



Memorandum

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DATE: November 29, 2018

TO: Alameda County Transportation Commission

FROM: Patricia Reavey, Deputy Executive Director of Finance and Administration

SUBJECT: Approve and adopt an amendment to the Alameda CTC Health Reimbursement Arrangement Plan for retirees

Recommendation

It is recommended that the Commission approve and adopt a clarifying amendment to the Alameda CTC Health Reimbursement Arrangement (HRA) Plan for retirees. If approved by the Commission, the amended HRA Plan would technically be effective January 1, 2019; however, since the purpose of the amendment is to effectuate the original intent of the plan, the clarified language would be immediately applicable.

Summary

The HRA Plan is Alameda CTC's reimbursement plan for retiree health care premiums that the Commission originally adopted in January 2012 (effective February 2012) and adopted an amendment once, effective April 2015. To be eligible for retiree health coverage under the HRA plan, a retiree must be vested with at least 10 years of CalPERS service, five of which must be for employment with Alameda CTC. With 10 years of CalPERS service, a retiree would be 50 percent vested for retiree health benefits increasing by 5 percent with each additional year of service up to 20 years for 100 percent coverage at the rate approved by the Commission annually.

Since the Commission adopted the HRA Plan in January 2012, the question as to what constitutes "CalPERS credited service" has been raised on multiple occasions. Staff would like to further define the term "CalPERS credited service" within the HRA Plan document to reflect the intent when the document was crafted to ease concerns of employees and potential employees (Alameda CTC's future retirees).

The intent when the HRA Plan was drafted was for the term "CalPERS credited service" to include all years of service CalPERS would take into account when determining eligibility for retirement pension benefits. This includes CalPERS purchased years of services, as well

as years of service in public agency retirement plans which have a reciprocal arrangement with CalPERS, in addition to service with CalPERS member agencies.

Background

The Alameda CTC contributes only the required minimum contribution amount directly to CalPERS for retirees' health premiums (\$136 per month in 2019). CalPERS requires that the remaining premium costs be deducted directly from each retiree's monthly retirement check under the CalPERS pension plan. Once CalPERS takes this deduction, Alameda CTC's HRA administrator will reimburse each retiree for their eligible deduction amount based on their years of CalPERS service, up to the annually determined amount set by the Commission, which is expected to be \$1,597 per retiree per month for 2019 (median CalPERS HMO health plan rate for retiree plus one, less \$136 PEMHCA-required minimum contribution). If a retiree's elected health coverage costs exceed the amount approved by the Commission, the retiree pays for the additional amount from his or her own funds.

Fiscal Impact: There is no direct fiscal budget impact related to the approval and adoption of this amendment to the HRA plan for retirees.

Attachments:

- A. Alameda CTC Health Reimbursement Arrangement (Draft Amendment)
- B. Resolution Approving and Adopting an Amendment to the Health Reimbursement Arrangement Plan for Retirees

**ALAMEDA COUNTY TRANSPORTATION COMMISSION
RETIREE HEALTH REIMBURSEMENT ARRANGEMENT**

As Amended Effective January 1, 2019-2015

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ALAMEDA COUNTY TRANSPORTATION COMMISSION RETIREE HEALTH REIMBURSEMENT ARRANGEMENT

As Amended Effective January 1, 2015

ARTICLE I. ESTABLISHMENT AND PURPOSE OF THE PLAN

The Alameda County Transportation Commission (the Employer) provides post-retirement health benefits to its Eligible Retirees. The Employer hereby amends the Alameda County Transportation Commission Retiree Health Reimbursement Arrangement (the Plan), originally effective on February 1, 2012 (the Effective Date) to enable Eligible Retirees and their eligible Beneficiaries to pay for the health care benefits described herein. This amendment shall be effective as of January 1, 2015-2019 (the Amendment Date).

The Plan is intended to qualify as a health reimbursement arrangement within the meaning of Internal Revenue Service Notice 2002-45, and it is intended that the benefits under the Plan be tax-free to the maximum extent permitted under the Internal Revenue Code and the regulations issued thereunder. The Plan will be administered and interpreted to accomplish that objective. Capitalized terms used in this Plan that are not otherwise defined have the meanings set forth in Article II.

ARTICLE II. DEFINITIONS

- 2.1 “**Amendment Date**” means January 1, 20152019.
- 2.2 “**Beneficiary**” means any Eligible Retiree's surviving family member who qualifies as an “annuitant” under California Government Code section 22760(c) or (h).
- 2.3 “**Board**” or “Commission” means the Board of Commissioners governing body of the Alameda County Transportation Commission.
- 2.4 “**CalPERS**” means the California Public Employees’ Retirement System in which the Employer is a participating agency.
- 2.5 “CalPERS Credited Service” means the equivalent to all service that CalPERS would take into account when determining eligibility for pension benefits, including purchased years of service and years of service in a public agency retirement plan which has a reciprocal arrangement with CalPERS, in addition to service with Alameda CTC or other CalPERS member agencies.
- 2.5.2.6 “CalPERS Health” means the health care program made available by the Employer to Eligible Retirees under the Public Employees’ Medical and Hospital Care Act, codified under sections 22750 - 22948 of the California Government Code, which program provides health insurance under various coverage options from which covered individuals may select.

