

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE) RESOLUTION NO. 00-2961
PLAN RESTATEMENT FOR THE)
METRO 401K EMPLOYEE SALARY) Introduced by Executive Officer Mike Burton
SAVINGS PLAN)

WHEREAS, Metro, under its former name, the Metropolitan Service District, has established and maintained an Employee Salary Savings Plan (the 401K Plan) for the exclusive benefit of eligible employees; and

WHEREAS, from time to time it is necessary to amend the Employee Salary Savings Plan to reflect changes in applicable law and to provide for changes in administration of the plan; and

WHEREAS, the Metro Employee Salary Savings Plan 2000 Restatement, prepared and recommended by the 401K Plan Advisory Committee, will add a year-of-service requirement for eligibility to participate; conform the plan to the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997; update Plan language; allow for separate trust provisions; ensure compliance with applicable law and make other clarifying and administrative changes; now, therefore,

BE IT RESOLVED

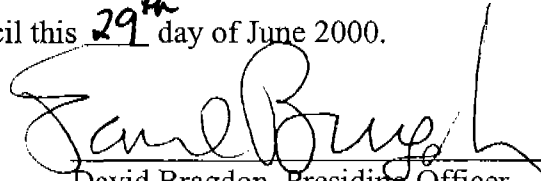
1. That the Metro Council adopts the Metro Employee Salary Savings Plan 2000 Restatement, attached as Exhibit A to this Resolution.

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2. That the Executive Officer is authorized to execute the Plan on behalf of Metro.

ADOPTED by the Metro Council this ^{29th} day of June 2000.


David Bragdon, Presiding Officer

Approved as to Form:


Daniel B. Cooper, General Counsel

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Metro
EMPLOYEE SALARY SAVINGS PLAN AND TRUST

2000 RESTATEMENT

July 1, 2000

Metro
an Oregon metropolitan service district
600 NE Grand Avenue
Portland, Oregon 97232-2736

Metro

TABLE OF CONTENTS

ARTICLE 1	Relevant Dates; Qualification	1
1.1	Effective Dates; Valuation Dates; Plan Year	1
1.2	Qualification	2
ARTICLE 2	Eligibility and Participation	2
2.1	Conditions of Eligibility	2
2.2	Participation	3
ARTICLE 3	Contributions	3
3.1	Elective Contributions	3
3.2	Discretionary Contributions	6
3.3	No Employee Contributions	6
3.4	Limit on Annual Additions	6
3.5	Time of Payment; Reports to Plan Administrator	8
3.6	In-Service Withdrawals	9
ARTICLE 4	Participants' Accounts; Allocations	11
4.1	Participants' Accounts; Vesting	11
4.2	Valuations and Adjustments	11
4.3	Allocation of Discretionary Contributions	11
4.4	Rollovers	12
4.5	Transfers Between Plans	12
4.6	Loans to Participants	13
ARTICLE 5	Benefits on Retirement or Termination	16
5.1	Retirement Dates; Eligibility	16
5.2	Amount and Form of Benefit	17
5.3	Application for Benefits; Time of Distribution	17
5.4	Distribution Rules	18
ARTICLE 6	Benefits on Death or Disability	19
6.1	Benefits on Death	19
6.2	Benefits on Disability	19
6.3	Designation of Beneficiary	20
ARTICLE 7	Plan Administration	21
7.1	Plan Administrator	21
7.2	Metro Functions	22
7.3	Claims Procedure	22
7.4	Expenses	23
7.5	Indemnity and Defense	23
ARTICLE 8	Investment of Trust Fund	24
8.1	Trust Fund	24
8.2	Participant Direction of Investments	24
8.3	Special Additional Trustee	24
8.4	Custodian	25

ARTICLE 9	Amendment; Termination; Merger	25
9.1	Amendment	25
9.2	Termination	25
ARTICLE 10	Miscellaneous Provisions	26
10.1	Information Furnished	26
10.2	Applicable Law	26
10.3	Plan Binding on All Parties	26
10.4	Not Contract of Employment	26
10.5	Notices	26
10.6	Benefits Not Assignable; Qualified Domestic Relations Orders	26
10.7	Nondiscrimination	27
10.8	Nonreversion of Assets	27

