

Metropolitan Transportation Commission

December 21, 2022

Agenda Item 7d - 23-0001

Performance Evaluations for Executive Director and General Counsel

Subject:

Approval of the Performance Evaluations for Executive Director and General Counsel, a contract extension for the Executive Director and a new 4-year contract for the General Counsel, and related adjustments to their salaries.

Background:

The Commission is asked to consider approval of employment contracts for the Executive Director and General Counsel as well as related amendments to the salary schedule. Executive Director Therese McMillan's employment contract expires on December 31, 2022. However, Ms. McMillan has agreed to continue her employment until February 1, 2023, prior to her previously announced retirement. General Counsel Kathleen Kane's employment agreement similarly terminates on December 31, 2022.

Following successful performance evaluations, MTC leadership recommends extending Ms. McMillan's employment agreement through February 1, 2023 and Ms. Kane's employment with the agency for a four year term. An amendment to Ms. McMillan's employment agreement is attached to this item, as is a new employment agreement based on the previously negotiated form for Ms. Kane.

On July 1, 2022, MTC staff other than the Executive Director and General Counsel received a 4.2% salary increase as approved by the Commission. In accordance with prior practice, it is recommended that the Commission approve the same percentage increase for Ms. McMillan and Ms. Kane, effective January 1, 2023 (RES 4369). An amended salary schedule reflecting the change is attached (RES 4369:Attachment A). With the increase, Ms. McMillan's annualized salary would be (\$428,604.80) and Ms. Kane's annualized salary would be (\$348,132.20).

Issues:

None identified.

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Recommendations:

Approve the following items:

- a. The employment contract amendment with Executive Director Therese McMillan through February 1, 2023 (\$428,604.80)
- b. The employment contract with General Counsel Kathleen Kane through December 31, 2025 (\$348,132.20).
- c. The changes to salary schedule to reflect increases to Executive Director and General Counsel salaries (RES-4369 and RES-4369:Attachment A).

Attachments:

- Attachment A: Employment Agreement with Therese McMillan dated March 1, 2019
- Attachment B: Proposed Amendment to Employment Agreement with Therese McMillan
- Attachment C: Proposed Employment Agreement with Kathleen Kane
- Attachment D: Resolution 4369 (as amended)
- Attachment E: Resolution 4369 Attachment A (as amended)

DocuSigned by:

Nalungo Conley

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Nalungo Conley,
Chief of Staff/Director of Administration and
Human Services Department
(on behalf of Chair Alfredo Pedroza)

**EMPLOYMENT AGREEMENT
BETWEEN THE
METROPOLITAN TRANSPORTATION COMMISSION AND
THERESE W. MCMILLAN**

This Agreement is made and entered into as of the 1st day of March 2019, by and between the Metropolitan Transportation Commission, a regional transportation planning agency established pursuant to California Government Code Sections 66500 *et seq.*, hereinafter referred to as “MTC” and Therese W. McMillan, hereinafter referred to as “Employee”, and hereinafter collectively referred to as the “Parties”.

WITNESSETH

WHEREAS, MTC’s current Executive Director has announced his intention to retire, effective February 28, 2019; and

WHEREAS, after the completion of a lengthy and thorough recruitment process, MTC, on January 23, 2019, appointed Therese W. McMillan to be MTC’s new Executive Director, effective March 1, 2019; and

WHEREAS, MTC and Employee desire to enter an agreement memorializing the terms of her employment as an Employee of MTC in the capacity of MTC’s Executive Director;

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the parties mutually agree as follows:

1. Duties of Employee

For the term of this Agreement, Employee shall serve on a full-time basis as Executive Director of MTC with such powers and duties as set forth under California Government Code Section 66505, and as may be assigned to her by MTC.

