

AMENDMENT 12
TO THE ALAMEDA-CONTRA COSTA DISTRICT
AND THE AC TRANSIT DISTRICT RETIREMENT BOARD
AGREEMENT

THIS SECOND AMENDED AGREEMENT is entered into this ____ day of June, 2019, by and between "the ALAMEDA-CONTRA COSTA TRANSIT DISTRICT, a special district created and operating under the laws of the State of California (hereinafter referred to as "DISTRICT"), and the AC TRANSIT DISTRICT RETIREMENT BOARD, a board created by DISTRICT (hereinafter referred to as "RETIREMENT BOARD").

WHEREAS, the DISTRICT created the RETIREMENT BOARD in accordance with Public Utilities Code (PUC) Section 25361; and

WHEREAS, the RETIREMENT BOARD, under Article 16, Section 17 of the California Constitution, has sole and exclusive responsibility over the assets of the AC Transit District Retirement Plan ("the Plan") and similarly has sole and exclusive responsibility for the administration of the Plan; and

WHEREAS, the RETIREMENT BOARD requires full time, qualified professional personnel dedicated to the management of the Plan in order to fulfill its responsibilities under the Constitution and the PUC; and

WHEREAS, the DISTRICT and the RETIREMENT BOARD agree that the interests of the beneficiaries of the Plan and the DISTRICT are served by in-house administration of the Plan; and

WHEREAS, the DISTRICT is willing and able to employ as DISTRICT employees, a Retirement System Manager and supporting Retirement Department Staff, who have the requisite qualifications and experience to administer the plan and oversee its assets, and to contract with the RETIREMENT BOARD to provide the services of these employees to the RETIREMENT BOARD so that it may fulfill its constitutional obligations,

NOW, THEREFORE, in consideration of the faithful performance of the terms, conditions, covenants and promises set forth in this Agreement, the parties agree as follows:

1. TERM. This Agreement shall remain in effect until terminated by either of the parties in accordance with Paragraph 13 herein.

2. RETIREMENT DEPARTMENT STAFF. Subject to Paragraph 3 below, DISTRICT agrees to recruit and hire a Retirement System Manager, who shall serve as Plan Administrator and Secretary to the RETIREMENT BOARD, and such subordinate staff as the RETIREMENT BOARD and DISTRICT may mutually determine are necessary to carry out the RETIREMENT BOARD'S responsibilities.

3. TERMS AND CONDITIONS FOR EMPLOYMENT OF RETIREMENT DEPARTMENT STAFF. DISTRICT shall consult with the RETIREMENT BOARD before establishing the qualifications and terms and conditions of employment of the Retirement Department Staff, as well as the criteria for determining eligible candidates. Subject to the following sentence, DISTRICT shall not adopt any such terms, conditions or criteria over the objection of the RETIREMENT BOARD. RETIREMENT BOARD acknowledges and accepts that the terms and conditions of employment of Retirement Department Staff, other than the Retirement System Manager (except as otherwise provided in Paragraph 6), shall be set in accord with the DISTRICTS Memoranda of Understanding with affected employee organizations. RETIREMENT BOARD, at its sole and exclusive discretion, shall select a candidate for appointment to the position of Retirement System Manager from a group of no fewer than three eligible candidates and shall have the right to request additional groups of three until such time as it selects a candidate; all other Retirement Department positions shall be filled by the District's General Manager based on the recommendation of the Retirement System Manager.

4. REPORTING RELATIONSHIP. The Retirement System Manager shall report to and be solely responsible to the RETIREMENT BOARD. The remainder of the Retirement Department Staff shall report to the Retirement System Manager. All Retirement Department Staff shall work exclusively on matters related to the administration of the Plan and overseeing Plan assets and shall not perform work for the DISTRICT.

5. SERVICE AS FIDUCIARY. DISTRICT acknowledges and agrees that the Retirement System Manager shall be a fiduciary with respect to the Plan.

6. SERVICE AT THE PLEASURE OF THE RETIREMENT BOARD. The Retirement System Manager shall serve at the sole and exclusive pleasure of the RETIREMENT BOARD. Accordingly, DISTRICT agrees to employ the Retirement System Manager as an employee terminable at will, without advance notice and with or without cause, and upon notice that the RETIREMENT BOARD has voted to relieve the Retirement System Manager of his/her responsibilities, to terminate the employee's employment.

Notwithstanding the foregoing, if, at any time, the State Conciliation Service or an arbitrator or court with authority to render such a decision determines that the position of Retirement System Manager is required to be a represented position in accord with the District's employer-employee resolution, and thus cannot be a position employed at will, RETIREMENT BOARD agrees that the terms of the appropriate bargaining agreement shall govern the employment of the Retirement System Manager, including, as appropriate, terms governing the retention, evaluation or dismissal of the individual occupying the position.