INDEX OF TERMS

Accounts.....	11
Additional Discretionary Contributions.....	6
Affiliate.....	7
Agent for Service of Process.....	20
Allocation of Contributions.....	11
Annual Addition.....	7
Application for Benefits.....	17
Beneficiary.....	19
Claims.....	21
Code.....	1
Compensation.....	7
Custodian.....	24
Death Benefit.....	19
Deferred Retirement Date.....	16
Direct Rollover.....	18
Disability.....	19
Early retirement date.....	16
Effective Dates.....	1
Elections.....	4
Elective Contributions.....	3
Entry Date.....	3
Excess Deferral.....	5
Financial Hardship.....	9
Form of Benefit.....	16
Individual Retirement Account (IRA).....	12
IRS.....	2
Limitation Year.....	2
Loans.....	13
Make-Up Elective Contributions.....	4
Metro.....	1
Normal Retirement Date.....	16
Plan.....	1
Plan Year.....	2
Prior Plan.....	1
Qualified domestic relations order.....	18
Qualified employee.....	3
Restatement.....	1

Retirement	16
Rollovers	12
Special Additional Trustee	24
Transfers.....	12
Valuation Date.....	2
Withdrawals	9

METRO
EMPLOYEE SALARY SAVINGS PLAN

2000 Restatement

July 1, 2000

Metro
an Oregon metropolitan service district
600 NE Grand Avenue
Portland, OR 97232-2736

Metro

Metro, under its former name, The Metropolitan Service District, has established and maintained an Employee Salary Savings Plan (the Plan) for the exclusive benefit of eligible employees. Before this restatement, the Plan was a nonstandardized prototype document that was signed December 3, 1992, effective generally July 1, 1987 (the Prior Plan). Metro adopts this restatement to add a year-of-service requirement for eligibility to participate, conform to the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997, update Plan language, delete trust provisions, which will be placed in a separate trust document, ensure compliance with applicable law and make other clarifying and administrative changes. This Plan document is intended to comply with §401 of the Internal Revenue Code of 1986, as amended (the Code), and applicable regulations.

ARTICLE 1

Relevant Dates; Qualification

1.1 Effective Dates; Valuation Dates; Plan Year

1.1.1 This restatement shall be effective July 1, 2000, except that the provisions of this restatement identified below shall be effective as follows:

- (1) The changes in 3.1.3, 3.2.2 and 3.4.2(b) regarding make-up contributions and imputing compensation during military leaves of absence

shall be effective December 12, 1994 with respect to reemployments initiated on or after that date; the Plan shall comply with such rules starting October 13, 1996.

(2) The change in 3.4.2(a) to the definition of compensation for purposes of the annual addition limits shall be effective July 1, 1998.

(3) The Prior Plan shall continue to apply to events that occurred before the effective date of this restatement, except as provided above.

1.1.2 Through June 30, 2000, June 30 of each year shall be the regular valuation date. Effective July 1, 2000, December 31 of each year shall be the regular valuation date. Any business day the New York Stock Exchange is open for trading shall be a special valuation date.

1.1.3 Through June 30, 2000, the Plan Year and limitation year shall be a fiscal year ending June 30. Effective July 1, 2000, the Plan Year and limitation year shall be the calendar year. There shall be a short Plan Year and limitation year from July 1, 2000 through December 31, 2000. The limitation year is the period used for determining compliance with the annual addition limits under 3.4.

1.2 Qualification

Under Internal Revenue Service (IRS) rules, this Plan is, technically, a profit sharing plan. If the IRS rules that this restatement does not qualify under §§401(a) and 501(a) of the Code, Metro may amend the Plan retroactively to qualify.

ARTICLE 2

Eligibility and Participation

2.1 Conditions of Eligibility

2.1.1 A qualified employee of Metro shall be eligible to participate on the first Entry Date on or after the earlier of the following dates:

(1) The date the qualified employee has become "benefit-eligible" under the terms of the Metro Code.

