

**LONG BEACH TRANSIT
BOARD OF DIRECTORS MEETING
AGENDA**



**THURSDAY, MARCH 28, 2024
4801 AIRPORT PLAZA DRIVE
ROSA PARKS BOARD CHAMBER
3:30 P.M.**

David Sutton, Chair
Abigail Mejia, Vice Chair
Raul Añorve, Secretary/Treasurer
Eduardo Angeles, Director
Randy Rawlings, Director
Tunua Thrash-Ntuk, Director

Joshua Hickman, City Representative
Christopher Koontz, City Representative

Kenneth A. McDonald
President and Chief Executive Officer

LONG BEACH TRANSIT BOARD OF DIRECTORS IN-PERSON MEETING

MEMBERS OF THE PUBLIC ALSO HAVE THE OPTION TO PROVIDE PUBLIC COMMENT IN THE ZOOM MEETING BY USING THE RAISE HAND FUNCTION OR PRESSING *9 ON YOUR PHONE

PLEASE NOTE THE ZOOM MEETING MAY ENCOUNTER TECHNICAL DISRUPTIONS, BUT IN-PERSON ACCESS AND PUBLIC COMMENT WILL CONTINUE TO BE AVAILABLE IN ACCORDANCE WITH THE BROWN ACT

MEMBERS OF THE PUBLIC MAY LISTEN TO THE MEETING BY DIALING (669) 444-9171 AND ENTERING THE FOLLOWING MEETING ID: 892 4992 2679 (PASSWORD: 1963)

MEMBERS OF THE PUBLIC MAY ALSO JOIN THE VIDEO CONFERENCE VIA THE FOLLOWING ZOOM MEETING LINK:

<https://us06web.zoom.us/j/89249922679?pwd=C6H1K4aKWbnpU9QTVsN6ynNnxYqX0Y.1>

PERSONS WISHING TO ADDRESS THE BOARD MAY SUBMIT PUBLIC COMMENT VIA EMAIL OR TELEPHONE.

Public comments on agenda items may be submitted by email to board@lbtransit.com or by telephone at 562.599.8599.

If calling, please leave a voicemail with your name (please state it clearly), your telephone number for a return call, and the item number on which you would like to comment (or specify "public comment").

If emailing, please include your name, your telephone number for a return call, and the item number on which you would like to comment (or specify "public comment").

More information on this process may be found at ridelbt.com/about-us

REGULAR MEETING – 3:30 P.M.

1. Call to Order. (Abigail Mejia)
2. Roll Call. (Jen Flores)
3. Employee Recognition. (Jen Flores)

Employees of the Month for February 2024:

Lennyn Gutierrez, Transit Service Delivery and Planning
Reuben De Ocampo, Maintenance and Infrastructure
James Tai, Administrative Staff

Employees of the Month for March 2024:

Chad Wright, Transit Service Delivery and Planning
Timothy Smith, Maintenance and Infrastructure
Vivian Garcia, Administrative Staff

INFORMATION ITEM

4. Public Comment.

Any member of the public may approach the lectern and, upon recognition by the Chair, state his or her name and proceed to address the Board on any item within the subject matter jurisdiction of the Long Beach Transit Board of Directors, provided that no action may be taken on off-agenda items unless authorized by law. Comments shall be limited to three minutes, unless different time limits are set by the Chair, subject to the approval of the Board.

5. President and CEO Report. (Kenneth McDonald)

INFORMATION ITEM

NOTICE TO THE PUBLIC

All matters included on the Consent Calendar are considered routine by the Long Beach Transit (LBT) Board of Directors and will all be enacted by one motion. There will be no separate discussion of these items unless a member of the Board of Directors or the public so requests, in which event the matter shall be removed from the Consent Calendar and considered as a separate item.

CONSENT CALENDAR (6)

6. Recommendation to approve the minutes of the regular session meeting held on January 25, 2024.

Suggested Action: Approve recommendation.

REGULAR CALENDAR

7. Monthly Financial Report. (Lisa Patton)

INFORMATION ITEM

8. Recommendation to authorize the President and CEO to enter into a six-year contract, with four option years, with Clean Energy for a total cost of \$3,582,730 plus a 5% contingency, for a total authorization amount not to exceed \$3,761,866. (Jim Scott)

Suggested Action: Approve recommendation.

9. Recommendation to authorize the President and CEO to enter into a three-year contract with ETC Institute, in an amount not to exceed \$390,367, including a ten percent contingency, to conduct customer, community and operator surveys, as well as monthly mystery calls and bus rides and optional focus groups. (Mike Gold)

Suggested Action: Approve recommendation.

10. Calendar Year 2024 Legislative Program. (Marisol Barajas)

INFORMATION ITEM

11. Public Comment.

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12. Closed Session.

