July 25, 2014

To: Executive Board

Subject: **Second Amendment to Executive Director Employment Contract**

Recommendations

Authorize the Chair to execute the Second Amendment to the Executive Director Employment Agreement.

Analysis

After extensive consultation with the retirement advisor, retirement administrator, and human resources legal counsel, it has been determined that the Executive Directors employment agreement should be amended to conform to the the two types of retirement accounts used by Foothill Transit pursuant to the Internal Revenue Code.

A Section 401(a) plan is used to deposit any retirement contributions made by Foothill Transit for an employee. Pursuant to IRS regulations, Foothill Transit may currently contribute up to $52,000 per year to an employee's 401(a) account.

A Section 457(b) plan is used for employees' own contributions to their retirement account. Employees under the age of 50 may currently contribute up to $17,500 per year to a 457(b) account. This amount currently increases to $23,000 in the year that employee will have his or her 50th birthday.

The Foothill Transit Employee Compensation Program currently provides that Foothill Transit shall contribute seven percent of the employee's bi-weekly compensation to a defined contribution retirement plan. In addition, Foothill Transit will match 100 percent of employee contributions up to two percent of annual compensation to this retirement plan.

Executive Director's Retirement Account

The Executive Director's contract with the agency currently provides that Foothill Transit will provide contribute seven percent of his salary to a retirement account plus the maximum contribution that can be made under a Section 457 plan. However, the contract language specifies that the latter contribution be made *into* a Section 457 plan. If this is done, however, the Executive Director will not be able to personally contribute any funds towards his own retirement account because there would be no room available in the 457(b) Plan for any additional funds.

Instead, it is recommended that the Executive Director's retirement allowance, plus the funds equivalent to a maximum Section 457(b) contribution, both be deposited into the Section 401(a) account. The Section 457b account would then function in the same manner is it does for all other employees and allow the Executive Director to contribute the maximum amount of his own funds toward his retirement.

Executive Director's Vacation Cash Out

The amended employment agreement with the Executive Director indicates that he may cash out out up to 120 hours annually provided that he takes at least two *consecutive* weeks of vacation during the calendar year. Given the monthly nature of Foothill Transit Board meetings and his other obligations, it is difficult for the Executive Director to be away from the organization for two consecutive weeks. It is recommended that this language be changed to indicate that a minimum of two weeks of vacation must be taken in order to exercise the cash out option, but these would not have to be two consecutive weeks.

The proposed Second Amendment is attached as **Attachment A**. A redline version showing the wording changes to the existing contract is attached as **Attachment B**.

Budget Impact

There is no fiscal impact to Foothill Transit resulting from the proposed contract amendment.

Sincerely,

Darold Pieper
General Counsel

Attachments

ATTACHMENT A

Foothill Transit

Second Amendment

to

EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT

Between

Foothill Transit

and

Doran J. Barnes

dated

May 24, 2013

Second Amendment Date: July 25, 2014

TABLE OF CONTENTS

SECOND AMENDMENT

EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT
Between
Foothill Transit
And
Doran J. Barnes

1. Parties and Date

This Agreement is entered into as of July 25, 2014 ("Second Amendment Date"), by and between **Foothill Transit**, a California joint powers authority ("Foothill"), and **Doran J. Barnes**, an individual ("Barnes"). Foothill and Barnes are sometimes individually referred to as a "Party" and collectively as "Parties."

2. Recitals

A. Barnes is employed as the Executive Director of Foothill pursuant to an Executive Director Employment Agreement dated May 24, 2013 ("Employment Agreement").

B. The Parties desire to amendment the Employment Agreement to establish better parity between the Executive Director and the other employees of Foothill whose terms and conditions of employment were established after the execution of the Employment Agreement.

C. In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

3. Amendments

A. Article 5 (Security), Section A (Pensions), is amended to read as follows:

(1) Retirement Contributions

(a) Foothill shall contribute 7% of Barnes' base pay to Barnes' Section 401a Plan account unless and until such time, if ever, as Foothill may contract with the California Public Employees' Retirement System ("CalPERS") for retirement benefits, at which time Barnes retirement contributions will be governed by the CalPERS contract.

(2) Deferred Compensation

(a) Section 457 Plan

Foothill will further make, in equal proportionate amounts each pay period, an annual contribution to Barnes' Section 401a Plan account equal to the maximum contribution that would be allowed by the Internal Revenue Code and its related regulations (including any age-related and "catch-up" provisions that are now or may in the future become applicable) for a qualified Section 457b Plan; provided, however, that the contribution shall not cause the total contribution to exceed the annual Section 401a Plan limit.

(b) Internal Revenue Code Compliance

All provisions of this Section 5.A are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of any provision of this Section 5.A shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations, and the inability of Foothill to effectuate such requirements shall not constitute a breach of this Agreement.

B. Article 4 (Compensation), Section B (Basic Benefits), Paragraph (2) (Vacation Leave Allowance) is amended to read as follows:

(2) Vacation Leave Allowance

Barnes shall accrue paid leave credits at the rate of 240 hours per year effective upon the execution of this Agreement, and shall be credited with and initial balance of 120 hours at the Effective Date. Barnes shall not accrue not in excess of 600 hours of paid leave. Barnes may sell back up to 120 hours of accrued paid leave annually, provided that he has taken at least two weeks of vacation during the calendar year.

4. Reaffirmation of Other Terms

Except as modified or changed herein, all of the terms and provisions of the Employment Agreement shall remain in full force and effect.

5. Execution

The Parties have executed this Agreement as of the Second Amendment Date.

"Foothill"	"Barnes"
FOOTHILL TRANSIT, a California joint powers authority	**Doran J. Barnes**
By:____________________ DOUGLAS F. TESSITOR, CHAIR	By:____________________ DORAN J. BARNES

APPROVED AS TO FORM:
DAROLD PIEPER, GENERAL COUNSEL

By:____________________

ATTACHMENT B

5. SECURITY

A. Pensions

(1) Retirement Contributions

(a) Foothill shall contribute 7% of Barnes' base pay to ~~a~~ Barnes' Section 401a ~~defined contribution retirement program~~ Plan account unless and until such time, if ever, as Foothill may contract with the California Public Employees' Retirement System ("CalPERS") for retirement benefits, at which time Barnes retirement contributions will be governed by the CalPERS contract.

(2) Deferred Compensation

(a) Section 457 Plan

Foothill will further make, in equal proportionate amounts each pay period, an annual contribution to Barnes' Section 401a Plan account equal to the maximum contribution that would be allowed by the Internal Revenue Code and its related regulations (including any age-related and "catch-up" provisions that are now or may in the future become applicable) ~~into~~ for a qualified Section 457b Plan; provided, however, that the contribution shall not cause the total contribution to exceed the annual Section 401a Plan limit. ~~from one of Foothill approved plans as selected by Barnes. Amounts contributed under this section shall be to the benefit of the Executive Director in accordance with the Deferred Compensation Plan participation agreement.~~

(b) Internal Revenue Code Compliance

All provisions of this Section 5.A are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of any provision of this Section 5.A shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations, and the inability of Foothill to effectuate such requirements shall not constitute a breach of this Agreement.

"(2) Vacation Leave Allowance

Barnes shall accrue paid leave credits at the rate of 240 hours per year effective upon the execution of this Agreement, and shall be credited with and initial balance of 120 hours at the Effective Date. Barnes shall not accrue not in excess of 600 hours of paid leave. Barnes may sell back up to 120 hours of accrued paid leave annually, provided that he has taken at least two ~~consecutive~~ weeks of vacation during the calendar year."