

**EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF MADISON
AND
MICK RUSCH**

This Agreement made this 5th day of September, 2023, by and between the City of Madison, a municipal corporation of Dane County, Wisconsin (hereafter, the "City") and Michael (Mick) Rusch, a natural person (hereafter, the "Transit Chief Development Officer" or "Transit CDO").

WITNESSETH;

WHEREAS, the City desires to hire the Transit CDO as an employee of the City of Madison to perform the services described herein on its sole behalf as the CDO of Metro Transit, and

WHEREAS, the Transit CDO represents that they possesses the necessary knowledge, skill, abilities and experience to perform such services and is willing to perform such services as the Transit CDO, and

WHEREAS, the Transit CDO has been duly selected and has been confirmed for appointment to the position of CDO of Metro Transit by the Common Council of the City of Madison on September 5, 2023, and

WHEREAS, the Common Council of the City has authorized the execution of the Agreement by Resolution No. RES-23-.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and agreements contained in this document, the receipt and sufficiency of which is mutually acknowledged, the parties agree as follows:

I. CHIEF DEVELOPMENT OFFICER OF METRO TRANSIT HIRED

Mick Rusch is hereby hired as a non-civil service employee of the City, holding the position of Chief Development Officer of Metro Transit pursuant to the terms, conditions and provisions of this Agreement. The Transit CDO shall have and exercise full authority and discretion as a Division Head within the City's organizational structure and act as Appointing Authority for employees of the Metro Transit Development Office in accordance with all appropriate City Ordinances and Mayor's Administrative Procedure Memoranda.

II. FUNCTIONS, DUTIES AND RESPONSIBILITIES OF THE TRANSIT CDO

A. General Responsibilities:

Under the general direction of the Metro General Manager, directs and oversees the public-facing activities and major initiatives of Metro. This includes oversight and direction of personnel, consultants and contractors engaged in marketing, outreach, customer service, planning, and capital projects. This position is responsible for infusing racial equity, social justice and inclusion goals, principles, and tools, into all aspects of work at Metro Transit and the City of Madison.

Assigned projects are high profile with substantial political interaction and public scrutiny and may include various transportation modes and systems. This position requires experience skill leading multiple simultaneous complex projects, and candidate must be capable of independently making decisions on significant problems and issues.

B. Examples of Duties and Responsibilities:

- Establish and monitor annual performance objectives and work plans with the Metro General Manager and establish annual objectives for Metro's Development unit. Prioritize the unit's Action Plan items. Develop and administer operating and capital budgets for projects and staff under the unit's responsibility.
- Provide direction, leadership, information and recommendations to division staff on diverse programs, projects and improvements to services/procedures, new prototypes and updated Federal and State legislation and regulations. Organize and delegate preparation of issue papers, policies, programs, strategies and plans. Facilitate the accomplishment of multiple and diverse division assignments. Hire, train, supervise, coordinate, coach and discipline a diverse staff. Conduct regular performance check-ins with Division Managers and perform related management functions in the areas of personnel, affirmative action, labor relations, etc. Effectively respond to all resident, alder, and business/developer inquiries.
- Direct diverse operating divisions engaged in: leadership of Metro Transit capital projects; overseeing all aspects of capital project implementation, assuring RFPs, bids and subcontractors meet organizational requirements; directing community oriented joint development projects, analyzing policies and presenting recommendations to the general manager; providing review and support for capital programs; overseeing work of planning and development unit staff; leading marketing and customer service units ensuring the organization's voice and mission, vision, and values are

present in communication efforts; developing crisis and emergency communication plans; leading legislative affairs development and implementation;