Conference with labor negotiator (Gov. Code sec. 54957.6)

Agency negotiator: Board Vice Chair Abigail Mejia

Unrepresented employee: President and CEO, Kenneth A. McDonald

13. Recommendation to approve the employment agreement with Kenneth A. McDonald for the position of President and Chief Executive Officer. (Abigail Mejia)

Suggested Action: Approve recommendation.

14. Board Requests.

15. Adjourn. The next regular meeting will be held on April 25, 2024. (Abigail Mejia)

Suggested Action: Approve recommendation.

Note:

Long Beach Transit intends to provide reasonable accommodations in accordance with the Americans with Disabilities Act of 1990. If special accommodation is desired please call the Office of the Board Secretary 48 hours prior to the meeting at 562.599.8599.

Long Beach Transit is an entity which is separate and distinct from the City of Long Beach.

**LONG BEACH TRANSIT
BOARD OF DIRECTORS MEETING
MINUTES**



**THURSDAY, JANUARY 25, 2024
4801 AIRPORT PLAZA DRIVE
ROSA PARKS BOARD CHAMBER
3:30 P.M.**

David Sutton, Chair
Abigail Mejia, Vice Chair
Eduardo Angeles, Director
Raul Añorve, Director
Randy Rawlings, Director
Tunua Thrash-Ntuk, Director

Joshua Hickman, City Representative
Christopher Koontz, City Representative

Kenneth A. McDonald
President and Chief Executive Officer

REGULAR MEETING – 3:30 P.M.

1. Call to Order. (David Sutton)

Chair Sutton called the meeting to order at 3:31 p.m.

2. Roll Call. (Jen Flores)

Directors Present: Eduardo Angeles, Raul Añorve, Randy Rawlings and David Sutton

Directors Excused: Abigail Mejia and Tunua Thrash-Ntuk

3. Employee Recognition. (Jen Flores)

Employees of the Month for December 2023:

Preston Wicks, Transit Service Delivery and Planning
Mark Juarez, Maintenance and Infrastructure
Brendan McGuire, Administrative Staff

Employees of the Month for January 2024:

Kelly Williams, Transit Service Delivery and Planning
William Bahr, Maintenance and Infrastructure
Arantxa Chavarria, Administrative Staff

INFORMATION ITEM

Jen Flores, Board Secretary, presented the Employees of the Month for December 2023 and January 2024.

Director Thrash-Ntuk joined the Board of Directors meeting at 3:35 p.m.

Directors Present: Eduardo Angeles, Raul Añorve, Abigail Mejia, Randy Rawlings, David Sutton and Tunua Thrash-Ntuk

Directors Excused: Abigail Mejia

4. Public Comment.

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There were no public comments.

5. President and CEO Report. (Kenneth McDonald)

INFORMATION ITEM

Kenneth McDonald, President and CEO, presented his monthly report.

CEO McDonald announced the retirement of Patrick Pham, Executive Director/VP, Information Technology.

CEO McDonald introduced and welcomed Pretty George, who joined LBT on, January 16, 2024, as Executive Director/VP, Information Technology.

CEO McDonald recognized the 2023 Employees of the Year:
Nanette West, Transit Service Delivery and Planning
Mark Juarez, Maintenance and Infrastructure
Wale Akinyinka, Administrative Staff

CEO McDonald highlighted various community events LBT staff and Board Directors participated in for the month of January.

NOTICE TO THE PUBLIC

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CONSENT CALENDAR (6)

A motion was made by Director Angeles, seconded by Director Rawlings, to pass the consent calendar. The motion carried by the following vote:

Yes: 5 - Eduardo Angeles, Raul Añorve, Randy Rawlings, David Sutton and Tunua Thrash-Ntuk

Excused: 1 - Abigail Mejia

6. Recommendation to approve the minutes of the regular session meeting held on December 7, 2023.

Suggested Action: Approve recommendation.

REGULAR CALENDAR

7. Monthly Financial Report. (Lisa Patton)

INFORMATION ITEM

Lisa Patton, Executive Director/VP, Finance and Budget, presented the staff report.

Director Añorve inquired about the natural gas costs compared to last year.

Ms. Patton responded that LBT has not seen the natural gas spikes that were seen last year.

Director Thrash-Ntuk requested further information about taxes and fees regarding the Tax Assessors Office.

Ms. Patton responded that LBT does not agree with the County's Assessor's Office property tax assessment and Counsel is addressing the issue with the County.

8. Recommendation to authorize the President and CEO to:
 - 1) Increase the President and CEO authorization amount of the three-year contract by an additional \$1,990,000 of the previously approved contract of \$7,945,955, with Merrimac Energy Group for the purchase of unleaded gasoline fuel, for a revised total authorization amount not to exceed \$9,935,955.
 - 2) Exercise contract option year one, with Merrimac Energy Group for the purchase of unleaded gasoline fuel at a cost of \$4,025,633 for the one-year contract option including a 10% contingency.

(Jim Scott)

Suggested Action: Approve recommendation.

Jim Scott, Executive Director/VP, Maintenance and Infrastructure, presented the staff report.

