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**AC TRANSIT DISTRICT**  
**Board of Directors**  
Executive Summary

**GC Memo No. 09-294**

Meeting Date: December 9, 2009

**Committees:**

Planning Committee   
External Affairs Committee   
Rider Complaint Committee   
**Board of Directors**

Finance and Audit Committee   
Operations Committee   
Para transit Committee   
**Financing Corporation**

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**SUBJECT:** Consider Approving Resolutions to Approve a First Amendment to Site Lease and a First Amendment to the Lease Agreement between the Alameda-Contra Costa Transit District and the AC Transit Financing Corporation to Adjust the Size of the Parcel Subject to the 2009 Certificates of Participation Issued for the Purchase of Approximately 16.26 Acres of Property Located at 66<sup>th</sup> Avenue, Oakland, California

**RECOMMENDED ACTION:**

Information Only     Briefing Item     Recommended Motion

1. **AC Transit Board of Directors – adopt Resolution No. 09-063**
2. **AC Transit Financing Corporation – adopt Resolution No. 09-001**

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**Fiscal Impact:** Approving the resolutions will enable the \$7.7 million sale to the City of Oakland Redevelopment Agency to proceed.

**Background/Discussion:**

On February 1, 2009, AC Transit and the AC Transit Financing Corporation entered into a Lease Agreement and Site Lease approving Certificate of Participation (COP) financing to enable the District to purchase approximately 16.26 acres of property in the vicinity of San Leandro and 66<sup>th</sup> Avenue (the Property). The financing was secured by approximately 10.5 acres of the Property the District expected to retain and seven (7) articulated buses. Under the terms of the Lease and Site Lease the combination of land and buses must be 1.1 times the outstanding principal of the COPs or \$16.5 million. Whether the present value of the remaining land and buses meet this requirement without any additional buses being included in the transaction will not be known until the end of the week when an appraisal of the property is received. The Boards will be advised of the results of the appraisal at the joint meeting.

Subsequent to the acquisition of the Property the District entered into negotiations with the City of Oakland Redevelopment Agency (the ORDA) for the sale of approximately 6.3 acres of the Property. This sale is nearing closure. However, the legal description of the property to be sold to ORDA revealed an overlap of approximately 15,882 square feet/.365 acres with the District's property subject to the COPs financing. This discrepancy needs to be rectified prior to the close of the sale to ORDA. While the resolutions have been written to provide for the additional buses, if needed, new amended documents will be provided at the meeting if

additional buses are required. The District has a sufficient number of articulated buses to accommodate any need for additional collateral.

The adoption of the attached resolutions, authorizing the amendments to the Site Lease and the Lease Agreement will enable the \$7.7 million sale to the City of Oakland Redevelopment Agency to proceed.

**Prior Relevant Board Actions/Policies:**

AC Transit Resolution No. 08-057, adopted September 24, 2008  
AC Transit Financing Corporation Resolution No. 08-003, adopted September 24, 2008

**Attachments:**

1. AC Transit Resolution No. 09-063
2. AC Transit Financing Corporation Resolution No. 09-001
3. First Amended Site Lease
4. First Amended Lease Agreement

**Approved by: Kenneth C. Scheidig, General Counsel**  
**Prepared by: Kenneth C. Scheidig, General Counsel**  
**Date Prepared: December 1, 2009**

**RESOLUTION NO. 09-063**

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO SITE LEASE AND A FIRST AMENDMENT TO LEASE AGREEMENT IN CONNECTION WITH THE SALE OF CERTAIN PROPERTY TO THE CITY OF OAKLAND, CALIFORNIA, AND CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the Alameda-Contra Costa Transit District (the “District”) is authorized pursuant to the laws of the State of California to purchase, sell and lease real and personal property which is necessary and proper for public purposes; and

WHEREAS, the AC Transit Financing Corporation (the “Corporation”) was formed to assist the District, among other things, in the acquisition and purchase of real and personal property and improvements to such property; and

WHEREAS, the District purchased the AC Transit 66<sup>th</sup> Avenue location (the “Property”) from moneys on deposit in its general fund and obtained financing to reimburse itself for a portion of the acquisition costs of the Property and to finance various improvements made to the Property; and

WHEREAS, in order to generate funds in an amount sufficient to reimburse the District for a portion of the acquisition costs of the Property and to meet the District’s purposes, and because it was in the best interest of the District and necessary and proper to the purposes of the District, the District, in order to effectuate the financing of a portion of the Property, leased a portion of the Property, up to ten and one-half (10.5) acres (the “Leased Property”) to the Corporation pursuant to a Site Lease, dated as of February 1, 2009 (the “Site Lease”), by and between the District and the Corporation, and is leasing back the Leased Property from and making certain lease payments to the Corporation pursuant to the Lease Agreement dated as of February 1, 2009 (the “Lease Agreement”) by and between the District and the Corporation; and

WHEREAS, in recent years the District has purchased various low floor clean diesel buses, of which seven (7) such buses (the “Equipment”) were sold to the Corporation to effectuate the financing of the Leased Property pursuant to a Purchase and Sale Agreement, dated as of February 1, 2009 (the “Purchase and Sale Agreement”), by and between the District and the Corporation, and is leasing back the Equipment from and making certain lease payments to the Corporation pursuant to the Lease Agreement; and

