

Metrorail Safety Commission
May 8, 2018

Agenda Item # 7A – Consent Agenda Action

Adoption of Resolution to issue an employment offer letter and contract to MSC CEO

Background	After an exhaustive national search for candidates for the position of Chief Executive Officer (CEO) of the Metrorail Safety Commission (MSC) and extensive vetting of candidate resumes resulting in interviews with the top candidates followed by thoughtful discussions and deliberation by the MSC Board, the MSC Board negotiated a salary, employee benefits and a bonus with the top candidate for the MSC CEO position and unanimously approved to recommend David L. Mayer as the top candidate for the MSC CEO position during the April 24 th MSC Board meeting.
Issues	None
Staff	
Recommendation	Review and adopt Resolution - MSC 06-2018 authorizing the MSC Board Chair to issue an employment offer letter and contract to MSC CEO David L. Mayer

MSC R06-2018
May 8, 2018

WASHINGTON METRORAIL SAFETY COMMISSION
777 North Capitol Street, N.E.
Washington, D.C. 20002

RESOLUTION APPROVING
THE MSC CHAIRMAN TO ISSUE AN EMPLOYMENT OFFER LETTER
AND CONTRACT TO THE MSC CEO DAVID L. MAYER

WHEREAS, an exhaustive national search for candidates for the position of Chief Executive Officer (CEO) of the Metrorail Safety Commission (MSC) commenced in September 2017;

WHEREAS, the candidate resumes were reviewed and vetted through State Safety Oversight (SSO) policy representatives from the District of Columbia and the states of Maryland and Virginia in order to move forward on the establishment of a new State Safety Oversight Agency (SSOA) SSOA called the Metro Safety Commission (“MSC”); and

WHEREAS, the MSC Board of Commissioners carefully reviewed resumes of at least a dozen qualified candidates for the position of Chief Executive Officer that had extensive transportation safety experience, were well versed in the areas of leadership, public relations, safety, operations and regulatory compliance,

WHEREAS, the MSC Board of Commissioners conducted lengthy interviews with four of the top candidates and held thoughtful discussions and deliberation,

WHEREAS, the MSC Board negotiated a salary, employee benefits and a bonus with the top candidate for the MSC CEO position;

WHEREAS, the Metrorail Safety Commission (MSC) Board at its regular meeting on April 24, 2018, unanimously selected David L. Mayer, PhD, as the MSC’s Chief Executive Officer (CEO).

NOW, THEREFORE, BE IT RESOLVED THAT THE METRORAIL SAFETY COMMISSION approves the substantially final Employment Agreement with Dr. Mayer, subject to confirmation by the parties, and authorizes the MSC to enter into the Employment Agreement to engage Dr. Mayer as the CEO of the MSC.

**EMPLOYMENT AGREEMENT
CHIEF EXECUTIVE OFFICER**

This Employment Agreement (“Agreement”) is entered into as of this ___ day of May, 2018, by and between the Metrorail Safety Commission (“MSC”) and David L. Mayer. The Chairman of the Metrorail Safety Commission Board of Directors (“Board”) has been authorized by Board action to execute this Agreement on behalf of the MSC.

In consideration of the mutual agreements set forth below, the parties hereby contract as follows:

I. SCOPE OF EMPLOYMENT AND DUTIES

- A. The MSC agrees to employ David L. Mayer in the position of Chief Executive Officer (“CEO”) to perform the functions and duties of that office as may be defined and prescribed from time to time by the Board.
- B. The Board shall establish performance objectives to be met by the CEO for each year of this Agreement. Such objectives will be established as part of an annual evaluation process, which shall include an annual meeting at which the CEO’s performance for the prior year will be discussed.
- C. The CEO agrees to remain in the exclusive employ of the MSC during the time he receives any monetary payment or any other benefit under this Agreement.
- D. The CEO shall faithfully and industriously assume and perform with skill, care, diligence and attention all responsibilities and duties connected with his employment on behalf of the MSC.
- E. The CEO shall have no authority to enter into any contracts binding upon the MSC, or to deliberately create any obligations on the part of the MSC, except as may be specifically authorized by the Board.

II. TERM OF EMPLOYMENT

- A. Term
 - 1. The term of this Agreement shall commence and be effective on June 4, 2018 (“Effective Date”), and shall continue indefinitely from the date of commencement unless terminated as set forth herein.
 - 2. Calculation of retirement compensation benefits paid by the MSC begins on the date of employment. The CEO is eligible for the same benefits that other employees have, including retirement and deferred compensation as set forth at Article IV below, and may be entitled to additional benefits as set out in the terms of this Agreement.

