

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Office of the Board of Directors

BRIEF DESCRIPTION:

Approving Amendment #2 to the Appointment and Compensation Employment Agreement between the City and County of San Francisco and Nathaniel P. Ford, Sr. to defer CPI adjustment of Mr. Ford's base salary for Fiscal Year 2008 and defer award of incentive compensation for FY2008 and to allow Mr. Ford to cash out accrued executive leave and floating holidays earlier at his current salary rate.

SUMMARY:

- The SFMTA Board of Directors appointed Nathaniel P. Ford, Sr. to the position of Executive Director/CEO by approving an individual appointment contract. The contract sets forth the primary terms and conditions of Mr. Ford's employment.
- As further required, the SFMTA Board approved an incentive compensation bonus plan for Mr. Ford, under which, based upon the Agency's achievement of milestones, the Executive Director/CEO may receive up to 10% of his base salary in incentive compensation.
- The Agreement also provides for annual adjustment of the Executive Director/CEO's base salary by a percentage no less than the increase in the Consumer Price Index-Urban (CPIU) for the Bay Area. CPI for FY08 was 4.2%.
- In recognition of the economic crisis, the SFMTA Board of Directors and Executive Director/CEO Ford have agreed to defer adjustment of Mr. Ford's base salary and defer award of incentive compensation until such time as may agreed to by the SFMTA Board of Directors and Mr. Ford.
- In addition, Amendment #2 allows Mr. Ford to "cash out" any accrued executive leave or floating holidays earlier than he could under the current Agreement; however, the rate at which any such executive leave and floating holidays would be paid for leave accrued to date would be capped.

ENCLOSURES:

1. SFMTAB Resolution
2. Amendment #2

APPROVALS:

DATE

CHAIRMAN _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION Roberta Boomer _____

TO BE RETURNED TO

ASSIGNED MTAB CALENDAR DATE: December 2, 2008

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PURPOSE

To approve Amendment #2 to the Appointment and Compensation Agreement between the City and County of San Francisco and Nathaniel P. Ford, Sr. to defer CPI adjustment of Mr. Ford's base salary for the year beginning July 1, 2008 and defer award of incentive compensation for FY2008 and to allow Mr. Ford to cash out accrued executive leave and floating holidays earlier, but only at his current salary rate.

GOAL

Approval of this calendar item supports:

Strategic Goal 4: Financial Capacity – to ensure financial stability and effective resource utilization.

Strategic Goal 5: SFMTA Workforce – To provide a flexible, supportive work environment and develop a workforce that is capable of leading the agency into the ever-evolving, technology driven future, that takes pride and ownership of the agency's mission and vision.

Objective 5.5 - Improve SFMTA's ability to grow and retain strong leadership.

Indirectly this calendar items supports all goals in the 2008-2012 Strategic Plan as the Executive Director/CEO leads the SFMTA toward the achievement of all goals.

DESCRIPTION:

Background

On December 6, 2005, the SFMTA Board of Directors appointed Nathaniel P. Ford, Sr. to the position of Executive Director/CEO of the Municipal Transportation Agency and approved the execution of an Appointment and Compensation Agreement ("Agreement") by Resolution #05-179. The Agreement provides for (1) an annual performance evaluation after completion of each fiscal year; 2) an annual increase in base salary based on the results of the performance evaluation but no less than the increase in the Consumer Price Index-Urban (CPIU) for the Bay Area; and 3) award of additional incentive compensation in an amount not to exceed 10% of the Executive Director/CEO's current base salary based on an incentive compensation plan consistent with Section 8A.103 of the Charter. The Agreement also provides employment benefits for Mr. Ford, including executive leave and floating holidays each fiscal year. Executive leave and floating holidays unused in one fiscal year may be carried over to the following year and cashed out when Ford's employment terminates.

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Performance Evaluation

Section 9 of the Agreement requires that the SFMTA Board of Directors provide Mr. Ford with an annual performance evaluation after completion of each fiscal year. The performance evaluation is conducted in closed session following presentation of the fiscal year end Service Standards Report.

The SFMTA Board of Directors and Mr. Ford met in closed session on October 21, 2008 and on November 18, 2008 to discuss Mr. Ford's performance evaluation. The Policy and Governance Committee of the SFMTA Board of Directors met on November 12, 2008 to discuss Mr. Ford's performance evaluation.