WHEREAS, the District desires to sell approximately 6.0 acres of the Property and approximately 0.365 acres of the Leased Property to the City of Oakland, California; and

WHEREAS, in order to comply with the provisions of the Lease Agreement and the Site Lease to release the approximately 0.365 acres of Leased Property from the leasehold mortgage held by The Bank of New York Mellon Trust Company, N.A.’s, as trustee (the “Trustee”) and to revise the legal description of the Leased Property, the District desires to make amendments to

the Site Lease and the Lease Agreement, as such amendments will be set forth the First Amendment to Site Lease, to be dated as of December 1, 2009 (the “First Amendment to Site Lease”) and the First Amendment to Lease Agreement, to be dated as of December 1, 2009 (the “First Amendment to Lease Agreement”); and

WHEREAS, the District has learned that the Leased Property has potentially decreased in value since the District acquired the Leased Property; and

WHEREAS, in order to release the Trustee’s lien on the approximately 0.365 acres of Leased Property, the District needs to provide evidence to the Trustee and the Corporation that the remaining Leased Property and Equipment, as revised by such release, has a total value at least equal to 1.1 times the principal amount of the Certificates (as defined in the Lease Agreement) then outstanding; and

WHEREAS, in order to provide the evidence needed to the Trustee and the Corporation that the total value of Leased Property and Equipment is at least equal to 1.1 times the principal amount of the Certificates then outstanding, the District desires to maintain the flexibility to amend the definition of Equipment under the Lease Agreement to include additional unencumbered low floor clean diesel buses as Equipment under the Lease Agreement in order to make up for any deficiency in fair market value of the Leased Property and Equipment; and

WHEREAS, there have been presented to the Board of Directors the following documents:

1. Proposed form of the First Amendment to Site Lease; and
2. Proposed form of the First Amendment to Lease Agreement; and

WHEREAS, all capitalized terms used herein, except as otherwise defined herein, shall have the meanings assigned thereto in the Lease Agreement; and

WHEREAS, the District has full legal right, power and authority under the laws of the State of California to enter into the transactions herein authorized; and

WHEREAS, the Board of Directors has been presented with the form of each document referred to herein, relating to the District’s financing program, and the Board of Directors has examined and approved each document and desires to authorize and direct the execution of such documents and the consummation of such financing; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of such financing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the District is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such financing for the purpose, in the manner and upon the term herein provided;

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT DOES RESOLVE AS FOLLOWS:

**Section 1. First Amendment to Site Lease.** The First Amendment to Site Lease, on file with the Secretary of the District (the “Secretary”), in substantially the form submitted to this special meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved, and the General Manager of the District (the “General Manager”) or any deputy or assistant of the General Manager designated by the General Manager (each an “Authorized Representative” and collectively, the “Authorized Representatives”), any one or more thereof, are hereby authorized and directed, for and in the name and on behalf of the District, to execute and deliver a First Amendment to Site Lease in substantially said form, with such changes, insertions and omissions therein as such officers and the District’s General Counsel may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 2. First Amendment to Lease Agreement.** The First Amendment to Lease Agreement, on file with the Secretary, in substantially the form submitted to this special meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved, and the Authorized Representatives, any one or more thereof, are hereby authorized and directed, for and in the name and on behalf of the District, to execute and deliver the First Amendment to Lease Agreement in substantially said form, with such changes, insertions and omissions therein as such officers and the District’s General Counsel may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 3. Additional Equipment.** In order to provide the evidence needed to the Trustee and the Corporation that the total value of Leased Property and Equipment are at least equal to 1.1 times the principal amount of the Certificates then outstanding, the Authorized Representatives are hereby authorized and directed, jointly and severally, to include, if necessary, such number of unencumbered low floor clean diesel buses as Equipment under the Lease Agreement in order to make up for any deficiency in fair market value of the Leased Property.

**Section 4. Other Actions.** The Authorized Representatives, with the approval of the District’s General Counsel, as may be required, are hereby authorized and directed, jointly and severally, to do any and all things which they may deem necessary or advisable in order to consummate the transactions herein authorized and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution. The Authorized Representatives, be and they are hereby authorized and directed, for and in the name and on behalf of the District, to execute and deliver any and all certificates and representations, including signature certificates, no-litigation certificates and tax certificates, and to do any and all things and take any and all actions which may be necessary or advisable, in their discretion, to accomplish the transactions set forth above.

**Section 5. Attestations.** The Secretary is hereby authorized and directed to attest the signature of the Authorized Representatives of the District, as may be required or appropriate in connection with the execution and delivery of said First Amendment to Site Lease and First Amendment to Lease Agreement and such other such agreements authorized herein.

**Section 6. Effect.** This Resolution shall take effect immediately upon its adoption and passage by four affirmative votes of the Board of Directors.

PASSED AND ADOPTED THIS 9<sup>th</sup> day of December, 2009.

