services, purchasing securities or other property for more than adequate consideration, selling securities or other property for less than adequate consideration, or engaging in any other transaction which results in a substantial diversion of the Plan's income or trust corpus.
4. Forfeitures under the Plan are not to be used to increase benefits to any participant other than increases already provided under the Plan. Code Section 401(a)(8) permits forfeitures to be used to reduce employer contributions.

5. In order to comply with Code Section 401(a)(9), if the participant dies before the required beginning date, then benefits to a beneficiary will be distributed either within 5 years of the date of death or through an annuity over the life or a period not extending beyond the life expectancy of the beneficiary that commences by the end of the following year. A surviving spouse may delay the annuity commencement date to the end of the year in which the participant would have attained age 70 1/2.

6. As also required by Code Section 401(a)(9), if the participant dies after the required beginning date, then the benefits to the survivor must continue under a benefit option that distributes benefits at least as rapidly as the option that was in effect during the life of the participant.

7. Death and disability benefits are limited to ensure that they are incidental to the provision of retirement benefits for the participant. This limitation is applied on a plan-wide basis by limiting all such benefits to 25% of the cost of all participant benefits under the Plan.

8. Benefits paid to an alternate payee under a domestic relations order may be treated favorably under the Code if the order complies with certain requirements for qualified domestic relations orders under Code Section 414(p). An example of this treatment is the shifting of tax liability from the participant to the alternate payee for payments to a spousal alternate payee.

9. The Plan may invest its assets in a commingled group trust under Code Section 401(a)(24) that contains assets from other governmental 401(a) and 457(b) plans.

The proposed amendment will not change benefits under the Plan.

II. VOLUNTARY CORRECTION PROGRAM

For plans that are applying for a determination letter, the Voluntary Correction Program ("VCP") is available for a fee as a means to ensure that the IRS will not seek penalties for any past failures to comply with the requirements of the Code.

As part of its contract with the Retirement Board, Ice Miller was asked to evaluate whether the Plan should also be submitted to the IRS as part of the VCP process. We are recommending that the Plan be submitted to VCP primarily for two purposes: (1) to revise the
grandfathered protection under Code Section 415; and (2) to add USERRA protections for members.

Our experience with the VCP process for other governmental plans has been very favorable. Submitting as part of the VCP process provides additional protection for the Plan if at a later time the IRS raises any compliance issues.

The additional fee for filing in VCP would be $15,000, assuming that the number of participants in the Plan is between 1,001 and 5,000.

Please let us know if you have any questions about this letter or the attached amendments.

Very truly yours,

ICE MILLER LLP

Terry A.M. Mumford

TAMM/AJL

cc: Albert J. Lee

Enclosures: Proposed Amendments

CIRCULAR 230 DISCLOSURE

Except to the extent that this advice concerns the qualification of any qualified plan, to ensure compliance with recently-enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting, marketing, or recommending to another party any tax-related matters addressed herein.
November 9, 2010

VIA OVERNIGHT DELIVERY
(With Letter Via Email)

PERSONAL & CONFIDENTIAL

Mr. Hugo Wildmann  
Retirement System Manager  
AC Transit Employees' Retirement Board  
1600 Franklin Street  
Oakland, CA 94612

Mr. Russell Richeda  
Saltzman & Johnson  
44 Montgomery Street  
Suite 2110  
San Francisco, CA 94104

Mr. Kenneth C. Scheidig  
General Counsel  
Alameda-Contra Costa Transit District  
1600 Franklin Street, 10th Floor  
Oakland, CA 94612

RE: IRS Filing for AC Transit Employees' Retirement Plan

Dear Hugo, Russ, and Ken:

As we have discussed, we are preparing an application for a determination letter to be filed with the Internal Revenue Service ("IRS") on behalf of the Alameda-Contra Costa Transit District ("District") with respect to the AC Transit Employees' Retirement System ("Plan"). Enclosed for your review are materials to file the Plan with the IRS. Please note that we have prepared materials to request both a determination letter and a compliance statement under the IRS Voluntary Correction Program ("VCP Program") for the Plan. As you know, the deadline for a Cycle E filing is January 31, 2011, but we would hope to file the Plan before that. Enclosed is a timetable to accomplish that goal.

In connection with the application, we are enclosing the following documents:

1. Draft Transmittal to IRS. We are enclosing a draft of the transmittal letter to the IRS that lists all materials that will be submitted and explains our request. You will note that the letter makes reference to several items that are not included in this packet, but which will be included with the filing. Please confirm that we have identified all relevant plan documents in item 7 of the letter.

2. Form 5300 (Application for Determination for Employee Benefit Plan), with attachments. We have completed the Form 5300 and its attachments with the information you
provided us, along with other materials as indicated. However, we will need your assistance with several items as noted below:

(a) Please provide us with the District's employer identification number for Line 1b (and the other IRS forms).

(b) We have entered the number of participants in Line 4e based on the Actuarial Review and Analysis as of January 1, 2009. If the analysis for 2010 is available, please provide us with a copy so that we can update this number. We can also obtain the asset information needed for Appendix F (discussed below) from that report.

(c) With regard to Exhibit 3a and 3b, please confirm that the list of documents that comprise the Plan document. Also in our discussions, you have indicated that a restated Plan document may be completed in 2011.

(d) We have included a draft attachment to Line 12c of Form 5300. If there are any court cases pending related to the Plan, please provide a summary of any such case(s).

(e) Please verify that we have answered all remaining items correctly.

If you have questions or would like to make changes to Form 5300 or any of the attachments, please let us know.

3. **Appendix F, Streamlined VCP Submission, with Schedules 1 and 2.** This is the form provided by the IRS under Revenue Procedure 2008-50 to voluntarily correct a failure to timely adopt plan amendments. The approved method of correction for a "late amender" is to (i) file this form, (ii) pay the compliance fee, and (iii) file an amendment to the Plan to retroactively bring the Plan into compliance. The proposed amendment that we sent to you on September 15, 2010 will need to be included with the IRS filing. The compliance fee is based on the number of participants in the Plan (including all active, retired receiving benefits, and terminated deferred vested participants). Assuming that the number of participants is from 1,001 to 5,000, the compliance fee is $15,000.

4. **Form 2848 (Power of Attorney and Declaration of Representative).** This form will enable us to deal directly with the IRS regarding the application.

5. **Form 8821 (Tax Information Authorization).** This form will enable Nancy Germano, the paralegal assisting with the filing, to obtain information from the IRS regarding the status of the filing.
6. **Form 8717 (IRS User Fee for Employee Plan Determination).** In addition to the $15,000 compliance fee discussed above, the IRS charges a filing fee for applications for a determination letter. The fee to submit each Plan will be $1,000.

7. **2009 Cumulative List of Changes.** As you know, this checklist is based on the 2009 Cumulative List issued by the IRS under Notice 2009-98 to indicate all qualification requirement changes that have occurred since the IRS issued "GUST" determination letters. We will include this checklist with the filing to demonstrate compliance and provide Plan section references for the IRS reviewing agent.

8. **Plan Qualification Requirements.** This checklist shows all Internal Revenue Code section requirements applicable to government plans. We will include this checklist with the filing to demonstrate compliance and provide Plan section references for the IRS reviewing agent.

After you have had an opportunity to review the enclosed materials, we would like to schedule a telephone conference to discuss any questions or changes you would like to make. We can then provide you with final copies of the filing materials for signature, and we will request that you return checks payable to the United States Treasury in payment of the filing fees at that time. We will need two checks, one for $15,000 and one for $1,000, each payable to the United States Treasury.

We look forward to hearing from you.