2. Compensation of Employee



- (a) Employee's salary in effect on March 1, 2019 shall be \$385,000.00 annually.
- (b) Subject to (1) the full and faithful performance by Employee of her duties, (2) the completion of an annual performance evaluation of Employee satisfactory to MTC (which shall occur in the month of November or December of each year of this Agreement, commencing November or December of 2019), and (3) the satisfactory completion of such other evaluations of Employee as MTC deems appropriate, Employee's salary shall be subsequently adjusted as follows:

Effective January 1 of each calendar year during the term of this Agreement, commencing January 1, 2020, the salary in effect in the immediately preceding December shall be increased by Bureau of Labor Statistics Consumer Price Index for the San Francisco Bay Area, immediately preceding October report, but not to exceed 2.8%, subject to the executive committee's approval as part of the annual performance evaluation. Except as provided in (c), Employee's non-salary employee benefits, effective on March 1, 2019, and for the term of this Agreement, shall be the same benefits provided to MTC executive employees, as set forth in MTC Resolution No. 4342 or as that resolution may be revised or superseded.

- (c) Employee shall commence employment on March 1, 2019 with vacation accrual of 120 hours (15 days). Such vacation accrual shall be available to Employee for immediate use with no waiting period. In accordance with MTC Resolution No. 4342, the maximum vacation accrual available to Employee commencing on March 1, 2019 is 200 hours annually (25 days).
- (d) Employee shall receive up to \$10,000 in reimbursable relocation expenses, as defined by the Internal Revenue Service, proper receipts and MTC expense reports to be provided by Employee to MTC.
- (e) Employee's salary and employee benefits shall be subject to such deductions and withholdings as may be required by law or authorized by Employee.

3. Term of Agreement

- (a) Except as provided for in Section 3(b) below, the term of this Agreement shall begin on March 1, 2019 and shall be completed on December 31, 2022. The term of this Agreement may be extended by mutual written agreement.
- (b) Notwithstanding Section 3(a) above, or any other provision of this Agreement, either MTC or Employee may terminate Employee's employment as Executive Director of MTC at any time prior to the expiration of the term of this Agreement, for any reason, upon one hundred eighty days' written notice. Neither MTC nor Employee need to show any cause to terminate Employee's employment with MTC. MTC's obligation in the event it terminates Employee's employment before the expiration of the term of this Agreement shall be determined solely under Section 4 below. In the event Employee chooses to terminate her employment before the end of the term of this Agreement, or chooses not to continue her employment with MTC after being offered an extension of this Agreement under comparable terms, Employee shall be entitled to only those termination benefits that are available to all MTC executive employees.

4. Severance

- (a) Other than by mutual agreement or because of Employee's death, disability incurred outside of carrying out the Employee's duties as Executive Director, or grave misconduct (as defined in Section 4(b) below), in the event MTC terminates Employee's employment before the expiration of the term of this Agreement, or in the event MTC chooses not to extend this Agreement beyond December 31, 2022 under comparable terms, MTC shall pay Employee a severance payment equal to six months salary, calculated by the annual salary in effect on the effective date of termination, plus a payment equal to six months medical group health payments, calculated by the actual monthly premium amount paid by MTC for Employee on the effective date of termination. Employee shall be responsible for all deductions and withholdings on the severance salary payment required by law or authorized by Employee. Employee shall be entitled also to such other termination

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benefits that may be available to all MTC executive employees. Employee agrees that in the event of early termination of this Agreement by MTC, or if MTC chooses not to extend this Agreement beyond December 31, 2022 under comparable terms, the payments pursuant to this Section shall constitute full and complete payment by MTC to Employee and that MTC shall thereafter have no further obligation to continue Employee's MTC employment.

(b) As used herein, "grave misconduct" means (1) fraud, theft, embezzlement, bribery or other similar serious acts in connection with Employee's position or duties; (2) conviction of any felony; or (3) the willful refusal to carry out the lawful directives, policies or procedures of MTC.