By \_\_\_\_\_  
Ryan "Rocky" Fernandez, President

Attest:

By \_\_\_\_\_  
Linda Nemeroff, District Secretary

I, \_\_\_\_\_, Secretary for the Alameda-Contra Costa Transit District, do hereby certify that the foregoing Resolution was passed and adopted at a special meeting of the Board of Directors held on the 9<sup>th</sup> day of December, 2009, by the following vote:

Ayes:           Directors:  
Noes:           Directors:  
Absent:         Directors:  
Abstain:        Directors:

By \_\_\_\_\_  
District Secretary

Approved as to form by:

By \_\_\_\_\_  
Kenneth C. Scheidig, General Counsel to  
Alameda-Contra Costa Transit District

**RESOLUTION NO. 09-001**

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE AC TRANSIT FINANCING CORPORATION AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO SITE LEASE AND A FIRST AMENDMENT TO LEASE AGREEMENT IN CONNECTION WITH THE SALE OF CERTAIN PROPERTY TO THE CITY OF OAKLAND, CALIFORNIA, AND CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the AC Transit Financing Corporation (the "Corporation") is a nonprofit public benefit corporation organized and existing under the laws of the State of California with the authority to assist in the financing and refinancing of certain capital projects on behalf of, among others, the Alameda-Contra Costa Transit District (the "District"); and

WHEREAS, the District purchased the AC Transit 66<sup>th</sup> Avenue location (the "Property") from moneys on deposit in its general fund and obtained financing to reimburse itself for a portion of the acquisition costs of the Property and to finance various improvements made to the Property; and

WHEREAS, in order to generate funds in an amount sufficient to reimburse the District for a portion of the acquisition costs of the Property and to meet the District's purposes, and because it was in the best interest of the District and necessary and proper to the purposes of the District, the District, in order to effectuate the financing of a portion of the Property, leased a portion of the Property, up to ten and one-half (10.5) acres (the "Leased Property") to the Corporation pursuant to a Site Lease, dated as of February 1, 2009 (the "Site Lease"), by and between the District and the Corporation, and is leasing back the Leased Property from and making certain lease payments to the Corporation pursuant to the Lease Agreement dated as of February 1, 2009 (the "Lease Agreement") by and between the District and the Corporation; and

WHEREAS, in recent years the District has purchased various low floor clean diesel buses, of which seven (7) such buses (the "Equipment") were sold to the Corporation to effectuate the financing of the Leased Property pursuant to a Purchase and Sale Agreement, dated as of February 1, 2009 (the "Purchase and Sale Agreement"), by and between the District and the Corporation, and is leasing back the Equipment from and making certain lease payments to the Corporation pursuant to the Lease Agreement; and

WHEREAS, the District desires to sell approximately 6.0 acres of the Property and approximately 0.365 acres of the Leased Property to the City of Oakland, California; and

WHEREAS, in order to comply with the provisions of the Lease Agreement and the Site Lease to release the approximately 0.365 acres of Leased Property from the leasehold mortgage held by The Bank of New York Mellon Trust Company, N.A.'s, as trustee (the "Trustee") and to revise the legal description of the Leased Property, the District desires to make amendments to the Site Lease and the Lease Agreement, as such amendments will be set forth the First Amendment to Site Lease, to be dated as of December 1, 2009 (the "First Amendment to Site

Lease”) and the First Amendment to Lease Agreement, to be dated as of December 1, 2009 (the “First Amendment to Lease Agreement”); and

WHEREAS, the District has learned that the Leased Property has potentially decreased in value since the District acquired the Leased Property; and

WHEREAS, in order to release the Trustee’s lien on the approximately 0.365 acres of Leased Property, the District needs to provide evidence to the Trustee and the Corporation that the remaining Leased Property and Equipment, as revised by such release, has a total value at least equal to 1.1 times the principal amount of the Certificates (as defined in the Lease Agreement) then outstanding; and

WHEREAS, in order to provide the evidence needed to the Trustee and the Corporation that the total value of Leased Property and Equipment is at least equal to 1.1 times the principal amount of the Certificates then outstanding, the District desires to maintain the flexibility to amend the definition of Equipment under the Lease Agreement to include additional unencumbered low floor clean diesel buses as Equipment under the Lease Agreement in order to make up for any deficiency in fair market value of the Leased Property and Equipment; and

WHEREAS, there have been presented to the Corporation’s Board of Directors the following documents:

1. Proposed form of the First Amendment to Site Lease; and
2. Proposed form of the First Amendment to Lease Agreement; and

WHEREAS, all capitalized terms used herein, except as otherwise defined herein, shall have the meanings assigned thereto in the Lease Agreement;

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE AC TRANSIT FINANCING CORPORATION DOES RESOLVE AS FOLLOWS:

**Section 1. First Amendment to Site Lease.** The First Amendment to Site Lease in substantially the form submitted to this special meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved, and the Chair, Vice Chair and Chief Financial Officer of the Corporation, any one or more thereof, are hereby authorized and directed, for and in the name and on behalf of the Corporation, to execute and deliver the First Amendment to Site Lease with such changes, insertions and omissions therein as such officers and the Corporation’s General Counsel may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 2. First Amendment to Lease Agreement.** The First Amendment to Lease Agreement in substantially the form submitted to this special meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved and the Chair, Vice Chair and Chief Financial Officer of the Corporation, any one or more thereof, are hereby authorized and directed, for and in the name and on behalf of the Corporation, to execute and deliver the First Amendment to Lease Agreement in substantially said form, with such changes, insertions and



omissions therein as such officers and the Corporation's General Counsel may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 3. Release of Property and Additional Equipment.** The Corporation hereby authorizes District staff to take the actions necessary to effectuate the release of approximately 0.365 acres of Lease Property, and the Corporation hereby approves of District staff including, if necessary, such number of unencumbered low floor clean diesel buses as Equipment under the Lease Agreement in order to make up for any deficiency in fair market value of the Leased Property.