Very truly yours,

ICE MILLER LLP

Terry A.M. Mumford

TAMM:NMG
Enclosures
cc: Albert J. Lee (without enclosures)

*CIRCULAR 230 DISCLOSURE: Except to the extent that this advice concerns the qualification of any qualified plan, to ensure compliance with recently-enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting, marketing or recommending to another party any tax-related matters addressed herein.*
ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

RESOLUTION NO. 10-057

A RESOLUTION APPROVING AMENDMENT 10-A-15 TO THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT EMPLOYEES' RETIREMENT PLAN AND AUTHORIZE THE INTERIM GENERAL MANAGER TO FILE FOR A DETERMINATION LETTER FROM THE UNITED STATES INTERNAL REVENUE SERVICE AND FILE A VOLUNTARY COMPLIANCE PROGRAM APPLICATION

WHEREAS, the Alameda-Contra Costa Transit District Board of Directors (the District) is authorized by Public Utilities Code sections 25301 and 25361 to establish a retirement system; and

WHEREAS, the District has created a retirement system known as the AC Transit Employees' Retirement Plan (the Plan); and

WHEREAS, the Plan may be amended by the District's Board of Directors; and

WHEREAS, the proposed amendments (the Amendments) are intended to bring the Plan into compliance with the Internal Revenue Code and Internal Revenue Service (IRS) regulations for a qualified plan; and

WHEREAS, outside counsel retained by the Retirement Board (Ice Miller LLP) prepared the amendments, which have been reviewed by the District's retirement counsel, were provided to the District's three labor unions for review and have been reviewed by the Retirement Board (the Reviewing Parties); and

WHEREAS, no changes to the Amendments were recommended by any of the Reviewing Parties; and

WHEREAS, Ice Miller LLP prepared a Determination Letter request for the IRS and a Voluntary Compliance Program application for filing with the IRS together with the Amendments prior to the present IRS submittal deadline of January 31, 2011;

NOW, THEREFORE, the Alameda-Contra Costa Transit District Board of Directors does resolve as follows:

SECTION 1. Approves Amendment 10-A-15 to the Plan as more specifically set forth in Exhibit A, attached to and incorporated into this resolution by reference as if fully set forth in it.

SECTION 2. Authorizes the Interim General Manager to submit a Determination Request and file a Voluntary Compliance Program application with the United States Internal Revenue Service, together with the Plan Amendments and necessary filing fees, prior to January 31, 2011, as said documents are more specifically set forth in
Exhibits B and C, respectively, and incorporated into this resolution as if fully set forth in it.

**SECTION 3.** This resolution shall become effective immediately upon its passage by four affirmative votes of the Board of Directors.

RESOLUTION NO. 10-057 WAS PASSED AND ADOPTED this 15th day of December 2010.

_____________________________________________________
Elsa Ortiz, President
Attest:

_____________________________________________________
Rose Martinez, District Secretary

I, Linda Nemeroff, District Secretary for the Alameda-Contra Costa Transit District, certify that the foregoing Resolution was passed and adopted at a Special Meeting of the Board of Directors held on the 15th day of December 2010, by the following roll call vote:

**AYES:** DIRECTORS:

**NOES:** DIRECTORS:

**ABSENT:** DIRECTORS:

**ABSTAIN:** DIRECTORS:

_____________________________________________________
Linda Nemeroff, District Secretary

Approved As To Form:

_____________________________________________________
Kenneth C. Scheidig, General Counsel
AMENDMENT 10-A-15

AC TRANSIT EMPLOYEES' RETIREMENT PLAN

The AC Transit Employees' Retirement Plan (the "Plan") hereby is amended as set forth below, effective __________, 2010. Capitalized terms not defined in the amendments below ("Amendments") have the same definitions as in the Plan.

1. The Preamble of the Plan is amended as follows:

This AC Transit Employees' Retirement Plan (the "Plan") is sponsored and maintained by the Alameda-Contra Costa Transit District (the "District"), a transit district organized and existing as a governmental agency under the laws of the State of California with its principal place of business located at Oakland, California, for the benefit of persons employed by the District, including members of bargaining units represented by the Amalgamated Transit Union Local 192, AFL-CIO, the International Brotherhood of Electrical Workers Local 1245, AFL-CIO, and the American Federation of State, County and Municipal Employees, Local 3916, AFL-CIO. The Plan is a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code of 1986, as amended (the "Code"). The Plan is intended to be a collectively bargained plan under Section 413 of the Code and Treasury Regulations thereunder. Accordingly, all participants of the Plan who are current or former employees of the aforementioned labor organizations are deemed to be current or former employees of the District solely for purposes of Sections 401(a) and 414(d) of the Code. Capitalized terms used in the Plan generally are defined in Article I.

2. Section 1.11 of the Plan, entitled "Compensation," is amended as follows:

1.11 "Compensation" means the total salary and wages, including overtime payments and other monetary remuneration, if any, which is paid to an Employee by the District (or by ATU or ATU-International in the case of Employees described in Section 1.23(ii) for the Plan Year, and which is required to be reported as wages on the Employee's Form W-2. Compensation includes any 'elective deferrals' (within the meaning of Section 402(g)(3) of the Code) withheld from the Employee's gross income by the District (or ATU or ATU-International in the case of Employees described in Section 1.23(ii)) for the Plan Year, and any amounts withheld for the Plan Year from the Employee's gross income by the District (or ATU or ATU-International in the case of Employees described in Section 1.23(ii)) that are not includible in the Employee's gross income by reason of Section 125, 132(0)(4) or 457(b) of the Code. Compensation also includes contributions made by the District on an Employee's behalf to a deferred compensation plan established by the District under Section 457(b) of the Code.

For any Plan Year, Compensation does not include:

(a) Any compensation directly paid or payable as fringe benefits or other special allowances.
(b) With respect to an Employee on leave to work for ATU or ATU-International, any compensation paid to such person by ATU or ATU-International for the performance of his or her normal duties as a "shop steward."

(c) If the Employee is either a Non-Represented Employee or a member of the collective bargaining unit represented by AFSCME, sick leave amounts accrued by such Employee that are rolled over or otherwise transferred on such Employee's behalf to a deferred compensation plan.

(d) If the Employee first became a Participant on or after July 1, 1996, any amount in excess of $200,000, as adjusted for increases in the cost of living pursuant to Section 401(a)(17) of the Code ("the annual compensation limit"). This Section 1.11(d) is effective January 1, 2002-2002, and applies to Plan Years beginning on and after that date. Amounts in excess of the annual compensation limit that are excluded from Compensation under this Section 1.11(d) may not be taken into account for any Employee in determining Employee or benefit accruals for any Plan Year.

(i) Compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to Compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the Compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the Compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

(ii) As used in this paragraph (ii), the term "eligible member" means a person who first became a Participant of the Plan prior to July 1, 1996. Pursuant to Section 13212(d)(3)(A) of OBRA '93, and the regulations issued under that Section, eligible members are not subject to the limits of Section 401(a)(17) of the Code and this Section 1.11(d), and the annual compensation limit shall not apply to the extent that the application of the limitation would reduce the amount of compensation that is allowed to be taken into account under the Plan below the amount that was allowed to be taken into account under the Plan as in effect on July 1, 1993.
3. Section 5.5 of the Plan, entitled "Commencement of Benefits," is amended as follows:

5.5 Commencement of Benefits.

Subject to Section 8.8, payment of Benefits will commence as soon as administratively practicable after the date, specified in Article III of the Plan, that the Participant is entitled to receive Benefit payments. Benefits will be paid monthly as of the end of each month. Notwithstanding anything to the contrary contained herein, the distribution options under the Plan will comply with a good faith reasonable interpretation of Section 401(a)(9) of the Code and regulations promulgated thereunder including the minimum distribution incidental benefit requirements of Treasury Regulation Section 1.401(a)(9). Accordingly, distribution of each Participant's interest will commence as soon as administratively feasible after the required beginning date, which is April 1 of the calendar year following the later of the (1) calendar year containing the date the Participant attains age 70 1/2 or (2) the calendar year containing the date of termination of the Participant's employment with the District. If the Participant dies after attaining age 70 1/2 but before the termination of his or her employment with the District, distribution of the Participant's interest will commence as soon as administratively feasible. In no event, however, will any Benefits under this Section 5.5 be paid later than the fifth anniversary of the Participant's death.

