

SEPARATION AGREEMENT, GENERAL RELEASE AND  
COVENANT NOT TO SUE

THIS SEPARATION AGREEMENT, GENERAL RELEASE AND COVENANT NOT TO SUE (hereafter "Agreement") relating to claims against THE CITY AND COUNTY OF SAN FRANCISCO, including its constituent department, the Municipal Transportation Agency (hereafter "the City"), is made between Nathaniel P. Ford, Sr. (hereafter "Ford") and the City.

WHEREAS, Ford has been employed by the City since January, 2006, as Executive Director / Chief Executive Officer of the Municipal Transportation Agency ("MTA"); and

WHEREAS, Ford and the City are party to an Appointment and Compensation Employment Agreement, which has been amended from time to time, and which currently expires on June 16, 2014 ("Employment Agreement"); and

WHEREAS, the Employment Agreement provides for compensation to Ford, including incentive compensation payments; and

WHEREAS, the MTA Board of Directors has deferred payment of certain compensation, including incentive compensation, in accordance with Sections 5 and 6 of the Employment Agreement, to which Ford claims entitlement; and

WHEREAS, Section 10a of the Employment Agreement provides for severance payments in the event of a termination without cause; and

WHEREAS, the parties have mutually agreed that the Employment Agreement should be terminated and that Ford will terminate City employment, effective close of business June 30, 2011; and

WHEREAS, the parties now desire to avoid the expense, burden and delay of litigation, and without admitting or acknowledging any liability, to resolve all of Ford's claims or potential claims against the City, fully and forever in consideration of the promises contained herein,

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. In exchange for the promises by Ford in this Agreement and complete settlement of all claims or potential claims by Ford, the City will pay the total amount of \$384,000 (the

"Settlement Amount") by means of a check made out to NATHANIEL P. FORD, SR. within 30 days after the Effective Date. The parties agree that the Settlement Amount, less applicable taxes and withholding, includes 30 days of pay in lieu of notice in accordance with Section 10.a. of the Employment Agreement and the value of all accrued but unused leave that may be due under Sections 7 or 8 of the Employment Agreement.

2. (a) In consideration of the foregoing promises and for other good and sufficient consideration Ford, on behalf of himself and his heirs, executors, administrators, assigns and successors, fully and forever releases and discharges the City, its constituent departments (including the MTA), commissions, agencies, boards, predecessors, successors, subsidiaries, related entities, and current and former officers, directors, trustees, agents, employees and assigns (collectively "Releasees") from any and all liabilities, claims, demands, contracts, debts, damages, acts or omissions, obligations and causes of action of every nature, kind and description, in law, equity, or otherwise, whether or not now known or unknown, which heretofore do or may exist, in any way arising out of, connected with or related in any way to Ford's employment with the City, the Employment Agreement, the negotiation or execution of this Agreement, up to and including the date that Ford signs this Agreement (the "Signature Date"). The release in this paragraph includes but is not limited to release of any matter, cause or thing arising out of, relating to, or connected with Ford's employment, the Employment Agreement, and any and all lawsuits and claims, charges and grievances brought by Ford against any Releasee not set forth herein, and all past, pending or contemplated EEOC, DFEH or other administrative charges relating to or arising from Ford's employment with the City through the Signature Date.

(b) The release contained in this Paragraph 2 is a complete and general release that will forever bar Ford from pursuing any released claims or rights against any Releasee. Ford covenants not to sue or otherwise institute or in any way actively participate in or voluntarily assist in the prosecution of any legal or administrative proceedings against any Releasee. Ford understands and agrees that Ford is waiving any rights Ford may have had, now