2.62.7 **“COBRA”** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

2.72.8 **“Code”** means the Internal Revenue Code of 1986 and the Treasury Regulations and guidance issued thereunder, as amended.

2.82.9 **“Effective Date”** means February 1, 2012.

2.92.10 **“Eligible Retiree”** means an Employee who has met the eligibility requirements in Article III. An individual’s status as an Eligible Retiree will be determined solely by the Employer.

2.102.11 **“Employee”** means an individual that the Employer classifies as a common-law employee and who is on the Employer's W-2 payroll, but does not include the following: (a) any leased employee (including but not limited to those individuals defined as leased employees in Code Section 414(n) or an individual classified by the Employer as a contract worker, independent contractor, temporary employee, or casual employee for the period during which such individual is so classified, whether or not any such individual is on the Employer's W-2 payroll or is determined by the IRS or others to be a common-law employee of the Employer; (b) any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency for the period during which such individual is paid by such agency, whether or not such individual is determined by the IRS or others to be a common-law employee of the Employer; and (c) any employee covered under a collective bargaining agreement, unless the agreement provides for the employee's participation in this Plan.

2.142.12 **“Employer”** means the Alameda County Transportation Commission.

2.122.13 **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as amended.

2.132.14 **“MEC”** means the minimum employer contribution required to be made by the Employer directly to CalPERS for an Eligible Retiree's coverage under CalPERS Health (\$112 per month in 2012, and adjusted annually in accordance with California Government Code Section 22892).

2.142.15 **“Plan”** means this Alameda County Transportation Commission Retiree Health Reimbursement Arrangement, as set forth herein and amended from time to time.

2.152.16 **“Plan Administrator”** means the Employer unless the Employer designates another person or organization to hold the position of Plan Administrator. The Employer may alternatively designate another person or organization to perform certain duties assigned to the Plan Administrator under this Plan.

2.162.17 **“Plan Year”** means the calendar year (i.e., the 12-month period commencing January 1 and ending on December 31). The first Plan Year is a short plan year, beginning on the Effective Date and ending on December 31, 2012.

2.172.18 **“Predecessor Agency”** means (1) the Alameda County Transportation Improvement Authority, or (2) the Alameda County Congestion Management Agency.

2.182.19 “Trust” means the legal entity that the Employer may establish and/or adopt to hold any assets it has irrevocably set aside to pay benefits under the Plan.

**ARTICLE III.
ELIGIBILITY, PARTICIPATION, AND COVERAGE**

3.1 Eligibility. Only Eligible Retirees are eligible to participate in the Plan. An individual will become an Eligible Retiree under the Plan only upon meeting all of the following requirements.

- a) The individual retired under CalPERS directly from the Employer or a Predecessor Agency within 120 days after his or her employment with the Employer or Predecessor Agency terminated. If the Employee retired under CalPERS from any other governmental agency (or retired under any other governmental retirement plan and not under CalPERS), he or she will not meet this requirement.
- b) The individual is eligible for coverage under CalPERS Health as a retiree, enrolled in CalPERS Health, and entitled to the MEC from the Employer.
- c) Either:
 - (i) The individual has at least 10 completed years of ~~credited service with CalPERS~~ Credited Service at retirement ~~(as determined by CalPERS)~~, and the individual performed at least five years of that service entirely for the Employer and/or a Predecessor Agency; or
 - (ii) The individual has at least 25 completed years of ~~credited service with CalPERS~~ Credited Service at retirement ~~(as determined by CalPERS)~~, and the individual performed at least two years of that service entirely for the Employer and/or a Predecessor Agency.

3.2 No Benefits Unless Eligible. An Employee will not have any interest under the Plan unless he or she meets all of the preceding requirements of this Article III, as applicable. Any person who does not meet these requirements will not be entitled to any benefits under the Plan.

3.3 Commencement of Participation. Each Eligible Retiree on the Effective Date will participate in the Plan beginning on that date. Each person who becomes an Eligible Retiree after the Effective Date will begin participation in the Plan on the date of becoming an Eligible Retiree.

3.4 Period of Coverage. Participation in the Plan is tied to the Eligible Retiree’s enrollment in CalPERS Health as a retiree. Coverage under this Plan for an Eligible Retiree will begin on the first day of the calendar month that coverage under CalPERS Health as a retiree begins.

3.5 Termination of Participation. An Eligible Retiree's participation in the Plan terminates upon the earlier of:

- a) the date he or she ceases to be an Eligible Retiree;

- b) the date that the Eligible Retiree is reemployed by the Employer, except as provided in Section 3.7; or
- c) the Eligible Retiree's death, except benefits may continue to the Eligible Retiree's Beneficiary in accordance with Section 3.6.