- Acts as General Manager in the absence of the GM where appropriate in standing division, agency, and organizational meetings;
- Serve on the Mayor's Management Team where appropriate and related interdepartmental committees. Serve as project manager for special projects at the direction of the Mayor. Provide advice, counsel and staff services to the Common Council, boards and committees, and other agencies and groups as appropriate.
- With the advice of the City Attorney, interpret ordinances and set standards and guidelines for providing various forms of assistance to businesses, individuals and community groups and make policy level decisions as appropriate. Conceptualize, plan, coordinate, implement and manage development, redevelopment, and planning programs. Under the direction of the Mayor, working with alders and other City departments, negotiate with neighborhood/community groups, developers, property owners, and other jurisdictions on transportation related issues.
- Represent the division and City with the press and the public. Maintain respectful and effective relationships with all elected officials, and Local, State, and Federal agencies. Maintain close working relationships with other City agencies in achieving mutual goals.
- Coordinate and collaborate with the Mayor's Office, Alders, and other City agencies on Metro Transit related matters.
- Demonstrate a commitment to the City's racial equity and social justice initiatives (RESJI). Participate in and help lead city-wide and agency efforts toward implementing RESJI principles.
- Instill a culture of continuous learning and a commitment to ongoing initiatives involving performance excellence systems.
- Demonstrate and promote organizational values, in everyday work, to further the mission and vision of the City of Madison.
- Perform related work as required.

- C. The Transit CDO agrees to perform such functions and duties at a professional level of competence and efficiency. The Transit CDO shall abide by all requirements of the laws of the State of Wisconsin, and of the ordinances, resolutions, regulations, rules and practices of the City which exist at the time of execution of this Agreement or which may, hereafter, be enacted or amended by the State of Wisconsin or the City in the exercise of their lawful authority. In the event a provision of this Agreement conflicts with any City ordinance, resolution, regulation, rule or policy, the provision of the Agreement shall control, except that nothing herein shall be interpreted as modifying the obligations or terms Madison General Ordinance §3.35 (the Ethics Code).
- D. The Transit CDO shall devote full time to the duties and responsibilities provided herein and shall engage in no pursuit that interferes with them. The Mayor, however, may approve the Transit CDO's reasonable time away from the regular duties and responsibilities provided such time is approved in advance and taken as vacation leave or absence without pay. Further, the Mayor may authorize other limited outside professional activities on City time provided that they are determined to be of benefit to the City and the Transit CDO is not compensated for such activities. Nothing herein limits the Transit CDO from performing outside services for compensation provided such outside services have been approved by the Mayor, are not done on City time, and otherwise comply with City ordinances and rules.
- E. The standard Metro workweek is 40 hours. However, the Transit CDO shall have reasonable flexibility from this standard to accommodate additional time expended outside regular working hours required by attendance at meetings and the like. Such flexibility is not intended to provide or be used as additional vacation or other paid leave.
- F. The Transit CDO shall have no right to make contracts or commitments for or on behalf of the City except as preauthorized by statute, ordinance or express written consent of the City.
- G. Following a 16 month grace period, the Transit CDO shall establish City residency and continue to reside within the City of Madison for the duration of this contract. As a condition of accepting this contract, the Transit CDO agrees to waive any right to challenge this residency requirement, by court action or otherwise.

III. COMPENSATION AND BENEFITS

- A. The Transit CDO's salary shall be based on an annualized rate of \$145,000 and shall be paid in approximately equal biweekly payments according to regular City payroll practices. Annual salary adjustments

during the term of this agreement may be made at the Mayor's discretion, subject to approval of the Common Council, as provided in the City's established managerial pay plan. The Transit CDO shall not be entitled to receive any additional overtime compensation, compensatory time off, or bonuses.

