

**ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
RESOLUTION NO. 22-011**

**A RESOLUTION APPROVING AMENDMENT 22-A-19 TO THE AC TRANSIT EMPLOYEES'
RETIREMENT PLAN**

WHEREAS, on September 12, 2012, Governor Brown signed into law the Public Employees' Pension Reform Act of 2013 (PEPRA), which became effective January 1, 2013; and

WHEREAS, on December 17, 2017, the Board of Directors adopted Resolution No. 17-046, approving Amendment 17-A-18 to the AC Transit District Employees' Retirement Plan (Plan) to apply PEPRA to Unrepresented Employees who became a Participant in the Plan on or after January 1, 2016; and

WHEREAS, upon conclusion of litigation challenging PEPRA under the Urban Mass Transit Act of 1964 Section 13(c), the District entered into agreements with its three labor unions to adopt the provisions of PEPRA for represented employees hired after January 1, 2020; and


WHEREAS, a proposed Plan Amendment has been prepared by legal counsel that implements a Tier 2 pension plan for represented employees that provides the same benefit as offered to California public employees other than public transit employees pursuant to Article 4, Chapter 21 of Division 7 of Title 1 of the California Government Code, as amended from time to time.

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

Section 1. Adopts Resolution No. 22-011, approving Amendment 22-A-19 to the AC Transit's Employees' Retirement Plan, attached hereto as Exhibit A.

Section 2. This resolution shall become effective immediately upon its passage by four affirmative votes of the Board of Directors.

PASSED AND ADOPTED this 23rd day of March 2022.



Elsa Ortiz, President

Attest:



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 23rd day of March 2022, by the following roll call vote:

AYES: DIRECTORS SHAW, PEEPLES, BECKLES, WALSH, VICE PRESIDENT YOUNG, and PRESIDENT ORTIZ

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE


Linda A. Nemeroff, District Secretary

Approved as to Form and Content:


Jill A. Sprague, General Counsel

EXHIBIT A

**AMENDMENT 22-A-19
AC TRANSIT EMPLOYEES' RETIREMENT PLAN**

The AC Transit Employees' Retirement Plan ("Plan") is hereby amended to modify and replace Article XIII as set forth below, as finally adopted and approved by the Alameda-Contra Costa Board of Directors on March 23, 2022. Capitalized terms not defined in this amendment have the same definitions as set forth in Article I of the Plan.

Article XIII

Tier 2 of the Pension Plan

13.1 Construction

(a) **Name.** The provisions of this Article XIII shall be known as "Tier 2."

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

(c) **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 consistent with equivalent provisions and requirements applicable to California public employees other than public transit employees pursuant to Article 4, Chapter 21 of Division 7 of Title 1 of the California Government Code, Government Code sections 7522 through 7522.74, as amended from time to time. Applicable Government Code sections are referred to herein for reference.

(d) **Authority to Amend.** The District reserves the right to retroactively or prospectively amend this Article XIII as appropriate to: (1) incorporate provisions reflecting Collective Bargaining Agreements (CBAs) with the bargaining units represented by recognized employee organizations, subject to any collective bargaining obligations, and (2) reflect any amendments to Article 4, Chapter 21 of Division 7 of Title 1 of the California Government Code, Government Code sections 7522 through 7522.74, as amended from time to time, or authoritative guidance relating to those provisions which would, if applicable, affect the Plan.

13.2 Provisions Applicable to All Participants. This Section 13.2 is effective on January 1, 2016 for all Non-Represented Participants and is effective on January 1, 2020 for all Represented Participants ("applicable effective dates") regardless of the date of any individual Participant's initial participation in the Plan.

(a) **No Retroactive Benefit Enhancements.** (Gov. Code sec. 7522.44) Any enhancement to a Participant's Benefit that is adopted on or after the applicable effective date, or that results from a change to the Participant's classification or employment on or after the applicable effective date, will apply only to Service performed on or after the operative date (as defined in section 7522.44 (a-c) 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 Code (26 U.S.C. § 415(n)(3)(C)), is not permitted.

(c) **Reinstatement of Retired Participants.** (Gov. Code sec. 7522.56) 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 the terms of this Plan. This Section 13.2(c) applies only to retired Participants who return to employment or service on or after the applicable effective date.