Determination of the amounts to be distributed each year under each of the optional forms available under Section 5.3 will be made in accordance with requirements established under Section 401(a)(9) of the Code, and regulations thereunder.

4. Section 9.3 of the Plan, entitled "Refund of District Contributions," is amended as follows:

9.3 Refund of District Contributions. Except where contributions are required to be returned to the District as provided by the Plan or the Code, it will be impossible for any part of the principal or income of the Fund prior to the satisfaction of all liabilities with respect to Participants or their Beneficiaries to be used for, or diverted to, purposes other than the exclusive benefit of such Participants or their Beneficiaries and no such amounts may be returned to the District; provided, however, that notwithstanding this or any other provision of this Plan, the District will be entitled, subject to the conditions established under Revenue Ruling 91-4, to recover any contributions made to the Fund:

(a) In error as a result of a mistake in fact.

(b) The permissible recovery under (a) must be made within one year from the date the contribution was made to the Plan.

(c) Reversions due to mistake of fact will be permitted only if the surrounding facts and circumstances indicate that the contribution of the amount that subsequently reverts to the District is attributable to a good faith mistake of fact.
(d) The maximum amount that may be returned to the District in the case of a mistake of fact is the excess of (i) the amount contributed, over (ii) the amount that would have been contributed had no mistake of fact occurred.

(e) Earnings attributable to the excess contribution may not be returned to the District, but losses attributable to such contribution will reduce the amount returned.

(f) If the return of the amount attributable to the mistake would cause the Accrued Benefit of any Participant to be reduced to an amount which is less than the amount which would have been the Accrued Benefit of such Participant had the mistakes not occurred, the amount returned to the District will be limited so as to avoid such reduction.

5. Section 11.1 of the Plan, entitled "Maximum Retirement Benefit," is amended as follows:

11.1 Maximum Retirement Benefit.

(a) Subject to the subsequent provisions of this Article XI, the maximum annual Benefit payable to a Participant will not exceed $160,000, as adjusted annually by the cost of living adjustment factor prescribed by the Secretary of the Treasury in accordance with Section 415(d)(1) of the Code.

(b) Adjustment for Optional Forms of Benefit. If a Participant's annual Benefit is paid under one of the optional Benefit forms described under Section 5.3, for purposes of applying the defined benefit dollar limitation in Section 11.1(a), the amount of the Benefit will be adjusted to the actuarial equivalent of a single life monthly Annuity for the Participant's life, in accordance with Section 415(b)(2)(B) of the Code. For purposes of this adjustment, for limitation years prior to January 1, 2009, the applicable mortality table is the table prescribed by Revenue Ruling 2001-62 (or any superseding guidance), for limitation years after December 31, 2008, the applicable mortality table is the table described in Section 417(e)(3)(B) of the Code (Notice 2008-85 or any subsequent guidance implementing Section 417(e)(3)(B) of the Code), and the interest rate assumption is 5%. This Section 11.1(b) will not apply to any Benefit payable under an optional Benefit form that constitutes a qualified joint and survivor annuity under Section 417 of the Code.

(c) Adjustment for Benefits Commencing Before Age 62. If Benefit payments to a Participant commence before the Participant attains age 62, the defined benefit dollar limitation under Section 11.1(a) will be adjusted in accordance with Section 415(b)(2)(C) of the Code so that such limit (as so reduced) equals an annual straight life annuity benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar ($160,000) (as adjusted) annual benefit beginning at age 62; provided, however, that such adjustment will not apply to a Disability Retirement Benefit or a Benefit paid as a result of the Participant's death.
(d) Adjustment for Benefits Commencing After Age 65. If Benefit payments to a Participant commence after the Participant attains age 65, the defined benefit dollar limitation under Section 11.1(a) will be adjusted in accordance with Section 415(b)(2)(D) of the Code so that it is actuarially equivalent to the benefit beginning at age 65. This adjustment shall be made using an assumed interest rate of 5% and shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

(e) If the District maintains, or at one time maintained, another qualified defined benefit plan, the limitations of this Article XI will not be exceeded when all such defined benefit plans are treated as one plan.

(f) The With respect to a Participant who first became a Participant in the Plan prior to January 1, 1990, the maximum permissible amount determined in accordance with this Section 11.1 for any that Participant will not be less than the current accrued benefit for such Participant. For this purpose, the term "current accrued benefit" means the Participant's accrued benefit under such Plans, determined as if the Participant had separated from Service at the close of the last limitation year beginning before July 1, 1987, expressed as an annual benefit within the meaning of Section 415(b)(2) of the Code. The preceding sentence only applies if such defined benefit plans met the requirements of Section 415 of the Code for all limitation years beginning before July 1, 1987. In determining the amount of a Participant's current accrued benefit, the Plan will disregard (i) any change in the terms and conditions of the Plan after May 5, 1986; and (ii) any cost of living adjustments occurring after May 5, 1986, determined without regard to any amendment of the Plan made after October 14, 1987.

6. The Plan is amended by adding a new Section 11.5, entitled "Reductions of Benefits Priority for 415 Compliance," to read as follows:

11.5 Reduction of Benefits Priority for 415 Compliance. Reduction of benefits under the Employer's plans, where required in order to comply with Section 415 of the Code, shall be made first with respect to the plan in which the Participant most recently accrued benefits and thereafter in such other plans.

7. The Plan is amended by adding a new Section 12.9, entitled "Participants in the Uniformed Services," to read as follows:

12.9 Participants in the Uniformed Services. Effective December 12, 1994, notwithstanding any other provision of the Plan, Benefits and Years of Service with respect to qualified military service are governed by Section 414(u) of the Code and the Uniformed Services Employment and Reemployment Rights Act of 1994.

Effective with respect to Participant deaths occurring on or after January 1, 2007, while a Participant is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code), to the extent required by Section 401(a)(37) of the Code, the Eligible Spouse, Eligible Domestic Partner, Eligible Child or Eligible Children, as the case may be, of a
8. The Plan is amended by adding a new Section 12.10, entitled "Miscellaneous Compliance with the Internal Revenue Code," to read as follows:

12.10 Miscellaneous Compliance with the Internal Revenue Code.

(a) The Participant's right to his or her Service Retirement Benefit is nonforfeitable on attainment of Retirement Age and Vested status.

(b) The Participant's entire interest shall be distributed in one of the following ways as prescribed by this Plan: (i) over the life of the Participant, (ii) over the lives of the Participant and a Beneficiary, (iii) over a period certain not extending beyond the life expectancy of the Participant, or (iv) over a period certain not extending beyond the joint life and last survivor expectancy of the Participant and the Beneficiary.

(c) The Board may not engage in a transaction prohibited by Section 503(b) of the Code.

(d) In conformity with Section 401(a)(8) of the Code, any forfeitures of benefits by Participants or former Participants of the Plan will not be used to increase the benefits any such Participant or former Participant would otherwise receive under the Plan.

