<u>Mag./9</u>,2011

Michael G. Ford Chief Executive Officer Ann Arbor Transportation Authority 1394 Brookfield Ann Arbor, Michigan 48103-6087

Re: CEO Employment Agreement, Article VI – Salary and Compensation for Fiscal Year Beginning October 1, 2010

Dear Mr. Ford:

This letter will set forth your salary and compensation as the Chief Executive Officer ("CEO") of the Ann Arbor Transportation Authority ("AATA") for the fiscal year beginning October 1, 2010, in accordance with the provisions of Article VI, Paragraph 6.1 of the Agreement between you and the AATA Board of Directors ("Board") dated \_\_\_\_\_

- (a) The Board will pay you an annual salary of \$160,000 for your service, payable in biweekly installments at the same time as other employees of AATA are paid, and subject to customary and mandatory withholdings.
- (b) Upon the execution of this letter, and your written agreement to the terms set forth herein, the Board will make a one-time lump sum payment to you in the amount of \$7,754.00 (which is equal to four percent (4%) of your annual salary for the 63 week period from July 20, 2009 through September 30, 2010), subject to customary and mandatory withholdings. Such payment will be made in the manner and at the time directed by you, in writing; and at your option, you may direct the Board to make this payment into your §457 deferred compensation plan account on or after January 1, 2011.

As stated in Article VI, Paragraph 6.1 of the above-referenced Agreement, this letter, and the terms specified herein, shall remain in effect until such time as the letter is modified or replaced by the Board, in which case a new letter meeting the requirements set forth in said Paragraph 6.1 shall be substituted in its stead.

Respectfully submitted,

esse Bernstein, AATA Board Chair

Sue McCormick, AATA Board Treasurer

Agreed to:

Date

I:\\_HumanResources\AATA HR DEPT Private Files\BOARD OF DIRECTORS\AATA CHIEF EXECUTIVE OFFICER CEO\CEO AGREEMENTS WITH AATA BOARD\2010 CEO Contract and Salary Letter\FINAL KEMPNER REVIEWED FY 2011 CEO SALARY & COMP LETTER WITH BOARD 5.3.11.docx

#### **AGREEMENT**

### Between Michael G. Ford And

### The Ann Arbor Transportation Authority Board of Directors for

### EMPLOYMENT AS THE AUTHORITY'S CHIEF EXECUTIVE OFFICER

This Agreement is made and entered into by and between the Ann Arbor Transportation Authority (hereinafter referred to as "AATA"), through its Board of Directors (hereinafter referred to as the "Board"), and Michael G. Ford (hereinafter sometimes referred to as the "Employee").

WHEREAS, the Board is desirous of appointing Michael G. Ford as the Chief Executive Officer (hereinafter referred to as "CEO") of the Ann Arbor Transportation Authority, and

WHEREAS, Michael G. Ford has indicated a willingness to accept the responsibilities and render specific performance to the Board as the CEO of AATA, and

WHEREAS, both parties have determined that it would be mutually beneficial to have a contract between them, setting forth the agreements and understandings that provide the terms and conditions under which Michael G. Ford will serve as the CEO of AATA,

NOW, THEREFORE, in consideration of the mutual covenants and promises, which the parties set forth below, the Board and Michael G. Ford agree as follows:

#### ARTICLE I APPOINTMENT OF MICHAEL G. FORD

1.1 The Board hereby appoints Michael G. Ford as the Chief Executive Officer of the Ann Arbor Transportation Authority, and Michael G. Ford hereby accepts such appointment upon the terms and conditions hereinafter set forth.

### ARTICLE II CEO RESPONSIBILITIES

- 2.1 The Board agrees to employ Michael G. Ford as CEO of AATA to perform the functions and duties specified in the policies and resolutions of the Board, and to perform other legally permissible and proper duties and functions as the Board may from time to time assign.
- 2.2 Employee shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules, policies, and regulations established by the Board.
- 2.3 Employee shall not engage in any activity which is or may become a conflict of interest, which is prohibited by contract, or which may create an incompatibility of office. Prior to performing any services under this Agreement and annually thereafter, the Employee must complete such disclosure forms as may be required by law or by the Board.