(d) **Exception to Reinstatement.** (Gov. Code sec. 7522.56(b)-(i)) On or after the applicable effective date, 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 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 as a retired annuitant subject to California Government Code Section 7522.56 with a public employer. 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.** (Gov. Code sec. 7522.74).

(1) If a current or former Participant is convicted of a felony under state or federal law, whether in state or federal court, 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, 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. Any funds returned to the Participant pursuant to this paragraph shall be disbursed by electronic funds transfer to an account of the Participant, in a manner conforming with the requirements of the Internal Revenue Code, and the Plan shall notify the relevant Court and District Attorney at least three days prior to said distribution of funds.

(3) Rights and benefits forfeited under Section 13.2(e) shall remain forfeited notwithstanding any reduction in sentence or expungement of the conviction following the date of the Participant's conviction. In the event the conviction is reversed and that decision is final, the Participant shall be entitled to either (i) recover the forfeited rights and benefits as adjusted for any contributions received pursuant to subdivision 13.2(e)(2) above, or (ii) redeposit those contributions and interest that would have accrued during the forfeiture period, as determined by the Plan Actuary, and then recover the full amount of the forfeited rights and benefits.

(f) **Eligible Rollover Distributions.**

(1) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section 13.2(f), a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee.

(2) **Definitions.** For purposes of this Section 13.2(f), the following definitions shall apply:

(i) **Distributee.** A "Distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse. A Distributee shall also include an Employee's or former Employee's nonspouse

designated Beneficiary, in which case, the distribution can only be transferred in accordance with Section 13.2(t)(3).

(ii) Eligible Retirement Plan. An "Eligible Retirement Plan" shall mean any of the following types of retirement plans which accepts an Eligible Rollover Distribution and agrees to separately account for amounts transferred into such plan from this Plan: (a) an individual retirement account described in Section 408(a) of the Code, (b) an individual annuity described in Section 408(b) of the Code, (c) an annuity plan described in Section 403(a) of the Code, (d) a qualified trust described in Section 401(a) of the Code; (e) an annuity contract described in Section 403(b) of the Code, or (t) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The term "Eligible Retirement Plan" shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Section 414(p) of the Code. However, in the case of a nonspouse beneficiary, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity, which is then treated as an inherited account.

(iii) Eligible Rollover Distribution. An "Eligible Rollover Distribution" is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more; (b) any distribution required under Section 401(a)(9) of the Code; and (c) the portion of any distribution that is not includable in gross income of the Distributee.

(3) Direct Rollovers for Nonspouse Beneficiaries. A designated Beneficiary who is not the surviving spouse of the deceased Participant may elect a direct rollover of all or any portion of his or her distribution at the time and in the manner prescribed by the Plan Administrator. Any such distribution may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code established for purpose of receiving the distribution on behalf of the designated Beneficiary and treated as an inherited IRA within the meaning of Section 408(d)(3)(C) of the Code. The designated Beneficiary must provide the Plan Administrator with sufficient information to identify the status of the inherited IRA as well as the custodian of the funds to whom the direct transfer is to be made. Any distribution made in accordance with this provision shall be considered an Eligible Rollover

Distribution excludable from gross income for the year in which payment is made under Section 402(c)(1) of the Code; however, any portion that is attributable to a required minimum distribution shall not be eligible for rollover treatment and shall be taxable to the Beneficiary. If a Participant's designated Beneficiary is a trust, the trustee of such trust shall be permitted to elect a direct rollover to an individual retirement account in accordance with this subsection provided the beneficiaries of the trust otherwise satisfy the requirements to be designated beneficiaries within the meaning of Section 401(a)(9)(E) of the Code and the regulations issued thereunder.

13.3 **Provisions Applicable to New Participants.** This Section 13.3 is effective for all Non-Represented Employees and Represented Employees who meet the definition of "New Participant" in this section 13.3(a). The provisions of this Section 13.3 shall in no event be applicable to any Participant already participating in the Plan prior to the effective date of this Section.

(a) **Definition of New Participant.** (Gov. Code sec. 7522.04) A New Participant is a Non-Represented Employee who first becomes a Participant in the Plan on or after January 1, 2016, and a Represented Employee who first becomes a Participant in the Plan on or after January 1, 2020.