(e) If the Participant dies before the required distribution of the Participant's benefits has begun under Section 5.5, distribution of the Participant's entire interest will commence as soon as administratively feasible. In no event, however, will any Benefits be paid later than December 31 of the calendar year which contains the fifth anniversary of the Participant's death, unless either paragraph (i) or (ii) applies.

(i) If the Participant's remaining interest is to be distributed over the life of the Beneficiary or over a period not extending beyond the life expectancy of the Beneficiary; and such distribution begins no later than December 31 of the calendar year immediately following the calendar year of the Participant's death, then the Participant's remaining interest to be distributed to the Beneficiary shall be treated as distributed on the date on which the distributions begin.

(ii) If the Participant's Eligible Spouse is the sole Beneficiary under paragraph (i), then the Participant's remaining interest in the Plan must commence on or before the later of December 31 of the calendar year immediately following the calendar year of the Participant's death or December 31 of the calendar year in which the Participant would have attained age 70 1/2; and if the Eligible
Spouse dies before the distribution to the Eligible Spouse begins, Section 5.5 shall be applied as if the Eligible Spouse were the Participant.

(f) If the Participant dies after the required distribution of benefits has begun, then the remaining portion of the Participant's interest must be distributed at least as rapidly as under the method of distribution before the Participant's death.

(g) Determination of the amounts to be distributed each year under each of the optional forms available under Section 5.3 will be made in accordance with requirements established under Section 401(a)(9) of the Code, and regulations thereunder. The death and disability benefits provided by the Plan shall be limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Code and Treasury Regulation Sections 1.401-1(b)(1)(i), 1.401(a)(9)-6, and/or any successor regulation. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the Participants' Benefits provided under the Plan.

(h) If benefits are payable pursuant to a Domestic Relations Order that meets the requirements of a qualified domestic relations order as defined in Section 414(p) of the Code, then the applicable requirements of Section 414(p) of the Code will be followed by the Board.

(i) The Fund may participate under Section 401(a)(24) of the Code in a qualified group trust that meets the requirements of Section 401(a) of the Code in accordance with Revenue Ruling 81-100, as amended by Revenue Ruling 2004-67.

I, Linda A. Nemeroff, District Secretary for the Alameda-Contra Costa Transit District, do certify that the Plan is hereby amended as set forth above as of the ___ day of __________, 2010.

By
Linda A. Nemeroff, District Secretary
Alameda-Contra Costa Transit District
Application for Determination for Employee Benefit Plan
(Including collectively bargained plans formerly filed on Form 5503)
(Under sections 401(e) and 601(e) of the Internal Revenue Code)

Exhibit B to Att C to GC Memo No. 206b

Form 5300
(Rev. September 2001)
Department of the Treasury
Internal Revenue Service

OMS No. 1545-0197
For IRB Use Only

Name of plan sponsor (employer if single-employer plan) Attn: Mary King
Alameda-Contra Costa Transit District

Number, street, and room or suite no. (If a P.O. box, see instructions.)
AC Transit Building GO, 1600 Franklin Street

City State ZIP Code
Oakland, CA 94612

Telephone number
Fax number
510-891-4875

Number, street, and room or suite no. (If a P.O. box, see instructions.)

City State ZIP Code

Telephone number
Fax number

3a Determination requested for (Enter applicable number(s) in the box and fill in required information). (See instructions.)

Enter 1 for Initial Qualification — Date plan signed [ ] See Attachment 3a

Enter 2 for a request after initial qualification — is complete plan attached? (See instructions.) [ ] Yes [ ] No

Date amendment signed [ ] Date amendment effective [ ]

Enter 3 for Affiliated Service Group status (section 414(m)) — Date effective

Enter 4 for Leased Employee status

Enter 5 for Partial termination — Date effective

Enter 6 for Termination of collectively bargained multiemployer or multiple-employer plan covered by PBGC Insurance — Date of Termination

b Has the plan received a determination letter? [ ] Yes [ ] No 

Date of letter

If "Yes" submit a copy of the latest letter and subsequent amendments.
Number of amendments [ ]

If "No" submit all prior plan(s) and/or adoption agreement(s). (See instructions.) [ ] See Attachment 3b

c Have interested parties been given the required notification of this application? (See instructions.) [ ] Yes [ ] No

d Does the plan have a cash or deferred arrangement (section 401(k))? [ ] Yes [ ] No

e Does the plan have matching contributions (section 401(m))? [ ] Yes [ ] No

f Does the plan have after-tax employee voluntary contributions (section 401(n))? [ ] Yes [ ] No

g Does this plan benefit noncollectively bargained employees or are more than 2% of the employees who are covered under a collective bargaining agreement for professional employees? [ ] Yes [ ] No

See Regulations section 1.410(b)-9.
h Does the plan provide for disparity in contributions or benefits that is intended to meet the permitted disparity requirements of section 401(o)? [ ] Yes [ ] No

Name of plan (Plan name may not exceed 60 characters, including spaces.)

AC Transit Employees' Retirement Plan

01011913 [ ] Enter 3-digit plan number

3792 [ ] Enter plan's original effective date (MMDDYYYY)

001 [ ] Enter data plan year ends (MMDD)

1231 [ ] Enter number of participants (See Instructions.)

Under penalties of perjury, I declare that I have examined this application, including accompanying statements and schedules, and to the best of my knowledge and belief, it is true, correct, and complete.

Print Name

Signature [ ] Date

For Paperwork Reduction Act Notice, see separate instructions.
Exhibit B to Att C to GC Memo No. 2050

5 Indicate type of plan by entering the number from the list below.
   4 1 - profit-sharing and/or 401(k)
   2 - money purchase
   3 - target benefit
   4 - defined benefit but not cash balance
   5 - cash balance
   6 - leveraged ESOP
   7 - non-leveraged ESOP
   8 - stock bonus
   9 - safe harbor 401(k)

6 a Is the employer a member of an affiliated service group?    Yes    No    X

   b Is the employer a member of a controlled group of corporations or a group of trades or businesses under common
     control?    Yes    No    X

   If a and/or b above is "Yes," complete required statement (see instructions).

7 a Is this a governmental plan?    Yes    No    X

   b Is this a nonselecting church plan?    Yes    No    X

   c Is this a collectively bargained plan? (See Regulations section 1.410(b)-9.)    Yes    No    X

   d Is this a section 412(i) plan?    Yes    No    X

   e Is this a multiple-employer plan? Enter number of participating employers    X

   f Is this a multiemployer plan as described in section 414(f)?    Yes    No    X

8 a Do you maintain any other qualified plan(s) under section 401(a)?    Yes    No    X

   If "Yes," attach required statement (see instructions).

   If "No," skip to line 8d.

   b Do you maintain another plan of the same type (i.e., both this plan and the other plan are defined contribution
     plans or both are defined benefit plans) that covers non-key employees who are also covered under this plan?    Yes    No    X

   If yes, when the plan is top-heavy, do the non-key employees covered under both plans receive the required
   top-heavy minimum contribution or benefit under:

   (1) This plan?    Yes    No    X

   (2) The other plan?    Yes    No    X

   c If this is a defined contribution plan, do you maintain a defined benefit plan (or if this is a defined benefit plan,
     do you maintain a defined contribution plan) that covers non-key employees who are also covered under this
     plan?    Yes    No    X

   If yes, when the plan is top-heavy, do non-key employees covered under both plans receive:

   (1) the top-heavy minimum benefit under the defined benefit plan?    Yes    No    X

   (2) at least a 5% minimum contribution under the defined contribution plan?    Yes    No    X

   (3) the minimum benefit offset by benefits provided by the defined contribution plan?    Yes    No    X

   (4) benefits under both plans that, using a comparability analysis, are at least equal to the minimum benefit?
     (See instructions.)    Yes    No    X

   d Does the plan prevent the possibility that the section 415 limitations will be exceeded for any employee who is
   (or was) a participant in this plan and any other plan of the employer?    Yes    No    X

General Eligibility Requirements (Complete all lines.)