has, or in the future may have to pursue any and all remedies available to Ford under any cause of action arising out of, connected with or in any way related to Ford's employment with the City, and which arose at any time through the Signature Date. Such causes of action shall include without limitation claims of wrongful discharge, defamation, invasion of privacy, intentional infliction of emotional distress, negligent infliction of emotional distress, breach of contract, breach of the covenant of good faith and fair dealing, breach of contract, violation of the provisions of the California Labor Code, the City's Charter, Administrative Code, ordinances, Civil Service Commission Rules and other City enactments, the Meyers-Milias-Brown Act, violation of any memoranda of understanding covering Ford, and claims under Title VII of the 1964 Civil Rights Act, as amended, the Civil Rights Act of 1991, the California Fair Employment and Housing Act, the Americans with Disabilities Act, the Rehabilitation Act, the Family and Medical Leave Act, the California Family Rights Act, the California and United States Constitutions, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Civil Rights Acts of 1866, any other laws and regulations relating to employment or to discrimination.

(c) Ford understands and expressly agrees that the release contained in this Paragraph 2 extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present or future, and that any and all rights under Section 1542 of the California Civil Code or any analogous state law or federal law or regulation are hereby expressly waived. Said Section 1542 of the Civil Code of the State of California, reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

3. The parties agree that Ford's employment will terminate effective at the close of business June 30, 2011 (the "Effective Date"), provided that on or before that date this Agreement is approved by Board of Directors of the MTA. Notwithstanding his separation

from City employment, the parties agree that Ford will fully cooperate with the City in defending any claims or litigation about which he has personal knowledge at no cost to the City with the exception of any required travel expenses consistent with City policies regarding payment of employee travel expenses.

4. Ford will direct any prospective employer of Ford outside of the City employment system to Tom Nolan, Chair of the Board of Directors of the MTA for information regarding Ford's employment with the MTA. Ford recognizes that the City may disclose the dates of Ford's employment, the position held by Ford, Ford's compensation, and other information which is subject to disclosure by federal, state, or local law.

5. The parties hereby agree, acknowledge and recognize that this Agreement is a "no fault" settlement in light of disputed claims, and that nothing contained in this Release shall constitute or be treated as an admission of liability or wrongdoing by Ford or the City, which liability or wrongdoing is expressly denied by all parties.

6. Ford represents that either (a) there are no existing liens or partial liens in existence, including without limitation any attorney's fees, medical reimbursement, unemployment or disability compensation liens, which attach to the amounts specified in this Agreement, nor is any person or entity entitled to establish a lien for any payment or payments they have made or will make to Ford on behalf of Ford as a consequence of any of the matters arising out of or connected with Ford's employment with the City, or (b) to the extent there are any such liens, Ford will pay and retire all such liens out of the Settlement Amount. Ford agrees to defend, indemnify and hold harmless the City against any and all claims by any person or entity purporting to hold any lien, interest, or other claim, whether for medical care, unemployment and/or disability compensation, attorneys' fees, or otherwise, involving Ford and arising from or connected with Ford's employment with the City.

7. Ford represents and warrants that Ford has full power to make the releases and agreements contained herein. Ford expressly represents and warrants that Ford has not assigned, encumbered or in any manner transferred all or any portion of the claims covered by

the releases and agreements contained herein. Ford acknowledges and agrees that this warranty and representation is an essential and material term of this Agreement. Ford agrees to indemnify the affected Releasee for any claims brought against any Releasee by purported assignees of Ford, including costs of judgment and reasonable attorneys' fees.

8. Ford represents that there are no outstanding DFEH, EEOC or other administrative charges which are or may be pending relating to Ford's employment with the City through the Signature Date. To the extent any such charges have been or are filed on Ford's behalf, Ford agrees to dismiss or withdraw any such charges, with prejudice. Ford represents he has filed no litigation or other claims against any Releasee, and Ford agrees to dismiss with prejudice all litigation, claims, grievances, and administrative charges of any nature, kind and description against any Releasee which arise out of any right or claim released in this Agreement, whether or not listed in this Agreement.

9. All parties shall bear their own attorneys' fees, legal expenses and costs.

10. Ford acknowledges that this Agreement is contingent upon approval by San Francisco Municipal Transportation Agency Board of Directors and that this Agreement will not become effective absent such approval.