- B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Board or the CEO to terminate this Agreement at any time, subject to the provisions set forth in Article V of this Agreement.
- C. Except as otherwise expressly provided herein, the CEO shall have no right to any further benefits or payments of any kind upon his resignation, death, or termination of this Agreement for any reason.
- D. This Agreement shall be brought before the Board for review annually at the same meeting set for consideration of the MSC's annual budget at which time the CEO's salary will be reviewed.

III. COMPENSATION AND BENEFITS

A. Base Salary and Bonus

1. The MSC shall pay the CEO an annual base salary in the amount of Two Hundred Thirty Thousand Dollars (\$230,000) for a twelve (12) month period, payable ratably at the MSC's normal payroll periods, and subject to all appropriate federal, state and local tax withholding ("Base Salary"). The CEO's Base Salary will be reviewed each year and increases will be subject to the Board's assessment of the CEO's achievement of performance goals. A first year bonus of Thirty Thousand Dollars (\$30,000) shall be available to the CEO upon successful certification of the MSC's State Safety Oversight Program. This position is exempt and is not entitled to overtime pay.
2. The Board shall have sole discretion to determine whether to award a bonus and, if so, the amount of such bonus, to the CEO in years subsequent to the CEO's first year of service.

B. Paid Time Off

The CEO shall be entitled to paid time off ("PTO") of twenty-one (21) days per twelve (12) month period, which shall carry over to the following fiscal year as determined by MSC PTO Accrual Policies approved by the Board. The maximum PTO accrual, which may be accumulated by the CEO, is subject to the MSC PTO policy approved by the Board. The MSC will pay out any unused accrual of PTO in accordance with MSC PTO policies adopted by the Board upon the CEO's resignation, death or termination of this Agreement for any reason, as provided hereunder.

C. Medical/Dental/Vision Coverage

The CEO will be eligible to participate in the MSC's group health insurance plan offered to all employees. Medical benefits will be based on the Board's adoption and on-going renewal of a medical plan and the CEO will be

responsible for paying 20% of the healthcare premium of the plan across all tiers. Both Dental and Vision plans will also be available to the CEO and all other MSC employees as adopted by the Board and 20% of the premiums will be paid by the CEO across all tiers.

D. Flexible Spending Account

The MSC will offer a Flexible Spending Account (FSA) to the CEO up to the allowable federal limits and the CEO is responsible for making contributions to the account. There will be no contributions from the MSC.

E. Qualified Transportation Fringe Benefit

The MSC will provide the CEO with up to \$260 per month in qualified transportation fringe benefits which can be used for commuting to and from work as well as for parking at commuter rail or subway stations. The amount of the monthly benefit may be adjusted based on changes to federal law and at the discretion of the Board.

F. Life Insurance

The MSC will pay the premium for a term life insurance policy provided to the CEO which policy amount shall be 1.5 times the annual salary with additional Accidental and Dismemberment (“ADD”) coverage of an equal amount. The CEO will also be eligible to participate in additional supplemental life insurance and additional ADD at 1 times the annual salary at the employee’s expense.

G. Disability Insurance

The CEO will be eligible to participate in the MSC short term and long term group disability insurance programs as then-currently offered to MSC employees.

H. Employee Assistance Program (“EAP”)

During the course of the CEO’s employment, the CEO will be eligible to participate in the MSC’s EAP program consisting of triage counseling, wellness benefits, and work-life balance assistance.

I. Training/Tuition Assistance

The CEO is eligible to receive technical training, Skillsoft and Federal Transit Administration (“FTA”) safety certification training, and such other training as the Board may determine. Technical training with regard to the required FTA Transit Safety and Security Program certification shall lead to successful certification no later than February 28, 2019. All training expenses, including reasonable travel expenses, will be paid by the MSC.

IV. RETIREMENT AND DEFERRED COMPENSATION

- A. The CEO is eligible for full participation in the MSC deferred compensation plan offered to all MSC employees, in accordance with the terms of such plan.
- B. In accordance with the terms of the MSC's deferred compensation program and applicable tax law, (a) the MSC will provide an employer contribution on behalf of the CEO which will be a one to one match of funds the CEO contributes to the retirement benefit program, of up to six percent (6%) of the CEO's annual base salary, and (b) the CEO may request such contribution at any time within the permissible schedule.