(2) The date the qualified employee has become eligible to participate in the Oregon Public Employees Retirement System.

2.1.2 "Qualified employee" means any employee except the following:

(1) A leased employee treated as an employee for pension purposes solely because of §414(n) of the Code.

(2) An employee who is covered by a collective bargaining agreement that does not provide for participation in this Plan.

(3) A worker who is classified by Metro as an independent contractor, even if the worker is later determined to have been an employee.

2.1.3 Through December 31, 1999, "Entry Date" shall mean each January 1 and July 1. Effective January 1, 2000, "Entry Date" shall mean the first day of each calendar month.

2.2 Participation

2.2.1 "Participant" means an employee or former employee with an account balance under the Plan.

2.2.2 The Plan Administrator shall inform each qualified employee who has become eligible to participate about the Plan and furnish forms for electing contributions, selecting investments and designating beneficiaries.

ARTICLE 3

Contributions

3.1 Elective Contributions

3.1.1 Subject to 3.1.2 and 3.4, a qualified employee who has satisfied the requirements of 2.1.1 may elect to have Metro reduce the employee's compensation and contribute the compensation-reduction amount to the Trust each Plan Year as follows:

(1) Subject to (b) and (c), elective contributions from compensation shall be a whole number percentage of compensation under 3.4.2, per payroll period while participating for the Plan Year, up to a maximum established by the Plan Administrator pursuant to 3.1.2(b).

(2) Elective contributions by any Plan participants for any calendar year shall not for any employee exceed the dollar limit under §402(g)(1) of the Code, as adjusted by the IRS for increases in cost-of-living. The limit for 2000 is \$10,500. Such limit is in addition to any limit imposed by 3.4.

(3) An employee's compensation shall be reduced by the amount of the elective contributions.

(4) An employee may make elective contributions only with respect to amounts that the employee could otherwise elect to receive in cash and that are not currently available to the employee.

3.1.2 Elections shall be governed by the following rules:

(1) An employee's new or changed election shall be effective on the first payroll period beginning on or after the date the employee's completed election is received by the Benefits Manager.

(2) The Plan Administrator may establish rules covering the maximum amount or rate of elective contributions, the method and frequency of elections and procedures for starting, stopping and changing the rate of elective contributions.

3.1.3 Contributions with respect to qualified military service will be provided as specified in the Plan and in accordance with applicable law, including §414(u) of the Code. An employee who returns from military leave with employment rights protected by law may make elective contributions on account of the period of leave as follows:

(1) Subject to (c), make-up elective contributions must be made during the contribution make-up period under (b) out of compensation payable during such period.

(2) The contribution make-up period begins on the date the employee is reemployed and ends on the earlier of the following:

(1) The fifth anniversary of reemployment.

(2) The last day of a period that is three times as long as the period of military leave.

(3) To the extent permitted by applicable regulations, make-up contributions may be made out of funds other than compensation. Each such contribution shall be considered made when the employee delivers funds to the Plan equal to the contribution amount.

(4) The employee shall file an election with the Benefits Manager designating the Plan Year during military leave to which make-up contributions under (a) and (c) relate.

3.1.4 If an employee's elective contributions for a Plan Year would be more than permitted under 3.1.1(b) (an excess deferral), the following shall apply:

(1) Any direction for such an excess deferral shall be invalid and the directed deferral shall not be made.

(2) A participant may withdraw all or part of any excess deferral by notice in accordance with rules of the Plan Administrator.

(3) If an excess deferral occurs because of combined elective deferrals under this Plan and another plan, the participant may withdraw the excess only if the following conditions are satisfied:

(1) The participant notifies the Benefits Manager of the excess deferral by April 15 following the close of the Plan Year, unless the Plan Administrator waives the deadline.

(2) The notice specifies how much of the excess deferral is to be withdrawn from this Plan.