3.6 Beneficiaries. After an Eligible Retiree's death, benefits will be provided under the Plan to the Eligible Retiree's Beneficiary, if any, but only if the individual is (1) eligible for coverage under CalPERS Health and (2) entitled to the MEC from the Employer. Benefits will be provided under the Plan to such Beneficiary only during such periods that he or she meets these two requirements. The Beneficiary will not be entitled to any benefits under the Plan for any period he or she does not meet these two requirements. To the extent required by the Code, the Employer will follow the tax withholding and reporting requirements applicable to benefits paid under this Plan to an Eligible Retiree's non-dependent domestic partner or same-sex spouse.

3.7 Reemployed Retirees. If the Employer reemploys an Eligible Retiree, any benefits provided under the Plan to that Eligible Retiree will cease effective on the reemployment date and his or her Plan participation will cease. The Eligible Retiree will be entitled to benefits under the Plan upon subsequent termination of employment only if he or she is then eligible under this Article III. If, however, after the reemployment date, the reemployed Eligible Retiree is entitled to continued receipt of retirement benefits under CalPERS as a retiree of the Employer and continues to be eligible for both the MEC and retiree coverage under CalPERS Health, any benefits provided under the Plan to that Eligible Retiree will continue uninterrupted.

**ARTICLE IV.
VESTING AND BENEFITS**

4.1 Amount of Benefits. Each Eligible Retiree will be entitled to receive Employer-funded health care coverage as specified in this Article IV, paid in the form of a reimbursement in accordance with Section 4.3. The maximum benefit on behalf of an Eligible Retiree for any calendar month will be the amount established and adopted by the Board from time to time (and such benefit amounts are herein incorporated by reference), multiplied by the Eligible Retiree's Vested Percentage under Section 4.2. In no event, however, will the benefit paid in any calendar month on behalf of any Eligible Retiree be greater than the Eligible Retiree's actual out-of-pocket premium cost for CalPERS Health coverage for that calendar month. An Eligible Retiree may at any time decline benefits under the Plan by notifying the Employer.

4.2 Vested Percentage. An Eligible Retiree's Vested Percentage is based on the Eligible Retiree's completed number of years of CalPERS ~~credited service~~ Credited Service in accordance with the following table.

Years of CalPERS Credited Service	Vested Percentage
<10	0%
10	50%
11	55%
12	60%
13	65%

Years of CalPERS Credited Service	Vested Percentage
14	70%
15	75%
16	80%
17	85%
18	90%
19	95%
20+	100%

- 4.3 Reimbursements Under the Plan.** Benefits under the Plan will be provided in the form of monthly reimbursements of the health care coverage premium costs incurred by the Eligible Retiree (or his or her Beneficiary) for the coverage under the CalPERS Health option that the Eligible Retiree has elected for the applicable Plan Year, up to the maximum amount specified in Section 4.1. Any such premium costs may not be paid or reimbursed from any other source and must be substantiated in accordance with Section 4.4. Under no circumstances will unused amounts for one calendar month be applied to costs in any subsequent calendar month and no unused amounts may roll over to any subsequent Plan Year. The Eligible Retiree will be solely responsible for paying the coverage cost of any amounts that are not reimbursed under this Plan or otherwise paid by the Employer.
- 4.4 Substantiation of Expenses.** Reimbursements of health care premium expenses under the Plan for an Eligible Retiree's (or his or her Beneficiary's) individual coverage under CalPERS Health must be properly documented and substantiated at the time and in the manner determined by the Plan Administrator. The Plan Administrator has authority to establish rules and procedures to be followed by individuals in filing applications for benefits, for furnishing and verifying proofs necessary to establish their rights to benefits under the Plan, or for any other reason it deems necessary for the efficient administration of the Plan. Upon satisfactory documentation and substantiation, the Plan Administrator will direct payment to the Eligible Retiree (or his or her Beneficiary) as soon as administratively feasible.

ARTICLE V. BENEFIT FUNDING

- 5.1 Employer Contributions.** All benefits under the Plan will be paid by Employer contributions and earnings thereon. Employee contributions are not permitted. In addition, the Employer may set aside contributions and related earnings to pre-fund benefits under the Plan. In determining the amount of any such contributions, the Employer may engage an actuary to conduct actuarial experience studies and periodic actuarial valuations of the Plan benefits and to recommend to the Employer the amount of contributions that are needed in order to fund the Plan's benefits.
- 5.2 Trust.** The Employer may establish and/or adopt a Trust to receive and invest assets set aside by the Employer to pay benefits under the Plan. The Trust may specifically provide, among other things, for the investment and reinvestment of the Trust assets and the income thereof, the management of the Trust assets, the responsibilities and immunities of the trustee, removal of the trustee and appointment of a successor, accounting by the trustee and the disbursement of the Trust assets. The trustee will, in

accordance with the terms of the Trust, accept and receive all contributions paid to it from time to time, and shall hold, invest, reinvest and manage such moneys and any increment, increase, earnings and income thereof for the exclusive benefit of Eligible Retirees and Beneficiaries and for the payment of reasonable expenses of administering the Plan.