Director Rawlings inquired about the delays in the BEB charging infrastructure.

Mr. Scott responded that LBT is ahead of schedule in receiving BEB buses however, the Phase IV build-out is in the works.

City Representative Koontz inquired about hedging costs.

Mr. Scott responded that LBT pays 15 cents under the rack rate based on the daily market rate.

Ms. Patton responded that this type of fueling is being phased out and the staff did a procurement to find the best rate for the volume of gas consumed.

Director Angeles inquired if LBT is anticipating putting the contract back out for a competitive bid once this contract ends.

CEO McDonald responded that there is still one more option year left to exercise and that staff will make a decision as the contract approaches the second option year.

A motion was made by Director Thrash-Ntuk, seconded by Director Angeles, to approve the recommendation. The motion carried by the following vote:

Yes: 5 - Eduardo Angeles, Raul Añorve, Randy Rawlings, David Sutton and Tunua Thrash-Ntuk

Excused: 1 - Abigail Mejia

9. Fiscal Year 2023 Annual Comprehensive Financial Report (ACFR). (Ashley Liang)

INFORMATION ITEM

Ashley Liang, Treasurer, presented the staff report.

This Agenda Item was received and filed.

10. Fiscal Year 2023 Single Audit Report. (Jenifer Maxwel)

INFORMATION ITEM

Jenifer Maxwel, Manager, Capital Programs, presented the staff report.

This Agenda Item was received and filed.

11. Election of Officers. (David Sutton)

Suggested Action: Approve recommendation.

Individual votes were taken during this time to appoint the Chair, Vice Chair and Secretary/Treasurer. The results are noted below:

Director Añorve nominated David Sutton to serve as Chair. The nomination carried by the following vote:

Yes: 5 - Eduardo Angeles, Raul Añorve, Randy Rawlings, David Sutton and Tunua Thrash-Ntuk

Excused: 1 - Abigail Mejia

Chair Sutton nominated Abigail Mejia to serve as Vice Chair. The nomination carried by the following vote:

Yes: 5 - Eduardo Angeles, Raul Añorve, Randy Rawlings, David Sutton and Tunua Thrash-Ntuk

Excused: 1 - Abigail Mejia

Director Thrash-Ntuk nominated Raul Añorve to serve as Secretary/Treasurer. The nomination carried by the following vote:

Yes: 5 - Eduardo Angeles, Raul Añorve, Randy Rawlings, David Sutton and Tunua Thrash-Ntuk

Excused: 1 - Abigail Mejia

12. Public Comment.

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There were no public comments.

13. Closed Session.

1) Conference with Labor Negotiator
Pursuant to Cal. Gov. Code § 54957.6

Long Beach Transit Representative: Kenneth A. McDonald, President and CEO

Employee Organization:
Amalgamated Transit Union, Local 1277
American Federation of State, County and Municipal Employees (AFSCME),
District Council 36

2) CONFERENCE REAL PROPERTY (Gov. Code sec. 54956.8)
Property: 4801 Airport Plaza Drive, Long Beach, CA 90815
Kenneth A. McDonald, President and CEO; Lisa Patton, Executive Director/VP,
Finance and Budget
Re: Price, Terms

The Board received a written public comment submitted by Luis Schmidt, AFSCME DC 36, regarding ongoing contract negotiations.

Meeting went into Closed Session at 4:45 p.m.

Meeting reconvened at 5:24 p.m.

Vince Ewing, General Counsel, reported that no direction was given and no action was taken.

14. Board Requests.

Director Thrash-Ntuk requested site visits to LBT facilities.

Director Thrash-Ntuk inquired about LBT commemorating Transit Equity Day.

Chair Sutton also requested information on LBT's plans for Transit Equity Day.

15. Adjourn. The next regular meeting will be held on February 22, 2024. (David Sutton)

Suggested Action: Approve recommendation.

Meeting adjourned at 5:28 p.m.

A motion was made by Director Rawlings, seconded by Director Thrash-Ntuk, to approve the recommendation. The motion carried by the following vote:

Yes: 5 - Eduardo Angeles, Raul Añorve, Randy Rawlings, David Sutton and Tunua Thrash-Ntuk

Excused: 1 - Abigail Mejia

Note:

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Long Beach Transit is an entity which is separate and distinct from the City of Long Beach.