3.2 Discretionary Contributions

3.2.1 Subject to 3.2.2 and 3.4, for each Plan Year Metro may make a discretionary contribution in an amount, if any, determined by the Metro Council. Such contribution shall be, under IRS rules, a profit sharing contribution.

3.2.2 Metro shall make additional discretionary contributions for each participant who returns from military leave with employment rights protected by law as follows:

(1) The additional discretionary contributions shall be determined separately with respect to each Plan Year for which the participant failed to receive such a contribution because of the participant's absence on military leave.

(2) The amount of the additional discretionary contribution with respect to any Plan Year described in (a) shall equal the amount of discretionary contribution that would have been made on behalf of the participant based on compensation imputed under 3.4.2 for the Plan Year.

(3) The additional discretionary contributions shall be subject to the limits in 3.4 that applied to the Plan Year for which the additional contribution is made.

(4) Metro shall not take into account gains or losses from the date the allocation would have been made had the participant been employed rather than on military leave, to the date the contribution is actually made under this paragraph.

3.3 No Employee Contributions

No employee contributions are required or permitted. Under IRS rules, elective contributions under 3.1 are technically contributions by Metro.

3.4 Limit on Annual Additions

3.4.1 No annual addition for any limitation year under 1.1.3 for any employee shall be more than the lesser of the following:

(1) The limit under §415(c)(1)(A) of the Code, as adjusted by the IRS for increases in cost-of-living. The limit from all sources for the Plan Year ending June 30, 2000 is \$30,000. The limit from all sources for the short Plan Year ending December 31, 2000 is \$15,000.

(2) 25 percent of the employee's compensation under 3.4.2.

3.4.2 "Compensation" means pay reportable on IRS Form W-2, adjusted in accordance with Treasury regulations, subject to the following rules:

(1) Compensation shall include elective deferrals pursuant to §402(g) of the Code and contributions made at the employee's election under any flexible benefits plan pursuant to §125 of the Code.

(2) For purposes of contributions under 3.1.3 and 3.2.2, during any military leave of absence, compensation shall be imputed at the rate the employee would have been paid if not absent. If this amount is not reasonably certain, compensation shall be based on the employee's average compensation during the 12 months immediately before the leave began, or all such months if fewer than 12.

(3) The maximum amount of annual compensation counted for any employee shall not exceed the limit in §401(a)(17)(A) of the Code, as adjusted by the IRS for increases in cost-of-living. The limit for the Plan Year ending June 30, 2000 is \$160,000. The limit for the short Plan Year ending December 31, 2000 is \$80,000.

3.4.3 "Annual addition" means for any limitation year the sum of the elective and any nonelective contributions for the year.

3.4.4 In applying the limits on annual additions, all affiliates of Metro under §414(b) and (c) of the Code, as modified by §415(h) of the Code, shall be considered a single employer.

3.4.5 If Metro maintains another qualified defined contribution plan, the annual additions under all such plans shall be combined for purposes of applying the limit above.

3.4.6 If Metro maintains or has maintained one or more defined benefit plans at any time, the following shall apply through June 30, 2000 but shall cease to be effective July 1, 2000:

(1) The defined benefit fraction under all such plans combined with the defined contribution fraction under this Plan and all other defined contribution plans currently or previously maintained by Metro shall not exceed 1.0 for any individual.

(2) The defined benefit fraction numerator shall be the employee's annual normal retirement benefit. The denominator shall be the maximum benefit under §415(b)(1) of the Code, adjusted under (d).

(3) The defined contribution fraction numerator shall be the sum of all annual additions for the employee since the Plan's inception. The denominator shall be the sum of the maximum annual additions under §415(c)(1) of the Code for all years of the employee's employment with Metro, adjusted under (d).

(4) The denominators under (b) and (c) shall be the smaller of the maximum percentage limitation amount times 1.4 or the maximum dollar limitation amount times 1.25.

3.4.7 If an annual addition for an employee would exceed the limit in 3.4.1 or 3.4.6, the Plan Administrator shall reduce the employee's elective contributions and, if necessary after reduction of elective contributions, discretionary contributions to come within the limit.