11. The parties acknowledge that this Agreement constitutes the sole agreement in this matter, that it supersedes any prior oral or written agreements, and that it may be modified only by a writing signed by all parties to this Agreement, and approved by the San Francisco Municipal Transportation Agency Board of Directors

12. If any provision of this Agreement is found to be unenforceable, then the remaining provisions shall remain valid and enforceable.

13. The parties agree that the San Francisco Superior Court will have jurisdiction to enforce this Agreement. All disputes arising out of this Agreement shall be resolved by the San Francisco Superior Court.

14. Ford acknowledges that Ford has the right to consult with an attorney concerning this Agreement, including the releases contained herein.

15. Ford acknowledges that Ford has read and understands this Agreement and that Ford agrees to its terms and signs this Agreement voluntarily and without coercion. Ford further acknowledges that the release and waivers Ford has made herein are knowing, conscious and with full appreciation that Ford is forever foreclosed from pursuing any of the rights or claims so released or waived.

16. This Agreement has been reviewed by the parties and their respective attorneys, and each have had full opportunity to negotiate the contents of this Agreement. The parties each waive any common law and statutory rule of construction that ambiguity should be construed against the drafter of this Agreement, and agree that the language in all parts of this Agreement shall be in all cases be construed as a whole, according to its fair meaning.

17. In connection with the Age Discrimination in Employment Act (“ADEA”), Ford acknowledges that the City has advised Ford to consult with an attorney prior to signing this Agreement. As set forth in the ADEA, 29 U.S.C. Section 626(f)(1), Ford hereby acknowledges the following: (1) that this Agreement is written in a manner calculated to be understood by Ford and that Ford in fact understands the Agreement; (2) that this Agreement specifically refers to and waives rights or claims arising under the ADEA; (3) that this Agreement applies only to claims arising up to and including the date that Ford signs this Agreement; (4) that in exchange for this Agreement, Ford received value beyond that to which Ford is already entitled; (5) that the City has advised Ford in writing to consult with an attorney before executing the Agreement; and (6) that Ford has been provided with an adequate period of time to review this Agreement. Ford further acknowledges that Ford is entitled to consider this Agreement for twenty-one (21) days before signing and that Ford has made a knowing and voluntary decision to sign this Agreement before expiration of the twenty-one (21) day period. Ford may revoke this Agreement for a period of seven (7) days after executing the Agreement. Any such revocation must be communicated in writing to Julia M. C. Friedlander, 1390 Market Street, 6<sup>th</sup> Floor, San Francisco, CA 94102, within the seven-day revocation period. This Agreement shall not become effective or enforceable until the revocation period has expired.

DATED: _____	_____ <b>Nathaniel P. Ford, Sr.</b>
DATED: _____	_____ <b>Thomas Nolan, Authorized Agent,</b> San Francisco Municipal Transportation Agency
APPROVED AS TO FORM AND SUBSTANCE: LAW OFFICES OF KAY & MERKLE  By: _____  <b>STEVEN KAY</b> Attorney for Nathaniel P. Ford	DATED: _____
APPROVED AS TO FORM <b>DENNIS J. HERRERA</b> City Attorney	
By _____  <b>JULIA M. C. FRIEDLANDER</b> SFMTA General Counsel	DATED: _____
San Francisco Municipal Transportation Agency Board of Directors Resolution No. _____ Adopted: _____ Attest:  _____ Secretary, SFMTA Board of Directors	

San Francisco  
Municipal Transportation Agency  
Board of Directors

RESOLUTION NO. \_\_\_\_\_

RESOLVED, That the SFMTA Board of Directors does hereby approve a separation agreement between Nathaniel P. Ford, Sr., Executive Director/CEO and the City and County of San Francisco, acting through the Municipal Transportation Agency, to end his employment effective June 30, 2011 and resolve any claims or potential claims by Ford for the amount of \$384,000.

I certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of \_\_\_\_\_.

\_\_\_\_\_  
Secretary, Municipal Transportation Agency Board of Directors