The SFMTA Board of Directors believes that Mr. Ford has exhibited strong leadership since his arrival and that his continued leadership will be crucial for the SFMTA as it works to minimize the impact of the budget deficit on SFMTA customers and workforce. In addition, the SFMTA Board of Directors recognizes that Mr. Ford has also shown strong leadership throughout the region as Chairman of the Transbay Joint Powers Authority, Chairman of the Translink Management Group and as a member of the Peninsula Corridor Joint Powers Board.

Annual Salary Adjustment

Based on the performance evaluation provided in accordance with Section 9 of the Agreement, Section 5 of the Agreement states that the SFMTA Board of Directors shall adjust Mr. Ford's base salary by a percentage no less than the increase in the Consumer Price Index – Urban (CPIU) for the Bay Area within 120 days after the close of any fiscal year. Any adjustment in Mr. Ford's base salary must be approved as an Amendment to the Agreement.

The Bay Area Consumer Price Index for All Urban Consumers from June 2007 through June 2008 is 4.2%. The Bay Area CPI was calculated by using the Consumer Price Index Calculator provided by the State of California's Division of Labor Statistics & Research. The Consumer Price Index Calculator is available at <http://www.dir.ca.gov/dlsr/CAPriceIndex.htm>. 4.2% of Mr. Ford's current base salary of \$315,140 is \$13,235.88. Adjustment of Mr. Ford's base salary by this percentage would bring his base annual salary to \$328,375.88.

Annual Incentive Compensation

Pursuant to Charter Section 8A.102(c)(1) and Section 6 of the Agreement, the SFMTA is required to provide an incentive compensation plan to Mr. Ford based upon the Agency's achievement of the fiscal year milestones adopted pursuant to Section 8A.103. The SFMTA Board of Directors approved the incentive compensation bonus plan by Resolution 06-098 on August 1, 2006. The plan and Agreement state that additional incentive compensation shall not exceed 10% of Mr. Ford's current base salary.

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Based on the SFMTA Board of Directors performance evaluation, the Chairman and Vice Chairman of the SFMTA Board of Directors had determined that appropriate incentive compensation for FY08 would be \$26,787.

Executive Leave and Floating Holidays

Sections 8 (a) and (b) of the Agreement discuss benefits that shall be provided to Mr. Ford including executive leave and floating holidays. The contract states that unused executive leave and floating holidays may be carried from one year to the next; the value of unused executive leave or floating holidays must be paid to Mr. Ford in cash upon termination of his employment.

Amendment #2 will amend Sections 8 (a) and (b) to allow Mr. Ford to “cash out” accrued executive leave or floating holidays before terminating his employment; however, the amount of executive leave and floating holidays that have accrued as of the date on which the SFMTA Board of Directors approves Amendment #2 shall be paid at Mr. Ford’s current compensation rate of \$315,140. This has the effect of capping the SFMTA's costs arising from the executive leave and floating holiday benefits in Mr. Ford's contract.

FUNDING IMPACT

The SFMTA Board of Directors and the Executive Director/CEO recognize that the City and County of San Francisco and the San Francisco Municipal Transportation Agency have been deeply affected by the economic downturn and that city employees are facing lay-offs and wage freezes. Therefore the SFMTA Board of Directors and Mr. Ford have mutually agreed to defer any adjustment to Mr. Ford’s FY08 base salary in the amount of \$13,235.88 and payment of the FY08 incentive compensation in the amount of \$26,787 until such time as may agreed to by the SFMTA Board of Directors and Mr. Ford.

Allowing Mr. Ford to cash out unused leave before his employment terminates is a financial benefit to the SFMTA. It caps the city’s costs for executive leave and floating holidays that have already accrued to the current base salary rate as of the day that the SFMTA Board of Directors approves Amendment #2. The current base salary rate is likely lower than the base salary rate that will be in effect on the day his employment terminates.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney has reviewed this calendar item.

No other approvals are required.

RECOMMENDATION

Approval of this item is a policy matter for the SFMTA Board of Directors.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Charter Section 8A.102(c) authorizes the San Francisco Municipal Transportation Agency Board of Directors to appoint a Director of Transportation pursuant to an individual contract; and,

WHEREAS, By Resolution No. 05-179, dated December 6, 2005, the SFMTA Board of Directors approved the Appointment and Compensation Employment Agreement between the City and Nathaniel P. Ford, Sr. ("Agreement") and appointed Mr. Ford to the position of Executive Director/CEO of the Municipal Transportation Agency; and,

WHEREAS, Charter Section 8A.102(c) (1) states that the "the Agency shall provide an incentive compensation plan . . . under which a portion of the Director's compensation is based on the achievement of service standards adopted by the Board of Directors"; and,