(c) Any dispute or controversy arising in connection with Section 4 of this Agreement, which cannot be resolved between the parties, shall be settled by final and binding arbitration. Unless otherwise agreed to by the parties, such arbitration shall be held in accordance with the rules of the American Arbitration Association then in effect. MTC shall be responsible for the costs of the arbitration. MTC and Employee shall each be responsible for its/her own attorneys' fees and costs. The judgment of the arbitrator shall be final and binding, and non-appealable as to the parties, their representatives, successors, and assigns, and shall be enforceable in all courts having jurisdiction.

5. Entire Agreement

Except for MTC Resolution No. 4342, its amendments, and succeeding resolutions as provided for in Section 2(b) above, this written Agreement constitutes the sole understanding of the parties hereto regarding Employee's employment with MTC. This Agreement may not be changed orally and may be amended or supplemented only by written agreement between the parties.

6. Choice of Law





All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of California applicable to agreements made and to be performed within the State.

IN WITNESS WHEREOF, this Agreement is approved by the parties as of the date and year first written above.

METROPOLITAN TRANSPORTATION
COMMISSION

EXECUTIVE DIRECTOR



Jake Mackenzie, ~~Chair~~ Chair


DocuSigned by:


Therese W. McMillan, Executive Director

1/21/2019

**AMENDMENT 1 TO THE
EMPLOYMENT AGREEMENT
BETWEEN THE
METROPOLITAN TRANSPORTATION COMMISSION AND
THERESE MCMILLAN**

An agreement was first made and entered into as of the 1st day of March 2019, by and between the Metropolitan Transportation Commission, a regional transportation planning agency established pursuant to California Government Code Sections 66500 *et seq.*, [“MTC”] and Therese McMillan [“McMillan”], collectively referred to as the “Parties”, for employment of McMillan as MTC’s Executive Director [“Agreement”]. That Agreement terminates on December 31, 2022. This Amendment 1 provides for an extension to the employment term, through February 1, 2023, and an increase in compensation commensurate with the increase received by other MTC staff on July 1, 2022. This Amendment 1 is executed on December _____, 2022. This agreement may be executed in counterparts and using electronic signatures.

WITNESSETH

WHEREAS, McMillan has served as MTC’s Executive Director since March 1, 2019;
and

WHEREAS, McMillan has received positive evaluations during her tenure at MTC; and

WHEREAS, in August 2022, McMillan announced her intent to retire as Executive Director; and

WHEREAS, the prior employment agreement terminates on December 31, 2022 and both McMillan and MTC wish to extend McMillan’s service as Executive Director until February 1, 2023, prior to her retirement;

NOW, THEREFORE, in consideration of the mutual covenants set forth in the Agreement and below, the parties mutually agree to amend the Agreement as follows:

1. Paragraph 2 – Compensation of Employee is amended:

Subparagraph (f) is added as follows:

(f) Employee’s salary effective January 1, 2023 shall be \$428,604.80 annually.

2. Paragraph 3 – Term of Agreement is amended:

Subparagraph (c) is added as follows:

(c) The term of this Agreement is extended to February 1, 2023.

All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, this Agreement is approved by the parties as of the date and year first written above.

METROPOLITAN TRANSPORTATION
COMMISSION

EXECUTIVE DIRECTOR

Alfredo Pedroza, Chair

Therese McMillan, Executive Director

**EMPLOYMENT AGREEMENT
BETWEEN THE
METROPOLITAN TRANSPORTATION COMMISSION AND
KATHLEEN KANE**

An agreement was first made and entered into as of the 30th day of November 2020, by and between the Metropolitan Transportation Commission, a regional transportation planning agency established pursuant to California Government Code Sections 66500 *et seq.*, [“MTC”] and Kathleen Kane [“Kane”], collectively referred to as the “Parties”, for employment of Kane as MTC’s General Counsel. That Agreement terminates at 11:59 pm on December 31, 2022. This Agreement provides for a new employment term, commencing on January 1, 2023, and is executed on December ____, 2022. This agreement may be executed in counterparts and using electronic signatures.