ARTICLE VI. ADMINISTRATION OF THE PLAN

6.1 Plan Administrator. The administration of this Plan will be under the supervision of the Plan Administrator. It is the principal duty of the Plan Administrator to see that this Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in this Plan.

6.2 Powers of the Plan Administrator. The Plan Administrator will have such duties and powers as it considers necessary or appropriate to discharge its duties. It will have the exclusive right to interpret the Plan and to decide all matters thereunder, and all determinations of the Plan Administrator with respect to any matter hereunder will be conclusive and binding on all persons. Without limiting the generality of the foregoing, the Plan Administrator will have the following discretionary authority:

- a) to construe and interpret the Plan, including all possible ambiguities, inconsistencies, and omissions in the Plan and related documents, and to decide all questions of fact, questions relating to eligibility and participation, and questions of benefits under this Plan;
- b) to prescribe procedures to be followed and the forms to be used by Eligible Retirees and Beneficiaries to claim reimbursements pursuant to this Plan;
- c) to prepare and distribute information explaining this Plan and the benefits under this Plan in such manner as the Plan Administrator determines to be appropriate;
- d) to request and receive from all Eligible Retirees and Beneficiaries such information as the Plan Administrator will from time to time determine to be necessary for the proper administration of this Plan;
- e) to furnish each Eligible Retiree and Beneficiary with such reports with respect to the administration of this Plan as the Plan Administrator determines to be reasonable and appropriate;
- f) to receive, review, and keep on file such reports and information regarding the benefits covered by this Plan as the Plan Administrator determines from time to time to be necessary and proper;
- g) to appoint and employ such individuals or entities to assist in the administration of this Plan as it determines to be necessary or advisable, including legal counsel and benefit consultants;
- h) to sign documents for the purposes of administering this Plan, or to designate an individual or individuals to sign documents for the purposes of administering this Plan;

- i) to secure or require such evidence as it deems necessary to decide any claim for benefits under the Plan; and
- j) to maintain the books of accounts, records, and other data in the manner necessary for proper administration of this Plan and to meet any applicable disclosure and reporting requirements.

6.3 Fiduciary Duties. Each Plan fiduciary shall discharge its duties solely in the interest of Eligible Retirees and Beneficiaries and for the exclusive purpose of providing benefits under the Plan, or defraying reasonable expenses of administering the Plan. Each Plan fiduciary, in carrying out such duties and responsibilities, shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use. A fiduciary may serve in more than one fiduciary capacity and may employ one or more persons to render advice with regard to its fiduciary responsibilities. If the fiduciary is serving as such without compensation, all expenses reasonably incurred by such fiduciary will be paid by the Employer. The Employer may, however, elect to have those expenses paid from Trust assets.

6.4 Provision for Third-Party Plan Service Providers. The Plan Administrator, subject to approval of the Employer, may employ the services of such persons as it may deem necessary or desirable in connection with the operation of the Plan. Unless otherwise provided in the service agreement, obligations under this Plan shall remain the obligation of the Employer or Plan Administrator, as applicable.

6.5 Inability to Locate Payee. If the Plan Administrator is unable to make payment to any person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of such person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to such person will be forfeited following a reasonable time after the date any such payment first became due.

6.6 COBRA and HIPAA Compliance. The Plan will comply with the applicable requirements of the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA"), and with the applicable requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") in accordance with the rules set out in Appendix A below.

ARTICLE VII. AMENDMENT AND TERMINATION OF THE PLAN

7.1 No Vested Rights. The Employer may at any time amend or terminate the Plan as provided in Sections 7.2 and 7.3 below. Nothing in the Plan is intended to or will be construed to entitle any Eligible Retiree or other person to vested or non-terminable benefits.

7.2 Amendment of the Plan. The Employer may amend all or any part of this Plan at any time for any reason by resolution of the Board or by any person or persons authorized by the Board to take such action. Any such amendment will supersede and override any claim to "vested rights" that any person may otherwise have with respect to benefits under the Plan.

7.3 Termination of the Plan.

- a) The Employer has established the Plan with the expectation that it will be continued, but continuance is not a contractual or other obligation of the Employer and no employee of the Employer or other person will have any vested right to continuance of the Plan or to continuance of any Employer contributions to the Plan. The Employer reserves the right at any time to terminate the Plan without prejudice and for any reason, and such termination will supersede and override any claim to “vested rights” that any person may otherwise have with respect to benefits under the Plan. Such decision to terminate the Plan will be made in writing and must be approved by the Board.
- b) If the Plan is terminated, the Employer shall direct the trustee to compute the value of the Plan assets under the Trust as of the date of termination. Those assets will continue to be held in the Trust, and will be distributed to pay any remaining benefits owed under the Plan until those benefits are satisfied.
- c) The “partial termination” rules of the Code that apply to qualified retirement plans will not apply under this Plan, and no action will be taken with respect to this Plan in connection with any event or events that would be a partial termination for a qualified plan.