9 a Check all that apply:
   (1) All employees
   (2) Hourly rate employees
   (3) Salaried employees
   (4) X Other (Specify) See Attachment 3a

   b Minimum years of service required to participate    X

   If no minimum, check    X

   c Minimum age required to participate (Specify)    X

   If no minimum, check    X

Vesting (Check one box to indicate the regular (non-top heavy) vesting provisions of the plan.)

10 a Full and immediate

   b Full vesting after 2 years of service

   c Full vesting after 3 years of service

   d Full vesting after 5 years of service

   e 2 to 6 year graded vesting

   f 3 to 7 year graded vesting

   g X Other See Attachment 10g
11a For defined benefit plans - Method for determining accrued benefit: See Attachment 11a

(1) Benefit formula at normal retirement age is See Attachment 11a

(2) Benefit formula at early retirement age is See Attachment 11a

(3) Normal form of retirement benefit is See Attachment 11a

b For defined contribution plans - Employer contributions: N/A

(1) Profit-sharing or stock bonus plan contributions are determined under:
   - A definite formula
   - A discretionary formula
   - Both

(2) Matching contributions are determined under:
   - A definite formula
   - A discretionary formula
   - Both

(3) Money purchase plan - Enter rate of contribution

(4) Target benefit plan - state target benefit formula

Miscellaneous

12a Does any amendment to the plan reduce or eliminate any section 411(d)(6) protected benefit, including an amendment adopted after September 6, 2000, to eliminate a joint and survivor annuity form of benefit? (See instructions.)
   - Yes
   - No
   X

b Are trust earnings and losses allocated on the basis of account balances in a defined contribution plan?
   - Yes
   - No
   X

If "No," attach a statement explaining how they are allocated.

c Is this plan or trust currently under examination or is any issue related to this plan or trust currently pending before:
   - The Internal Revenue Service
   - The Department of Labor
   - The Pension Benefit Guaranty Corporation
   - Any court?
   - Yes
   - No

If "Yes," attach a statement explaining the issues involved, the contact person's name (IRS Agent, DOL Investigator, etc.) and their telephone number. Do not answer "Yes" if the plan has been submitted under the Voluntary Compliance Program of the Employee Plans Compliance Resolution System (EPCRS).
Optional determination request regarding the ratio percentage test. A determination regarding the ratio percentage test of Regs. section 1.410(b)-2(b)(2) or a request for a determination regarding one of the special requirements of Regs. section 1.410(b)-2(b)(5), (6), or (7) should be requested by attaching Schedule Q (Form 5300).

13 Is this a request for a determination regarding the ratio percentage test of Regs. section 1.410(b)-2(b)(2) or a request for a determination regarding one of the special requirements of Regs. section 1.410(b)-2(b)(5), (6), or (7)?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

If "Yes," complete only lines 13a through 13n for a ratio percentage test determination, or complete only line 13o for a determination regarding one of the special requirements.

If "No," skip to line 14.

a Is this plan disaggregated into two or more separate plans that are not 401(k), 401(m), or profit sharing plans?

b Does the employer receive services from any leased employees as defined in section 414(n)?

c Coverage date (MMDDYYYY). See instructions for inserting date.

d Total number of employees (include self-employed individuals) (employer-wide).

e Statutory and regulatory exclusions under this plan (do not count an employee more than once):
   (1) Number of employees excluded because of minimum age or years of service required
   (2) Number of employees excluded because of inclusion in a collective bargaining unit
   (3) Number of employees excluded because they terminated employment with less than 501 hours of service and were not employed on last day of plan year
   (4) Number of employees excluded because employed by other qualified separate lines of business (CSLOBs)
   (5) Number of employees excluded because they were nonresident aliens with no earned income from sources within the United States

f Total statutory and regulatory exclusions (add lines 13a(1) through 13a(5))

g Nonexcludable employees (subtract line 13f from line 13d)

h Number of nonexcludable employees on line 13g who are highly compensated employees (HCEs)

i Number of nonexcludable HCEs on line 13h, benefiting under the plan

j Number of nonexcludable NHCEs who are nonhighly compensated employees (NHCEs) (subtract line 13h from line 13g)

k Number of nonexcludable NHCEs on line 13i benefiting under the plan

l Ratio percentage (See instructions.)

m Enter the ratio percentage for the following, if applicable:
   (1) Section 401(k) part of the plan
   (2) Section 401(m) part of the plan

n Are the results on line 13i or 13m based on the aggregated coverage of more than one plan?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
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<tbody>
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</table>

If "Yes," attach a statement showing the names, plan numbers, EINs, and benefit/allocation formulas of the other plans. All aggregated plans should be filed concurrently.

o If the plan satisfied coverage using one of the special requirements of Regulations section 1.410(b)-2(b)(5), (6), or (7), enter the letter from the list below that identifies the special requirement:
   A - 1.410(b)-2(b)(5) - No NHCEs employed
   B - 1.410(b)-2(b)(6) - No HCEs benefit
   C - 1.410(b)-2(b)(7) - Collectively bargained only

Optional determination request regarding the nondiscrimination design-based safe harbors of section 401(e)(4).

Section 401(k) and/or section 401(m) plans that do not contain a provision for discretionary contributions should not complete this line.

14 Is this a request for a determination regarding a design-based safe harbor under section 401(a)(4)?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

If "Yes," complete the following:

Design-based nondiscrimination safe harbors:

a Does the plan provide for disparity in contributions or benefits that is intended to meet the permitted disparity requirements of section 401(l)?

b Do the provisions of the plan ensure that the overall permitted disparity limits will not be exceeded?

c Enter the letter ("A" - "G") from the list below that identifies the safe harbor intended to be satisfied:
   A - 1.401(a)(4)-2(b)(2) defined contribution (DC) plan with uniform allocation formula
   B - 1.401(a)(4)-3(b)(3) unit credit defined benefit (DB) plan
   C - 1.401(a)(4)-3(b)(4)(i)(C)(1) unit credit DB fractional rule plan
   D - 1.401(a)(4)-3(b)(4)(ii)(C)(2) flat benefit DB plan
   E - 1.401(a)(4)-3(b)(6) insurance account
   F - 1.401(a)(4)-8(b)(3) target benefit plan
   G - 1.401(a)(4)-8(c)(3)(iii)(b) cash balance plan

d List the plan section(a) that satisfies the safe harbor (including, if applicable, the permitted disparity requirements) here:
ATTACHMENT TO FORM 5300, LINE 3a and 3b
DETERMINATION LETTER REQUEST
for the
AC Transit Employees' Retirement Plan

The AC Transit Employees' Retirement Plan ("Plan") is a single governmental defined benefit plan sponsored and maintained by the Alameda-Contra Costa Transit District ("District"), a governmental entity as defined in Internal Revenue Code ("Code") Section 414(d), and administered by the Retirement Board ("Board"). The Plan was first effective on January 1, 1913, and has been amended and restated numerous times since that date. The District represents that the governing provisions for the Plan are contained in the documents comprising the Plan: the Constitution of the State of California, Article 16, Section 17 (the California Pension Protection Act); the California Public Utilities Code, Sections 25301-25392; Plan restatement effective January 1, 2005 and all subsequent amendments thereto; and selected District Board policies. Item 3b on Form 5300 requests copies of all prior plans. Given that the Plan has never received a determination letter since its establishment on January 1, 1913, we have only submitted the current document. However, we are able to provide the Service with any specific prior documentation, as needed.