WITNESSETH

WHEREAS, Kane has served as MTC’s General Counsel since November 30, 2020; and

WHEREAS, Kane has received positive evaluations during her tenure at MTC; and

WHEREAS, the prior employment agreement terminates on December 31, 2022 and both Kane and MTC wish to extend Kane’s service as General Counsel under the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the parties mutually agree as follows:

1. Duties of Employee

For the term of this Agreement, Kane shall serve on a full-time basis as General Counsel of MTC with such powers and duties as may be assigned to her by MTC.

2. Compensation of Employee

(a) Commencing on January 1, 2023, Kane’s salary shall be \$348,132.20 annually. This amount represents application of the 4.2% cost of living increase provided to other agency staff on July 1, 2022, to Kane’s 2022 annual salary.

(b) Contingent on (1) the full and faithful performance by Kane of her duties, and (2) the completion of an annual performance evaluation of Kane satisfactory to MTC, Kane’s salary shall be subsequently adjusted as follows:

On January 1 of each calendar year during the term of this Agreement, commencing January 1, 2024, the salary in effect in the immediately preceding December shall be increased by the percentage (or amount) provided to the management staff of MTC per the Memorandum of Understanding then in effect. MTC may consider additional market or merit adjustments to Kane's compensation during the term of this Agreement. Any increase in compensation must be approved by MTC. Kane's non-salary employee benefits shall be the same as those provided to MTC executive employees, as set forth in an applicable MOU and MTC Resolution No. 4342 or as that resolution may be revised or superseded. Kane's existing benefits, accrual rates and leave balances under the prior employment agreement shall carry forward into the term of this Agreement.

- (c) Kane's salary and employee benefits shall be subject to such deductions and withholdings as may be required by law or authorized by Employee.

3. Term of Agreement

- (a) Except as provided for in Section 3(b) below, the term of this Agreement shall begin on January 1, 2023, and shall be completed on December 31, 2026.
- (b) Notwithstanding Section 3(a) above, or any other provision of this Agreement, MTC may terminate Kane's employment as General Counsel at any time prior to the expiration of the term of this Agreement, for any reason, upon ninety days' written notice. Kane may also terminate her employment upon written notice to MTC and shall endeavor to provide ninety days' notice or as much as is practicable under the circumstances. Neither MTC nor Kane need to show any cause to terminate Kane's employment with MTC. MTC's obligation in the event it terminates Kane's employment before the expiration of the term of this Agreement shall be determined under Section 4 below. In the event Kane chooses to terminate her employment before the end of the term of this Agreement or chooses not to continue her employment with MTC after being offered an extension of this Agreement under comparable terms, Kane shall be entitled to only those termination benefits that are available to all MTC executive employees.

4. Severance

- (a) Other than by mutual agreement or because of Kane's death, disability incurred outside of carrying out the duties as General Counsel, or grave misconduct (as defined in Section 4(b) below), in the event MTC terminates Kane's employment before the expiration of the term of this Agreement, or in the event MTC chooses not to extend this Agreement beyond December 31, 2026 under comparable terms, MTC shall pay Kane a severance payment equal to three months' salary, calculated by the annual salary in effect on the effective date of termination, plus a payment equal to three months medical group health payments, calculated by the actual monthly

premium amount paid by MTC for Kane on the effective date of termination. Kane shall be entitled to such other termination benefits that may be available to all MTC executive employees. Kane agrees that in the event of early termination of this Agreement by MTC, or if MTC chooses not to extend this Agreement beyond December 31, 2026 under comparable terms, the payments pursuant to this Section shall constitute full and complete payment by MTC to Kane and that MTC shall thereafter have no further obligation to continue Kane's MTC employment. This paragraph does not constitute a waiver by Kane of any claims under applicable laws relating to employment discrimination or whistleblower protections.

(b) As used herein, "grave misconduct" means (1) fraud, theft, embezzlement, bribery or other similar serious acts in connection with Kane's position or duties; (2) conviction of any felony; or (3) the willful refusal to carry out the lawful directives, policies or procedures of MTC. If MTC determines to terminate Kane's employment for alleged grave misconduct, MTC must provide a description of the grounds in writing to Kane and Kane is entitled to request a public hearing on the matter before the Commission, at which witness testimony and other evidence shall be considered by the Commission.