LONG BEACH TRANSIT
STATEMENT OF REVENUES AND EXPENSES
FOR PERIOD JULY 1, 2023 TO FEBRUARY 29, 2024

Page 1 of 4

	February 2023	February 2024	February Budget	%	Year to Date FY 2023	Year to Date FY 2024	Year to Date Budget	%
OPERATING REVENUE								
Passenger Fares	\$749,318	\$751,785	\$765,263	98	\$5,007,895	\$6,125,331	\$5,850,021	105
Dial A Lift Fares	2,944	2,554	3,576	71	23,534	25,178	28,820	87
Aqua Service Fares	8,909	0	0	-	190,129	155,312	120,815	129
Special Event Service Revenue	0	0	0	-	10,375	6,281	6,000	105
Advertising Revenue	56,250	56,250	56,250	100	436,206	515,683	450,000	115
Interest & Miscellaneous	288,443	397,832	226,603	176	1,605,006	3,014,985	1,821,330	166
TOTAL OPERATING REVENUE	\$1,105,864	\$1,208,420	\$1,051,692	115	\$7,273,145	\$9,842,770	\$8,276,986	119
SUBSIDY REVENUE								
Federal	\$1,400,000	\$1,400,000	\$1,700,000	82	\$3,900,000	\$5,814,123	\$13,950,000	42
State	2,683,280	2,838,136	2,838,136	100	19,021,434	22,793,761	22,705,088	100
County	4,154,934	4,051,300	4,051,300	100	29,124,878	32,447,506	32,460,652	100
Local	706,550	743,085	743,101	100	5,202,023	6,661,016	6,626,244	101
TOTAL SUBSIDY REVENUE	\$8,944,764	\$9,032,521	\$9,332,537	97	\$57,248,335	\$67,716,406	\$75,741,984	89
TOTAL REVENUE	\$10,050,628	\$10,240,941	\$10,384,229	99	\$64,521,481	\$77,559,175	\$84,018,970	92
OPERATING EXPENSES								
Operations	\$4,500,038	\$4,602,907	\$4,884,321	94	\$32,142,826	\$40,915,171	\$40,899,428	100
Maintenance	2,273,341	2,310,713	2,441,868	95	15,731,924	19,941,906	19,874,457	100
Administration	2,230,461	2,046,302	2,412,577	85	12,755,209	16,111,553	18,703,793	86
Fuel & Lubricants	532,172	482,550	521,526	93	4,281,124	3,931,216	4,540,631	87
TOTAL OPERATING EXPENSES	\$9,536,012	\$9,442,473	\$10,260,292	92	\$64,911,084	\$80,899,846	\$84,018,309	96
NET INCOME (LOSS) BEFORE DEPR.	\$514,616	\$798,468	\$123,937		(\$389,603)	(\$3,340,671)	\$661	
DEPRECIATION	\$1,431,187	\$1,485,260	\$1,565,535	95	\$9,496,536	\$11,699,912	\$12,524,280	93

**LONG BEACH TRANSIT
SCHEDULE OF EXPENSES
FOR PERIOD JULY 1, 2023 TO FEBRUARY 29, 2024**

Page 2 of 4

	Operations	Maintenance	Admin	Total Curr. Month	Current Month Budget	%	Year to Date	Year to Date Budget	%
LABOR									
Operators	\$2,371,685	\$0	\$0	\$2,371,685	\$2,459,982	96	\$21,792,540	\$21,309,508	102
Maintenance	0	569,899	0	569,899	576,780	99	5,112,402	4,833,672	106
Salaried	246,536	266,512	739,592	1,252,639	1,808,407	69	11,706,662	13,392,644	87
FRINGE BENEFITS									
FICA	193,431	61,500	55,289	310,220	353,904	88	2,702,170	2,842,588	95
Pension	356,368	110,419	97,648	564,435	592,820	95	5,019,927	4,826,570	104
Health	587,006	173,069	107,782	867,856	952,757	91	6,876,301	7,398,418	93
Workers' Compensation	374,093	26,764	2,257	403,115	403,531	100	3,224,917	3,228,248	100
Uniform & Tool Allowance	9,946	2,521	0	12,467	28,876	43	178,529	255,012	70
Unemployment & Other Fringes	4,041	2,100	40,777	46,918	42,310	111	311,261	433,955	72
SERVICES									
Advertising	0	0	81,596	81,596	68,496	119	487,294	580,968	84
Professional & Technical	20,212	19,883	293,699	333,795	351,908	95	2,288,065	2,994,720	76
Contract Maintenance	0	197,923	147,813	345,736	414,219	83	3,144,590	3,327,313	95
Security	311,890	36,059	0	347,949	330,700	105	2,521,693	2,641,087	95
Employment Physicals	0	0	16,790	16,790	18,416	91	136,573	147,328	93
Other	0	4,672	15,290	19,962	10,421	192	110,899	85,368	130

