

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



**THURSDAY, OCTOBER 26, 2023
4801 AIRPORT PLAZA DRIVE
BOARD CHAMBER, 3:30 P.M.**

David Sutton, Chair
Abigail Mejia, Vice Chair
Eduardo Angeles, Director
Raul Anorve, Director
Colleen Bentley, 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: 857 3532 0899 (PASSWORD: 4801)

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

<https://us06web.zoom.us/j/85735320899?pwd=kb1ttUYqbsaYxkjefrKkzUVbeqvcKk.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 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. (David Sutton)
2. Roll Call. (Jen Flores)
3. Employee Recognition. (Jen Flores)

Employees of the Month for October 2023:

Maria Ortega, Transit Service Delivery and Planning
Manuel Fernandez-Alonso, Maintenance and Infrastructure
Miki Deckner, 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. 23-056TR Recommendation to approve the minutes of the regular session meeting held on September 28, 2023.

Suggested Action: Approve recommendation.

REGULAR CALENDAR

7. 23-057TR Monthly Financial Report. (Lisa Patton)

INFORMATION ITEM

8. 23-058TR Recommendation to authorize an update to LBT's Procurement Policy to increase the acquisition threshold limit of the President and CEO to approve procurements for the Company from \$200,000 to \$250,000.

Suggested Action: Approve recommendation.

9. 23-059TR Recommendation to approve the Board of Directors meeting dates for Calendar Year 2024. (Jen Flores)

Suggested Action: Approve recommendation.

10. 23-060TR GFOA Distinguished Budget Presentation Award. (Kenneth McDonald)

INFORMATION ITEM

11. Public Comment.

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12. Closed Session.

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

Agency negotiator: Board Chair David Sutton

Unrepresented employee: President and CEO, Kenneth A. McDonald

- 2) Conference with Labor Negotiator

Pursuant to Cal. Gov. Code § 54957.6

Agency designated representatives: Kenneth A. McDonald, President and CEO

Employee Organization: Amalgamated Transit Union, Local 1277

American Federation of State, County and Municipal Employees,

District Council 36

13. 23-061TR Recommendation to approve a five-year employment agreement between Long Beach Transit and Kenneth A. McDonald as the President and Chief Executive Officer.

The CEO will be granted a 4 percent (4%) salary increase on his base salary after the signing of this contract agreement. (David Sutton)

Suggested Action: Approve recommendation.

14. Board Requests.

15. 23-062TR Adjourn. The next regular meeting will be held on December 7, 2023. (David Sutton)

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, SEPTEMBER 28, 2023
411 W. OCEAN BOULEVARD
CIVIC CHAMBERS, 3:30 PM**

David H. Sutton, Chair
Abigail Mejia, Vice Chair
Eduardo Angeles, Director
Raul Añorve, Director
Colleen Bentley, Director
Randy Rawlings, Director



Christopher Koontz, City Representative
Joshua Hickman, 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)

Commissioners Eduardo Angeles, Raúl Añorve, Colleen Bentley, Randy

Present: Rawlings, Abigail Mejia and David Sutton

Commissioners Tunua Thrash-Ntuk

Excused:

3. Employee Recognition. (Jen Flores)

Employees of the Month for August 2023:

Michael Vidal, Transit Service Delivery and Planning

Mario Mendoza, Maintenance and Infrastructure

Antonio Chacon, Administrative Staff

Employees of the Month for September 2023:

Jorge Meza, Transit Service Delivery and Planning

Earl Burr, Maintenance and Infrastructure

Oscar Sanchez, Administrative Staff

Jen Flores, Board Secretary, presented the Employees of the Month for August 2023 and September 2023.

Francis Emily Dawson Harris gave a live public comment regarding the Bus Operator

Employees of the Month.

Director Thrash-Ntuk joined the meeting at 3:38 p.m.

Commissioners Eduardo Angeles, Raúl Añorve, Colleen Bentley, Randy
Present: Rawlings, Tunua Thrash-Ntuk, Abigail Mejia and David Sutton

4. Public Comment.

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Chair Sutton read a comment submitted by Wayne Wright regarding Carson service.

Francis Emily Dawson Harris gave a live public comment regarding the grant received by the Senior Resource Center.

Marisela D gave a live public comment regarding safety and cleaning on the buses.

Jean Young gave a live public comment regarding the safety and cleanliness of mass transit.