As stated in the transmittal letter, we request that the determination letter be issued on the qualified status of the Plan in its entirety, including the [proposed] Amendment 10-____-____.
ATTACHMENT TO FORM 5300, LINE 3c
NOTICE TO INTERESTED PARTIES
for the
AC Transit Employees' Retirement Plan

Pursuant to a conversation with the TE/GE call site, we have indicated that interested parties have been given the required notification of this application. However, no notice was given. The Treasury Regulations issued on July 19, 2002, clarify that the notice requirements are not applicable to governmental plans.
ATTACHMENT TO FORM 5300, LINE 9a
ELIGIBILITY REQUIREMENTS
for the
AC Transit Employees’ Retirement Plan

All non-represented employees are immediately eligible to participate, and represented employees are eligible upon completion of the requirements determined under the applicable collective bargaining agreement. See Plan § 2.1.

An employee includes (i) a person employed by the District, any portion of whose income is subject to withholding of income tax by the District, or (ii) any person employed by the District who is on leave to work for ATU or ATU-International as a full-time official of such entity, or as an employee on official business for such entity, and who receives salary from ATU or ATU-International. A person's status as an employee will be determined by the Board subject to the following:

(a) an employee does not include any person treated or classified by the District as (i) a temporary employee, (ii) an independent contractor, (iii) a Para-Transit worker, or (iv) a Leased Employee. For this purpose, "Leased Employee" means any person classified by the District as a leased employee who receives compensation from a third party for services performed for the District.

(b) A person who is reclassified as an employee on a retroactive basis will not be treated as having been an employee for purposes of the Plan for any period prior to the date that such person is so reclassified.

(c) No person will be an employee for any period for which he or she receives service credit under another pension plan, if receipt of service credit under this Plan for that period is prohibited under California Government Code Section 20894, as amended.

See Plan § 1.23.

Attachment 9a
ATTACHMENT TO FORM 5300, LINE 10g
VESTING
for the
AC Transit Employees' Retirement Plan

As noted in line 7a of Form 5300, the Plan is a governmental plan. Therefore, the Plan is not subject to Title I of the Employee Retirement Income Security Act of 1974. The General Instructions indicate that such a plan should skip this item on the Form 5300. Nevertheless, we believe the following summary of vesting provisions may assist you when considering this application.

With respect to employees who are members of the bargaining unit represented by ATU and who terminated employment prior to June 30, 2008, the employee is vested upon completion of 10 years of service. With respect to employees who are members of the bargaining unit represented by ATU and who terminate employment on or after June 30, 2008, an employee is vested upon completion of 8 years of service.

With respect to non-represented employees or members of the bargaining unit represented by AFSCME or IBEW, the employee is vested upon completion of 5 years of service.

With respect to employees who are a member of the bargaining unit represented by ATU and who becomes a non-represented employee or a member of the bargaining unit represented by AFSCME or IBEW, the employee will become vested upon completion of 5 years of service after he or she completes the applicable probationary period as a non-represented employee or an IBEW or AFSCME member. See Plan § 1.46.

A participant who has satisfied the service requirement for vesting and reached age 55 will be eligible for a service retirement benefit. See Plan §§ 1.40 and 3.1.

In the event of Plan termination, the accrued benefits of participants will become fully vested and nonforfeitable to the extent funded. See Plan § 10.3.

Attachment 10g

AC Transit Employees' Retirement Plan
ATTACHMENT TO FORM 5300, LINE 11a
ACCRUED BENEFIT, BENEFIT FORMULA, AND NORMAL FORM
for the
AC Transit Employees' Retirement Plan

Method for Determining Accrued Benefit

A member's accrued benefit is determined based on the participant's monthly average earnings and years of service as of the date of determination. See Plan §§ 1.1, 3.4, and 4.3.

Benefit Formula at Normal Retirement Age

The benefit formula is a specified percentage (based on the participant's age at retirement and employee classification) of monthly average earnings multiplied by the participant's years of service. See Plan § 4.1.

Benefit Formula at Early Retirement Age

A participant who terminates as a non-represented employee may retire after completing the years of service required to become vested and reaching age 50. The early retirement benefit formula is a specified percentage (based on the participant's age at retirement) of monthly average earnings multiplied by the participant's years of service as a non-represented employee. See Plan § 4.1(f).

Normal Form of Retirement Benefit

The normal form of benefit is a single life annuity. See Plan § 5.1(a).
APPENDIX F

STREAMLINED VCP SUBMISSION

PART I. PLAN INFORMATION

1. APPLICANT'S NAME ____________________________ Alamada-Contra Costa Transit District

2. APPLICANT'S ADDRESS  AC Transit Building, 1600 Franklin Street, Oakland, CA 94612

3. APPLICANT'S TELEPHONE NO.  510-891-4889  4. FAX NO. ____________________________
   (optional)  (optional)

5. APPLICANT'S EIN 94-1492636  6. PLAN NO. 001

7. PLAN NAME AC Transit Employees' Retirement Plan

8. TYPE OF SUBMISSION

☑ REGULAR SUBMISSION
☐ REGULAR SUBMISSION - ANONYMOUS
☐ REGULAR SUBMISSION - MULTI-EMPLOYER PLAN
☐ GROUP SUBMISSION

9. TYPE OF PLAN (CHECK ONE ONLY):

☐ 01 PROFIT SHARING  ☐ 09 CASH BALANCE
☐ 02 401(k)  ☐ 10 GOVERNMENTAL PLAN (§ 414(d))
☐ 03 MONEY PURCHASE  ☐ 11 SEP
☐ 04 DEFINED BENEFIT  ☐ 12 SARSEP
☐ 05 ESOP  ☐ 13 SIMPLE
☐ 06 TARGET BENEFIT  ☐ 14 STOCK BONUS
☐ 07 403(b)  ☐ 15 KSOP
☐ 09 457  ☐ 16 OTHER (specify):

10. DATE (month and day) ON WHICH PLAN YEAR ENDS 12/31

11. NUMBER OF PARTICIPANTS IN THE PLAN AS PROVIDED ON THE MOST RECENTLY FILED FORM 5500 SERIES (See Rev. Proc. 2008-50, section 12.07.): 3,792

12. ASSETS IN THE PLAN AS PROVIDED ON THE MOST RECENTLY FILED FORM 5500 SERIES (ROUND TO NEAREST DOLLAR): $377,823,000


AC Transit Employees' Retirement Plan
APPENDIX F
STREAMLINED VCP SUBMISSION

Plan Name: AC Transit Employees' Retirement Plan       EIN:   94-1492636   Plan #001

If the Applicant is being represented by someone in connection with this matter or wishes to authorize someone to receive information from us in connection with this matter, submit a completed Form 2848 or Form 8821 and complete items 13 through 18.

13. NAME OF APPLICANT'S REPRESENTATIVE ___________Terry A.M. Mumford__________________________

14. NAME OF REPRESENTATIVE'S FIRM ___________ Ice Miller LLP ________________________________

15. REPRESENTATIVE'S ADDRESS: One American Square, Suite 2900, Indianapolis, IN 46282

16. REPRESENTATIVE'S PHONE NO. (317) 236-2110       17. FAX NO. (317) 592-4713

18. REPRESENTATIVE'S E-MAIL ADDRESS ___________ terry.mumford@icemiller.com __________________________

(Part B - Required)

PART II. APPLICANT'S ENCLOSURES

The Applicant encloses the following documents with this submission:

☒ VCP fee of $15,000 made payable to the U.S. Treasury (required). (If the fee is determined on the basis of treating Transferred Assets as a separate plan, pursuant to section 12.07 of Rev. Proc. 2008-50, please enclose a description of the related employer transaction, including the date of the employer transaction and the date the assets were transferred to the plan.)