7. INSURANCE AND BONDS. DISTRICT shall include the RETIREMENT BOARD and Retirement Department Staff within the scope of coverage in its various insurance programs to the fullest extent possible. DISTRICT shall advise the Retirement Board in writing, no less frequently than once annually, of the existence of such insurance and the extent of coverage. To the extent the costs for RETIREMENT BOARD and Retirement Department Staff inclusion in the DISTRICT'S insurance programs are reasonably ascertainable, RETIREMENT BOARD shall reimburse the DISTRICT for such costs DISTRICT actually incurs.

In the event DISTRICT elects to provide fidelity bonds for any of its employees, DISTRICT shall notify RETIREMENT BOARD and, with RETIREMENT BOARD approval, shall provide fidelity bonds for all Retirement Department Staff who have authority over disbursement of Plan assets. RETIREMENT BOARD shall reimburse DISTRICT for any cost DISTRICT incurs to provide fidelity bonds for Retirement Department Staff.

8. SUPPORT SERVICES. In addition to the provisions of Paragraph 10, to the extent the RETIREMENT BOARD does not or is unable to utilize non-DISTRICT providers of goods and services, DISTRICT will provide good and services to the Retirement System Manager and Retirement Department Staff to enable them to perform their duties to the RETIREMENT BOARD and retirement system. These goods and services include, but are not limited to, the following, on an as needed basis:

- a. Office space and equipment (desks, chairs, filing cabinets, telephones, Personal computers, etc.);
- b. Use of copying/duplicating equipment;
- c. Use of mail facilities;
- d. Use of accounting resources;
- e. Use of procurement resources;
- f. Use of management information systems;
- g. Use of payroll resources; and
- h. Office supplies.

The above supplies and services will be provided by DISTRICT without additional cost to the RETIREMENT BOARD. However, if DISTRICT determines that the costs for providing these supplies and services cannot be absorbed by DISTRICT, it shall notify the RETIREMENT BOARD in writing that it will charge for these items, at least six months before the beginning of the RETIREMENT BOARD'S fiscal year. DISTRICT shall provide the RETIREMENT BOARD, as part of the notice, an estimate of the costs of providing the aforementioned items, or any portion of them, for the upcoming fiscal year. Each year this agreement is in effect, and DISTRICT charges for any or all of the aforementioned items, it shall provide RETIREMENT BOARD with an itemized list of the charges for supplies and services in accordance with the terms of this paragraph. Any charges for supplies and services provided under this paragraph shall not exceed the actual cost to the DISTRICT for such supplies and services.

9. INDEMNIFICATION. The RETIREMENT BOARD agrees to defend and indemnify the

DISTRICT for any loss the DISTRICT suffers or damage the RETIREMENT BOARD causes the DISTRICT, any DISTRICT loss or damage on account of any decision or conduct by the RETIREMENT BOARD or its staff including, but not limited to, conduct which (a) causes the DISTRICT to terminate the employment of the Retirement System Manager; (b) results in claims against the DISTRICT for violation of any DISTRICT memoranda of understanding or any employment law or regulation, except that DISTRICT shall be solely responsible for providing to the Retirement Department Staff unemployment insurance, disability insurance and workers' compensation insurance; or (c) results in any claim by any retirement system beneficiary or regarding the administration of the retirement system; provided that RETIREMENT BOARD shall be required to defend or otherwise indemnify the DISTRICT for attorney's fees or other costs of defense only in a proceeding where the DISTRICT is a named party and is found not liable and, in a proceeding where the DISTRICT is a named party and is found liable, the parties shall determine the allocation between them of the total of their attorneys¹ fees, costs, and any monetary judgment pursuant to their respective degree of fault, with any dispute on allocation to be resolved pursuant to Paragraph 12, and further provided that the RETIREMENT BOARD shall have no responsibility to the DISTRICT on account of the performance of DISTRICT employees under Paragraph II. An individual member of the Retirement Board, including a past, present, and future Board member, shall not be subject to this Paragraph 9.

DISTRICT agrees to defend and indemnify the RETIREMENT BOARD for any loss it suffers on account of any work performed by DISTRICT employees under Paragraph 8 reasonably relied upon by the RETIREMENT BOARD, the Retirement System Manager, or Retirement Department Staff.

10. PAYMENT FOR DIRECT AND INDIRECT COSTS OF SECRETARY TO RETIREMENT DEPARTMENT STAFF.

a. The RETIREMENT BOARD shall reimburse DISTRICT for the direct and indirect costs incurred by DISTRICT on account of the employment of Retirement Department Staff. These costs include, but are not limited to, salary, fringe benefits and other costs associated with the employment of the Retirement Department Staff. Such reimbursement shall be made monthly, based on itemized statements from the DISTRICT to the RETIREMENT BOARD.

b. The RETIREMENT BOARD may request an audit of DISTRICT'S records regarding the calculation of DISTRICT costs incurred on account of the employment of RETIREMENT BOARD staff or the provision of supplies and services under Paragraph 8. The RETIREMENT BOARD shall provide the DISTRICT with at least 72 hours prior written notice of its request. Any audit shall occur only during the DISTRICT'S normal business hours. If, as a result of the audit, the parties agree that a discrepancy exists in the amount paid by the RETIREMENT BOARD to the DISTRICT, an adjustment shall be made in the RETIREMENT BOARD'S next monthly payment following the parties's resolution of the discrepancy.

c. The RETIREMENT BOARD'S payment to the DISTRICT shall be directed to the DISTRICT'S designee.