5. President and CEO Report. (Kenneth McDonald)

INFORMATION ITEM

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

LBT has joined the City of Los Angeles' Regional Marketplace for Procurement (RAMP)

RAMP allows local, small and disadvantaged business to access procurement opportunities in one central hub.

LBT completed the FTA Triennial Review and received the Preliminary Summary of Findings. The final report is expected to be completed by November and will be forward to the CEO and Chair of the Board.

CEO McDonald gave summaries of the CTA Federal Lobby Day and Zero Emission Bus

Conference attended by staff.

LBT has participated in the corridor planning with the City of Pico Rivera. The proposed corridor would create a new 26-mile north-south bus rapid transit lane from east Pasadena to the City of Long Beach.

CEO McDonald highlighted various community events LBT staff participated in for the Month of September.

NOTICE TO THE PUBLIC

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CONSENT CALENDAR (6 - 7)

A motion was made by Director Bentley, seconded by Director Añorve, to passed the consent calendar. The motion carried by the following vote:

Yes: 5 - Raúl Añorve, Colleen Bentley, Randy Rawlings, Abigail Mejia and David Sutton

Abstain: 2 - Eduardo Angeles and Tunua Thrash-Ntuk

- 6. 23-046TR Recommendation to approve the minutes of the regular session meeting held on July 27, 2023.

- 7. 23-047TR Recommendation to approve the minutes of the special session meeting held on September 11, 2023.

REGULAR CALENDAR

8. 23-048TR Monthly Financial Report. (Lisa Patton)

INFORMATION ITEM

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

Francis Emily Dawson Harris gave a live public comment inquired about the reduced funding for Dial-A-Lift.

This TR-Agenda Item was received and filed.

9. 23-049TR Recommendation to adopt a resolution authorizing the President and CEO to file an application and execute a grant agreement with the Federal Transit Administration for \$25,924,258 under the Bipartisan Infrastructure Law. (Jenifer Maxwel)

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

Francis Emily Dawson gave a live public comment regarding the Artesia Station.

Director Anorve inquired if LBT has projects in mind for the funding.

Ms. Maxwel responded that the projects were listed in the FY24 Budget book.

Director Bentley inquired about the delivery of the BEB buses.

Ms. Maxwel responded LBT is expecting delivery of Spring 2024.

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

Yes: 7 - Eduardo Angeles, Raúl Añorve, Colleen Bentley, Randy Rawlings, Abigail Mejia, David Sutton and Tunua Thrash-Ntuk

10. 23-050TR Recommendation to adopt a resolution authorizing the President and CEO to submit a funding request to the California Department of Transportation for Senate Bill 1 State of Good Repair funds to obligate allocated funding for Long Beach Transit's capital projects. (Marisol Barajas)

Marisol Barajas, Manager, Government Relations, presented the staff report.

Director Rawlings inquired about the deadline passing.

Ms. Barajas responded that there was no impact.

A motion was made by Vice Chair Mejia, seconded by Director Rawlings, to approve recommendation. The motion carried by the following vote:

Yes: 7 - Eduardo Angeles, Raúl Añorve, Colleen Bentley, Randy Rawlings, Abigail Mejia, David Sutton and Tunua Thrash-Ntuk

11. 23-051TR Recommendation to authorize the President and CEO to enter into a contract with RE Chaffee Construction Inc., for the construction of the LBT Guard House Replacement Project at a cost of \$214,212 with a 10% contingency of \$21,421, for a total authorization amount not to exceed \$235,633. (Jim Scott)

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

Director Bentley inquired about the order of completion for the project.

Mr. Scott responded that LBT1 will be completed first and LBT2 will be started when LBT1 is finished.

Director Bentley inquired about the guards during the construction.

Mr. Scott responded that there will be temporary facility for the guards during construction.

Director Rawlings inquired about the lifetime of the new guard shacks.

Mr. Scott responded that the lifetime is expected to be 15-years.

Chair Sutton inquired about the cost of the project.

Mr. Scott broke down the cost of the two guard shacks, which including purchasing materials, demolition and removal of existing units and other contractor costs.

Chair Sutton inquired if there will be heating and AC in the new units

Mr. Scott responded that they will have heating and AC

Director Anorve inquired if there will be before and after photos

Mr. Scott responded that staff will take photos of the project progression.