WHEREAS, Section 6 of the Agreement, entitled "Incentive Compensation", states that "Ford shall be eligible to receive additional incentive compensation in an amount not to exceed 10% of Ford's current base salary based on an incentive compensation plan consistent with Section 8A.103 of the Charter"; and,

WHEREAS, Section 5 of the Agreement states that the SFMTA Board "shall adjust Ford's base salary by a percentage no less than the increase in the Consumer Price Index – Urban (CPIU) for the Bay within 120 days after the close of any fiscal year based on the performance evaluation provided in accordance with section 9 of the Agreement"; and,

WHEREAS, the Bay Area Consumer Price Index for All Urban Consumers from June 2007 through June 2008 is 4.2%, and Mr. Ford's base salary for FY08 should therefore be adjusted by \$13,235.88 to a new base salary of \$328,375.88, and

WHEREAS, On August 1, 2006, the SFMTA Board of Directors approved an incentive compensation plan entitled "Executive Director's Incentive Compensation Plan Recommendation" (Resolution #06-098), and,

WHEREAS, The SFMTA Board of Directors met with the Executive Director/CEO on October 21, 2008, following presentation of the FY08 Year-End Service Standards Report and on November 18, 2008 to conduct a performance evaluation for FY08 and,

WHEREAS, On November 12, 2008, the SFMTA Board of Directors Policy and Governance Committee met to review Mr. Ford's performance evaluation;

WHEREAS, Based on the SFMTA Board of Directors performance evaluation, the Chairman and Vice Chairman of the SFMTA Board of Directors had determined that appropriate incentive compensation for FY08 would be \$26,787; and,

WHEREAS, Sections 8 (a) and (b) of the Agreement provide benefits to Mr. Ford including executive leave and floating holidays and states that unused executive leave and floating holidays may be carried over from one year to the next and shall be cashed out when Mr. Ford's employment terminates; and,

WHEREAS, It is in the financial best interests of the City and County of San Francisco to amend the contract to allow Mr. Ford to cash out unused executive leave or floating holidays before Mr. Ford's employment terminates if it is thereby paid out at the current base salary rate; and,

WHEREAS, The SFMTA Board of Directors and Executive Director/CEO Ford recognizes the serious economic situation that the City and County of San Francisco and the San Francisco Municipal Transportation Agency now faces; now, therefore be it

RESOLVED, That the SFMTA Board of Directors hereby approves Amendment #2 to the Appointment and Compensation Agreement between the City and County of San Francisco and Nathaniel P. Ford, Sr. to defer CPI adjustment of Mr. Ford's base salary and defer award of incentive compensation for FY2008 until such time as may agreed to by the SFMTA Board of Directors and Mr. Ford and authorize Mr. Ford to cash out accrued executive leave and floating holidays before terminating employment provided that currently accrued leave shall be paid only at his current base salary rate.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of December 2, 2008.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

AMENDMENT No. 2
TO
AGREEMENT FOR APPOINTMENT AND COMPENSATION

This Amendment to the Appointment and Compensation Employment Agreement between the City and County of San Francisco ("City") and Nathaniel P. Ford, Sr. ("Ford"), dated December 6, 2005, as amended on November 20, 2007 (the "Agreement"), is entered into this 2nd day of December, 2008, between the City, acting by and through its Board of Directors of the Municipal Transportation Agency, and Ford.

NOW THEREFORE, it is mutually understood and agreed that all other terms and conditions of the Agreement shall remain in full force and effect and the Agreement is hereby amended as follows:

Section 5, Salary, is amended to read as follows:

(a) Ford's base annual salary shall be \$298,000 subject to such deductions and withholding as may be required by law or authorized by Ford; provided, however that pursuant to the terms of the salary adjustment provision of this Section 5, Ford's base salary shall be increased to \$315,140 commencing on July 1, 2007. Ford's base annual salary shall be payable in the same manner and at the same time as other MTA employees are paid.

(b) The Board shall adjust Ford's base salary by a percentage no less than the increase in the consumer Price Index – Urban (CPIU) for the Bay Area within 120 days after the close of any fiscal year based on the performance evaluation provided in accordance with Section 9 of this Agreement. Any adjustment in Ford's base salary shall be approved as an Amendment to this Agreement in accordance with Section 16. For the fiscal year beginning July 1, 2008, the applicable CPIU is 4.2%.