B. The Transit CDO shall, in addition to the compensation provided in Paragraph A above, and except as otherwise set forth in the Agreement, be entitled to the following benefits:

1. The Transit CDO shall receive the same benefits as all other non-represented professional employees in Compensation Group 18 as may be provided and/or modified by the Madison General Ordinances, Resolution of the Common Council, Administrative Procedure Memoranda or other official City action throughout the duration of this agreement subject to paragraph II. (G) above.
2. The Transit CDO shall be entitled to twenty-seven (27) days of vacation in each year of this Agreement. Credited but unused vacation in excess of ten (10) days may be carried forward to the succeeding year with the approval of the Human Resources Transit CDO. Except as otherwise provided, the Transit CDO shall be paid in full for credited but unused vacation existing at the expiration of this Agreement or upon the Transit CDO's retirement, when qualified for receipt of Wisconsin Retirement Fund benefits. If the Transit CDO accrues and carries over a balance of more than five weeks from the preceding year(s), the Transit CDO may elect to convert up to ten (10) days of their annual vacation to an amount of cash equivalent, calculated on their regular earnings. The Transit CDO shall apply for such conversion option in accordance with City procedures, and such amount shall be paid in a manner determined by the City.
3. Sick Leave: If the Transit CDO leaves the position before the end of the contract period, the Transit CDO shall be entitled to payment in full (100%) of any earned but unused sick leave accumulated during each of the fully completed contract period(s) and any sick leave earned in a Civil Service position prior to the contract period. The Transit CDO shall be entitled to one-half (50%) of any earned but unused sick leave accumulated to the day the Transit CDO terminated City employment during the contract period. If the City terminates the Transit CDO's contract before the end of the contract period or the Transit CDO leaves the position at the end of the contract period or the Transit CDO retires and qualifies for WRS benefits, they shall be entitled to payment in full (100%) of any sick leave the Transit CDO would have earned through the end of that year.

4. The Transit CDO shall be eligible to participate at City expense in professional seminars, conferences, workshops and related meetings consistent with the role as Transit CDO and in accordance with applicable Administrative Procedure Memoranda.
5. The Transit CDO shall be reimbursed for relevant professional association and/or licensure dues.
6. The Transit CDO shall be eligible for smart phone with data plan reimbursement up to seventy-five (\$75) dollars per month for City usage.

IV. TERM: RENEWAL OPPORTUNITY; NON-RENEWAL

- A. This Agreement shall take effect on the pay period following September 5, 2023, and shall expire on September 4, 2028, unless terminated sooner as provided herein.
- B. For a period of twelve (12) months from the effective date of this Agreement, the Transit CDO shall serve a probationary period. During the probationary period, the Transit CDO serves at the pleasure of the Mayor and may be removed at will by the Mayor, in consultation with the Transit General Manager. The Mayor will give the Transit CDO four (4) weeks' notice of removal. Following the probationary period, and for any renewal of this Agreement, the Transit CDO may only be removed as otherwise provided herein.
- C. The Mayor, in their sole discretion, and after consultation with the Transit General Manager, may offer renewal of this Agreement to the Transit CDO. The Mayor shall notify the Transit CDO of the intent to renew the Agreement at least ninety (90) calendar days before the expiration of this Agreement. Failure to so notify the Transit CDO shall extend the term of this Agreement by the time of the delay in actual notification (but in no event for more than ninety (90) days) without change in the Transit CDO's anniversary date, and shall not act as a full renewal of the Agreement. Renewal of the agreement and of its provisions shall be subject to the approval of the Common Council. In the event the Common Council does not renew this Agreement, this Agreement will remain in effect for ninety (90) days following the non-renewal action by the Common Council or five (5) years from the date of this Agreement, whichever is later.
- D. The Mayor, in their sole discretion, and after consultation with the Transit General Manager, may elect not to offer renewal of this Agreement to the Transit CDO. In such event, the Mayor shall notify the Transit CDO of the intent not to renew the contract at least ninety (90) calendar days before the

expiration of this Agreement. Failure to so notify shall extend the term of this Agreement by the time of the delay in actual notification (but in no event for more than ninety (90) days) and shall not act as a renewal of the Agreement. At the expiration of the Agreement, the parties' rights, duties, responsibilities and obligations shall end. However, the Transit CDO will, at the sole discretion of the Mayor, be eligible to take a voluntary demotion into any vacant or newly created position for which the Transit CDO is qualified.