V. TERMINATION AND SEVERANCE BENEFITS

- A. Severance Benefits
 - 1. Termination
 - a. The Board may terminate the CEO's employment and this Agreement at any time in its sole discretion, with or without Cause (as defined at Section V.A.1.c below). If the CEO's employment is terminated by the Board other than for Cause, the MSC shall, for a period of six (6) months following the effective date of said termination ("Severance Period") provide the following compensation and benefits (collectively, "Severance Benefits"), subject to the requirements of Section V.A.4:
 - (i) Base salary
 - (ii) Employer's share of health, dental, and vision premiums
 - b. If, during the Severance Period, the CEO elects continuation of medical insurance coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), upon submission of a copy of such election to the MSC, the MSC will provide reimbursement for medical health insurance up to the employer portion of the health benefit premiums for the CEO (as determined by the percentage paid by the MSC at the termination date for the CEO's health insurance benefits). After the Severance Period, if the CEO elects continuation of his health coverage under COBRA, the entire amount of the COBRA premiums shall be the CEO's sole cost and expense.
 - c. No other benefits otherwise available to the CEO under this Agreement shall be provided upon termination for Cause,

including payment of any accrued PTO or for any prospective benefits or compensation of any sort.

- d. For the purposes of this Agreement, the term “Cause” means (i) gross neglect, (ii) malfeasance, (iii) breach of the confidentiality provision of this Agreement, (iv) conviction of or pleading no contest to an illegal act, (v) any proven act of dishonesty or self-dealing regardless of whether such act gives rise to a violation of any applicable criminal statute, (vi) willful failure to comply with a directive of the Board, (vii) an ethical violation of MSC policy not cured within the cure period set forth at Article XVIII below, or (viii) a determination by the Board that the CEO has failed in his performance of his duties under this Agreement, following notice and the opportunity to cure as set forth at Article XVIII below, to a degree that warrants termination .
- e. There will be no severance pay for the CEO in the event of termination for Cause.

2. Resignation with Good Reason

In the event the CEO resigns following the refusal of the Board to comply with any provision of this Agreement benefitting the CEO, after the CEO provides thirty (30) days’ written notice to the Board of such non-compliance and an additional thirty (30) days to cure, then the CEO will be deemed to have resigned with “Good Reason,” and he shall be entitled to the Severance Benefits provided hereunder. If the Board does not provide an adequate cure for any such non-compliance, the CEO’s effective date of termination of this Agreement shall be sixty (60) days after the date of the notice the CEO provided to the MSC. The MSC shall pay to the CEO any accumulated PTO benefits (with limits set out in Section III.B), within two weeks of the effective date of his resignation.

3. Voluntary Resignation without Good Reason

In the event the CEO voluntarily resigns his position with the MSC without Good Reason, the MSC shall pay to the CEO any accumulated PTO benefits (with limits set out in Section III.B), within two weeks of the effective date of his resignation; provided, however, that no such payment shall be made if the CEO fails to give at least three (3) months’ advance notice of his resignation. The MSC shall not be liable for any other compensation or benefits of any sort if the CEO resigns voluntarily.

4. General Release

The payment of Severance Benefits is subject to the CEO’s execution of a general release satisfactory to the MSC.

VI. OTHER BENEFITS

A. Travel Expenses

The MSC will pay for the CEO's business-related travel costs according to the terms of the MSC travel policy and subject to the Board's approval.

B. Electronic Support

The MSC will, at its expense, provide to the CEO all reasonable business tools to support the CEO's execution of his duties. This will include a cell-phone for business related matters and a laptop or other electronic devices needed to carry out the mission of the MSC.

VII. MSC CONFIDENTIAL INFORMATION AND TRADE SECRETS

A. Confidential Information and Trade Secrets. The CEO has access to certain information confidential to the MSC. The MSC's confidential information includes, but is not limited to, information relating to the MSC, to investigations and resulting recommendations made in the ordinary course of MSC's business, and to MSC's , employee trade secrets, vendors/contractors, finances, operations, products, reports and findings, and other business/organization information.

1. With respect to the MSC Confidential Information, the CEO will: (a) treat as confidential and use a reasonable degree of care to protect such confidential information; and (b) only use the MSC's Confidential Information in connection with his business dealings with the MSC, but may with prior written authorization from the Board disclose MSC Confidential Information to third parties if such third parties have a need to know and agree to be bound by the terms of this Article VII.
2. Information shall not be considered MSC's Confidential Information for purposes of Section VII.A above if: (a) it is in the public domain at the time of disclosure, or enters the public domain without breach of this Agreement; (b) it is obtained by the CEO after termination, rescission, non-renewal or expiration of this Agreement in good faith from a third party not in connection with any MSC or MSC-related activities and under no obligation of secrecy to the CEO; or (c) it is the subject of a court or government agency order to disclose, provided the CEO gives prompt notice to the MSC to allow the MSC to contest such order.
3. The obligations set forth in this Article VII survive termination, rescission, non-renewal or expiration of this Agreement.