A motion was made by Director Bentley, seconded by Director Añorve, to approve recommendation. The motion carried by the following vote:

Yes: 7 - Eduardo Angeles, Raúl Añorve, Colleen Bentley, Randy Rawlings, Abigail Mejia, David Sutton and Tunua Thrash-Ntuk

12. 23-052TR

Recommendation to authorize the President and CEO to approve the one-year contract extension for Commune Communications, including advertising expenses, in the amount of \$243,360 for creative services and \$144,000 for advertising, for a total authorization amount not to exceed \$387,360. (Mike Gold)

Mike Gold, Executive Director/VP, Customer and Community Relations, presented the staff report.

Francis Emily Dawson Harris gave a live public comment regarding having ads depict ADA customers.

Vice Chair Mejia inquired about translating advertising in Khmer or any other languages. Director Anorve also commented that LBT should serve the Cambodian community and look into advertising in Khmer.

Mr. Gold responded that staff will look into advertising in Khmer. LBT does

do community outreach in the Cambodian community at live events.

Director Bentley inquired about how LBT evaluates if advertising leads to increased ridership.

Mr. Gold responded that the evaluation is very anecdotal. Meaning if LBT advertises for water taxi service and there is an increase in water taxi service ridership that could be attributed to the marketing. This is more difficult when handling the bus advertising due to current market conditions.

Conversation ensued regarding having the vendor present to the Board.

Director Anorve requested adding survey questions about advertising

Mr. Gold responded that there are survey questions that address customer interaction with LBT advertising.

Director Rawlings asked about evaluating the effectiveness of advertising.

Mr. Gold responded that LBT looks at website impressions, social media growth, television and digital impressions.

Director Rawlings inquired if the agency is well positioned to handle strategic priorities.

Mr. Gold responded that LBT has focused on ridership and bringing customer back.

City Representative Koontz commented on Khmer advertising and analyzing metrics.

Chair Sutton commented on the hardships of foreign language speakers riding LBT and requested a report on what LBT is doing to reach out to other communities.

A motion was made by Vice Chair Mejia, seconded by Director Bentley, to approve recommendation. The motion carried by the following vote:

Yes: 7 - Eduardo Angeles, Raúl Añorve, Colleen Bentley, Randy Rawlings, Abigail Mejia, David Sutton and Tunua Thrash-Ntuk

13 23-053TR Long Beach Transit's Bus Service. (Jessica Cignarella)

INFORMATION ITEM

Jessica Cignarella, Manager, Transit Service Planning, presented the staff report.

Francis Emily Dawson Harris inquired about ridership.

Chair Sutton read public comment from Kurt Canfield about service restoration levels regarding sc.

Chair Sutton read a public comment from Erin Hoops regarding schedule frequency.

14. 23-054TR Fiscal Year 2022 Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting Award. (Kenneth McDonald)

INFORMATION ITEM

CEO McDonald presented the staff report.

15. Public Comment.

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There were no public comments.

16. Closed Session.

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

Meeting went into Closed Session at 5:31 p.m.

17. Closed Session.

CONFERENCE WITH LABOR NEGOTIATORS

Government Code section 54957.6

Agency designated representatives: 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

Director Thrash-Ntuk left the meeting at 6:07 p.m.

Meeting reconvened at 6:08 p.m.

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

Commissioners Eduardo Angeles, Raúl Añorve, Colleen Bentley, Randy

Present: Rawlings, Abigail Mejia and David Sutton

Commissioners Tunua Thrash-Ntuk

Excused:

18. Board Requests.

Director Rawlings asked for a follow-up about parking at bus stops in the Belmont Shore area.

19. 23-055TR Adjourn. The next regular meeting will be held on October 26, 2023.
(David Sutton)

Meeting adjourned at 6:11 p.m.

A motion was made by to approve recommendation. The motion carried by the following vote:

Yes: 6 - Eduardo Angeles, Raúl Añorve, Colleen Bentley, Randy Rawlings, Abigail Mejia and David Sutton

Absent: 1 - Tunua Thrash-Ntuk

Note:

The City of Long Beach intends to provide reasonable accommodations in accordance with the Americans with Disabilities Act of 1990. If special accommodation is desired, please call the City Clerk Department 48 hours prior to the meeting at 562.570.6101.

(*The City's Clerk's office is closed on weekends. To assure proper accommodations, please call by 4:30 p.m. on the Friday prior to the meeting.)