- E. In the event of non-renewal of this Agreement, under either Paragraphs C or D above, the Mayor may, in their sole discretion, terminate this Agreement at any earlier date within ninety (90) days of the expiration of this Agreement, as determined by the Mayor. The early termination is to be accomplished by (a) notifying the Transit CDO of the date of early termination, and (b) committing to buy out the balance of this Agreement by paying the Transit CDO the balance due under this Agreement in a lump sum, including salary and leave benefits (vacation, floating holiday, paid leave, sick leave) earned or to be earned through the original term of this Agreement, together with payment of the City's share of any health insurance premiums or the provision for such payment through the original term of this Agreement. The buy-out may be for the full period left on this Agreement, or any portion of the final ninety (90) days thereof. If this Agreement is terminated early through the provisions of this buy-out clause, the Transit CDO's employment with the City ends as of the date of early termination.

V. PERSONNEL ACTIONS

- A. The Transit CDO is subject to the Transit General Manager and Mayor's supervision and is, during the term of this Agreement, subject to the Transit General Manager and Mayor's authority to impose discipline on or to discharge the Transit CDO for a breach of this agreement if deemed necessary. The Transit CDO shall come to work and follow all applicable work rules including those designed to protect the interests and safety of the City, employees, and members of the general public. The City recognizes, however, that corrective action may be necessary if the Transit CDO fails to meet these expected standards. The purpose of any disciplinary action that the City takes is to correct behavior and is not intended to be merely a punitive action. Such disciplinary action shall be administered consistent with the accepted standards of just cause.
- B. The Transit CDO is expected to prepare an annual work plan for their division. The Transit CDO shall be evaluated annually by the Mayor to assess work performance. This evaluation shall include the establishment of departmental goals and an assessment of challenges and accomplishments. It may also involve soliciting input from other department heads, staff supervised by the Transit CDO, and/or Common Council Members.

VI. CITY OBLIGATIONS AND RIGHTS

The City shall provide staff, equipment, supplies and space that it deems reasonable, in its sole discretion, for the conduct of the work of the Transit CDO. The City retains the sole right to determine the organizational structure and overall functioning of Metro Transit.

VII. REOPENING THE AGREEMENT

Either party may request that the Agreement be reopened for renegotiation if or when the Transit CDO's duties or responsibilities change significantly. A "significant" change in the Transit CDO's duties is defined as that degree of change in duties and responsibilities that would qualify a civil service position for reclassification pursuant to standard City personnel practices.

Factors which may be considered include the addition or deletion of duties, changes in division services or the addition or deletion of programs. If there is no agreement, the original Agreement shall control and shall not be reopened. Agreement changes, if any, and any resulting reclassification of the position shall not be deemed the creation of a new position so as to require competition.

VIII. LIABILITY PROTECTION

The City shall defend and indemnify the Transit CDO against and for any and all demands, claims, suits, actions and legal proceedings brought against them in their official capacity or personally for acts performed within the scope of his employment to the extent and only to the extent authorized by the Wisconsin Statutes in effect at the time of the act complained of and as may be provided by any City insurance coverage for employees at such time.

IX. STATEMENT OF ECONOMIC INTERESTS

Pursuant to Madison General Ordinance §3.35 (the Ethics Code), the Transit CDO shall file a Statement of Economic Interests with the City Clerk within 14 days of his appointment. Each person required to file a Statement of Economic Interests shall annually file with the Clerk an updated Statement no later than April 30 of each year.

X. DOCUMENTS AND MATERIALS PROPERTY OF THE CITY

All of the documents, materials, files, reports, data and the like which the Transit CDO prepares or receives while this Agreement is in effect are the sole property of the City of Madison. The Transit CDO will not publish any such materials or use them for any research or publication without attribution to the City other than as work performed pursuant to the terms of this Agreement.

