

# Metropolitan Transportation Commission

February 22, 2023

Agenda Item 7c - 23-0291

## Appointment of Executive Director and Approval of Employment Agreement

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**Subject:**

Appointment of Andrew B. Fremier as Executive Director, with approval of his employment agreement.

**Background:**

MTC's prior Executive Director announced her retirement in August 2022. Following a national search and interviews by both the ABAG Administrative Committee and the Commission, the Commission identified Andrew B. Fremier as the preferred candidate and delegated authority to negotiate an employment agreement to the Chair and Vice Chair. The Chair and Vice Chair have confirmed that negotiations were concluded within the authority conferred on them by the Commission and directed presentation of the attached employment agreement for approval. Upon approval of this item, Mr. Fremier will take office as Executive Director immediately and his compensation and benefits shall be adjusted to reflect the terms of his employment agreement.

**Issues:**

None.

**Recommended Action:**

Action: By motion, appoint Andrew B. Fremier as MTC Executive Director and approve his employment agreement in the form attached.

**Attachment:**

Employment Agreement with Andrew B. Fremier

DocuSigned by:

*Kathleen Kane*

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Kathleen Kane, General Counsel

**EMPLOYMENT AGREEMENT**  
**BETWEEN THE**  
**METROPOLITAN TRANSPORTATION COMMISSION AND**  
**ANDREW B. FREMIER**

This agreement is made and entered into as of the 22nd day of February 2023, by and between the Metropolitan Transportation Commission, a regional transportation planning agency established pursuant to California Government Code Sections 66500 *et seq.*, ["MTC"] and Andrew B. Fremier ["Fremier"], collectively referred to as the "Parties", for employment of Fremier as MTC's Executive Director. This agreement may be executed in counterparts and using electronic signatures.

WITNESSETH

WHEREAS, MTC conducted a nationwide search for a new Executive Director upon the announcement of the retirement of the prior incumbent; and

WHEREAS, Fremier was selected as the preferred candidate during that search process; and

WHEREAS, Fremier has been employed by MTC since 2005, most recently as Deputy 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, Fremier shall serve on a full-time basis as Executive Director of MTC with such powers and duties as may be assigned to him by MTC.

2. Compensation of Employee

(a) Commencing on February 22, 2023, Fremier's salary shall be \$380,000 annually.

(b) Contingent on (1) the full and faithful performance by Fremier of his duties, and (2) the completion of an annual performance evaluation of Fremier satisfactory to MTC, Fremier'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 Fremier's compensation during the term of this Agreement, up to a cap of six percent over the salary level then in effect. Any increase in compensation must be approved by MTC. Fremier'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. Fremier's existing benefits, accrual rates and leave balances shall carry forward into the term of this Agreement.

- (c) Fremier'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 February 22, 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 Fremier's employment at any time prior to the expiration of the term of this Agreement, for any reason, upon ninety days' written notice. Fremier may also terminate his 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 Fremier need to show any cause to terminate Fremier's employment with MTC. MTC's obligation in the event it terminates Fremier's employment before the expiration of the term of this Agreement shall be determined under Section 4 below. In the event Fremier chooses to terminate his employment before the end of the term of this Agreement or chooses not to continue his employment with MTC after being offered an extension of this Agreement under comparable terms, Fremier 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 Fremier's death, disability incurred outside of carrying out the duties as Executive Director, or grave misconduct (as defined in Section 4(b) below), in the event MTC terminates Fremier'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 Fremier 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 three months medical group health payments, calculated by the actual monthly premium amount paid by MTC for Fremier on the effective date of termination. Fremier shall be entitled to such other termination benefits that may be available to all

MTC executive employees. Fremier 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 Fremier and that MTC shall thereafter have no further obligation to continue Fremier's MTC employment. This paragraph does not constitute a waiver by Fremier 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 Fremier'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 Fremier's employment for alleged grave misconduct, MTC must provide a description of the grounds in writing to Fremier and Fremier 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. Additional Leave

In addition to the leaves and benefits generally available to executive-level employees, Fremier shall be granted an additional eight days of "Personal Business" leave for each calendar year of this Agreement, including 2023. The additional "Personal Business" leave shall expire at the end of each calendar year if not used prior to December 31.

6. 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 Fremier's employment with MTC. This Agreement may not be changed orally and may be amended or supplemented only by written agreement between the parties.

7. 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

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Alfredo Pedroza, Chair

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Andrew B. Fremier, Executive Director