3.5 Time of Payment; Reports to Plan Administrator

3.5.1 Metro may pay contributions to the Trustee in one sum or in installments, subject to the following:

(1) Elective contributions shall be paid as soon as the amount can reasonably be identified and separated from Metro's other assets and in any event no later than the fifth business day following the day on which such amounts would otherwise have been payable to the participant in cash.

(2) All contributions for a Plan Year shall be paid within the regular or extended time for filing Metro's federal information return for the Metro reporting year in which the Plan Year ends.

(3) Any amount paid after the end of the Plan Year shall be treated, for allocation, not investment, purposes, as paid on the last day of that year if both of the following apply:

(1) The amount is paid within the time specified in (b).

(2) The amount is designated by Metro as attributable to that Plan Year.

3.5.2 Metro shall furnish the Plan Administrator any information he or she reasonably requests for Plan administration.

3.6 In-Service Withdrawals

3.6.1 An employee may make in-service withdrawals (while still employed by Metro) from the employee's accounts as follows:

(1) An employee who has reached age 59½ may withdraw up to the full balance of the employee's accounts.

(2) To the extent approved by the Plan Administrator because of financial hardship under 3.6.2, an employee not covered in (a) may withdraw all or part of the employee's rollover, transfer and discretionary contribution accounts, if any, and a portion of the employee's elective contribution account. The portion of the elective contribution account available for withdrawal on account of hardship shall be limited to the principal amount of the employee's elective contributions, and earnings allocated to that account as of June 30, 1989.

3.6.2 "Financial hardship" means an employee's immediate and heavy financial need that cannot be met from other reasonably available resources and is caused by one or more of the following:

(1) Unreimbursed medical expenses of the employee or the employee's spouse or dependents.

(2) The cost of tuition, related educational fees and room-and-board expenses for the next 12 months of post-secondary education for the employee or the employee's spouse, child or dependent.

(3) The cost of buying the employee's principal residence, excluding mortgage payments.

(4) The cost of preventing eviction from or foreclosure on employee's principal residence.

(5) Unexpected or unusual expenses creating a financial need, as determined by the Plan Administrator.

3.6.3 Withdrawals shall be subject to the following rules, in addition to any withholding or taxation rules imposed by local, state and federal governments:

(1) The withdrawal date shall be fixed by the Plan Administrator after application by the employee under procedures established by the Plan Administrator.

(2) The application shall include a signed statement of the facts causing financial hardship, the unavailability of other reasonably available resources and any other information required by the Plan Administrator. The Plan Administrator may rely on the signed statement of facts as conclusive evidence of an employee's financial need.

(3) The Plan Administrator may require a minimum advance notice, may limit the amount and frequency of withdrawals and may delay payment of an approved withdrawal to permit liquidation of necessary assets or for other pertinent reasons.

(4) Amounts shall be adjusted as of the regular or special valuation date on or preceding the date on which acceptable distribution directions are received by the Trustee.

ARTICLE 4

Participants' Accounts; Allocations

4.1 Participants' Accounts; Vesting

4.1.1 The Plan Administrator shall keep such separate accounts for each participant as may be necessary to administer the Plan properly.

4.1.2 The Plan Administrator shall furnish each participant at least annually a statement showing contributions and account balances.

4.1.3 Participants' accounts shall be fully vested at all times, except for the "Transferred 5% Employer Contribution Account," which shall remain subject to the vesting schedule under the plan from which it was initially transferred.

4.2 Valuations and Adjustments

4.2.1 As of each regular or special valuation date, the Trustee shall value the Trust fund at its fair market value and report the value to the Plan Administrator. The Plan Administrator shall allocate the value in proportion to the balances of nonsegregated accounts on the valuation date before adding any allocations made as of that date and with appropriate adjustment for any interim contributions since the last valuation date.

4.2.2 The Plan Administrator may call for a special valuation whenever he or she finds that desirable to avoid a material distortion in benefits or otherwise to administer the Plan properly.