7.4 Determination of Effective Date of Amendment or Termination. Any such amendment, discontinuance or termination will be effective as of the date the Employer determines.

7.5 Assets After Termination. Any assets remaining in the Trust after all benefits owed under the Plan and all Plan expenses have been paid will revert to the Employer unless otherwise determined by the Employer.

7.6 Limitation of Obligations. The Employer must provide all benefits accrued by Eligible Retirees or Beneficiaries under the Plan through its termination. Once those benefits are satisfied, the Employer will not have any remaining obligations to provide any benefit under the Plan. No one will accrue benefits under the Plan after its termination.

ARTICLE VIII. GENERAL PROVISIONS

8.1 Governing Law. The provisions of the Plan will be construed, administered and enforced according to applicable federal law and, to the extent not preempted, the laws of the State of California.

8.2 Requirement for Proper Forms. All communications in connection with the Plan made by an Eligible Retiree or Beneficiary will become effective only when duly executed on any forms as may be required and furnished by, and filed with, the Employer or Plan Administrator, as applicable.

8.3 No Guarantee of Tax Consequences. Neither the Employer nor any Plan Administrator makes any warranty or other representation as to whether any benefits under the Plan will be treated as excludable from gross income for federal, state, or local income tax purposes. It will be the obligation of each Eligible Retiree or Beneficiary to

determine whether each payment under this Plan is excludable from gross income for federal, state, and local income tax purposes and to notify the Employer or Plan Administrator if he or she has any reason to believe that such payment is not so excludable. If for any reason it is determined that any amount paid for the benefit of an Eligible Retiree or Beneficiary is includable in gross income for federal, state or local income tax purposes, then under no circumstances will the recipient have any recourse against the Employer or Plan Administrator with respect to any increased taxes or other losses or damages suffered by the Eligible Retiree or Beneficiary as a result thereof.

- 8.4 Compliance With Code and Other Applicable Laws.** It is intended that this Plan meet all applicable requirements of the Code and of all regulations and guidance issued thereunder. This Plan will be construed, operated and administered accordingly, and in the event of any conflict between any part, clause, or provision of this Plan and the Code, the provisions of the Code will be deemed controlling, and any conflicting part, clause, or provision of this Plan will be deemed superseded to the extent of the conflict. In addition, the Plan will comply with the requirements of all other applicable laws.
- 8.5 Headings.** The headings of the various Articles and Sections are inserted for convenience of reference and are not to be regarded as part of this Plan or as indicating or controlling the meaning or construction of any provision.
- 8.6 Severability.** Should any part of this Plan subsequently be invalidated by a court of competent jurisdiction, the remainder of the Plan will be given effect to the maximum extent possible.
- 8.7 Administration Expenses.** The Employer will pay the reasonable expenses of administering the Plan, including but not limited to the reasonable compensation of any counsel, accountants, and other agents hired by the Employer, Plan Administrator, or Board, as well as any other expenses incurred in administering the Plan. The Employer may, however, elect to have those expenses paid from Trust assets.
- 8.8 Effect of Mistake.** In the event of a mistake as to the eligibility or participation of an individual, or the allocations made to the account of any Eligible Retiree, or the amount of distributions made or to be made to an Eligible Retiree or other person, the Employer or Plan Administrator will, to the extent it deems possible, cause to be allocated or cause to be withheld or accelerated, or otherwise make adjustment of, such amounts as will in its judgment accord to such Eligible Retiree or other person the credits to the account or distributions to which he or she is properly entitled under the Plan.
- 8.9 No Contract of Employment.** The Plan does not provide any person with any right to be retained in the Employer's employment or service. An Eligible Retiree's sole rights under the Plan are limited to those described in this document.
- 8.10 Plan Provisions Controlling.** The Plan encompasses the benefits provided by the Employer to Eligible Retirees. In the event that the terms or provisions of any summary or description of this Plan are interpreted as being in conflict with the provisions of this Plan as set forth in this document, the provisions of this Plan will be controlling.
- 8.11 Non-Assignability of Rights.** The right of any Eligible Retiree or Beneficiary to receive any reimbursement under this Plan will not be alienable by the Eligible Retiree or Beneficiary by assignment or any other method and will not be subject to claims by his

or her creditors by any process whatsoever. Any attempt to cause such right to be so subjected will not be recognized, except to the extent required by law.

8.12 Provisions Applicable During Periods of Military Service. Notwithstanding any Plan provision to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided as required by any law concerning veterans' rights.