**Section 4. Attestations.** The secretary is hereby authorized and directed to attest the signature of the Chair, Vice Chair and Chief Financial Officer of the Corporation, as may be required or appropriate in connection with the execution and delivery of said First Amendment to Site Lease and First Amendment to Lease Agreement.

**Section 5. Other Actions.** The Chair, Vice Chair and Chief Financial Officer of the Corporation and the other officers of the Corporation are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this Resolution. Such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

**Section 6. Effect.** This Resolution shall take effect immediately upon its adoption and passage by four affirmative votes of the Board of Directors.

[End of Resolution No. 09-001]

PASSED AND ADOPTED THIS 9<sup>th</sup> day of December, 2009.

By \_\_\_\_\_  
Ryan "Rocky" Fernandez, Chair

Attest:

By \_\_\_\_\_  
Linda Nemeroff, Secretary

I, \_\_\_\_\_, Secretary for the AC Transit Financing Corporation, do hereby certify that the foregoing Resolution was passed and adopted at a special meeting of the Board of Directors held on the 9<sup>th</sup> day of December, 2009, by the following vote:

Ayes:           Directors:  
Noes:           Directors:  
Absent:         Directors:  
Abstain:        Directors:

By \_\_\_\_\_  
Linda Nemeroff, Secretary

Approved as to form by:

By \_\_\_\_\_  
Kenneth C. Scheidig, General Counsel to  
Alameda-Contra Costa Transit Corporation

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Kutak Rock LLP  
1801 California Street  
Suite 3100  
Denver, Colorado 80202  
Attention: William S. Martin, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

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(Space above for Recorder's Use)

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**FIRST AMENDMENT TO SITE LEASE**

by and between the

**ALAMEDA-CONTRA COSTA TRANSIT DISTRICT**  
as Lessor,

and

**AC TRANSIT FINANCING CORPORATION,**  
as Lessee

Dated as of December 1, 2009

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## FIRST AMENDMENT TO SITE LEASE

This **FIRST AMENDMENT TO SITE LEASE**, dated as of December 1, 2009 (this "*First Amendment*"), is made by and between the **ALAMEDA-CONTRA COSTA TRANSIT DISTRICT**, a special transit district duly organized and existing under the laws of the State of California, as lessor (the "*District*"), and **AC TRANSIT FINANCING CORPORATION**, a nonprofit, public benefit corporation duly organized and existing under the laws of the State of California, as lessee (the "*Corporation*").

### WITNESSETH:

WHEREAS, the Corporation and the District entered into that certain Site Lease, dated as of February 1, 2009 (the "*Site Lease*"), in connection with the lease and lease back of the Property in order to generate funds in an amount sufficient to reimburse the District for the acquisition cost of the Property and to meet the District's purposes; and

WHEREAS, the Site Lease was originally filed (file number 2009038952) on February 3, 2009 in Alameda County; and

WHEREAS, the District and the Corporation have determined that it is in their best interests to make certain amendments to the Site Lease; and

**NOW THEREFORE**, the District and the Corporation agree as follows, each for the benefit of the other and/or the benefit of the holders of the Certificates.

**Section 1. Definitions.** All capitalized terms used herein, except as otherwise defined herein, shall have the meanings assigned thereto in the Lease Agreement, dated as of February 1, 2009, by and between the Corporation and the District, or the Trust Agreement, dated as of February 1, 2009, by and among The Bank of New York Mellon Trust Company, N.A. (the "*Trustee*"), the Corporation and the District.

**Section 2. Authorization.** Pursuant to Section 21 of the Site Lease, the District and the Corporation may amend the Site Lease with the prior written consent of the District, the Corporation and the Trustee.

This First Amendment is supplemental to and amendatory of the Site Lease and is entered into in accordance with the provisions of the Site Lease. Each of the parties hereby represents and warrants that it has full legal authority and is empowered to enter into this First Amendment, and has taken all actions necessary to authorize the execution and delivery of this First Amendment.

**Section 3. Amendment to the Site Lease.** Attached hereto is a new "EXHIBIT A—LEGAL DESCRIPTION OF THE PROPERTY" to the Site Lease, which will replace the original "EXHIBIT A—LEGAL DESCRIPTION OF THE PROPERTY" in its entirety.

**Section 4. Severability.** If any provision of this First Amendment shall be determined to be unenforceable, that shall not affect any other provision of this First Amendment.