4.3 Allocation of Discretionary Contributions

4.3.1 A discretionary contribution, if any, shall be allocated by the Plan Administrator among participants in proportion to compensation under 3.4.2 while participating for the Plan Year.

4.3.2 All participants shall be eligible to receive an allocation under 4.3.1 for a Plan Year regardless of hours worked or employment by Metro at the end of the Plan Year.

4.4 Rollovers

4.4.1 The Plan Administrator may approve rollover of funds from a tax-qualified plan or Individual Retirement Account (IRA) into this Plan if all of the following criteria are met:

(1) The funds come from either of the following:

(1) An IRA that holds only funds rolled over from one or more qualifying rollover distributions from other qualified plans.

(2) A qualifying rollover distribution from a qualified plan.

(2) The funds are paid to this Plan either directly or within 60 days after distribution from the other plan or IRA.

(3) The funds do not include any employee contributions.

(4) The Plan Administrator finds that the rollover will not impair the qualified status of this Plan.

4.4.2 Qualified employees under 2.1.2, even if they have not yet become participants, may apply to roll funds into the Plan, either directly or indirectly, by application to the Plan Administrator.

4.5 Transfers Between Plans

4.5.1 The Plan Administrator may approve a transfer from this Plan directly into another qualified plan if all of the following conditions are met:

(1) The account is vested and distributable under this Plan.

(2) The individual involved requests that the account be distributed directly to the other plan.

(3) The plan administrator of the receiving plan has agreed to accept the funds and has affirmed that the receiving plan is authorized to accept the transfer.

4.5.2 The Plan Administrator may direct the Trustee to accept funds transferred directly to this Plan from another qualified plan if all of the following conditions are met:

(1) The individual involved has requested the transfer and is a qualified employee under 2.1.2 at the time the transfer is made.

(2) None of the funds are subject to distribution requirements inconsistent with the distribution options in this Plan.

(3) The Plan Administrator determines that the transfer will not impair the qualified status of this Plan.

4.6 Loans to Participants

4.6.1 The Plan Administrator may direct the Trustee to make loans available to participants and beneficiaries on a reasonably equivalent basis pursuant to the following rules:

(1) The minimum loan amount shall be \$1,000. A reasonable fee may be charged to the borrower for making and administering the loan.

(2) The borrower must show the intention and capacity to repay the loan and interest when due.

(3) Receipt of a loan shall constitute consent by the borrower to withdrawals under 4.6.6 before normal retirement age.

(4) A loan shall be held as a promissory note for the separate account of the borrower.

(5) The borrower may designate the investment funds from which the loan proceeds are to be taken. Absent such a designation, the Plan Administrator shall take the proceeds *pro rata* from the investment funds in which the participant's accounts are invested as of the date the loan is funded.

(6) Loan repayments shall be invested the same as the borrower's new contributions.

(7) A borrower may not have more than one loan outstanding at a time.

(8) A borrower who has defaulted on a Plan loan may not take another Plan loan for five years after the date of the default.

4.6.2 Loans shall be funded as follows:

(1) No more than 50 percent of the borrower's account balances shall be considered as funding for the outstanding balance of all loans made to the borrower, determined as of the date of each loan.

(2) All loans shall be repaid by an assignment of current pay of the borrower or other automatic payment arrangement sufficient to service the loan as determined by the Plan Administrator and 4.6.5 shall apply.

4.6.3 Subject to lower limits applied uniformly by the Plan Administrator, a Plan loan when added to the outstanding balance of any Plan loans on which the borrower has defaulted and accrued interest on such loans, shall not exceed the lesser of the following:

(1) 50 percent of the borrower's vested account balances.

(2) \$50,000, reduced by any principal payments made on Plan loans in the 12 months preceding the date of the loan.

4.6.4 The Plan Administrator shall fix the terms of payment and interest rate for loans under the following rules, treating all similarly situated persons alike:

(1) All loans shall be evidenced by negotiable promissory notes payable to the Trustee. The maker shall be personally liable on the note.

(2) The interest rate shall be based on the local commercial lending rates for comparable loans at the time the loan is made.