(For Telecommunication Device for the Deaf, please call 562.570.6626. Inquire at the City Council Chamber Audio Visual Room for Assistive Listening Device.)

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 SEPTEMBER 30, 2023

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	September 2022	September 2023	September Budget	%	Year to Date FY 2023	Year to Date FY 2024	Year to Date Budget	%
OPERATING REVENUE								
Passenger Fares	\$865,190	\$939,378	\$880,088	107	\$2,199,431	\$2,394,576	\$2,251,966	106
Dial A Lift Fares	3,386	3,308	3,611	92	10,028	9,804	10,818	91
Aqua Service Fares	24,091	15,611	11,204	139	157,119	155,262	120,815	129
Special Event Service Revenue	5,313	0	0	-	5,313	3,406	0	-
Advertising Revenue	62,131	56,250	56,250	100	168,342	168,750	168,750	100
Interest & Miscellaneous	(240,614)	406,583	227,628	179	(3,581)	1,009,176	688,315	147
TOTAL OPERATING REVENUE	\$719,497	\$1,421,130	\$1,178,781	121	\$2,536,651	\$3,740,974	\$3,240,664	115
SUBSIDY REVENUE								
Federal	\$1,250,000	\$500,000	\$1,550,000	32	\$2,500,000	\$1,000,000	\$4,650,000	22
State	2,714,911	2,905,933	2,838,136	102	8,146,237	8,582,205	8,514,408	101
County	4,177,572	4,068,781	4,069,300	100	12,495,439	12,181,899	12,191,900	100
Local	702,483	752,996	795,604	95	2,436,142	2,774,093	2,761,180	100
TOTAL SUBSIDY REVENUE	\$8,844,965	\$8,227,710	\$9,253,040	89	\$25,577,818	\$24,538,197	\$28,117,488	87
TOTAL REVENUE	\$9,564,463	\$9,648,840	\$10,431,821	92	\$28,114,469	\$28,279,171	\$31,358,152	90
OPERATING EXPENSES								
Operations	\$4,518,635	\$4,630,846	\$5,082,995	91	\$13,676,057	\$14,573,177	\$15,459,330	94
Maintenance	2,261,842	2,264,538	2,413,419	94	6,473,907	6,748,661	7,388,980	91
Administration	1,732,160	1,990,967	2,240,026	89	5,177,711	5,731,969	6,713,037	85
Fuel & Lubricants	618,462	483,285	618,073	78	1,794,260	1,495,891	1,826,565	82
TOTAL OPERATING EXPENSES	\$9,131,099	\$9,369,636	\$10,354,513	90	\$27,121,935	\$28,549,698	\$31,387,912	91
NET INCOME (LOSS) BEFORE DEPR.	\$433,364	\$279,204	\$77,308		\$992,534	(\$270,527)	(\$29,760)	
DEPRECIATION	\$1,346,028	\$1,467,695	\$1,565,535	94	\$4,002,468	\$4,325,885	\$4,696,605	92

**LONG BEACH TRANSIT
SCHEDULE OF EXPENSES
FOR PERIOD JULY 1, 2023 TO SEPTEMBER 30, 2023**

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	Operations	Maintenance	Admin	Total Curr. Month	Current Month Budget	%	Year to Date	Year to Date Budget	%
LABOR									
Operators	\$2,414,471	\$0	\$0	\$2,414,471	\$2,615,577	92	\$7,621,064	\$8,047,360	95
Maintenance	0	501,488	0	501,488	583,912	86	1,744,878	1,824,929	96
Salaried	305,412	406,905	722,742	1,435,059	1,594,726	90	4,165,299	4,801,126	87
FRINGE BENEFITS									
FICA	189,981	64,834	50,754	305,568	344,253	89	943,945	1,054,411	90
Pension	344,990	116,040	95,822	556,852	586,757	95	1,743,180	1,793,848	97
Health	504,983	145,685	92,120	742,787	878,211	85	2,398,079	2,634,633	91
Workers' Compensation	374,093	26,764	2,257	403,115	403,531	100	1,209,344	1,210,593	100
Uniform & Tool Allowance	10,439	5,045	401	15,884	40,876	39	52,774	98,628	54
Unemployment & Other Fringes	6,256	5,708	23,284	35,248	35,910	98	89,928	157,055	57
SERVICES									
Advertising	0	0	101,582	101,582	68,496	148	199,622	205,488	97
Professional & Technical	84,838	19,583	202,356	306,777	357,908	86	654,348	1,072,452	61
Contract Maintenance	0	240,278	175,940	416,218	419,890	99	1,093,139	1,239,777	88
Security	251,623	35,074	0	286,697	417,457	69	879,470	1,020,551	86
Employment Physicals	0	0	21,116	21,116	18,416	115	59,954	55,248	109
Other	0	6,515	8,155	14,670	10,421	141	30,259	31,263	97