**LONG BEACH TRANSIT
SCHEDULE OF EXPENSES
FOR PERIOD JULY 1, 2023 TO FEBRUARY 29, 2024**

Page 3 of 4

	Operations	Maintenance	Admin	Total Curr. Month	Current Month Budget	%	Year to Date	Year to Date Budget	%
MATERIALS & SUPPLIES									
Fuel & Lubricants	\$0	\$482,550	\$0	\$482,550	\$521,526	93	\$3,931,216	\$4,540,631	87
Fleet Parts & Supplies	0	555,494	0	555,494	417,067	133	3,886,358	3,414,613	114
Other Materials & Supplies	0	73,415	34,863	108,278	77,329	140	682,808	657,902	104
UTILITIES	0	116,489	39,394	155,883	197,742	79	1,356,547	1,686,611	80
CASUALTY/LIABILITY COSTS	0	6,592	330,309	336,901	345,969	97	2,889,210	2,767,752	104
PURCHASED TRANS. SERVICE									
Dial A Lift	89,694	0	0	89,694	96,843	93	766,800	820,398	93
Aqua Service	38,004	0	0	38,004	52,591	72	569,256	662,979	86
MISC. EXPENSES									
Dues & Subscriptions	0	0	13,478	13,478	15,833	85	116,127	126,664	92
Taxes, Fees	0	30,246	0	30,246	27,091	112	599,937	220,718	272
Training, Travel & Meetings	0	0	13,032	13,032	27,084	48	69,793	216,672	32
Schedules & Tickets	0	0	1,353	1,353	6,250	22	28,048	110,000	25
Safety & Misc. Items	0	8,906	4,175	13,081	15,709	83	78,374	125,672	62
Recruitment Advertising	0	0	4,653	4,653	16,000	29	50,566	132,000	38
Other	0	48,252	6,512	54,764	29,731	184	260,982	238,298	110
TOTAL OPERATING EXPENSES:	<u>\$4,602,907</u>	<u>\$2,793,264</u>	<u>\$2,046,302</u>	<u>\$9,442,473</u>	<u>\$10,260,292</u>	92	<u>\$80,899,846</u>	<u>\$84,018,309</u>	96

**LONG BEACH TRANSIT
BALANCE SHEET**

Page 4 of 4

	Balance at 02/29/24	Balance at 01/31/24	Balance at 02/28/23
<u>ASSETS</u>			
Cash and Investments	69,165,127	69,809,895	70,709,320
Receivables			
Federal	16	525,014	0
State	5,325,258	5,421,217	3,556,654
County	322,637	666,116	2,661,794
Local	804,186	949,278	1,383,039
Miscellaneous	5,231,648	3,400,390	1,850,966
Materials & Supplies Inv.	3,971,100	3,840,018	3,497,330
Net Capital Assets	123,981,553	124,865,655	110,821,438
Other Assets	15,816,280	16,766,471	25,678,815
TOTAL ASSETS	<u>224,617,804</u>	<u>226,244,056</u>	<u>220,159,356</u>
<u>LIABILITIES AND CAPITAL</u>			
Trade Payables	3,482,542	4,467,955	4,772,806
Accrued Payroll Liabilities	8,981,793	9,707,382	7,722,718
Net Pension Liability (GASB 68)	34,055,081	34,055,081	32,192,337
Compensated Absence Liabilities	3,824,897	3,798,602	3,475,967
Estimated Liabilities	68,413,859	68,876,476	65,546,756
Deferred Credits	14,565,395	13,958,688	12,172,562
Long-Term Notes Payable	0	0	0
TOTAL LIABILITIES	<u>133,323,566</u>	<u>134,864,184</u>	<u>125,883,147</u>
Federal Capital Contributions	339,226,870	338,965,510	327,795,028
State Capital Contributions	115,486,713	115,432,225	113,353,366
Local Capital Contributions	130,738,018	130,452,707	124,103,043
Accumulated Earnings (Losses)	(494,157,363)	(493,470,570)	(470,975,227)
TOTAL CAPITAL	<u>91,294,238</u>	<u>91,379,872</u>	<u>94,276,210</u>
TOTAL LIABILITIES AND CAPITAL	<u>224,617,804</u>	<u>226,244,056</u>	<u>220,159,356</u>



RECOMMENDED ACTION

To authorize the President and CEO to enter into a six-year contract, with four options years, with Clean Energy, for service and maintenance on Long Beach Transit's compressed natural gas (CNG) fuel station at LBT2.

STAFF REPRESENTATIVE

James Scott, Executive Director/VP, Maintenance and Infrastructure

BACKGROUND

Long Beach Transit (LBT) currently operates a compressed natural gas (CNG) fueling facility at its LBT2 Facility located at 6860 Cherry Avenue, Long Beach, California. This fueling station is used to fuel the 125 CNG buses that operate out of LBT2.

The maintenance of the CNG fuel station is essential for the operation of the bus fleet at LBT2. The maintenance and repair of the fuel station and all its related systems is highly specialized work. As such, this contract seeks to provide all the staff and resources necessary to maintain the LBT2 fuel station in a state of good repair. The contract services include all labor, materials, and equipment necessary to maintain and repair the fuel station and the related equipment systems such as the standby generator and the shop methane detection systems.

The contract requires a firm with the technical staff and resources to perform all preventative maintenance and to respond to emergencies and unplanned maintenance 24/7.

PROCUREMENT

LBT issued a Request for Proposal (RFP) to multiple firms nationwide and received two (2) qualified proposals.

The proposal was evaluated based on the following criteria:

- Qualifications of the Firm
- Staffing and Project Organization
- Technical Solution/Work Plan
- Price

The possible points for the technical evaluation was 75. Pricing made up an additional 25 points, for a total of 100 points.