**Section 5. Governing Law.** This First Amendment shall be governed by and construed in accordance with the laws of the State of California.

**Section 6. Headings.** The headings or titles of the Sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this First Amendment.

**Section 7. Execution in Counterparts.** This First Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute by one and the same agreement.

[End of First Amendment to Site Lease]

IN WITNESS WHEREOF, the Corporation has caused this First Amendment to Site Lease to be executed in its corporate name by its duly authorized officers; and the District has caused this First Amendment to Site Lease to be executed and attested in its name by its duly authorized officers, as of the Dated Date.

AC TRANSIT FINANCING CORPORATION, as  
Lessor

By \_\_\_\_\_  
Ryan "Rocky" Fernandez, Chair

Attest:

By \_\_\_\_\_  
Secretary

Approved as to form by:

\_\_\_\_\_  
Kenneth C. Scheidig, General Counsel to  
AC Transit Financing Corporation

ALAMEDA-CONTRA COSTA TRANSIT  
DISTRICT, as Lessee

By \_\_\_\_\_  
Richard C. Fernandez, General Manager

Attest:

By \_\_\_\_\_  
District Secretary

Approved as to form by:

\_\_\_\_\_  
Kenneth C. Scheidig, General Counsel to  
Alameda-Contra Costa Transit District

[Signature page to First Amendment to Site Lease]

IN WITNESS WHEREOF, the Trustee hereby consents to this First Amendment to Site Lease as of the Dated Date.

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

By \_\_\_\_\_  
Authorized Signatory

[Consent to First Amendment to Site Lease]

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Date (Insert Name and Title of the Officer)

Personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



**EXHIBIT A**  
**DESCRIPTION OF**  
**ALAMEDA CONTRA-COSTA TRANSIT AUTHORITY**  
**AREA 3A**  
**CONTAINING 10.035 ACRES MORE OR LESS**

A portion of land in the City of Oakland, County of Alameda, State of California, being more particularly described as follows:

BEGINNING AT A POINT, SAID POINT BEING THE NORTHERLY MOST CORNER OF LOT 8 AS SHOWN ON THE TRACT MAP ENTITLED "EASTLAWN" RECORDED IN BOOK 25 OF MAPS, PAGE 35 OFFICIAL RECORDS OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THENCE COINCIDENT WITH THE SOUTHEASTERN BOUNDARY LINE OF SAID EASTLAWN NORTH 52° 08' 33" EAST 114.10 FEET TO THE MOST EASTERN CORNER OF LOT 7 IN BLOCK 19 PER SAID MAP OF EASTLAWN;

THENCE COINCIDENT WITH THE NORTHEASTERN BOUNDARY LINE OF SAID LOT 7 NORTH 40° 24' 17" WEST 5.00 FEET TO THE SOUTHEASTERN LINE OF MALDON STREET AS SHOWN ON SAID MAP;

THENCE COINCIDENT WITH SAID SOUTHEASTERN LINE OF MALDON STREET NORTH 52° 08' 33" EAST 50.05 FEET TO THE SOUTHWESTERN BOUNDARY LINE OF LOT 8 IN BLOCK 18 AS SHOWN ON SAID MAP;

THENCE COINCIDENT WITH SAID SOUTHWESTERN BOUNDARY LINE SOUTH 40° 24' 17" EAST 5.00 FEET TO THE MOST SOUTHERN CORNER OF SAID LOT 8;

THENCE COINCIDENT WITH THE SOUTHEASTERN BOUNDARY LINE OF SAID EASTLAWN NORTH 52° 08' 33" EAST 240.24 FEET TO THE MOST EASTERN CORNER OF LOT 9 IN BLOCK 18 AS SHOWN ON SAID MAP;

THENCE COINCIDENT WITH THE NORTHEASTERN BOUNDARY LINE OF SAID LOT 9, NORTH 40° 24' 17" WEST 5.00 FEET TO THE SOUTHEASTERN LINE OF TEVIS STREET AS SHOWN ON SAID MAP;

THENCE COINCIDENT WITH SAID SOUTHEASTERN LINE OF TEVIS STREET NORTH 52° 08' 33" EAST 50.05 FEET TO THE SOUTHWESTERN BOUNDARY LINE OF LOT 9 IN BLOCK 13 AS SHOWN ON SAID MAP;

THENCE COINCIDENT WITH SAID SOUTHWESTERN BOUNDARY LINE SOUTH 40° 24' 17" EAST 5.00 FEET TO THE MOST SOUTHERN CORNER OF SAID LOT 9 IN BLOCK 13 BEING ALSO THE MOST WESTERN CORNER OF THAT CERTAIN 3.6 ACRE PARCEL OF LAND RECORDED IN BOOK 373 OF DEEDS, AT PAGE 180, ALAMEDA COUNTY RECORDS;

THENCE COINCIDENT WITH THE SOUTHWESTERN BOUNDARY LINE OF SAID 3.6 ACRE PARCEL SOUTH 39° 17' 17" EAST 315.35 FEET TO THE MOST SOUTHERN CORNER OF SAID PARCEL BEING ALSO A POINT ON THE BOUNDARY COMMON TO PARCELS 1 AND 2 OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN BOOK 1422 OF DEEDS, AT PAGE 172, ALAMEDA COUNTY RECORDS AND THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 582.19 FEET, FROM WHICH THE RADIUS POINT BEARS SOUTH 37° 25' 33" EAST;

