

**EMPLOYMENT AGREEMENT
BETWEEN
THE LONG BEACH PUBLIC TRANSPORTATION COMPANY
AND
KENNETH A. MCDONALD**

THIS EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of August 31, 2018, between the LONG BEACH PUBLIC TRANSPORTATION COMPANY ("Employer") and Kenneth A. McDonald ("CEO"). The above-named parties hereby mutually agree and promise as follows:

I. TERM.

Employer hereby employs CEO as President and Chief Executive Officer for a term of five (5) years commencing on September 1, 2018 ("Commencement Date"), and continuing through the end of business on August 31, 2023, or until terminated pursuant to Section VII of this Agreement ("Term"). It is the parties' intention to meet, no later than six months prior to the expiration of this Agreement, and discuss a potential extension or new agreement. Nothing in this Agreement, however, shall require Employer to agree to or grant any extension or new agreement, and the failure of the parties to meet to discuss a new agreement or an extension shall not prevent this Agreement from otherwise expiring on August 31, 2023.

II. SALARY.

A. Base Salary. CEO's Base Salary shall be two hundred eighty-seven thousand three hundred ninety-eight dollars (\$287,398.00) per year, which sum shall be paid pursuant to the same procedures established for employees of Employer, and as they may be amended by the Employer in its sole discretion.

B. Future Salary Increases. The Board of Directors may, at its discretion, grant increase to CEO's Base Salary when financial conditions permit, when increases or cost of living adjustments have been granted to other employees, or when it otherwise deems appropriate.

III. DUTIES.

CEO shall perform the duties of CEO, as designated in the Employer's By-Laws, Employer policies, all resolutions and administrative regulations, as well as applicable law, as may presently exist or which are adopted during CEO's term of employment. CEO shall devote his full time and energy to the fulfillment of his duties to Employer. CEO acknowledges that he is subject to the common law and statutory conflict-of-interest provisions, including but not limited to the Political Reform Act, the Fair Political Practices Commission regulations, and Employer policies, as they may be amended from time to time. CEO agrees that he will be acquainted with the above-referenced provisions, comply fully with them, and not take any action which results or could appear to result in a violation of such provisions. CEO acknowledges and affirms that he will devote his entire time to the business of the Employer.

IV. CEO AND BOARD OF DIRECTORS RESPONSIBILITIES.

CEO shall be the President and Chief Executive Officer of Employer. As such, the CEO shall have the responsibility for implementing Employer policies, whereas the Board of Directors of Employer shall retain the responsibility for formulating and adopting said policy. CEO understands that he reports to and is directed by the Board of Directors.

V. OTHER DUTIES.

CEO, as President and Chief Executive Officer (or his designee) shall: (1) review all policies proposed to the Board of Directors and make appropriate recommendations on those policies; (2) periodically evaluate employees; (3) advise the Board of Directors of possible sources of funds that might be available to implement present or contemplated Employer programs or services; (4) maintain and improve his professional competence by available means, including subscription to and reading of appropriate periodicals, and joining and participating in appropriate professional associations and their activities; (5) establish and maintain an appropriate community relations program; and (6) serve as liaison between the Board of Directors and as its designated representative with respect to all employer-employee matters. Notwithstanding that a designee of CEO may perform said duties, CEO shall be the person ultimately responsible to the Board of Directors for the proper implementation of the duties and responsibilities described in this Agreement.

VI. EVALUATION.

CEO shall meet with the Board of Directors of Employer in closed session on or about six (6) months after Commencement Date, and thereafter annually, to formally review the CEO's performance and to discuss the Board of Directors' evaluation of said performance. As part of the formal evaluation process, the Board of Directors and CEO shall meet to discuss the evaluation procedure and format, with the final determination of such procedure and format at the Board of Directors' discretion. CEO shall remind Board of Directors of its obligations under this Section each year and shall work with the Board of Directors in finding an appropriate time to place his annual evaluation on the agenda.

Additional closed sessions may be scheduled throughout the year to discuss the CEO's performance as deemed necessary by the Board of Directors.

CEO's Base Salary shall increase on January 1, 2019 by four and one half percent (4.5%) in lieu of a 2018 performance evaluation.