(3) Loans must be payable in not more than five years, unless used to acquire the principal residence of the borrower. If a loan is used to acquire the principal residence of the borrower, the loan must be payable in not more than 30 years.

(4) Loans must be amortized by substantially level principal and interest payments for each pay period during the loan term, subject to (e).

(5) If a borrower takes an unpaid leave of absence authorized by Metro, interest shall accrue, but no loan repayments shall be required during the first 12 months of such leave and the loan shall be reamortized at the end of the leave or 12 months, whichever is earlier, but the loan period in (c) shall not be extended.

(6) If a borrower performs service in the uniformed services, whether or not the borrower returns with employment rights protected by law, interest shall not accrue, no loan repayments shall be required during the period of military service, the period of military service shall not be taken into account in determining the maximum loan term and repayments shall resume as scheduled when the period of military service ends.

4.6.5 Regardless of the payment terms, if the person whose assigned pay provides repayment of the loan terminates employment or if any automatic payment arrangement is canceled, the principal and accrued interest as of the date of termination shall, at the option of the Plan Administrator, become immediately due and collectable from the account, pursuant to 4.6.6.

4.6.6 If a loan is not repaid when due or otherwise is in default, the following shall apply:

(1) The Plan Administrator shall have the option of declaring the entire principal and interest accrued to the date the default occurs immediately due and payable.

(2) After the borrower has reached age 59½ or terminated employment, the outstanding balance, including accrued interest, plus any applicable withholding, may be withdrawn on default.

(3) Withdrawals on default shall be debited against the borrower's accounts *pro rata*.

ARTICLE 5

Benefits on Retirement or Termination

5.1 Retirement Dates; Eligibility

5.1.1 A participant shall be entitled to benefits on retirement or other termination of employment. Retirement shall occur on termination of employment after reaching a retirement date under 5.1.2. A participant who has reached the mandatory benefit starting date under 5.4.2 and is still employed by Metro may withdraw all or any part of the employee's accounts under the Plan.

5.1.2 Retirement dates are as follows:

(1) Normal retirement date shall be age 65.

(2) Deferred retirement date shall be any day after normal retirement date.

(3) Early retirement date shall be any day after age 59½, except that early retirement shall not affect vesting under 4.1.3.

5.1.3 If a person entitled to receive benefits under the Plan is hired by Metro before retirement benefits have begun or been paid, the following shall apply:

(1) If payment had not begun or been made, benefits shall not be paid until later retirement under 5.1.1. On later retirement, the amount and form of benefit shall be redetermined.

(2) If payment had begun in installments under 5.2.2(b), the participant may elect to stop benefits or to reduce the size of installments, subject to 5.4. If installments are stopped, the amount and form of benefit will be redetermined on later retirement.

5.2 Amount and Form of Benefit

5.2.1 The benefit shall be based on the participant's vested account balances, adjusted through the regular or special valuation date on or preceding the date on which acceptable distribution directions are received by the Trustee.

5.2.2 If the distributable amount is not more than \$5,000, benefits shall be paid in a single sum in cash, unless the participant timely elects a direct rollover under 5.3.4. If the distributable amount is more than \$5,000, unless the participant timely elects a direct rollover under 5.2.3, benefits shall be paid in cash in one of the following ways, as selected by the participant, subject to 5.4:

(1) In a single sum.

(2) In any other form of payment selected by the participant, subject to 5.4.2.

5.2.3 If the participant dies before payment of the entire account, the balance shall be paid as a death benefit under Article 6.

5.3 Application for Benefits; Time of Distribution

5.3.1 A participant or beneficiary eligible for benefits must apply in writing under 7.3 on a form prescribed by the Plan Administrator. Application shall be made within 14 days before single-sum payments are to be made or installment benefits are to start.

5.3.2 The participant shall select the form of payment of benefits in the application, subject to 5.2.2, 5.4 and the following rules

(1) The participant may make or revoke an election under 5.3.1 at any time up to the later of the date that is seven days before the benefit starting date or five days after the date the Benefits Manager sends the direct rollover notice to the participant.