**LONG BEACH TRANSIT
SCHEDULE OF EXPENSES
FOR PERIOD JULY 1, 2023 TO SEPTEMBER 30, 2023**

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	\$483,285	\$0	\$483,285	\$618,073	78	\$1,495,891	\$1,826,565	82
Fleet Parts & Supplies	0	466,797	0	466,797	420,664	111	1,346,947	1,280,344	105
Other Materials & Supplies	0	48,233	35,934	84,167	77,329	109	255,514	252,077	101
UTILITIES	0	140,030	53,385	193,414	203,988	95	573,463	610,387	94
CASUALTY/LIABILITY COSTS	0	6,592	349,645	356,237	345,969	103	1,117,459	1,037,907	108
PURCHASED TRANS. SERVICE									
Dial A Lift	93,348	0	0	93,348	102,361	91	293,672	310,837	94
Aqua Service	50,316	0	0	50,316	72,090	70	370,878	397,714	93
MISC. EXPENSES									
Dues & Subscriptions	0	0	13,432	13,432	15,833	85	36,142	47,499	76
Taxes, Fees	0	0	0	0	27,091	-	0	82,673	-
Training, Travel & Meetings	0	0	6,300	6,300	27,084	23	15,570	81,252	19
Schedules & Tickets	0	0	19,984	19,984	6,250	320	19,984	28,750	70
Safety & Misc. Items	0	4,973	4,457	9,430	15,709	60	31,744	47,127	67
Recruitment Advertising	0	0	6,132	6,132	16,000	38	22,948	48,000	48
Other	96	23,995	5,171	29,262	29,731	98	84,201	89,418	94
TOTAL OPERATING EXPENSES:	\$4,630,846	\$2,747,823	\$1,990,967	\$9,369,636	\$10,354,513	90	\$28,549,698	\$31,387,912	91

LONG BEACH TRANSIT BALANCE SHEET

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	Balance at 09/30/23	Balance at 08/31/23	Balance at 09/30/22
<u>ASSETS</u>			
Cash and Investments	67,757,334	59,988,431	74,261,546
Receivables			
Federal	131,114	3,475,830	0
State	2,384,208	1,596,825	1,681,536
County	1,200,789	6,169,335	1,814,960
Local	2,715,853	1,927,857	2,151,552
Miscellaneous	2,591,040	2,811,490	980,188
Materials & Supplies Inv.	3,734,703	3,710,419	3,400,741
Net Capital Assets	124,787,616	124,930,267	101,817,953
Other Assets	21,166,950	21,522,237	17,254,226
TOTAL ASSETS	226,469,606	226,132,691	203,362,702
<u>LIABILITIES AND CAPITAL</u>			
Trade Payables	3,326,314	3,582,492	4,304,060
Accrued Payroll Liabilities	7,060,822	6,914,865	6,165,156
Net Pension Liability (GASB 68)	32,192,337	32,192,337	13,865,718
Compensated Absence Liabilities	3,692,691	3,666,396	3,422,967
Estimated Liabilities	69,208,722	69,573,605	75,835,446
Deferred Credits	11,731,911	11,080,921	15,594,002
Long-Term Notes Payable	0	0	0
TOTAL LIABILITIES	127,212,796	127,010,616	119,187,349
Federal Capital Contributions	337,054,167	336,124,892	320,516,961
State Capital Contributions	114,630,126	114,607,456	111,702,997
Local Capital Contributions	129,180,244	128,808,962	117,106,468
Accumulated Earnings (Losses)	(481,607,727)	(480,419,235)	(465,151,073)
TOTAL CAPITAL	99,256,810	99,122,075	84,175,353
TOTAL LIABILITIES AND CAPITAL	226,469,606	226,132,691	203,362,702



RECOMMENDED ACTION

To approve an update to LBT’s Procurement Policy to increase the procurement acquisition threshold limit of the President and CEO.