VII. TERMINATION.

CEO shall serve at the will and pleasure of the Board of Directors and may be removed from office (terminated) at any time for any reason or no reason upon a majority vote of the Board of Directors. CEO understands that, in the event of termination, he is exempt from any pre-termination due process rights (such as *Skelly* rights, "name clearing" hearing, etc.) and/or dispute resolution or grievance rights which may exist under Employer's personnel rules and/or regulations. Nothing in this Agreement shall prevent the Board of Directors from terminating this Agreement and the services of CEO at its sole discretion.

A. Notice of Termination. In the event CEO is terminated without cause by the Employer during the Term of this Agreement, during which time the CEO is willing and able to perform his duties under this Agreement, the Board of Directors agrees to provide CEO with written notice of termination.

B. Severance Payment. In the event CEO is terminated without cause, CEO shall be entitled to a severance payment in the amount of the lesser of twelve (12) months' Base Salary or the value of Base Salary for the remaining unexpired Term of this Agreement. CEO shall also be entitled, in the event of his termination without cause, to the continuation of all existing health benefits for twelve (12) months or until CEO finds other employment that provides, and he qualifies to begin receiving, health benefits, whichever occurs first. (The foregoing salary and health benefits shall be referred to collectively as "Severance Pay.") Further, the continuation of any existing health benefits shall not be for any time in excess of the remaining unexpired Term of this Agreement. The above severance

provisions are intended to comply with the provisions of Government Code section 53260, et seq. Any severance payment under this Agreement is also subject to the forfeiture or repayment provisions of Government Code section 53243, et seq.

C. Termination for Cause. In the event that it is determined that CEO has been terminated for cause, he shall not be entitled to any Severance Pay. Termination shall be for "cause" if CEO: (i) acts in bad faith and to the detriment of the Employer; (ii) refuses or fails to act in accordance with any specific and lawful direction or order of the Board of Directors; (iii) continues in the poor performance of his duties after having failed to correct the performance deficiencies within 90 days of receipt of written notice by the Board of Directors outlining such deficiencies; (iv) exhibits misconduct or dishonesty in regard to his employment; or (v) is convicted of a misdemeanor or felony crime.

D. Resignation or Retirement. CEO agrees to provide Employer with written notice not less than sixty (60) days in advance of the effective date of any resignation or retirement. In the event CEO resigns his employment or retires, he shall not be entitled to any Severance Pay.

E. Incapacity. This Agreement shall terminate in the event CEO becomes incapable of performing the essential functions of his position for a period of six months or longer, with or without reasonable accommodation. In such event, CEO shall receive no Severance Pay.

F. Expiration of Agreement. CEO's employment with Employer shall terminate upon expiration of this Agreement, and CEO shall receive no Severance Pay upon expiration of this Agreement.

VIII. FRINGE BENEFITS.

A. Fringe Benefits. Except as otherwise set forth below, CEO shall be entitled to all benefits, including various leave benefits, that Employer provides to other regular and salaried, exempt employees, as they exist on August 31, 2018, subject to the same rules and regulations governing such benefits. In the event Employer materially changes any such benefits that it provides to other regular and salaried, exempt employees, the Board of Directors shall meet to consider whether to make a corresponding change to CEO's benefits. Any such corresponding change shall be at the discretion of the Board of Directors. It shall be CEO's obligation to coordinate with the Board of Directors in order to place the consideration of any such corresponding changes on the agenda of a regular meeting of the Board of Directors.

B. Deferred Compensation.

(a) Section 457 Plan. CEO shall be eligible to participate in the Employer's Section 457 Deferred Compensation Plan pursuant to which he may elect to contribute from his Base Salary each year an amount designated by him up to the limits permitted under Internal Revenue Code ("Code") Sections 457(b) and 414(v).

(b) Section 401(a) Plan. CEO shall be eligible to participate in Employer's 401(a) Matching Contribution Plan as of his commencement of employment and shall participate in the Plan as follows:

(i) Matching Contribution. Employer shall make a matching contribution on his behalf equal to his salary deferrals under the Section 457 Deferred Compensation Plan up to a maximum contribution of four percent (4%) of Base Salary. In determining the salary deferral amount to be matched, catch-up deferrals under Code Sections 457(b)(3) and 414(v) shall not be taken into account.