The combined technical score and overall cost resulted in the selection of Clean Energy, which received the highest score of 86 points.



Board Agenda Item No. 08

March 28, 2024

Clean Energy, with offices in Newport Beach, CA, was found to be fair and reasonable by LBT's Purchasing department.

DBE/SBE PARTICIPATION

A Small Business Enterprise (SBE) goal of 8% was established for this project.

Clean Energy LLP, a non-SBE prime contractor proposed 2.5% SBE participation on this project and therefore, did not meet the established goal. However, the firm demonstrated good faith efforts to meet the goal sufficient to fulfill FTA's requirements for award.

Clean Energy, LLP. Will self-perform 95.8% of the overall contract and has committed the remaining 4.2% of the project to four subcontractors. Three of the four subcontractors, Dr. Detail Services, ICA, Inc. and JC Building Solutions are SBE-certified firms and will perform a total of 2.5% of the contract costs.

ALTERNATIVES CONSIDERED

Staff did not consider alternative options as the CNG fuel stations are an essential service and need to be kept in a state of good repair.

BUDGETARY/FISCAL IMPACT

Funds for this contract have been planned and approved in the current year's operating budget. Funds for future contract years will be included in the subsequent years' operating budget.

The cost breakdown for the contract would be as follows:

Contract Year		
Year 1	\$	294,224.18
Year 2	\$	310,236.38
Year 3	\$	326,248.58
Year 4	\$	342,260.78
Year 5	\$	358,272.98
Year 6	\$	358,272.98
Year 6 SubTotal	\$	1,989,515.85
Option Years		
Option Year 1	\$	374,285.18
Option Year 2	\$	390,297.38
Option Year 3	\$	406,309.58
Option Year 4	\$	422,321.78
10 Year Total	\$	3,582,729.75
Contingency 5%	\$	179,136.49
Grand Total	\$	3,761,866.24



STAFF RECOMMENDATION

Staff is requesting LBT's Board of Directors to authorize the President and CEO to enter into a six-year contract, with four option years, with Clean Energy for a total cost of \$3,582,730 plus a 5% contingency, for a total authorization amount not to exceed \$3,761,866.

A handwritten signature in blue ink that reads "K. McDonald".

Kenneth A. McDonald
President and Chief Executive Officer



RECOMMENDED ACTION

To authorize the President and CEO to enter into a three-year agreement with ETC Institute to conduct customer, community and operator surveys, as well as monthly mystery calls and bus rides and optional focus groups.

STAFF REPRESENTATIVE

Mike Gold, Executive Director/Vice President, Customer Relations and Communications

BACKGROUND

As part of its ongoing effort to provide transit services that closely match the needs of the community, LBT conducts an annual survey to measure current customer and community attitudes and awareness levels regarding the agency's transit services. The survey results are used to identify perceived strengths and areas for improvement of LBT services and serves as a foundation for developing programs to improve service quality. The results are also used to correctly identify appropriate marketing strategies to increase awareness and ridership.

Following the survey, the results are presented to the Board of Directors, along with strategies LBT intends to implement in response to feedback received by customers and the communities served by LBT.

In previous years, LBT conducted one annual customer survey and one community survey. Prior to the pandemic, LBT also conducted quarterly mystery calls, bus rides and visits to the Transit Information & Visitors Center.

On September 29, 2023, LBT posted a Request for Proposals (RFP) soliciting firms to conduct surveys to Long Beach Transit's customers. The RFP increased the number of customer surveys to twice annually, continued the once-per-year community survey and the mystery calls and bus rides each quarter. New in the proposal was an annual survey to bus operators and the provision to conduct optional focus groups.

LBT decided that another valuable input to enhance service and the customer experience would be asking Bus Operators for their feedback on LBT's routes and services. One such survey was conducted in 2022. These surveys will ask Bus Operators for their feedback on current routes, suggested service improvements and their perceptions about safety and security.

In addition, LBT would have the option to better understand the customer experience by conducting focus groups, which would involve convening customers and/or Bus Operators to discuss specific topics related to LBT's service.



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Of note is the proposals stipulated that all surveys should be conducted in English and Spanish as well as Khmer and Tagalog.

The overall goal of the package of tasks is giving staff a better understanding of service delivery and the customer experience to foster continuous improvement.

PROCUREMENT

LBT issued a Request for Proposal (RFP) to multiple firms nationwide and received six (6) qualified proposals.

The proposal was evaluated based on the following criteria:

- Financial resources and ability to meet the schedule.
- Experience with Similar Project.
- Technical approach and scope of services.
- Understanding of Scope of Work and assigned personnel qualifications.
- Cost.

The total amount of possible points for the technical evaluation was 80. Pricing made up an additional 20 points, for a total of 100 points.

The combined technical score and overall cost resulted in the selection of ETC Institute, which received the highest score of 84 points.