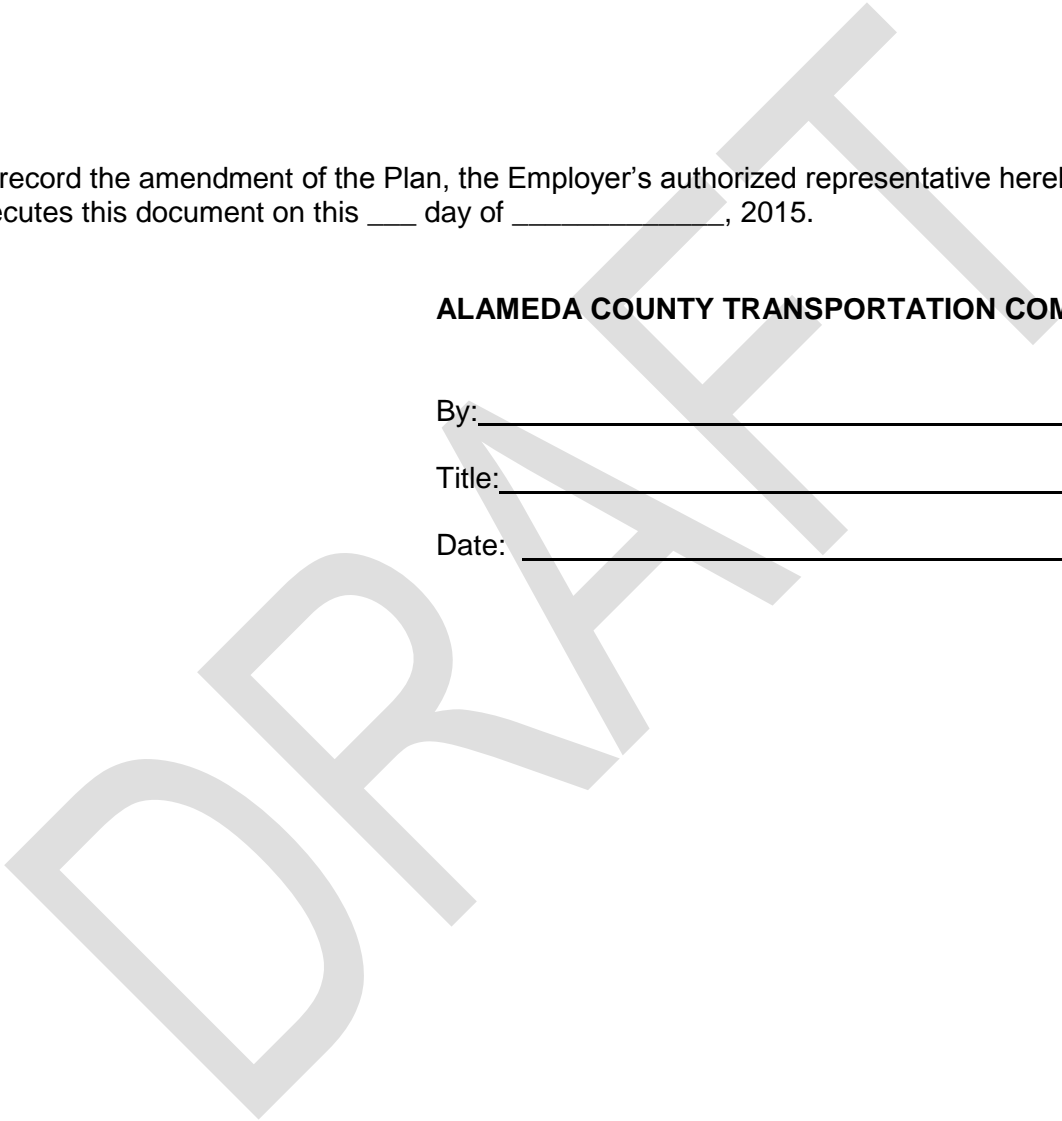
To record the amendment of the Plan, the Employer's authorized representative hereby executes this document on this ____ day of _____, 2015.

ALAMEDA COUNTY TRANSPORTATION COMMISSION

By: _____

Title: _____

Date: _____



APPENDIX A: HIPAA COMPLIANCE

A.1 Provision of Protected Health Information to Employer

Members of the Employer's workforce have access to the individually identifiable health information of Plan participants for administrative functions of the Plan. When this health information is provided from the Plan to the Employer, it is Protected Health Information (PHI). The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations restrict the Employer's ability to use and disclose PHI. The following HIPAA definition of PHI applies for purposes of this Article Appendix A:

Protected Health Information. Protected health information means information that is created or received by the Plan and relates to the past, present, or future physical or mental health or condition of a participant; the provision of health care to a participant; or the past, present, or future payment for the provision of health care to a participant; and that identifies the participant or for which there is a reasonable basis to believe the information can be used to identify the participant. Protected health information includes information of persons living or deceased.