#### ARTICLE III TERM

3.1 This Agreement shall commence on October 1, 2010, and shall renew annually upon its anniversary date until terminated by either party in accordance with the provisions set forth in Article 4, or until terminated by the event of the death or permanent disability of Employee. For purposes of this Agreement, the terms "anniversary date" and "anniversary" shall be deemed to be October 1 of each year.

- 3.2 No later than sixty (60) days prior to each anniversary of this Agreement, the Board and Employee shall meet to discuss the upcoming renewal of this Agreement and any changes the parties may wish to mutually make or negotiate with respect to its terms and conditions.
- 3.3 Employee agrees to refrain from acting in any other work capacity of employment, activity, consulting service, or other enterprise, for compensation, or otherwise which would restrict or interfere with his ability to devote his full time to employment as CEO of AATA, to faithfully perform the duties and work of the office of the CEO, and at all times to work in the best interest and furtherance of the general business of the Ann Arbor Transportation Authority.
- Employee acknowledges that the duties of his position may require an average of more than forty (40) hours per week, and that some day-to-day hours may vary significantly. Employee will not be compensated for overtime hours worked or otherwise earn or be entitled to compensatory time off for hours worked in excess of eight (8) per day or forty (40) per week.

### ARTICLE IV AT WILL EMPLOYMENT

- 4.1 Regardless of any other provision in this Agreement, Employee understands and acknowledges that the position of CEO is an "At-Will" position which is exempt from accruing or receiving property rights, other than set forth in this Agreement, and that the Employee serves at the pleasure and at the will of the Board.
- 4.2 Nothing within this Agreement shall prevent, limit, or otherwise interfere with the right of the Board to revoke the appointment of Employee, with or without cause at any time, subject to Employee's contract rights hereunder. Employee hereby waives any rights he may have pursuant to Michigan Statutes, or any other applicable federal, county, or local law now in effect or subsequently adopted, to any prescribed notice of hearing prior to termination.
- 4.3 The decision by the Board to revoke the appointment of Employee and terminate this Agreement will only be made by a formal resolution of the Board in full and open public session. Discussions prior to any such decision to terminate this Agreement may be made by the Board in closed session consistent with the Michigan Open Meetings Act prior to the Board acting upon such a resolution in a public session. In recognition of Employee's professional status and integrity, Employee and the Board shall attempt to prepare a joint public statement to be made by the Board at the public meeting when termination is confirmed.
- Employee may choose to resign his office instead of being terminated if an action by the Board to terminate has been made in closed session. In such an event, the public announcement as provided for in Paragraph 4.3 above shall state that Employee has resigned, and Article 5 Severance Pay below shall remain applicable according to its terms.
- 4.5 Nothing within this Agreement shall prevent, limit, or otherwise interfere with the right of Employee to resign at any time from his position; provided, however, that Employee shall give the Board written notice of at least sixty (60) days prior to the effective date of such resignation (except as otherwise provided for in Paragraph 4.4 above).
- 4.6 Regardless of the reason for Employee's termination, for a period of one (1) year after such termination, Employee agrees not to disrupt relations or business of Employer by soliciting its employees to terminate their employment with Employer. All data, studies, reports and other documents prepared by or on behalf of Employee while performing his duties during the term of this Agreement shall be furnished to and become the property of the Board without restriction or limitation on their use.

#### ARTICLE V SEVERANCE PAY

- 5.1 If Employee is terminated by the Board while still willing and able to perform the duties of CEO, Board agrees to pay Employee a cash payment equal to six (6) months aggregate salary as severance. In the event Employee is entitled to severance under this Agreement, Employee shall also become immediately vested in all contributions made by AATA into his Hartford pension account.
- 5.2 Provided, however, if Employee is terminated due to any of the following reasons, or if he resigns in lieu of termination based on any of the following reasons, he shall not be entitled to any severance:
  - For just cause.
  - Conviction of any felony or any criminal offense involving moral turpitude, including cases where adjudication is withheld.
  - Conflict of interest or incompatibility of office.
  - Continued incapacity on the part of the Employee to perform his duties for more than sixty (60) days, unless waived by the Board.
  - Conduct of Employee that is of such nature that it will likely have a substantial negative impact on the goodwill of AATA.
  - Malfeasance or misfeasance in the performance of Employee's duties.
  - Upon the occurrence of circumstances that make it uneconomical, impossible or impractical for Employer to continue its operations.
- 5.3 For purposes of the severance package, aggregate salary shall consist of the following:
  - CEO's normal salary;
  - CEO's sick leave accrual and payout consistent with AATA policy;
  - CEO's vacation accrual consistent with AATA policy;
  - An amount equal to the value of AATA's normal contribution to Employee's
    health insurance plan for the tier of coverage selected as of the date of separation,
    or if no coverage is selected, the amount available to other AATA management
    employees who waive health insurance coverage.
- 5.4 Employee may elect to receive his severance package on a bi-weekly schedule as part of AATA's normal payroll cycle; or upon written request may receive the total amount of severance due in the form of one lump sum payment.
- As a precondition to the payment of any severance package, Employee shall deliver to the Board a signed Agreement and Release, in the form prescribed by the Board, holding AATA and the Board harmless and releasing AATA, the Board, and their officers, agents, attorneys and employees, past and present, from any and all liability relative to the Employee's employment, including revocation of his appointment as CEO.
- 5.6 Employee shall not receive any severance package should Employee voluntarily resign.