☐ A written request if the application is made for a terminating Orphan Plan and the Applicant is applying for a waiver of the VCP fee.

☒ Power of Attorney (Form 2848) or Tax Information Authorization (Form 8821), if applicable.

☐ If the plan is being considered for an unrelated determination letter application, a statement to that effect.

☒ Appendix E (optional)

☒ Completed Appendix F schedule(s). (Check the schedules that apply)

☒ Schedule 1 - Interim and Certain Discretionary Nonamender Failures
☒ Schedule 2 - Nonamender Failures (other than those to which Schedule 1 applies)
☒ Schedule 3 - SEPs and SARSEPs
☒ Schedule 4 - SIMPLE IRAs
☒ Schedule 5 - Plan Loan Failures
☒ Schedule 6 - Employer Eligibility Failure
☒ Schedule 7 - Failure to Distribute Elective Deferrals in Excess of the § 402(g) Limit
☒ Schedule 8 - Failure to Pay Required Minimum Distributions Timely under § 401(a)(9)
☒ Schedule 9 - Correction by Plan Amendment (In accordance with Appendix B)

☒ Information required by each schedule, as set forth in each applicable Part entitled "Enclosures."
APPENDIX F
STREAMLINED VCP SUBMISSION

Plan Name: AC Transit Employees' Retirement Plan EIN: 94-1492636 Plan #001

PART III. APPLICANT'S REPRESENTATIONS

A. Under Examination

To the best of my knowledge:

1) The subject plan is not currently under examination of either an Employee Plans Form 5500 series return or other Employee Plans examination,
2) The Plan Sponsor is not under an Exempt Organizations examination (that is, an examination of a Form 990 series return or other Exempt Organizations examination),
3) Neither the Plan Sponsor nor any of its representatives has received verbal or written notification from the Tax Exempt and Government Entities Division of the Internal Revenue Service ("Service") of an impending examination or of any impending referral for such examination nor is the plan in Appeals or litigation for any issues raised in such an examination, and
4) The subject plan is not currently under investigation by the Criminal Investigation Division of the Internal Revenue Service.

B. Abusive tax avoidance transaction (check box that applies)

☒ Neither the plan nor the Plan Sponsor has been a party to an abusive tax avoidance transaction as defined in section 4.13(2) of Rev. Proc. 2008-50.
☐ The plan or the Plan Sponsor has been a party to an abusive tax avoidance transaction. Details of the transaction(s) are provided in a separate statement which has been included with the submission.

C. Compliance Fee

The Applicant will neither attempt to amortize, deduct, or recover from the Internal Revenue Service any compliance fee paid in connection with this compliance statement nor receive any Federal tax benefit on account of payment of such compliance fee.

D. Penalties of Perjury

Under penalties of perjury, I declare that I have examined this submission, including accompanying documents and representations. To the best of my knowledge and belief, the facts and information presented in support of this submission are true, correct, and complete.

Signed: ___________________________ Date: ___________________________
Name (printed): ___________________________
Title: ___________________________
APPENDIX F
STREAMLINED VCP SUBMISSION

Plan Name: AC Transit Employees' Retirement Plan EIN: 94-1492636 Plan #001

PART IV: ENFORCEMENT RESOLUTION (to be completed by IRS only)

The Internal Revenue Service will not pursue the sanction of revoking the tax-favored status of the plan under §§ 401(a), 403(b), 408(k), or 408(p) of the Internal Revenue Code on account of the failure(s) described in the schedules submitted pursuant to this Appendix F. This compliance statement considers only the acceptability of the correction method(s) and the revision(s) of administrative procedures described in the schedules submitted pursuant to this Appendix F submission and does not express an opinion as to the accuracy or acceptability of any calculations or other material submitted with the application. In no event may this compliance statement be relied on for the purpose of concluding that the plan or Plan Sponsor (as defined in Rev. Proc. 2008-50) was not a party to an abusive tax avoidance transaction. The compliance statement should not be construed as affecting the rights of any party under any other law, including Title I of the Employee Retirement Income Security Act of 1974.

This compliance statement is conditioned on (1) there being no misstatement or omission of material facts in connection with the submission and (2) the completion of all corrections described in the applicable schedule(s) to this Appendix F submission within one hundred fifty (150) days of the date of the compliance statement.

In addition:
(paragraph applies only if checked by the Service)

☐ For failure(s) described in Schedule 1 of Appendix F, the Service will treat the amendments as if they had been adopted timely for the purpose of making available the extended remedial amendment period set forth in Revenue Procedure 2007-44, 2007-28 I.R.B. 54, or its successors. However, this compliance statement does not constitute a determination as to whether any such plan amendment, as drafted, complies with the applicable change in qualification requirements.

☐ For failure(s) described in Schedule 3 of Appendix F, the Service will not pursue the following:
☐ Excise tax under § 4972.
☐ Excise tax under § 4979.

☐ For failure(s) described in Schedule 4 of Appendix F, the Service will not pursue excise tax under § 4972.

☐ For loan failure(s) described in section _____ of Schedule 5 of Appendix F, the Service will not require the deemed distributions to be reported on Form 1099-R with respect to the participant(s) affected by the failure(s). The repayments made pursuant to the correction of such loan(s) will not result in an affected participant having additional basis in the plan for the purpose of determining the tax treatment of subsequent distributions from the plan to such participant(s).

☐ For loan failure(s) described in section _____ of Schedule 5 of Appendix F, the Service will require the deemed distributions to be reported on Form 1099-R with respect to the participant(s) affected by the failure(s). However, the plan will be permitted to report deemed distributions on Form 1099-R in the year of correction instead of the year of the failure.

☐ For minimum distribution failure(s) described in Schedule 8 of Appendix F, the Service will waive the excise tax under § 4974.

Approved:

Joyce Kahn, Manager
Employee Plans Voluntary Compliance
Tax Exempt and Government Entities Division

Date:

AC Transit Employees' Retirement Plan
APPENDIX F, SCHEDULE 1 Exhibit C to Att. C to GC Memo No. 10-206b
Interim and Certain Discretionary Nonamender Failures

Plan Name: AC Transit Employees' Retirement Plan EIN: 94-1492636 Plan #001

PART I. IDENTIFICATION OF FAILURES

A. Interim Amendments

The plan identified above was not amended timely for (check all failures that apply)