The Employer will have access to PHI from the Plan only as permitted under this Appendix A or as otherwise required or permitted by HIPAA. HIPAA and its implementing regulations were modified by the Health Information Technology for Economic and Clinical Health Act (HITECH Act), the statutory provisions of which are incorporated herein by reference.

A.2 Permitted Disclosure of Enrollment/Disenrollment Information

The Plan may disclose to the Employer information on whether the individual is participating in the Plan.

A.3 Permitted Uses and Disclosure of Summary Health Information

The Plan may disclose Summary Health Information to the Employer, provided that the Employer requests the Summary Health Information for the purpose of modifying, amending, or terminating the Plan.

"Summary Health Information" means information (a) that summarizes the claims history, claims expenses, or type of claims experienced by individuals for whom a plan sponsor had provided health benefits under a health plan; and (b) from which the information described at 42 CFR Section 164.514(b)(2)(i) has been deleted, except that the geographic information described in 42 CFR Section 164.514(b)(2)(i)(B) need only be aggregated to the level of a five-digit ZIP code.

A.4 Permitted and Required Uses and Disclosure of PHI for Plan Administration Purposes

Unless otherwise permitted by law, and subject to the conditions of disclosure described in Section A.5 and obtaining written certification pursuant to Section A.7, the Plan may disclose PHI to the Employer, provided that the Employer uses or discloses such PHI only for Plan administration purposes. "Plan administration purposes" means administration functions

performed by the Employer on behalf of the Plan, such as quality assurance, claims processing, auditing, and monitoring. Plan administration functions do not include functions performed by the Employer in connection with any other benefit or benefit plan of the Employer, and they do not include any employment-related functions.

Notwithstanding the provisions of this Plan to the contrary, in no event will the Employer be permitted to use or disclose PHI in a manner that is inconsistent with 45 CFR Section 164.504(f).

A.5 Conditions of Disclosure for Plan Administration Purposes

The Employer agrees that with respect to any PHI (other than enrollment/disenrollment information and Summary Health Information, which are not subject to these restrictions) disclosed to it by the Plan, the Employer will:

- not use or further disclose the PHI other than as permitted or required by the Plan or as required by law;
- ensure that any agent, including a subcontractor, to whom it provides PHI received from the Plan agrees to the same restrictions and conditions that apply to the Employer with respect to PHI;
- not use or disclose the PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer;
- report to the Plan any use or disclosure of the information that is inconsistent with the uses or disclosures provided for of which it becomes aware;
- make available PHI to comply with HIPAA's right to access in accordance with 45 CFR Section 164.524;
- make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR Section 164.526;
- make available the information required to provide an accounting of disclosures in accordance with 45 CFR Section 164.528;
- make its internal practices, books, and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of Health and Human Services for purposes of determining compliance by the Plan with HIPAA's privacy requirements;
- if feasible, return or destroy all PHI received from the Plan that the Employer still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and
- ensure that the adequate separation between the Plan and the Employer (i.e., the "firewall"), required in 45 CFR Section 504(f)(2)(iii) is satisfied.

The Employer further agrees that if it creates, receives, maintains, or transmits any electronic PHI (other than enrollment/disenrollment information and Summary Health Information, which are not subject to these restrictions) on behalf of the Plan, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality,

integrity, and availability of the electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such electronic PHI agree to implement reasonable and appropriate security measures to protect the information. The Employer will report to the Plan any security incident of which it becomes aware.

A.6 Adequate Separation Between Plan and Employer

The Employer will allow the following persons access to PHI: Director of Finance, Accounting Manager, Senior Accountant, Accountant, the Plan Administrator, and any other Employee who needs access to PHI in order to perform Plan administration functions that the Employer performs for the Plan (such as quality assurance, claims processing, auditing, and monitoring). No other persons will have access to PHI. These specified employees (or classes of employees) will only have access to and use PHI to the extent necessary to perform the plan administration functions that the Employer performs for the Plan. In the event that any of these specified employees does not comply with the provisions of this Section, that employee will be subject to disciplinary action by the Employer for non-compliance pursuant to the Employer's employee discipline and termination procedures.

The Employer will ensure that the provisions of this Section A.6 are supported by reasonable and appropriate security measures to the extent that the designees have access to electronic PHI.

A.7 Certification of Plan Sponsor

The Plan will disclose PHI to the Employer only upon the receipt of a certification by the Employer that the Plan incorporates the provisions of 45 CFR Section 164.504(f)(2)(ii), and that the Employer agrees to the conditions of disclosure set forth in Section A.5. Execution of the Plan by the Employer will serve as the required certification.