### ARTICLE VI SALARY AND COMPENSATION

6.1 Employee's salary and compensation during the initial term of this Agreement, including any bonuses and/or lump sum payments to be made to Employee during said term, shall be set forth in a separate letter executed by the Board Chairperson and Board Treasurer, and agreed to in writing by Employee, which shall be made a part of this Agreement and incorporated by this reference. This letter, and the terms specified therein, shall remain in effect until such time as the letter is modified or replaced by the Board, in which case a new letter meeting the requirements set forth above with regard to its execution and the agreement of Employee shall be substituted in its stead.

# ARTICLE VII PERFORMANCE REVIEWS, EVALUATIONS AND COMPENSATION ADJUSTMENTS

- 7.1 Employee's reviews, evaluations, and compensation adjustments shall be conducted annually in accordance with the following criteria:
  - 7.1.1 Starting with the fiscal year beginning October 1, 2010, the process for evaluating the CEO's performance will begin on or before September 1, 2011, and end no later than November 30, 2011. The review shall include:
    - a. An evaluation of the CEO's achievement of the goals set forth in the Work Plan for fiscal year 2011, as approved by the Board of Directors.
    - b. Feedback from the Board on Core Competencies and Key Responsibilities established by the Board.
    - c. The financial and operating outcomes of the immediately preceding fiscal year.

The above schedule and format shall be followed for the review and evaluation of the CEO's performance in subsequent years, and will not change Employee's date of hire if that date is or has been used for other calculations.

- 7.1.2 On or before November 30 of each subsequent year, the total compensation for the CEO for the then current fiscal year shall be determined by the Board. The Board and the CEO shall review the following data as part of the discussions pertaining to the CEO's compensation:
  - a. The most current report of total compensation for CEOs of similar sized transit authorities, as published by the American Public Transportation Association (APTA).
  - b. Changes in total compensation for CEOs of governmental and non-profit organizations of similar size and revenue base to AATA within the previous twelve months, with particular emphasis being given to organizations located in southeast Michigan.
  - c. The ability of AATA's budget for the fiscal year in question to support the proposed compensation of the CEO.
- 7.2 Employee's annual compensation, including any one-time bonus payments for exceptional performance, may be adjusted at the discretion of the Board at an official Board meeting. Adjustments to compensation will be made on a fiscal-year basis.

### ARTICLE VIII SUPPLEMENTAL BENEFITS

- 8.1 Except as provided otherwise by this Agreement, the Board shall provide Employee the same benefits as those provided to other non-union represented employees in the AATA Management Personnel Handbook, as they may be amended from time to time. All actions taken by the Board relating to benefits for such employees shall be considered actions granting the same benefits to Employee.
- As used herein, the term "benefits" shall include, but is not limited to: holidays, sick leave, vacation, pension plan contributions, health insurance, vision insurance, dental insurance, health care savings plan contributions, short and long term disability insurance, life insurance, flexible benefits plan, and tuition reimbursement.

- 8.3 Employee shall accrue paid vacation time at the rate of 13.33 hours of vacation for every month of employment in which he works at least fifteen (15) days. Employee will not be allowed to accumulate more than the amount of annual vacation to which he is entitled, and any excess unused vacation will be forfeited each September 30 unless the Board grants an exception to this limitation or adopts a policy allowing Employee to convert all or part of his unused vacation.
- 8.4 Employee shall immediately become fully vested in all contributions made by AATA into his health care savings plan account.