4. The CEO is prohibited from engaging in other employment and activities that would interfere with the performance of his duties, and is further prohibited from engaging in other employment or activities that would represent a conflict of interest.
- B. Perfection of Organization's Name Rights. Both while engaged by the MSC and afterward, the CEO agrees to execute and deliver, at the MSC's expense, any documents that the MSC may reasonably consider necessary or helpful to: (i) effectuate, perfect, enforce, defend, obtain, and maintain the MSC's rights under this Agreement, (ii) assure the originality of all Inventions, obtain or maintain patents, trademarks, copyrights or any other registrations, whether during the prosecution of applications therefore or during the conduct of an interference, opposition, litigation or other matter (all related expenses to be borne by the MSC), and (iii) vest ownership in, transfer and convey, by assignment or otherwise, all right, title and interest in and to such items to the MSC.
 - C. Immunity from Liability for Confidential Disclosure of a Trade Secret to the Government or in a Court Filing. The MSC shall not initiate any criminal charges or bring civil action alleging of a violation of U.S. Federal or State trade secret law for the disclosure of a trade secret that is made (i)(a) in confidence to a U.S. Federal, State or local government official, either directly or indirectly, or to an attorney, and (b) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
 - D. Use of Trade Secret Information in Anti-Retaliation on Lawsuit. If the CEO files a lawsuit against the MSC for retaliation by the MSC for reporting by the CEO of a suspected violation of law, the CEO may disclose the trade secret to the CEO's attorney and use the trade secret information in the court proceeding, if the CEO (a) files any document containing the trade secret under seal; and (b) does not disclose the trade secret, except pursuant to court order.

VIII. COMPANY PROPERTY

- A. The CEO understands that he may be assigned various items of the MSC's property and equipment to help the CEO carry out his responsibilities under this Agreement, including, but not limited to, keys, credit cards, access cards, MSC Confidential Information, cell phones, laptops, computer related and other office equipment, and/or other computer or communication devices, automobile, or money (collectively, "Agency Property"). When such Agency Property is issued, the CEO will formally acknowledge receipt of it when requested to do so and will take all reasonable precautions and actions necessary to safeguard and maintain Agency Property in normal operating condition.
- B. On or before the CEO's termination or resignation of employment from the

MSC for any reason, or upon the request of the MSC, the CEO shall immediately return all Agency Property to the MSC that the CEO has been issued or, to the extent within the CEO's possession or control, that otherwise belongs to the MSC, and the MSC will withhold the CEO's final reimbursement of expenses until the MSC receives the return of all requested Agency Property.

IX. RELOCATION ALLOWANCE

- A. The MSC will pay up to Ten Thousand Dollars (\$10,000) toward relocation expenses, conditioned upon the CEO soliciting estimates from more than one company for relocation, and the Board Chairman's review and acceptance of the CEO's selected company. The Relocation Allowance may be nontaxable to the extent it conforms to the requirements set forth in applicable IRS guidelines for such qualified moving expenses. In the event the CEO resigns from his employment with the MSC without Good Reason during the first twelve (12) months of his employment, he shall repay the MSC the full amount of the Relocation Allowance within thirty (30) days from the date of termination of this Agreement.
- B. The MSC will pay for the CEO's reasonable travel expenses, in accordance with the MSC's travel policy, incurred for two (2) trips to the Washington, D.C., region between April 24, 2018 and June 4, 2018, for housing searches.

X. CONDUCT

During the time the CEO receives any monetary payment or any other benefit under this Agreement, the CEO shall continue to follow the professional and personal standards of conduct consistent with the standards of conduct in the Board's adopted employee Code of Conduct, and shall accept no other compensation or other employment without the specific consent of the Board.

XI. ANNUAL MEDICAL EXAM

The CEO is entitled to have a comprehensive medical examination by a physician of his choice. The examination shall include drug and alcohol screening in accordance with the procedures set forth in FTA regulations at 49 C.F.R. part 655, subpart F, or any successor regulation. The CEO shall cause his physician to promptly provide verified drug and alcohol test results, whether positive or negative, to the Chairman of the Board and MSC Human Resources Director. All expenses incurred in the examination, if not covered by the medical benefit plan offered by the MSC, shall be paid by the MSC.