5. Entire Agreement

Except for MTC Resolution No. 4342, its amendments and succeeding resolutions as provided for in Section 2(b) above, this written Agreement constitutes the sole understanding of the parties regarding Kane's employment with MTC. This Agreement may not be changed orally and may be amended or supplemented only by written agreement between the parties.

6. Choice of Law

All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of California applicable to agreements made and to be performed within the State.

IN WITNESS WHEREOF, this Agreement is approved by the parties as of the date and year first written above.

METROPOLITAN TRANSPORTATION
COMMISSION

GENERAL COUNSEL

Alfredo Pedroza, Chair

Kathleen Kane, General Counsel

Attachment D

Date: March 27, 2019
W.I.: 1153
Referred by: Administration
Revised: 2/23/2022-C
Revised: 12/21/2022-C

ABSTRACT

MTC Resolution No. 4369, Revised

This resolution sets forth the MTC agency pay schedules for the MTC Executive Director and General Counsel from March 1, 2019, through and including December 31, 2019.

This resolution was revised February 23, 2022, to update the pay schedules for the MTC Executive Director and General Counsel from January 1, 2022, through and including December 31, 2022.

This resolution was revised December 21, 2022, to update the pay schedules for the MTC Executive Director and General Counsel from January 1, 2023, through and including December 31, 2023.

Date: March 27, 2019
W.I.: 1153
Referred by: Administration Committee

Re: MTC Executive Director Pay Schedule from March 1, 2019 through December 31, 2019

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 4369

WHEREAS, the Metropolitan Transportation Commission (MTC) is the Regional Transportation Planning Authority for the San Francisco Bay Area pursuant to Government Code §§ 66500 *et seq.*; and

WHEREAS, the MTC has approved employment agreements from March 1, 2019 through and including February 1, 2023 for the Executive Director, and from November 30, 2020 through and including December 31, 2026 for the General Counsel; and

WHEREAS, the MTC contracts with the California Public Employees Retirement System (CalPERS) to provide retirement benefits for its employees; and

WHEREAS, CalPERS uses the MTC's pay schedules to calculate retirement benefits earned by the MTC's employees; and

WHEREAS, the MTC as a contracting public employer is adhering to the California Code of Regulations, Title 2, Section 570.5, which sets forth reporting regulations for CalPERS member agencies to have a duly approved and adopted publicly available pay schedule; now therefore be it

RESOLVED, that the pay schedule for MTC's Executive Director and General Counsel effective January 1, 2023 through and including December 31, 2023 shall be set forth in Attachment A to this resolution, attached hereto and incorporated herein as though set forth at length; and be it further

RESOLVED, that the attached pay schedule will be posted at MTC's offices or immediately accessible for public review during normal business hours or posted on MTC's internet site.

METROPOLITAN TRANSPORTATION COMMISSION


Chair

The above resolution was entered
into by the Metropolitan Transportation
Commission at a regular meeting of the
Commission held in San Francisco, California
on March 27, 2019.

Attachment E

Date: March 27, 2019

W.I.: 1153

Referred by: Administration Committee

Revised: 2/23/2022-C

Revised: 12/21/2022-C

Attachment A

MTC Resolution No. 4369

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**Pay Schedule for MTC Executive Director & General Counsel
Calendar Year 2023, Effective January 1, 2023**

CLASS/POSITION	GRADE	RATE	PAY TYPE
EXECUTIVE DIRECTOR	X/1	\$206.06	HOURLY BASE RATE
		\$16,484.80	BI-WEEKLY
		\$35,717.07	MONTHLY
		\$428,604.80	ANNUAL
Executive Director			
GENERAL COUNSEL	X/2	\$167.37	HOURLY BASE RATE
		\$13,389.70	BI-WEEKLY
		\$29,011.02	MONTHLY
		\$348,132.20	ANNUAL
General Counsel			