XI. APPEARANCE BEFORE ANY CITY ENTITY FOLLOWING SEPARATION FROM EMPLOYMENT

The Transit CDO shall be subject to the provisions of Madison General Ordinance §3.35 (the Ethics Code).

XII. TERMINATION OF AGREEMENT

- A. The Transit CDO may unilaterally terminate this Agreement during its term. If the Transit CDO unilaterally terminates this Agreement on less than forty-five (45) calendar days' notice in writing to the Mayor, the Transit CDO shall forfeit all rights to recover the cash equivalent of accumulated sick leave, unused vacation leave, and all other future benefits. These forfeiture provisions shall not apply if the Transit CDO retires from this position (upon qualifying for receipt of benefits pursuant to the Wisconsin Retirement Fund requirements). Upon expiration of this agreement or, if the Transit CDO unilaterally terminates this agreement on forty-five (45) or more calendar days' notice in writing to the Mayor, the Transit CDO shall have rights to be paid the cash equivalent of accumulated sick leave, unused vacation and all other future benefits accumulated at the time of the termination, as provided in Section 3 of this Agreement.
- B. The Transit CDO's discharge (as provided for in section 9 of the City of Madison Personnel Rules) during the term of this Agreement shall be deemed a breach of material provision of the Agreement. In the event of a discharge or other breach of a material provision of the Agreement by the Transit CDO, the Transit CDO shall forfeit all compensation and benefits from the date of notification of the breach by the City. This action shall not impact the receipt of benefits earned during the total period of employment. In the event of an alleged breach of a material provision of this Agreement by either party, the concerned party shall notify the other party in writing within thirty (30) working days, which shall be followed by a meeting of the parties to resolve the alleged breach. In the event the issue is not resolved, the Transit CDO or the City may pursue contract remedies.
- C. The City retains the right, in its sole discretion, to abolish the position of Chief Development Officer of Transit or to reorganize as it deems in the best interest of the City. In the event the City abolishes the position of Transit CDO or reorganizes the Department to the extent that the position of Transit CDO is no longer required, this Agreement shall terminate and all rights, duties and obligations of the parties shall mutually end without recourse ninety (90) calendar days after final approval of such abolishment of position or reorganization by the Common Council, except as provided in Madison General Ordinance §3.35 (the Ethics Code).

XIII. NO ASSIGNMENT OR SUBCONTRACT

The Transit CDO shall not assign or subcontract any interest or obligation under this Agreement.

XIV. AMENDMENT

This Agreement shall be amended only by written Addendum to Agreement of the parties approved and authorized for execution in the same fashion as this original Agreement.

XV. NO WAIVER

No failure to exercise and no delay in exercising any right, power or remedy on either party's part shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof, or the exercise of any other right, power, or remedy.

XVI. ENTIRE AGREEMENT

No agreements, oral or written, express or implied, have been made by either party hereto, except as expressly provided herein. All prior agreements and negotiations are superseded hereby. This Agreement and any duly executed addenda or amendments thereto constitute the entire Agreement between the parties hereto.

XVII. SEVERABILITY

In the event any provisions of this Agreement are determined by any court of law to be unconstitutional, illegal, or unenforceable, it is the intention of the parties that all other provisions of this Agreement shall remain in full force and effect.

XVIII. GOVERNING INTENT AND LAW

This Agreement shall be interpreted in the first instance in accordance with the spirit and intent of the Substitute Report of the Human Resources Committee Report approved by the Common Council on August 2, 1988 and shall be controlled, construed and enforced in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the day and year contained herein.

CITY OF MADISON
A Municipal Corporation

Witness

Satya Rhodes-Conway, Mayor

Witness

Maribeth L. Witzel-Behl, City Clerk

Witness

Mick Rusch, Transit CDO

APPROVED:

APPROVED AS TO FORM:

David P. Schmiedicke
Finance Transit CDO

Michael P. May, City Attorney