## ARTICLE IX AUTOMOBILE AND TRAVEL

- 9.1 Employee is required to use a personal automobile from time to time in performing the business of AATA. The Board shall provide Employee with an automobile allowance in the gross taxable amount of \$385 per bi-weekly payroll period to be used toward his expense of acquiring a four door automobile, and maintaining, insuring, and using such personal vehicle for AATA business purposes.
- 9.2 In addition to the bi-weekly automobile allowance found in 9.1 above, Board approved personal automobile travel for any single business trip in excess of three hundred (300) miles one-way from the AATA facility will be reimbursed according to the Internal Revenue Service Vehicle Allowance in effect at the time of travel.
- 9.3 Employee shall procure and maintain, at his cost, a policy of automobile insurance acceptable to the Board with limits of no less than one hundred thousand dollars (\$100,000) per person and three hundred thousand dollars (\$300,000) per occurrence for bodily injury liability, and one hundred thousand dollars (\$100,000) for property damage. A copy of a current policy plus any amendments thereto shall be kept on file with the Board at all times during the term of this agreement.
- 9.4 Business related travel to and from meetings, seminars, and conferences held more than three hundred (300) one-way miles distance from AATA and any business trip requiring an overnight stay will be reported to the Board Chair in advance of such travel. Employee's travel and travel expenses will be governed by the policies found in the AATA Management Personnel Handbook.
- 9.5 AATA will pay reasonable and necessary expenses, as determined by the Board, incurred by Employee while attending business activities. Following return from business trips, Employee must submit a travel/expense report to obtain reimbursement for expenses with receipts and other appropriate documentation of expenses attached.
- 9.6 Expenses that generally will be reimbursed include the following:
  - Airfare or train fare for business travel in coach or economy class, or the lowest available fare.
  - Car rental fees for mid-sized or full sized non-luxury automobiles.
  - Airport shuttle buses or other public transportation modes.
  - Taxi fares only when there is no less expensive alternative.
  - Costs for standard accommodations in mid-priced hotels, motels, or similar lodgings.
  - The cost of meals and incidental expenses not to exceed the per diem rate established by the US General Services Administration (GSA).
  - Tips not exceeding 20% of the total cost of a meal, service, taxi, etc.
- 9.7 Expenses that will not be eligible for reimbursement include, but are not limited to, the following:
  - Personal items and gifts.
  - Wine, beer, liquor, or other alcoholic spirits.

- Entertainment costs such as movies, concerts, athletic events, etc.
- Expenses of family members or friends.
- Personal phone calls.
- Social club dues.
- Non-business related club dues.
- Any expenses requiring pre-approval that was not pre-approved.

### ARTICLE X OTHER BENEFITS

- In accordance with Board policy, AATA shall pay reasonable professional dues and subscriptions of Employee for his participation in national, regional, state, and local associations, and organizations deemed by the Board as necessary and desirable for his continued professional development and/or for the benefit of AATA.
- 10.2 The Board shall pay the full cost of any fidelity or other bonds required of or for Employee pursuant to any law, ordinance, or Board policy.

#### ARTICLE XI SEVERABILITY

11.1 If any provision or any portion hereof contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement or portion thereof shall be deemed severable, shall not be affected, and shall remain in full force and effect.

### ARTICLE XII ENTIRE AGREEMENT

- 12.1 Employee and the Board acknowledge and agree that this Agreement constitutes their final understanding and agreement with respect to the subject matter hereof, and supersedes all prior or contemporaneous negotiations, promises, covenants, agreements, or representations concerning all matters directly or indirectly, or collaterally related to the subject matter of this Agreement. In particular, this Agreement supersedes and replaces for all purposes the Agreement Between Michael G. Ford and the Ann Arbor Transportation Authority Board of Directors dated July 13, 2009.
- 12.2 Employee and the Board acknowledge, understand, and agree that nothing within this Agreement can be modified, amended, or revoked except by and with the express written consent of both Employee and the Board.