A.8 Privacy Official

The Employer will designate a Privacy Official, who will be responsible for the Plan's compliance with HIPAA. The Privacy Official may contract with or otherwise utilize the services of attorneys, accountants, brokers, consultants, or other third party experts as the Privacy Official deems necessary or advisable. In addition and notwithstanding any provision of this Plan to the contrary, the Privacy Official will have the authority to and be responsible for:

- accepting and verifying the accuracy and completeness of any certification provided by the Employer under this Appendix;
- transmitting the certification to any third parties as may be necessary to permit them to disclose PHI to the Employer;
- establishing and implementing policies and procedures with respect to PHI that are designed to ensure compliance by the Plan with the requirements of HIPAA;
- establishing and overseeing proper training of personnel who will have access to PHI; and
- any other duty or responsibility that the Privacy Official, in his or her sole capacity, deems necessary or appropriate to comply with the provisions of HIPAA and the purposes of this Appendix A.

A.9 Interpretation and Limited Applicability

This Appendix serves the sole purpose of complying with the requirements of HIPAA and will be interpreted and construed in a manner to effectuate this purpose. Neither this Appendix nor the duties, powers, responsibilities, and obligations listed herein will be taken into account in determining the amount or nature of the benefits provided to any person covered under the Plan, nor will they inure to the benefit of any third parties. To the extent that any of the provisions of this Appendix A are no longer required by HIPAA or do not apply to the Plan because the Plan is otherwise excepted from HIPAA, they will be deemed deleted and will have no force or effect.

A.10 Service Performed for the Employer

Notwithstanding any other provisions of this Plan to the contrary, all services performed by a business associate for the Plan in accordance with the applicable service agreement will be deemed to be performed on behalf of the Plan and subject to the administrative simplification provisions of HIPAA contained in 45 C.F.R. Parts 160 through 164, except services that relate to eligibility and enrollment in the Plan. If a business associate of the Plan performs any services that relate to eligibility and enrollment in the Plan, these services will be deemed to be performed on behalf of the Employer in its capacity as Plan Sponsor and not on behalf of the Plan.

DRAFT

**Commission Chair**

Supervisor Richard Valle, District 2

Commission Vice ChairMayor Pauline Cutter,
City of San Leandro**AC Transit**

Board President Elsa Ortiz

Alameda CountySupervisor Scott Haggerty, District 1
Supervisor Wilma Chan, District 3
Supervisor Nate Miley, District 4
Supervisor Keith Carson, District 5**BART**

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City of Pleasanton

Mayor Jerry Thorne

City of Union City

Mayor Carol Dutra-Vernaci

Executive Director

Arthur L. Dao

ALAMEDA COUNTY TRANSPORTATION COMMISSION**RESOLUTION 18-008****Amending the Health Reimbursement Arrangement for Retirees of the
Alameda County Transportation Commission**

Whereas, Alameda County Transportation Commission ("Alameda CTC") adopted the Alameda County Transportation Commission Retiree Health Reimbursement Arrangement ("Retiree HRA"), effective February 1, 2012;

Whereas, the Retiree HRA was designed to reimburse eligible retirees and their eligible surviving beneficiaries for all or some portion of their CalPERS Health premium costs;

Whereas, to be eligible for retiree health coverage under the original Retiree HRA, a retiree must be vested with at least 10 years of California Public Employees' Retirement System (CalPERS) credited service, five of which must be for employment with Alameda CTC or its predecessor agencies;

Whereas, Alameda CTC adopted an amended Retiree HRA, effective January 2015, thereby allowing retirees with at least 25 years of CalPERS credited service, including at least two years with Alameda CTC or its predecessor agencies, to be eligible for retiree health coverage;

Whereas, the term "CalPERS credited service" as used in the HRA Plan document is ambiguous, leading to potential confusion and inconsistency in application; and

Whereas, Alameda CTC's governing Body ("Commission") has determined it to be in the best interest of the Alameda CTC to amend the Retiree HRA to include a specific definition of the term "CalPERS Credited Service" to match the intent at the time when the Retiree HRA was initially adopted and subsequently amended.

Now, Therefore, Be It Resolved by the Commission of the Alameda CTC as follows:

A. Amendment of Health Reimbursement Arrangement

Section 1. Effective January 1, 2019, the Commission hereby amends the Alameda County Transportation Commission Retiree Health Reimbursement Arrangement, substantially in the form attached as Exhibit A, to add a definition of the term "CalPERS Credited Service" in Article II, to reflect its use in the Retiree HRA document as originally intended, as follows:

"CalPERS Credited Service" means the equivalent to all service that CalPERS would take into account when determining eligibility for pension benefits, including purchased years of service and years of service in a public agency retirement plan which has a reciprocal arrangement with CalPERS, in addition to service with Alameda CTC or other CalPERS member agencies.

DULY PASSED AND ADOPTED by the Alameda County Transportation Commission at the regular meeting of the Commission held on Thursday, December 6, 2018 in Oakland, California, by the following votes:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED:

ATTEST:

Richard Valle
Chair, Alameda CTC

Vanessa Lee
Clerk of the Commission