THENCE FOLLOWING THE BOUNDARY OF SAID PARCEL 2 THE FOLLOWING THREE (3) COURSES:

1) ALONG SAID CURVE 1.20 FEET THROUGH A CENTRAL ANGLE OF 00° 07' 06";

2) THENCE SOUTH 37° 18' 27" EAST 17.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 565.19 FEET, FROM WHICH THE RADIUS POINT BEARS SOUTH 37° 18' 27" EAST;

AND 3) ALONG SAID CURVE 57.11 FEET THROUGH A CENTRAL ANGLE OF 05° 47' 23" TO THE SOUTHWESTERN BOUNDARY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN SERIES NUMBER 2008-175638, ALAMEDA COUNTY RECORDS;

THENCE COINCIDENT THEREWITH SOUTH 54° 18' 28" EAST 119.76 FEET;

THENCE CONTINUING COINCIDENT THEREWITH SOUTH 43° 17' 16" EAST 528.00 FEET TO THE MOST SOUTHERN CORNER OF SAID PARCEL 1 BEING ALSO A POINT ON THE NORTHWESTERN LINE OF 66TH AVENUE, FORMERLY COUNTY ROAD NO. 593, BEING 20 FEET NORTHWESTERLY OF THE MONUMENTATION LINE AS DEFINED IN CITY MONUMENT FIELD BOOK 15, PAGE 16;

THENCE COINCIDENT WITH SAID NORTHWESTERN LINE SOUTH 44° 43' 44" WEST 399.96 FEET;

THENCE LEAVING SAID NORTHWESTERN LINE NORTH 45°54'56" WEST, 606.73 FEET TO A POINT ON THE BOUNDARY LINE COMMON TO PARCELS 1 AND 2 OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN BOOK 1422 OF DEEDS, AT PAGE 172, ALAMEDA COUNTY RECORDS;

THENCE COINCIDENT WITH SAID COMMON BOUNDARY LINE SOUTH 35°09'23" WEST, 38.53 FEET TO A CORNER OF A CERTAIN 9.20 ACRE TRACT OF LAND DESCRIBED IN THE QUIT CLAIM DEED FROM NATHANIEL DAMON TO LAURA M. DAMON, DATED NOVEMBER 6, 1895, RECORDED FEBRUARY 1, 1899 IN BOOK 687 OF DEEDS, PAGE 211, ALAMEDA COUNTY RECORDS;

THENCE COINCIDENT WITH THE BOUNDARY LINE OF SAID 9.20 ACRE TRACT NORTH 33° 49' 58" WEST 308.63 FEET TO THE SOUTHERLY MOST CORNER OF LOT 8 IN BLOCK 19, OF SAID MAP OF EASTLAWN;

THENCE COINCIDENT WITH THE NORTHEASTERLY BOUNDARY LINE OF SAID LOT 8 NORTH 34° 54' 37" WEST 129.52 FEET TO THE POINT OF BEGINNING, CONTAINING 10.035 ACRES, CONTAINING 10.035 ACRES MORE OR LESS.

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Kutak Rock LLP  
1801 California Street  
Suite 3100  
Denver, Colorado 80202  
Attention: William S. Martin, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER  
TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION  
CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO  
SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

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(Space above for Recorder's Use)

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**FIRST AMENDMENT TO LEASE AGREEMENT**

by and between

**AC TRANSIT FINANCING CORPORATION,**  
as Lessor

and

**ALAMEDA-CONTRA COSTA TRANSIT DISTRICT,**  
as Lessee

Relating to

\$15,000,000  
Alameda-Contra Costa Transit District  
Certificates of Participation  
(Land Acquisition Project)  
Series 2009A

Dated as of December 1, 2009

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## FIRST AMENDMENT TO LEASE AGREEMENT

This **FIRST AMENDMENT TO LEASE AGREEMENT**, dated as of December 1, 2009 (this "**First Amendment**"), is made by and between the **AC TRANSIT FINANCING CORPORATION**, a nonprofit, public benefit corporation duly organized and existing under the laws of the State of California, as lessor (the "**Corporation**"), and **ALAMEDA-CONTRA COSTA TRANSIT DISTRICT**, a special transit district duly organized and existing under the laws of the State of California, as lessee (the "**District**").

### WITNESSETH:

WHEREAS, the Corporation and the District entered into that certain Lease Agreement, dated as of February 1, 2009 (the "**Lease Agreement**"), in connection with the lease of the Property in order to generate funds in an amount sufficient to reimburse the District for the acquisition cost of the Property and to meet the District's purposes; and

WHEREAS, the Lease Agreement was originally filed (file number 2009038953) on February 3, 2009 in Alameda County; and

WHEREAS, the Corporation and the District have determined that it is in their best interests to make certain amendments to the Lease Agreement; and

**NOW THEREFORE**, the Corporation and the District agree as follows, each for the benefit of the other and/or the benefit of the holders of the Certificates.