STAFF REPRESENTATIVE

Lisa Patton, Executive Director/VP, Finance and Budget

BACKGROUND

In February 2021, the Board authorized an update to LBT’s Procurement Policy to increase the acquisition threshold limit of the President and CEO:

- Approve procurements for the Agency up to \$200,000.
- (For Board approved contracts), commit no more than an additional 10% of the contract for contingencies.
- Revisit the President and CEO acquisition threshold in one year.
- Receive a quarterly report on purchases under \$200,000, including the level of DBE/SBE commitment.

In alignment with the Board authorization, Staff presented an information item reviewing the effectiveness of the increased acquisition threshold in February of 2022.

In general, the cost of a purchase or contract impacts the complexity of finding and evaluating potential bidders. As an introduction, the following dollar ranges are specified by the FTA:

- Micro-Purchase: Involves the fewest federal requirements and is \$10,000 or less.
- Small Purchase: Triggers additional requirements, including comparing costs from multiple vendors and is over \$10,000 up to \$250,000.
- Large Purchase: Triggers the need for a formal competitive solicitation and other additional requirements and is over \$250,000.

Since the last threshold increase in February 2021, seven projects in the range of \$200,000-\$250,000 have been approved by the Board.

Project Description	Vendor	Award Total
Cybersecurity Services	Nth Generation Computing Inc.	\$ 234,360.00
Replacement of Steam Bay Lift for LBT1	Southwest Lift and Equipment	\$ 228,591.08
Santa Fe Ave Phase 2 – Installation of E-signage	ETA Transit Systems, Inc.	\$ 223,734.00
Bus Detailing services and Window Treatment	Smart Auto & Coach Detailing, Inc.	\$ 218,055.03
Replace Automatic Transfer Switch at LBT1 and LBT2	Global Diversified Voltage	\$ 214,538.00



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Fuel Contract	SC Fuels	\$	207,657.00
TVIC Renovation	Mata Construction Services, Inc.	\$	207,222.00

LBT’s procurement process will continue to procure goods and services following the general steps as recommended by the American Public Transportation Association (APTA) Standards Development Program, including the six major steps in a typical transit procurement process:

1. Identify and explore the need
2. Evaluate options and establish need for procurement
3. Select procurement method
4. Develop final solicitation
5. Execute solicitation
6. Contract administration

Adoption of the acquisition threshold of \$250,000 would be better suited to the size and scope of LBT’s current business operations. The recommended change also aligns with the Federal Transit Administration’s (FTA’s) simplified acquisition threshold of \$250,000. Staff would continue to bring forward recommendations regarding critical projects that would materially affect LBT.

(On June 20, 2018 the Office of Management and Budget (OMB) issued a memorandum “Implementing Statutory Changes to the Micro-Purchase and the Simplified Acquisition Thresholds for Financial Assistance.” This memorandum implements provisions of the National Defense Authorization Act (NDAA) for fiscal years 2017 and 2018 (FY 2018, Pub. L. No. 115-91), which became law on December 12, 2017. Specifically, Section 805 of the Public Law raised the simplified acquisition threshold from \$100,000 to \$250,000.)

To allow for maximum flexibility to grant recipients in the procurement of goods and services, the Federal Transit Administration (FTA) authorized the increase to the simplified acquisition threshold for FTA-funded procurements made after June 20, 2018 to \$250,000.

Additionally, pursuant to 2 C.F.R. § 200.88 (Simplified Acquisition Threshold), the simplified acquisition provision became effective in the Federal Acquisition Regulations (FAR) as of August 31, 2020. The simplified acquisition threshold is set by the FAR.

Staff is recommending an increase to the acquisition threshold to enhance the ability of suppliers to respond to the agency’s requirements, to improve the effectiveness and efficiency of LBT’s procurement processes and to reflect the increase in costs of goods and services.

BUDGETARY/FISCAL IMPACT

The fiscal impact of increasing the procurement threshold to \$250,000 will enable the agency to run more efficiently, reducing turnaround times on contract awards and the administrative obligations.



ALTERNATIVES CONSIDERED

The Board of Directors could maintain the current CEO authorization level of \$200,000. This is not recommended as it will impact and slow LBT from conducting business efficiently and effectively in the ever-changing business environment.

STAFF RECOMMENDATION

Staff is requesting LBT's Board of Directors approve an update to LBT's Procurement Policy to increase the procurement acquisition threshold limit of the President and CEO from \$200,000 to \$250,000.