(c) Notwithstanding the provisions of (a) and (b) above, in light of the impact of the national economic crisis on the City and County of San Francisco and its Municipal Transportation Agency, the parties agree that Ford shall defer the base salary adjustment (to \$328,375.88 based on the 4.2% increase in the CPIU) that he would otherwise be entitled to commencing in fiscal year 2008-09 until such time during the term of this Agreement as may be agreed by the parties and approved as an Amendment to this Agreement.

Section 6, Incentive Compensation, is amended to read as follows:

(a) Ford shall be eligible to receive additional incentive compensation in an amount not to exceed 10% of Ford's current base salary based on an incentive compensation plan consistent with Section 8A.103 of the Charter. The Board shall approve such an incentive compensation plan within 180 days after Board approval of this Agreement. The amount of any incentive compensation to be paid shall be calculated on a fiscal year basis within 120 days after the close of any fiscal year and shall be pro-rated for any fiscal year in which Ford does not serve as Executive Director for 12 months; provided, however, that no incentive compensation shall be paid for any fiscal year in which Ford is terminated pursuant to the provisions of Section 10 of this Agreement.

(b) Based on the incentive compensation plan adopted by the Board of Directors on August 1 2006 by Resolution 06-098, and based on the 2007-08 performance evaluation conducted by the

Board of Directors as required by Section 9 of this Agreement, the Chairman and Vice Chairman of the MTA Board of Directors recommend that the Board of Directors award Ford incentive compensation for performance in 2007-08 at 85% of the allowable amount, or \$26,787; however, notwithstanding the provisions of (a) above, in light of the impact of the national economic crisis on the City and County of San Francisco and its Municipal Transportation Agency, the parties agree that Ford shall defer that incentive compensation until such time during the term of this Agreement as may be mutually agreed by the parties and approved as an Amendment to this Agreement.

Section 7, Benefits, is amended to read as follows:

The MTA shall provide Ford with the following benefits available to "Executive Management Level" employees as described in the collective bargaining agreement between the Municipal Executives Association and the Municipal Transportation Agency ("MEA MOU"), as such agreement may be amended from time to time: paid recognized holidays, vacation leave, sick leave, the Management Compensation Package, and the MTA Attendance Incentive Program (Appendix F). Ford shall be entitled to enroll in the San Francisco Health Service System and the San Francisco City Employee Retirement System on the same terms as are available for employees designated as Executive Management Level employees under the MEA MOU. Except as provided in Section 8 below, Ford's salary shall be subject to the same deductions for employee benefit contributions provided in the MEA MOU for Executive Management Level employees. Other than the benefits specifically listed in this paragraph, Ford shall not be entitled to any other benefits established by the MEA MOU. With respect to the benefits specifically listed in this paragraph, if any provision of the Agreement conflicts with any relevant provision of the MEA MOU, as it may be amended, the provision providing greater benefits to Ford shall prevail.

Section 8a, Additional Benefits (Executive Leave) is amended to read as follows:

a. Executive Leave. Ford is required to work the days and hours necessary to perform the duties of his position and shall schedule his time accordingly. Ford shall receive 15 days of paid executive leave between January 17, 2006 and June 30, 2007 and 10 days per fiscal year thereafter. Executive leave unused during any fiscal year may be carried over to the following year. Executive leave accrued as of December 2, 2008 may be cashed out at any time during the term of this Agreement at the base salary rate in effect as of December 2, 2008 (\$315,140). Executive leave accrued after December 2, 2008 may be cashed out at any time after December 2, 2008 at the base salary rate in effect at the time it is cashed out.

Section 8b, Additional Benefits (Floating Holidays) is amended to read as follows:

b. Floating Holidays. In addition to the paid recognized holidays provided in Section 7 above, Ford shall receive 5 paid floating holidays per fiscal year to be taken on days selected by Ford. Floating Holidays accrued as of December 2, 2008 may be cashed out at any time during the term of this Agreement at the base salary rate in effect as of December 2, 2008 (\$315,140). Floating Holidays accrued after December 2, 2008 may be cashed out at any time after December 2, 2008 at the base salary rate in effect at the time they are cashed out.

Nathaniel P. Ford, Sr.

CITY AND COUNTY OF SAN FRANCISCO
by and through its Municipal Transportation Agency

Nathaniel P. Ford, Sr.

Dr. James McCray, Jr., Chairman, Board of Directors

APPROVED AS TO FORM

Dennis J. Herrera

City Attorney

Resolution No.

Adopted:

Attested: _____

Roberta Boomer, Secretary

SFMTA Board of Directors

Julia M.C. Friedlander

SFMTA General Counsel

Deputy City Attorney