(ii) **Non-elective Contributions.** Following CEO's completion of three (3) years of employment, Employer shall contribute each year to the 401(a) Matching Contribution Plan on his behalf a non-elective contribution equal to three percent (3%) of Base Salary.

(c) **Limitation on Base Salary.** Base Salary under this Section shall not be taken into account to the extent it exceeds the maximum permitted under Code Section 401(a)(17) (\$287,398.00 in 2018).

A. Health Benefits. In accordance with Section VIII.A of this Agreement, Employer shall provide CEO with the same medical, dental, and vision coverage as it provides other regular and salaried, exempt employees, with Employer paying the same share of premium that it provides those other employees.

B. Life Insurance. In accordance with Section VIII.A of this Agreement, Employer shall provide for a term life insurance policy at no cost to CEO in accordance with the Employer's life insurance plan. CEO shall designate the beneficiaries of that policy. It is also understood that federal regulations may require that a portion of the cost of the Employer-provided life insurance be included in wages for income and payroll tax purposes.

C. Professional Membership. Employer shall pay the CEO's dues for approved memberships in local, state, or national associations of his choice. Approval of any such membership shall be at the Board of Director's discretion.

D. Automobile Allowance. Employer shall provide CEO with an automobile allowance of eight hundred dollars (\$800.00) per month, to be used to purchase, lease, or own, and to operate and maintain, a vehicle. CEO shall be solely responsible for obtaining and paying for adequate insurance coverage of such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. Upon request, CEO shall provide Employer with proof of insurance.

E. Vacation. On January 1, 2019, and on every January 1 each year thereafter until such time that the Agreement expires or is otherwise terminated or renewed, CEO shall be entitled to five (5) weeks of paid vacation.

F. Exclusive Consideration. All compensation, benefits and comparable payments to be provided to the CEO under this Agreement shall be less withholdings required by law and shall be provided subject to any rules, regulations, agreements, or policies established by the Employer, as amended from time to time at its discretion. The CEO shall be entitled to no benefits and compensation other than as set forth above.

IX. EXPENSES AND INDEMNIFICATION.

A. Expenses. With the exception of expenses covered by CEO's automobile allowance, Employer shall pay or reimburse for all normal and customary expenses for Employer business, travel, and meetings. When reimbursing for expenses incurred, the Employer requires the submission of adequate proof of the expenses, such as a receipt, and some expenses may require prior approval of the Board of

Directors. The reimbursement of expenses shall be subject to any Employer expense reimbursement policy. CEO shall notify the Board of Directors when out of town on Employer business for more than one day.

B. Indemnification. Employer shall indemnify CEO against all necessary expenditures and losses incurred by CEO in direct consequence of the discharge of his duties, in accordance with Labor Code section 2802. In addition, the Employer shall defend and indemnify CEO against any civil action, proceeding, or claim, in accordance with Government Code section 995, et seq.

X. ARBITRATION.

The Employer and CEO mutually agree to arbitrate before a neutral arbitrator (the "Arbitrator") any and all disputes or claims by and between CEO, on the one hand, and Employer and its current and former officers, directors, employees, attorneys and agents (the "Employer Parties"), on the other hand, including but not limited to any and all claims arising from or relating to the employment relationship between the Employer and CEO, including but not limited to the CEO's recruitment, hiring, and employment, the termination of that employment, and any claims arising post-employment, including claims by or against the Employer Parties, whether such disputes or claims arise in tort, in contract or under a statute, regulation, or ordinance now in existence or that may in the future be enacted or recognized, including but not limited to the following claims: any alleged contract, express or implied; any covenant of good faith and fair dealing, whether express or implied; common law interference with prospective economic advantage; breach of fiduciary duty; negligence; any tort; any federal, state, or local statute or regulation, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the California Industrial Welfare Commission Orders, the Age Discrimination in Employment Act, the California Fair Employment and Housing Act (Government Code sections 12900-12996), Title VII, Civil Rights Act of 1964 (42 U.S.C. sections 2000-2000(e)-1-17), the Americans With Disabilities Act, the Federal Family Medical Leave Act, the California Family Rights Act, and the Armed Services Employment and Reemployment Rights Act. The CEO understands that any and all claims or disputes the Employer has against CEO arising from the employment relationship will also be subject to binding arbitration. All types of relief available pursuant to the laws under which CEO and/or the Employer's claim(s) arise will be available by arbitration.