ETC Institute, with offices in Olathe, Kansas, was found to be fair and reasonable by LBT's Purchasing department.

DBE/SBE PARTICIPATION

A Small Business Enterprise (SBE) goal of 9% was established for this project. ETC Institute is a non Disadvantaged Business (DBE)/SBE certified firm that intends to self-perform 65% of the project services. ETC Institute has committed 35% of the bid amount to Anik, LLC, a Caltrans-certified DBE to conduct field and data collection services.

ALTERNATIVES CONSIDERED

Staff considered assuming the responsibility of annual surveys; however, LBT does not have staffing with the skills or experience to manage this on a consistent basis and hiring full-time staff to conduct such surveys would exceed the cost of hiring a firm.

BUDGETARY/FISCAL IMPACT

Funds for this contract were included in the previously approved Fiscal Year 2024 Operating Budget.



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STAFF RECOMMENDATION

Staff is recommending LBT's Board of Directors authorize the President and CEO to enter into a three-year contract with ETC Institute, in an amount not to exceed \$390,367, including a ten percent contingency, to conduct customer, community and operator surveys, as well as monthly mystery calls and bus rides and optional focus groups.

A handwritten signature in blue ink, reading "K. McDonald", is written over a horizontal line.

Kenneth A. McDonald,
President and CEO



INFORMATION ITEM

Calendar Year 2024 Legislative Program

STAFF REPRESENTATIVE

Marisol Barajas, Manager, Government Relations

BACKGROUND

Long Beach Transit's (LBT) staff works at the local, state and federal levels to protect and enhance funding and advance goals that are important to LBT's provision of daily service for its customers. In addition to its own advocacy efforts, LBT works closely with both the California Transit Association (CTA) and the American Public Transportation Association (APTA) – LBT's industry trade associations – to help advance common goals at the state and federal levels.

Annually, staff develops a legislative work program to help guide advocacy efforts for the calendar year. The program is meant to serve as a strategic document, providing general direction for staff activities and allowing the flexibility to unanticipated legislative and administrative opportunities that may present themselves during the course of the year.

2024 Legislative Program Highlights:

The Calendar Year 2024 Legislative Program was created in conjunction with the CTA and APTA's Legislative Programs. The Program was also designed in support of LBT's Strategic Priorities:

- Improve Safety and Service Quality
- Exercise Financial Accountability
- Foster Employee Engagement
- Enhance Customer Experience
- Promote Community and Industry Focus

Local

LBT continues to serve as a regional partner and stakeholder in its overall effort to support stabilizing transit ridership as the agency advances services for LBT's customers and those who travel throughout LBT's service area, as well as the greater region.

LBT is committed to protecting and enhancing local and regional transportation funding by continuing to work collaboratively with the City of Long Beach and surrounding cities, Los Angeles County Metropolitan Transportation Authority (Metro) and the Southern California Association of Governments (SCAG) to ensure transportation funding is maximized and



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continues to flow on a consistent and reliable basis. LBT will also continue to implement the recommendations of LBT's Systemwide Transit Analysis and Reassessment (STAR) Initiative within the City of Long Beach and surrounding communities in a systematic and phased approach.

State

LBT will work with CTA to ensure that public transit agencies can continue to enhance customers experience, and improve mobility options, grow our services, further the state's environmental objectives, and support good paying jobs.

LBT along with CTA, will partner with local government, the environmental community, and other interested transportation stakeholders and form coalitions advocating for protection of transit funding. This includes supporting efforts to protect SB 1 funding and opposing any effort(s) to repeal, divert, or place conditions on SB 1 funding. LBT will work to preserve the Cap & Trade revenues for public transit established in 2014 legislation and explore flexibility regarding the use of existing Cap & Trade revenues.

Support of transit operations funding is imperative for LBT to continue to deliver vital service, to those vulnerable communities and essential workers that have historically comprised the core of our ridership. With increased operating costs stemming from increased inflation and supply-chain issues, as well as increased costs for vehicles, buses, and vessels to bring zero-emission technology online, LBT along with CTA are working to request the Administration and the Legislature extend the statutory relief provided to California's transit agencies through fiscal year 2024-25.

As LBT works towards sustaining investments in zero-emission transit fleets and continues to transition the bus fleet to zero-emission, LBT continues to support investments to help facilitate compliance with California Air Resources Board (CARB) innovative clean transit (bus) regulation, commercial harbor craft (ferry) regulation. LBT along with CTA will advocate for California to invest in these technologies and continue to dedicate funds for the benefit of Long Beach Transit and California's public transportation systems.

Coordinated with CTA, other legislation will also pursue land-use, fare reimbursements, and electricity prioritization.

LBT will seek opportunities to leverage its partnerships and resources to support local and regional efforts that maximize its capital improvements and operating programs.

Federal

At the federal level, LBT along with APTA will continue to support a minimum appropriation level for federal surface transportation programs equal to, or at least currently, authorized



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spending levels, and advocate for the highest possible levels of funding for project finance, innovation, safety, and transit programs.