# ARTICLE XIII DISPUTE RESOLUTION, JURISDICTION, VENUE AND GOVERNING LAW

Upon the written approval of both parties, disputes arising out of this Agreement may be submitted to binding arbitration for resolution. If binding arbitration is chosen as the means to resolve an issue, the parties shall mutually agree upon the selection of an arbitrator who will hear the evidence presented and render a written decision within thirty (30) calendar days from the date of the conclusion of all hearings or submission of briefs, whichever is later. The arbitrator shall have not have jurisdiction to subtract from or modify any of the terms of this Agreement or any written amendments hereof, or to specify the terms of a new Agreement, or to substitute her/his discretion for that of the parties. Fees and expenses of the arbitrator shall be shared equally by the Employee and Employer. The decision of the arbitrator shall be final, conclusive, and binding upon both parties and the parties agree that they shall have no recourse to the arbitrator's decision.

13.2 For disputes in any action or proceeding arising out of, or relating to this Agreement that are not presented to an arbitrator for binding resolution, the Board and Employee hereby irrevocably submit to the jurisdiction of the state courts located in Washtenaw County or the U.S. District Court for the Eastern District of Michigan, and irrevocably agree that venue for any such dispute shall be exclusively in the state courts located in Washtenaw County or in the U.S. District Court for the Eastern District of Michigan. This agreement shall be construed by and controlled under the laws of the State of Michigan.

#### ARTICLE XIV ACKNOWLEDGEMENT

14.1 Employee hereby acknowledges that he was provided with this Agreement prior to its execution, and that he had the time and opportunity to review the Agreement and provide comment prior to his execution of this Agreement. Employee agrees that he has had an opportunity to consult with an attorney of his choice on the terms and conditions of this Agreement and has had an opportunity to clarify any terms and conditions which were not understood by him. Employee further acknowledges that he has read this Agreement; and by his signature below acknowledges that he fully understands and agrees to the contents, terms, and conditions of this Agreement.

### ARTICLE XV INDEMNIFICATION

- The Board shall defend, hold harmless and indemnify Employee against and from any and all claims, legal or administrative actions or demands, consistent with the provisions of law, including actions for equitable relief whether groundless or otherwise, including attorney's fees and costs, arising from any act or omission either alleged or real, which occur or occurred during his employment as CEO of AATA, and which are within the scope of the CEO's employment and performance of his duties as CEO, so long as Employee acted in good faith and in a manner reasonably believed not to be opposed to AATA's interests, or in the case of a criminal proceeding, Employee had no reasonable cause to believe the conduct was unlawful. Indemnification shall not apply to any claims of AATA against Employee.
- 15.2 The Board may compromise and settle any claim or suit and pay the amount of any settlement or judgment rendered thereof, together with attorney's fees associated therewith. Employee shall cooperate fully in the defense, compromise, or settlement of any claims, actions, or demands which Board defends, holds him harmless, or indemnifies him.
- 15.3 Any unreasonable failure by Employee to provide full information or to cooperate with Board's attorneys shall be cause for the Board to deny Employee the defense, hold harmless and/or indemnification rights under this Article.
- The Board and Employee acknowledge and agree that even though the Board may proceed to handle a claim, action or demand against Employee, the Board reserves the right not to indemnify, or to recover costs of indemnification, if it is determined that the Employee's actions did not satisfy the standards of Section 15.1 of this Agreement.
- 15.5 The obligations of this Article shall survive the termination of the Agreement however terminated.

### ARTICLE XVI ASSIGNMENT

16.1 This Agreement is not assignable by either the Board or Employee. Any assignment by either party shall be void.

#### ARTICLE XVII NOTICES

17.1 Any notices required by this Agreement shall be in writing and either given in person or by first class mail with the postage prepaid and addressed as follows:

TO THE BOARD: Chair of the Board

Ann Arbor Transportation Authority 2700 South Industrial Highway Ann Arbor, Michigan 48104

TO EMPLOYEE:

Michael G. Ford

1394 Brookfield

Ann Arbor, Michigan 48103-6087

(or other address of record)

Changes of addresses of either party shall be relayed to the other party within ten (10) days of such changes becoming effective.

### ARTICLE XVIII COUNTERPARTS

18.1 This Agreement shall be executed simultaneously in three counterparts and each shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, The Board has caused this Agreement to be signed and executed in its behalf by its Chairperson, duly attested, and executed by Michael G. Ford this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 2011.

Michael G. Ford, Employee

Jesse Bernstein, AATA Board Chair

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ATTEST:/

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