(b) **Definition of Compensation.** (Gov. Code sec. 7522.34) For purposes of determining a New Participant's Retirement Benefit, "Compensation" means the normal monthly rate of pay or base pay of the New 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 New Participant's Benefit.

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

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

(5) Any payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid.

(6) Any payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(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(b).

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

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

From time to time, the District will provide the Retirement Board a list of pay codes identified as either includable or not includable in Compensation (based on the foregoing definition). The Retirement Board will determine whether to approve or reject the list of includable pay codes (as amended from time to time) in whole or in part.

(c) **Compensation Limit.** (Gov. Code sec. 7522.10) For each calendar year after 2014, any amount in excess of the contribution and benefit base specified in section 430(b) of the Title 42 of the United States Code on January 1, 2013, as adjusted in accordance with this Section 13.3(c), is excluded from Compensation. 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: U.S. City Average. The adjustment will be effective on the January 1 following each such annual valuation.

(d) **Definition of Monthly Average Earnings.** (Gov. Code sec. 7522.32) For purposes of determining the New Participant's Retirement Benefit, "Monthly Average Earnings" means the highest average annual Compensation earned by the New Participant during a period of 36 consecutive months immediately preceding his or her Retirement or last separation from service if earlier, or during any other period of 36 consecutive months during the New Participant's applicable service that the New Participant designates on the application for Retirement.

(e) **Participant Contributions.** (Gov. Code sec. 7522.30)

(1) Each New Participant must contribute part of his or her Compensation to the Plan. The initial contribution rate will equal 50% of the Tier 2 normal cost rate, rounded to the nearest quarter of 1%. For example, if the normal cost rate is 12.6%, 50% of the normal cost rate is 6.3% and the New Participant contribution rate will be 6.25%. The District may not pay any portion of this contribution for any New Participant. The New Participant contribution rate will be expressed as a percentage of Compensation. For tax purposes, new Participant contributions will be deemed picked up by the

District on a pre-tax basis under Section 414(h)(2) of the Internal Revenue Code.

(2) For purposes of this Section 13.3(e), "Tier 2 normal cost rate" means the total annual actuarially determined normal cost under the Plan of Benefits for New Participants, as determined by the Plan's actuary in accordance with the Board's funding policy.

(3) Once established, the New Participant contribution rate will be adjusted to reflect a change in the Tier 2 normal cost rate, but only if the Tier 2 normal cost rate increases or decreases by more than 1% of payroll above or below the Tier 2 normal cost rate in effect on the later of: (i) the date the New Participant contribution rate is first established, or (ii) the date of the last adjustment to the New Participant contribution rate under this paragraph.

(4) The New Participant contribution rate may be more than 50% of the Tier 2 normal cost rate, but only if the requirements of Section 7522.30(e) of the California Government Code are satisfied.

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

(6) An individual account will be established for each New 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 for each full calendar year during which the New Participant is employed with the District. In the event the New Participant terminates employment with the District, interest will accrue for the calendar year in which termination occurs on a pro rata basis up to and including the date of termination. No interest shall accrue after the New Participant terminates employment.

- i. If a New Participant's District employment terminates before the New Participant is Vested, the New Participant's entire account balance will be distributed as a lump sum to the New Participant as soon as administratively practicable.
- ii. A New Participant who is a Deferred Vested Participant under section 1.14 of the Plan may at any time elect to receive distribution of his or her entire account balance as a lump sum, upon which the New Participant's participation in the Plan will cease and neither he or she nor his or her estate or Beneficiary will be entitled to any Benefit.