**Section 1. Definitions.** All capitalized terms used herein, except as otherwise defined herein, shall have the meanings assigned thereto in the Lease Agreement or the hereinafter defined Trust Agreement.

**Section 2. Authorization.** Pursuant to Section 10.04 of the Lease Agreement and Section 6.02 of the Trust Agreement, dated as of February 1, 2009 (the "**Trust Agreement**"), by and among The Bank of New York Mellon Trust Company, N.A., as trustee (the "**Trustee**"), the Corporation and the District, the Corporation and the District may amend the Lease Agreement with the prior written consent of the Trustee if, in the Opinion of Counsel, such alterations, amendments or modifications are not materially adverse to the interests of the Owners, if applicable, and will not cause the interest components of the Lease Payments to be includible in the gross income of the Owners of the Certificates for federal income tax purposes.

This First Amendment is supplemental to and amendatory of the Lease Agreement and is entered into in accordance with the provisions of the Lease Agreement. Each of the parties hereby represents and warrants that it has full legal authority and is empowered to enter into this First Amendment, and has taken all actions necessary to authorize the execution and delivery of this First Amendment.

**Section 3. Amendments to the Lease Agreement.**

(a) Section 5.13(c)(iii) of the Lease Agreement shall be amended and restated in its entirety as follows:

“(iii) the District delivers to the Trustee and the Corporation evidence that the Property and Equipment, if any remains, as revised by such release, has a total value at least equal to 1.1 times the principal amount of the Certificates then outstanding”.

(b) Attached hereto is a new “EXHIBIT A—LEGAL DESCRIPTION OF THE PROPERTY” to the Lease Agreement, which will replace the original “EXHIBIT A—LEGAL DESCRIPTION OF THE PROPERTY” in its entirety.

**Section 4. Severability.** If any provision of this First Amendment shall be determined to be unenforceable, that shall not affect any other provision of this First Amendment.

**Section 5. Governing Law.** This First Amendment shall be governed by and construed in accordance with the laws of the State of California.

**Section 6. Headings.** The headings or titles of the Sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this First Amendment.

**Section 7. Execution in Counterparts.** This First Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute by one and the same agreement.

[End of First Amendment to Lease Agreement]

IN WITNESS WHEREOF, the Corporation has caused this First Amendment to Lease Agreement to be executed in its corporate name by its duly authorized officers; and the District has caused this First Amendment to Lease Agreement to be executed and attested in its name by its duly authorized officers, as of the Dated Date.

AC TRANSIT FINANCING CORPORATION, as  
Lessor

By \_\_\_\_\_  
Ryan "Rocky" Fernandez, Chair

Attest:

By \_\_\_\_\_  
Secretary

Approved as to form by:

\_\_\_\_\_  
Kenneth C. Scheidig, General Counsel to  
AC Transit Financing Corporation

ALAMEDA-CONTRA COSTA TRANSIT  
DISTRICT, as Lessee

By \_\_\_\_\_  
Richard C. Fernandez, General Manager

Attest:

By \_\_\_\_\_  
District Secretary

Approved as to form by:

\_\_\_\_\_  
Kenneth C. Scheidig, General Counsel to  
Alameda-Contra Costa Transit District

[Signature page to First Amendment to Lease Agreement]

IN WITNESS WHEREOF, the Trustee hereby consents to this First Amendment to Lease Agreement as of the Dated Date.

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

By \_\_\_\_\_  
Authorized Signatory

[Consent to First Amendment to Lease Agreement]



**ACKNOWLEDGMENT**

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Date (Insert Name and Title of the Officer)

Personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ **(Seal)**

**EXHIBIT A**

**DESCRIPTION OF  
ALAMEDA CONTRA-COSTA TRANSIT AUTHORITY  
AREA 3A  
CONTAINING 10.035 ACRES MORE OR LESS**

A portion of land in the City of Oakland, County of Alameda, State of California, being more particularly described as follows:

BEGINNING AT A POINT, SAID POINT BEING THE NORTHERLY MOST CORNER OF LOT 8 AS SHOWN ON THE TRACT MAP ENTITLED "EASTLAWN" RECORDED IN BOOK 25 OF MAPS, PAGE 35 OFFICIAL RECORDS OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THENCE COINCIDENT WITH THE SOUTHEASTERN BOUNDARY LINE OF SAID EASTLAWN NORTH 52° 08' 33" EAST 114.10 FEET TO THE MOST EASTERN CORNER OF LOT 7 IN BLOCK 19 PER SAID MAP OF EASTLAWN;

THENCE COINCIDENT WITH THE NORTHEASTERN BOUNDARY LINE OF SAID LOT 7 NORTH 40° 24' 17" WEST 5.00 FEET TO THE SOUTHEASTERN LINE OF MALDON STREET AS SHOWN ON SAID MAP;

THENCE COINCIDENT WITH SAID SOUTHEASTERN LINE OF MALDON STREET NORTH 52° 08' 33" EAST 50.05 FEET TO THE SOUTHWESTERN BOUNDARY LINE OF LOT 8 IN BLOCK 18 AS SHOWN ON SAID MAP;