A handwritten signature in blue ink that reads "K. McDonald". The signature is written in a cursive style and is positioned above a horizontal line.

Kenneth A. McDonald
President and Chief Executive Officer



RECOMMENDED ACTION

To approve the Board of Directors meeting dates for Calendar Year 2024.

STAFF REPRESENTATIVE

Jen Flores, Board Secretary

BACKGROUND

Staff has identified a proposed schedule for its Long Beach Transit (LBT) Board of Directors meetings in calendar year 2024 for Board consideration.

The proposed 2024 Board meeting calendar is as follows:

Thursday, January 25, 3:30 p.m.
Thursday, February 22, 3:30 p.m.
Thursday, March 28, 3:30 p.m.
Thursday, April 25, 3:30 p.m.
Thursday, May 23, 3:30 p.m.
Thursday, June 27, 3:30 p.m.
Thursday, July 25, 3:30 p.m.
Thursday, September 26, 3:30 p.m.
Thursday, October 24, 3:30 p.m.
Thursday, December 5, 9 a.m.

As was approved at the July 2022 Board of Directors meeting, the August date has been removed from the annual calendar schedule in order to promote and maintain a healthy work-life balance for staff.

There will also be no meeting held in November 2023 due to the Thanksgiving holiday, as that is the fourth Thursday of the month.

All meetings will be held at the LBT Corporate Office located at 4801 Airport Plaza Drive, Long Beach, California 90815.

ALTERNATIVES CONSIDERED

No alternatives were considered.



STAFF RECOMMENDATION

Staff is recommending LBT's Board of Directors approve the Board of Directors meeting dates for Calendar Year 2024.

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

Kenneth A. McDonald
President and Chief Executive Officer



INFORMATION ITEM

FY 2024 Government Finance Officers Association (GFOA) Distinguished Budget Presentation Award

STAFF REPRESENTATIVE

Kenneth A. McDonald, President and CEO

BACKGROUND

Each year, Long Beach Transit's (LBT) Board of Directors adopts a budget to implement the agency's objectives and capital strategic priorities. For LBT's Fiscal Year (FY) 2024 Budget, the Government Finance Officers Association of the United States and Canada (GFOA) has awarded LBT the Distinguished Budget Presentation Award.

The award represents a significant achievement for LBT. It reflects the agency's commitment to meeting the highest principles of governmental budgeting. To receive the award, LBT had to satisfy nationally recognized guidelines for effective budget presentation. These guidelines are designed to assess how well an entity's budget serves as:

- a policy document
- a financial plan
- an operations guide
- a communication device

LBT's budget document was judged by an impartial panel to meet the high standards of the program in regards to 25 specific criteria. Budget documents must be rated "proficient" in all categories and in the mandatory criteria to receive the award.

LBT is honored and proud to be acknowledged for the seventh consecutive year by GFOA for publishing a budget document that meets program criteria as a policy document, a financial plan, an operations guide, as well as a communication device.

The following staff members made significant contributions to the FY 2024 Budget:

- Lisa Patton, Executive Director/VP, Finance and Budget
- Ashley Liang, Treasurer
- Terry Coon, Manager, Finance
- Jenifer Maxwell, Manager, Capital Programs
- Melissa Murray, Senior Accountant
- Samantha Ihlenfeldt, Budget Analyst
- Irma Pamplona, Finance Analyst



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- Jeff Fortune, Capital and Grants Planner
- James Tai, Executive Assistant to the Deputy CEO
- Laura Orozco, Administrative Assistant, Finance

STAFF RECOMMENDATION

Not applicable. Information item only.

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

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 and employment agreement between Kenneth A. McDonald ("KAM") and LBT and approved his appointment to the position of President and Chief Executive Officer, effective August 1, 2013. The current agreement between LBT and KAM was extended for a period of three (3) months, beginning September 1, 2023 (and expiring December 1, 2023), as approved by the Board on July 28, 2023.

A five-year employment agreement effective October 1, 2023, and continuing through the end of business on September 30, 2028, is being presented to the Board of Directors for approval.

The employment agreement includes a base salary of \$365,029 per year.

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 Long Beach Transit and Kenneth A. McDonald as the President and Chief Executive Officer.

The CEO will be granted a 4 percent (4%) salary increase on his base salary after the signing of this contract agreement.

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 October 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 October 1, 2023 (“Commencement Date”), and continuing through the end of business on September 30, 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: _____