☐ Good faith amendments under the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") required under Notice 2001-42 (for details see Notice 2001-57). If the Plan Sponsor failed to timely adopt one or more good faith amendments required for the plan to comply with EGTRRA, then check the box on the left and check the applicable amendments below:
☐ The increased limit on annual additions under § 415(c) (applies to defined contribution plans that do not incorporate § 415(c) by reference)
☐ Modification of top heavy rules under § 416 (applies to both defined benefit and defined contribution plans)
☐ Vesting requirements for employer matching contributions under § 411 (applies to plans that provided for employer matching contributions that do not vest as rapidly as any of the schedules provided for under § 411(a)(12))
☐ Modification of rules relating to eligible rollover distributions under §§ 401(a)(31)(A), 401(a)(31)(C), 402(c)(4), and 402(c)(8) (applies to both defined benefit and defined contribution plans)
☐ Repeal of the multiple use test under Treasury Regulations § 1.401(m)-2 (applies to § 401(k) plans that were formerly subject to the multiple use test)
☐ Suspension period following hardship distribution (required for plans subject to the safe harbor requirements of § 401(k)(12) or § 401(m)(11))
☐ Plan provisions prohibiting loans to any owner-employee or shareholder-employee (required for plans that provide loans to participants but prohibit the making of loans to owner-employees or Subchapter S shareholder-employees)
☐ The automatic rollover provision under § 401(a)(31)(B), as described in Notice 2005-5 (applies to both defined benefit and defined contribution plans)
☐ The final and temporary regulations under § 401(a)(9) (interim amendment required for defined contribution plans; defined benefit plans have until the end of the extended EGTRRA remedial amendment period to amend. See Rev. Procs. 2002-29 and 2003-10.)
☐ Guidance relating to the prescribed mortality table under § 415(b)(2)(E)(v) or the applicable mortality table under § 417(e)(3)(A)(ii)(I), as described in Rev. Rul. 2001-62 (applies to defined benefit plans.)
☐ Interim amendments, as described in Rev. Proc. 2007-44 or its successors. If the plan failed to adopt one or more amendments required for the plan to comply with a law change, then check the box on the left and check the applicable amendments below:
☐ Final §§ 401(k) and 401(m) regulations (plans with 401(k) and 401(m) provisions must comply with the regulations for plan years beginning on or after January 1, 2006)
☐ Prohibited allocation of securities in an ESOP maintained by a S-Corp. pursuant to § 400(p)
☐ Retroactive annuity starting date provisions pursuant to Treasury Regulations § 1.417(e)-1 (required for plans that provide for retroactive annuity starting dates)
☐ Final regulations under regarding low normal retirement age (§ 1.401(a)-1(b)(2))
☐ Amendments to § 1.411 (c)-3 of the final regulations
☒ Final regulations under § 415
☐ Other (i.e., any other interim amendment that complies with the requirements in Rev. Proc. 2007-44 or its successors). Please list:
APPENDIX F, SCHEDULE 1 Exhibit C to Att. C to GC Memo No. 10-206b
Interim and Certain Discretionary Nonamender Failures

Plan Plan Name: AC Transit Employees' Retirement Plan EIN: 94-1492636 Plan #001

B. Implementation of Applicable Optional Law Changes (defined in section 6.05(3) of Rev. Proc. 2008-50)

The plan identified above was not amended timely for (check all failures that apply)

☐ Optional good faith EGTRRA amendments under Notice 2001-42 (for details, see Notice 2001-57). If the Plan Sponsor implemented any of the optional law changes and failed to adopt good faith amendments timely to conform the plan to its operation, then check the box on the left and check the applicable amendments below:
☐ Increasing the limit on compensation (under §401(a)(17)) that is taken into account for the purpose of determining allocations in a defined contribution plan or benefits in a defined benefit plan
☐ Disregarding amounts attributable to rollovers in determining the value of an employee’s vested accrued benefit subject to involuntary distribution pursuant to §411(a)(11)(D)
☐ Increasing the contribution limit for elective deferrals on account of the increased limitation under §402(g) or, in the case of a SIMPLE 401(k) plan, §408(p)(2)
☐ Adding types of rollovers accepted by the plan pursuant to EGTRRA §§641, 642, and 643 (available for rollovers accepted after December 31, 2001)
☐ Providing for catch-up contributions pursuant to §414(v)
☐ Adding “severance from employment” as a distributable event pursuant to §§401(k)(2) and 401(k)(10)
☐ Increasing the limit on a participant’s benefit pursuant to §415(b)
☐ Final §§401(k) and 401(m) regulations (optional for plan years beginning before January 1, 2006, the earliest possible plan year in which regulations could be effective: plan year ending after December 29, 2004)
☐ Permitting participants to designate elective deferrals as Roth contributions pursuant to §402A
☐ Permitting deemed individual retirement accounts pursuant to §408(q)
☐ Final regulations under §409(p) regarding ESOPs holding S-Corp stock.
☐ Other amendments relating to implementation of optional law changes. Please list

AC Transit Employees' Retirement Plan
APPENDIX F, SCHEDULE 1
Interim and Certain Discretionary Nonamender Failures

Plan Name: AC Transit Employees' Retirement Plan  EIN:  94-1492636  Plan #001

PART II. DESCRIPTION OF METHOD OF CORRECTION

The Plan Sponsor has adopted amendments that satisfy the requirements of all of the items checked in Part I of this Appendix F, Schedule 1 retroactively to the effective dates of the specific provisions contained in the amendments. The executed amendments have been enclosed with this submission.

PART III. CHANGE IN ADMINISTRATIVE PROCEDURES

The Applicant has taken the following step(s) to ensure that the failure(s) will not recur:

The Applicant will work closely with legal tax counsel to ensure that the Plan remains in compliance with all changes in law.

PART IV. ENCLOSURES

In addition to the applicable enclosures listed on Appendix F, the Plan Sponsor encloses copies of the signed and dated amendments used to correct the failure(s) identified in Part I of this Appendix F, Schedule 1.
APPENDIX F, SCHEDULE 2
Exhibit C to Att. C to GC Memo No. 10-208b
Nonamender Failures (other than those to which Schedule 1 applies)

Plan Name: AC Transit Employees' Retirement Plan EIN: 94-1492636 Plan #001

PART I. IDENTIFICATION OF FAILURES

A. Interim Amendments

The plan identified above was not amended to comply with the applicable provisions of the following legislative and regulatory requirements by the applicable deadlines in accordance with § 401(b) and the regulations thereunder:

☒ The Employee Retirement Income Security Act of 1974 (ERISA)
☐ The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)
☐ The Deficit Reduction Act of 1994 (DEFRA)
☐ The Retirement Equity Act of 1984 (REA)
☐ The Tax Reform Act of 1986 (TRA '86)
☐ The Unemployment Compensation Amendments of 1992 (UCA)
☒ The Omnibus Budget Reconciliation Act of 1993 (OBRA)
☒ GUST (includes The Uruguay Round Agreements Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1998, the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998, and the Community Renewal Tax Relief Act of 2000)
☐ The changes required by the 2005 Cumulative List (Notice 2005-101, 2005-2 C.B. 1219)
☐ The changes required by the 2006 Cumulative List (Notice 2007-3, 2007-1 C.B. 255)
☒ Other (specify the legal requirement and applicable Cumulative List):

Technical and Miscellaneous Revenue Act of 1988 (TAMRA) election under IRC 415(b)(10)

PART II. DESCRIPTION OF PROPOSED METHOD OF CORRECTION

The Plan Sponsor has adopted (or will adopt) amendments that satisfy the requirements of all of the items checked in Part I of this Appendix F, Schedule 2 retroactively to the effective dates of the specific provisions contained in the amendments. The amendments and restated plan documents (where applicable) are enclosed with this submission.

PART III. CHANGE IN ADMINISTRATIVE PROCEDURES

The Applicant has taken the following step(s) to ensure that the failure(s) will not recur:

The Applicant will work closely with legal tax counsel to ensure that the Plan remains in compliance with all changes in law.
PART IV. ENCLOSURES

In addition to the applicable enclosures listed on Appendix F, the Plan Sponsor encloses the following with this submission:

- Copies of all amendments used to correct the failure(s), either as adopted or in proposed form,
- A copy of the plan document in effect prior to any of the amendments used to correct the failure(s),
- A copy of the most recent determination letter issued with respect to the plan (if applicable), and
- A determination letter application (Form 5300, 5307, or 5310 along with Form 8717 and the applicable user fee payment made payable to the U.S. Treasury).