- iii. If a New Participant dies before becoming eligible to retire, the New Participant's entire account balance will be distributed as a lump sum to the New Participant's estate or, in the absence of an estate, in another form of distribution allowed by the California Probate Code.
- iv. If a New Participant who is a Deferred Vested Participant and who is eligible to retire dies prior to Retirement, the following will control:
 - I. If the New Participant has not submitted a valid application for a Service Retirement Benefit, the New Participant's entire account balance will be distributed as a lump sum to the New Participant's estate or, in the absence of an estate, to another form of distribution allowed by the California Probate Code.
 - II. A New Participant may elect an Optional Benefit form pursuant to Section 5.2. Such election may be made only as part of a valid application for Service Retirement, which may only be submitted within a reasonable time before the New Participant's Retirement Date.
 - 1. If the New Participant has submitted an application for a Service Retirement Benefit, is eligible to receive benefits, and has elected an Optional Benefit Form under Section 5.3, a living designated Beneficiary will be entitled to the selected Optional Benefit;
 - 2. If the New Participant has submitted an application for a Service Retirement Benefit, is eligible to receive benefits, and there is a designated living Beneficiary, but the New Participant has not elected an Optional Benefit Form under Section 5.3, the Beneficiary will be entitled to the benefit under Section 5.1(b);
 - 3. If the New Participant has submitted an application for a Service Retirement Benefit but there is no designated living Beneficiary, the New Participant's entire account balance will be distributed as a lump sum to the New Participant's estate or, in the absence of an estate, in another

form of distribution allowed by the California Probate Code.

- v. Upon Retirement, a New Participant will not be entitled to a refund of any part of the New Participant's account except as provided herein. In the event the total benefits paid to the New Participant and any Beneficiary (pursuant to Section 5.3) amount to less than the New Participant's total account balance, the difference shall be paid to the New Participant's designated living Beneficiary (as defined in Section 1.7) in a single lump-sum payment as soon as administratively practicable. In the event that there is no living designated Beneficiary, or the account still has value after the Beneficiary stops receiving benefits, the lump sum payment shall be made to the New Participant's estate or, the absence of an estate, in another form of distribution allowed by the California Probate Code.

(7) For Represented Employees who are New Participants, the New Participant contributions required under this section 13.3(e) shall be collected beginning within sixty (60) days of the date this plan amendment is adopted.

(f) Service Retirement Benefit. (Gov. Code sec. 7522. 20)

(1) Each New Participant who has (i) completed at least five Years of Service, (ii) reached at least age 52, (iii) terminated service as an Employee, and (iv) completed and submitted an application for benefits, at the time and in the manner determined by the Board, may retire for service and receive a Service Retirement Benefit.

(2) The Service Retirement Benefit payable to a New Participant upon meeting the requirements in Section 13.3(t)(1) will equal the percentage of the New Participant's Monthly Average Earnings, as determined in accordance with the following schedule based on the New Participant's age at retirement, taken to the preceding quarter year, multiplied by the New Participant's Years of Service.

<u>Age at Retirement</u>	<u>Percentage</u>
52	1.000%
52.25	1.025%
52.50	1.050%
52.75	1.075%
53	1.100%
53.25	1.125%
53.50	1.150%
53.75	1.175%

Age at Retirement	Percentage
54	1.200%
54.25	1.225%
54.50	1.250%
54.75	1.275%
55	1.300%
55.25	1.325%
55.50	1.350%
55.75	1.375%
56	1.400%
56.25	1.425%
56.50	1.450%
56.75	1.475%
57	1.500%
57.25	1.525%
57.50	1.550%
57.75	1.575%
58	1.600%
58.25	1.625%
58.50	1.650%
58.75	1.675%
59	1.700%
59.25	1.725%
59.50	1.750%
59.75	1.775%
60	1.800%
60.25	1.825%
60.50	1.850%
60.75	1.875%
61	1.900%
61.25	1.925%
61.50	1.950%
61.75	1.975%
62	2.000%
62.25	2.025%
62.50	2.050%
62.75	2.075%
63	2.100%
63.25	2.125%
63.50	2.150%
63.75	2.175%

<u>Age at Retirement</u>	<u>Percentage</u>
64	2.200%
64.25	2.225%
64.50	2.250%
64.75	2.275%
65	2.300%
65.25	2.325%
65.50	2.350%
65.75	2.375%
66	2.400%
66.25	2.425%
66.50	2.450%
66.75	2.475%
67	2.500%

13.4 Funding. (Gov. Code sec. 7522.52)

(a) **In any Plan Year beginning on or after January 1, 2016 the District's** contributions 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 set a contribution rate less than that indicated in 13.4(a) 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.

(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 23rd day of March, 2022.

By: 
 Linda A. Nemeroff, District Secretary