XII. EMPLOYEE COOPERATION

Upon notice of intent to terminate this Agreement for any reason, the CEO shall fully

cooperate with the MSC in all matters relating to the winding up of the CEO's pending work on behalf of the MSC and the orderly transfer of any such pending work to such other employees of the MSC as may be designated by the Board. To that end, the MSC shall be entitled to such full-time or part-time services of the CEO as the MSC may reasonably require during all or any part of the period from the time of giving any notice of termination, if any, until the effective date of such termination. While employed, the CEO further agrees to cooperate with and provide assistance to the MSC and its legal counsel in connection with any litigation to the extent that the cooperation does not interfere with the CEO's individual employee/employment rights afforded by policy or law (including arbitration or administrative hearings) or investigation affecting the MSC in which (in the reasonable judgment of the Board) the CEO's assistance or cooperation is needed. Any assistance upon separation requires the mutual consent of both parties. The MSC agrees to provide legal representation for the CEO if he is named in a lawsuit or is a necessary witness in litigation commencing after termination of this Agreement.

XIII. APPLICABLE LAW

This Agreement shall be construed in accordance with and governed by the laws of the District of Columbia.

XIV. WHOLE AGREEMENT

This Agreement is complete and sets forth the entire understanding and agreement of the parties hereto in respect of the matters contained herein, embodies all prior discussions, correspondence, and this Agreement may not be altered, modified, canceled, or terminated in any way except upon the agreement of the parties hereto in writing.

XV. SEVERABLE CLAUSES

If any part of this Agreement is found by any court to be void, the remainder thereof shall be and remain enforceable to the extent that is equitable.

XVI. WAIVER

No waiver by either party hereto of any condition or provision of this Agreement to be performed by the other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. Waiver by either party hereto of any breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof or as a waiver by any other person.

XVII. COUNTERPARTS

For the purpose of facilitating the execution of this Agreement and for other purposes, this Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. A signature of a party by facsimile or other electronic transmission (including, without limitation, a .pdf copy sent by e-mail) shall be deemed to constitute an original and fully effective signature of such party.

XVIII. MATERIAL BREACH

In the event of a material breach by either party of this Agreement, if the breaching party fails to cure the breach after seven (7) days' written notice of the breach and the right to cure by the non-breaching party, the non-breaching party may take any actions available to that party in law or equity.

[Remainder of the page intentionally blank; signature page follows.]

IN WITNESS WHEREOF, by Resolution, the Board has caused this Employment Agreement with the CEO to be signed and executed on its behalf by its Chairman, and David L. Mayer has signed and executed this Employment Agreement.

Employee

By: _____
David L. Mayer

Date: _____

Metrorail Safety Commission

By: _____
Christopher Hart, Chairman, Metrorail Safety Commission

Date: _____

METRORAIL SAFETY COMMISSION

May 7, 2018

David L. Mayer
255 Huguenot St., Apt. 2413
New Rochelle, New York 10801

Dear Dr. Mayer:

I am happy to confirm our offer to you of employment as the Chief Executive Officer for the Metrorail Safety Commission (MSC). As the highest-ranking employee of the Commission this position carries a starting annual salary of \$230,000. There will be an inaugural year bonus payment of \$30,000 subject to securing the Federal Transit Administration's (FTA) certification of the State Safety Oversight Program under which the MSC would operate as the State Safety Oversight Agency for the Washington Metropolitan Area Transit Authority, by FTA's deadline (April 15, 2019). The MSC Board will re-evaluate your performance in this position after each year to consider possible additional salary increases and/or bonuses for you based on your performance results and consistent with the Commission's policies.

Please note that this offer is contingent upon your meeting other requirements such as I-9 Eligibility to Work and signing this offer letter along with the attached Employment Agreement by May 15, 2018.

I believe you are generally familiar with the excellent program of fringe benefits MSC has adopted for its employees, including 21 days of paid time off plus ten holidays, basic health insurance, dental and vision insurance, short and long-term disability income insurance, a retirement plan with the MSC providing a one to one match of your retirement plan contribution up to six percent of your base pay, and transit subsidy (not to exceed \$260 per month). For your reference, attached is a copy of the summary of employee benefits adopted by the MSC.

The MSC has identified its general office hours as 9:00 a.m. to 5:00 p.m., although employees' service may extend beyond these times when events associated with the MSC's safety oversight functions require time beyond core hours. Since your position is exempt, you are not entitled to overtime pay.

We look forward to having you join us in this position on June 4, 2018. Please sign and date this letter and return it to the attention of Kanathur N. Srikanth, 777 N Capitol Street, N.E., Suite 300, Washington, D.C. 20002.

Sincerely,

Christopher Hart
Chairman, Metrorail Safety Commission

I accept the terms of employment noted above. _____

Date: _____