THENCE COINCIDENT WITH SAID SOUTHWESTERN BOUNDARY LINE SOUTH 40° 24' 17" EAST 5.00 FEET TO THE MOST SOUTHERN CORNER OF SAID LOT 8;

THENCE COINCIDENT WITH THE SOUTHEASTERN BOUNDARY LINE OF SAID EASTLAWN NORTH 52° 08' 33" EAST 240.24 FEET TO THE MOST EASTERN CORNER OF LOT 9 IN BLOCK 18 AS SHOWN ON SAID MAP;

THENCE COINCIDENT WITH THE NORTHEASTERN BOUNDARY LINE OF SAID LOT 9, NORTH 40° 24' 17" WEST 5.00 FEET TO THE SOUTHEASTERN LINE OF TEVIS STREET AS SHOWN ON SAID MAP;

THENCE COINCIDENT WITH SAID SOUTHEASTERN LINE OF TEVIS STREET NORTH 52° 08' 33" EAST 50.05 FEET TO THE SOUTHWESTERN BOUNDARY LINE OF LOT 9 IN BLOCK 13 AS SHOWN ON SAID MAP;

THENCE COINCIDENT WITH SAID SOUTHWESTERN BOUNDARY LINE SOUTH 40° 24' 17" EAST 5.00 FEET TO THE MOST SOUTHERN CORNER OF SAID LOT 9 IN BLOCK 13 BEING ALSO THE MOST WESTERN CORNER OF THAT CERTAIN 3.6 ACRE PARCEL OF LAND RECORDED IN BOOK 373 OF DEEDS, AT PAGE 180, ALAMEDA COUNTY RECORDS;

THENCE COINCIDENT WITH THE SOUTHWESTERN BOUNDARY LINE OF SAID 3.6 ACRE PARCEL SOUTH 39° 17' 17" EAST 315.35 FEET TO THE MOST SOUTHERN CORNER OF SAID PARCEL BEING ALSO A POINT ON THE BOUNDARY COMMON TO PARCELS 1 AND 2 OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN BOOK 1422 OF DEEDS, AT PAGE 172, ALAMEDA COUNTY RECORDS AND THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 582.19 FEET, FROM WHICH THE RADIUS POINT BEARS SOUTH 37° 25' 33" EAST;

THENCE FOLLOWING THE BOUNDARY OF SAID PARCEL 2 THE FOLLOWING THREE (3) COURSES:

1) ALONG SAID CURVE 1.20 FEET THROUGH A CENTRAL ANGLE OF 00° 07' 06";

2) THENCE SOUTH 37° 18' 27" EAST 17.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 565.19 FEET, FROM WHICH THE RADIUS POINT BEARS SOUTH 37° 18' 27" EAST;

AND 3) ALONG SAID CURVE 57.11 FEET THROUGH A CENTRAL ANGLE OF 05° 47' 23" TO THE SOUTHWESTERN BOUNDARY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN SERIES NUMBER 2008-175638, ALAMEDA COUNTY RECORDS;

THENCE COINCIDENT THEREWITH SOUTH 54° 18' 28" EAST 119.76 FEET;

THENCE CONTINUING COINCIDENT THEREWITH SOUTH 43° 17' 16" EAST 528.00 FEET TO THE MOST SOUTHERN CORNER OF SAID PARCEL 1 BEING ALSO A POINT ON THE NORTHWESTERN LINE OF 66TH AVENUE, FORMERLY COUNTY ROAD NO. 593, BEING 20 FEET NORTHWESTERLY OF THE MONUMENTATION LINE AS DEFINED IN CITY MONUMENT FIELD BOOK 15, PAGE 16;

THENCE COINCIDENT WITH SAID NORTHWESTERN LINE SOUTH 44° 43' 44" WEST 399.96 FEET;

THENCE LEAVING SAID NORTHWESTERN LINE NORTH 45° 54' 56" WEST, 606.73 FEET TO A POINT ON THE BOUNDARY LINE COMMON TO PARCELS 1 AND 2 OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN BOOK 1422 OF DEEDS, AT PAGE 172, ALAMEDA COUNTY RECORDS;

THENCE COINCIDENT WITH SAID COMMON BOUNDARY LINE SOUTH 35° 09' 23" WEST, 38.53 FEET TO A CORNER OF A CERTAIN 9.20 ACRE TRACT OF LAND DESCRIBED IN THE QUIT CLAIM DEED FROM NATHANIEL DAMON TO LAURA M. DAMON, DATED NOVEMBER 6, 1895, RECORDED FEBRUARY 1, 1899 IN BOOK 687 OF DEEDS, PAGE 211, ALAMEDA COUNTY RECORDS;

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NORTH 33° 49' 58" WEST 308.63 FEET TO THE SOUTHERLY MOST CORNER OF LOT 8  
IN BLOCK 19, OF SAID MAP OF EASTLAWN;

THENCE COINCIDENT WITH THE NORTHEASTERLY BOUNDARY LINE OF SAID LOT  
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10.035 ACRES, CONTAINING 10.035 ACRES MORE OR LESS.