CEO and Employer understand and agree that the arbitration of disputes and claims under this Agreement shall be instead of a trial before a court or jury. CEO and Employer further understand that CEO and Employer are expressly waiving any and all rights to a trial before a court or jury regarding any and all disputes and claims that they now have or may in the future have that are subject to arbitration under this Agreement; provided, however, that nothing in this Agreement prohibits either party from seeking provisional remedies in court in aid of arbitration including temporary restraining orders, preliminary injunctions, and other provisional remedies. All types of relief available pursuant to the laws under which CEO and/or the Employer's claim(s) arise will be available by arbitration.

In any arbitration under this Agreement, the Arbitrator shall allow reasonable discovery with respect to both documents and witnesses to prepare for arbitration of any claims and all disputes concerning the right to reasonable discovery will be decided by the Arbitrator. At a minimum, without adopting or incorporating the California Arbitration Act ("CAA"), codified in the Code of Civil Procedure, section 1280 et seq., into this Agreement, the Arbitrator shall allow at least that discovery that is authorized or permitted by the CAA and such other discovery required by law in arbitration proceedings. CEO and Employer also agree that nothing in this Agreement relieves either party from any obligation they may have to exhaust applicable administrative remedies before arbitrating any claims or disputes under this Agreement.

The Arbitrator will decide the case after hearing the parties' evidence and preparing a written decision. The Arbitrator shall have the authority to award any and all relief authorized by applicable law

in connection with the asserted claims or disputes. If CEO is challenging whether his termination was for "cause" as set forth in Section VII.C. of this Agreement, the remedy shall be limited to whether CEO is entitled to the severance payments as set forth in Section VII.B. Furthermore, except as otherwise required under applicable law, Employer and CEO shall each pay their own attorney fees and costs incurred in connection with the arbitration. The Arbitrator shall not have authority to award attorney fees and costs to the prevailing party unless a statute or contract at issue in the dispute authorizes the award of attorney fees and costs to the prevailing party, in which case the Arbitrator shall have the authority to make an award of attorney fees and costs to the same extent available under applicable law. If there is a dispute regarding whether Employer or CEO is the prevailing party in the arbitration, the Arbitrator will decide this issue.

The Arbitrator shall issue a written reasoned award that sets forth the essential findings and conclusions on which the award is based. The Arbitrator's award shall be subject to limited judicial review, as provided by any applicable law setting forth the standard of review.

The Employer and CEO also understand and agree that they must request arbitration in writing from the other within a reasonable time not to exceed one (1) year from the date that the dispute arises, and that the CEO agrees to contribute to the cost of the arbitration to the same extent it would cost the CEO to file a civil action in the county where CEO applied for employment and/or was employed. The Employer shall pay the Arbitrator's expenses and fees, and any other expenses that would not have been incurred if the case had been litigated in the judicial forum having jurisdiction over it.

XI. GENERAL PROVISIONS.

A. This Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the employment of the parties and contains all of the covenants and agreements between the parties with respect to the employment of CEO by the Employer.

B. Each party agrees and acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein and that any agreement, statement, or promise not contained in this Agreement shall not be valid or binding on either party.

C. Any modifications of this Agreement will be effective only if made in writing and signed by both parties.

D. If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way. The parties have entered into this Agreement on the date (s) set forth below.

SIGNATURES ON NEXT PAGE

EMPLOYER

Sumire I. Gant
Chair, Board of Directors

Date: _____

CEO

Kenneth A. McDonald
President and CEO

Date: _____

APPROVED AS TO FORM

Vincent C. Ewing
General Counsel

Date: _____