The Infrastructure Investment and Jobs Act (IIJA) created various new funding programs and established new requirements on transit agencies including the transition to zero-emission technologies, Build America/Buy America, and transit safety and security. With the support of APTA, LBT will continue to monitor and respond to federal rulemakings and notices to ensure that new programs and new requirements are implementable by California's transit agencies and ensure that California's transit agencies are well-positioned to receive discretionary grant awards.

Throughout calendar year 2024, staff will work closely with CTA, APTA and other transit industry associations to continue to monitor, support and initiate local, state and federal legislation that will positively impact LBT's operations and service delivery.

Staff will coordinate with legislative representatives to ensure continued communication of LBT's vision, mission and strategic priorities and their alignment with local, state and federal legislative policies and funding programs that support LBT's services as well as its current and future programs and initiatives.

STAFF RECOMMENDATION

Not applicable. Information only item.

A handwritten signature in blue ink, appearing to read 'K. McDonald', is written over a horizontal line.

Kenneth A. McDonald
President and Chief Executive Officer



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RECOMMENDED ACTION

To approve a five-year employment agreement between Long Beach Transit and Kenneth A. McDonald as the President and Chief Executive Officer.

BACKGROUND

On June 25, 2013, Long Beach Transit's ("LBT") Board of Directors ("Board") approved an employment agreement between Kenneth A. McDonald ("KAM") and LBT and his appointment to the position of President and Chief Executive Officer, effective August 1, 2013. The agreement between LBT and KAM was extended for a period of three (3) months, beginning September 1, 2023 and expired December 1, 2023, as approved by the Board on July 28, 2023. The second extension approved by the Board on October 26, 2023, expires on March 31, 2024. The second extended agreement has a base salary of \$365,029 in fiscal year 2022.

This current five-year employment agreement effective September 1, 2023, and continuing through the end of business on August 31, 2028, is being presented to the Board of Directors for approval. Details are contained in the employment agreement, which is included with this agenda item.

BUDGETARY/FISCAL IMPACT

Funding for this position is in the FY2024 operating budget, approved and adopted by the Board in or about June 2023. Funding for subsequent years will be in the fiscal year operating budgets that will be brought to the Board for approval and adoption.

RECOMMENDATION

To approve a five-year employment agreement between LBT and Kenneth A. McDonald as the President and Chief Executive Officer, with a six percent (6%) salary increase on his base 2022 salary from \$365,029 to \$386,930.74, effective September 1, 2023 after the agreement is executed.

David Sutton

David Sutton
Chair, Board of Directors

Attachment: Employment Agreement

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

THIS EMPLOYMENT AGREEMENT (this “Agreement”) is entered into as of September 1, 2023, 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, 2023 (“Commencement Date”), and continuing through the end of business on August 31, 2028, 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 September 30, 2028.

II. SALARY.

A. Base Salary. CEO’s Base Salary shall be three hundred sixty-five thousand and twenty-nine dollars (\$365,029) per year, which sum shall be paid pursuant to the same procedures established for employees of Employer.

B. Future Salary Increases. The Board of Directors will grant an increase in the CEO’s Base Salary centered to the completion of the CEO’s annual performance evaluation and the organizational performance when financial conditions permit, or when it otherwise is deemed 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.

(7) manage and direct the long-term business priorities and operations while leading the day-to-day service delivery of LBT.

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 and to determine the evaluation procedure and format. 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.

The CEO's performance evaluation may lead to a salary increase which will be determined annually by the Board of Directors, factoring in the employer's budget, organizational performance, and financial market conditions.

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

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.

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 more than 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. If 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 twelve (12) months or longer, with or without reasonable accommodation. In such an event exceeds this period of time, the employer and CEO shall agree on a COBRA benefit package.

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.

G.

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 October 1, 2023, 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 and CEO shall meet to consider whether to make a corresponding change to CEO's benefits. It shall be CEO's obligation to coordinate with the Board of Directors 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 provide a matching contribution on his behalf equal to his salary deferrals under the Section 457 Deferred Compensation Plan up to a maximum contribution of five percent (5%) 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 considered.

(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 five percent (5%) of Base Salary.

(c) Limitation on Base Salary. Base Salary under this Section shall not be considered to the extent it exceeds the maximum permitted under Code Section 401(a)(17) (\$365,029 in 2022).

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 is to be coordinated with the Chair of the Board of Directors.

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, 2024, 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 six (6) 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. The CEO shall be entitled to no benefits and compensation other than as set forth above.

IX. EXPENSES AND INDEMNIFICATION.

A. Expenses. Except for 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 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 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 all other agreements, either oral or written, between the parties hereto with respect to the employment of the parties and contains all 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.

EMPLOYER

CEO

David Sutton
Chair, Board of Directors

Kenneth A. McDonald
President and CEO

Date: _____

Date: _____

APPROVED AS TO FORM

Vincent C. Ewing
General Counsel

Date: _____