11. INTERIM STAFFING. In the event of Retirement Department position vacancy(ies), DISTRICT agrees to expedite the recruitment process to fill such vacancy(ies). Upon request of the RETIREMENT BOARD, DISTRICT further agrees that, in the event that vacancy(ies) in the Retirement Department Staff prevent the adequate administration of the Plan or oversight of Plan assets, DISTRICT shall work with the Retirement System Manager to identify and provide temporary staffing to carry out the day-to-day responsibilities of the Retirement Department. [Nothing in this Agreement shall impair or restrict the authority of the RETIREMENT BOARD to contract directly with outside vendors for temporary staffing to carry out the day-to-day responsibilities of the Retirement Department.](#) In the event of a vacancy in the

position of Retirement System Manager, and where in the judgment of the RETIREMENT BOARD no other Retirement Department Staff is qualified to serve as Acting Retirement System Manager, DISTRICT agrees that its Chief Financial Officer shall serve as a fiduciary to the Plan for purposes of interim administration and overseeing Plan assets. The parties agree that in this situation and for this limited duration no conflict of interest shall exist between the responsibilities of the Chief Financial Officer on behalf of the DISTRICT and the retirement system, or of the Chief Financial Officer shall exist. DISTRICT staff serving in interim capacity(ies) under this paragraph shall keep time records upon which they shall log all time devoted to RETIREMENT BOARD matters. If a conflict of interest between the Chief Financial Officer's responsibilities to the DISTRICT and the RETIREMENT BOARD does exist, the RETIREMENT BOARD, by implementing this Section 11 shall waive such conflict. The RETIREMENT BOARD shall reimburse DISTRICT for the DISTRICTS actual payroll cost of such time provided to the RETIREMENT BOARD under this Paragraph 11.

~~In order to address the critical current staffing needs of the Retirement Department, the Retirement Board is authorized to enter into a contract, for a term of up to 6 months, with Robert Half that will facilitate Curtis Lim continuing to work in his current capacity. The scope of this amendment is limited to this one specific situation and does not set any precedent for any future amendments. The Retirement System Manager is to provide the District's General Manager with a copy of the contract detailing the price and terms.~~

~~12.~~ DISPUTE RESOLUTION. Disputes under this Agreement shall be submitted to final and binding arbitration under terms of the California Arbitration Act, with the arbitration to take place in Alameda County and any judicial proceedings to take place in Alameda County Superior Court. Notice of intent to arbitrate shall be given to the persons identified in Paragraph 14.

~~13.~~12. TERMINATION. Either party may terminate this Agreement at any time, without cause, by giving one hundred eighty (180) calendar days' written notice to the other party.

~~14.~~13. NOTICES. Any notice which may be required under this Agreement shall be in writing, shall be effective when received and shall be given by personal service or by certified or registered mail, return

receipt requested, to the addresses set forth below or to such other addresses which may be specified in writing to all parties to this Agreement.

DISTRICT Alameda-Contra Costa Transit District
1600 Franklin Street Oakland, CA 94612
Attention: General Manager

BOARD AC Transit District Retirement Board
1600 Franklin Street Oakland, CA 94612
Attention: Board Chair

15. MISCELLANEOUS.

a. Binding on Successor. This Agreement is binding on and inures to the benefit of the heirs, successors and assigns of the parties.

b. Interpretation. This Agreement is entered into and shall be interpreted and enforced in accordance with the laws of the State of California. The paragraphs and other headings used in this Agreement are solely for the convenience of the parties and not a part of this Agreement. The singular or plural shall each be deemed to include the others whenever the context so requires. Time is of the essence in the performance of this Agreement.

c. Waivers. By an instrument in writing, either party may waive compliance by the other party with any term or provision of this Agreement that such other party was or is obligated to comply with or perform, provided, however, that such waiver shall not operate as waiver of, or estoppel with respect to, any other or subsequent failure. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof.

d. Entire Agreement. This Agreement contains the entire Agreement between the parties and supersedes any prior agreements. No promise, representation, warranty or covenant not included in this Agreement has been or is relied upon by any party to it.

16. AMENDMENTS.

This Agreement may be amended from time to time in writing, subscribed by the parties hereto.

IN WITNESS WHEREOF, the parties have caused this amended Agreement to be entered into as of

the day and year set forth on Page 1 of this amended Agreement.

AC TRANSIT DISTRICT

Dated: June ____, 20189

President Joe Wallace
Alameda-Contra Costa Transit District

ATTEST:

Dated: June ____, 20189

Linda A. Nemeroff
District Secretary

APPROVED AS TO FORM AND CONTENT:

Dated: June ____, 20189

Denise Standridge
General Counsel

AC TRANSIT RETIREMENT BOARD

Dated: June ____, 20189

President
AC Transit District Retirement Board

APPROVED AS TO FORM:

Dated: June ____, 20189

Russell RL. Richeda
Counsel to the Retirement Board