(2) The participant may waive any waiting period for payment of benefits. Such waiver shall become irrevocable seven days after it is made.

(3) The Benefits Manager shall give the participant or beneficiary a notice of the right to have a direct rollover under 5.3.4 and the tax consequences of failing to elect a direct rollover.

5.3.3 If the participant has reached normal retirement age or the distributable amount is not more than \$5,000, the Plan Administrator shall direct the Trustee to pay benefits as soon as practicable, whether or not an application is filed. In all other situations, subject to 5.4, payment shall be made or begin as soon as practicable after the participant has terminated employment with Metro and applied for payment of benefits.

5.3.4 An eligible recipient of an eligible rollover distribution may elect to have the benefit distributed by a direct rollover to an eligible retirement plan by providing the Benefits Manager sufficient information regarding the amount and recipient of the direct rollover. For this purpose, eligible recipients are the participant, the participant's surviving spouse or a former spouse with rights under a qualified domestic relations order (a QDRO) as provided in 10.6.2.

5.3.5 If the account is fully distributed before the final allocation of contributions is made, a final payment shall be made to the participant promptly after allocation.

5.4 Distribution Rules

5.4.1 Benefits shall be paid in accordance with the overriding rules provided in §401(a)(9) of the Code and, to the extent not inconsistent with that section, Treasury Regulations §§1.401(a)(9)-1 and -2.

5.4.2 Payments to a participant shall be made or start by the April 1 after the calendar year in which the participant has reached age 70½ and has terminated employment with Metro and any affiliate under 3.4.4. After that date, installments shall be paid over a period not longer than the life expectancies of the participant and any designated beneficiary. The life expectancy of a non-spouse beneficiary shall be calculated as if the beneficiary were no more than ten years younger than the participant. Life expectancies shall not be recalculated after initial determination.

5.4.3 If the participant dies after the mandatory benefit starting date in 5.4.2 but before full payment has been made, any remaining amount shall continue to be paid to the participant's beneficiary at least as quickly as under the payment form in effect

at death, except to the extent that is impossible due to the Plan Administrator's inability to locate the beneficiary. In all other cases, death benefit payments to a participant's beneficiary shall be made or begin by the end of the Plan Year following the Plan Year in which the participant died, if the Administrator has located the beneficiary by that date and shall be paid over a period not longer than the life expectancy of the beneficiary. Life expectancies shall not be recalculated after initial determination.

5.4.4 If the date for making distribution has been reached and the location of the participant or beneficiary is not known, the Plan Administrator shall direct the Trustee to distribute the account into an interest-bearing account in a financial institution in the name of the participant or beneficiary. This shall constitute a complete distribution to which regular reporting and withholding requirements shall apply.

ARTICLE 6

Benefits on Death or Disability

6.1 Benefits on Death

6.1.1 If a participant dies, the vested accounts, adjusted to the regular or special valuation date on or preceding the date on which acceptable distribution directions are received by the Trustee, shall be paid as a death benefit to the beneficiary. Application shall be made under 5.3.1, and must include evidence satisfactory to the Plan Administrator of the participant's death.

6.1.2 Subject to 5.4, the beneficiary shall select whether benefits shall be paid in a lump sum or in substantially equal monthly installments subject to 5.4.3. If the beneficiary does not timely make an election, benefits shall be paid in a single sum, subject to any right the recipient may have to elect a direct rollover under 5.3.4.

6.2 Benefits on Disability

6.2.1 A participant whose employment with Metro terminates because of disability shall be retired and shall receive full benefits. Subject to 6.2.2, payment shall be made as soon as practicable after the final allocation of contributions is made to the participant's account. The participant shall select the form of distribution from those in 5.2.2 by filing application under 5.3.1.

6.2.2 If the participant notifies the Plan Administrator in writing that benefits after disability would reduce any other disability benefit, the Plan Administrator shall, subject to 5.4, direct the Trustee to defer payment until the other benefit stops.

6.3 Designation of Beneficiary

6.3.1 Each participant shall file a designation of specific beneficiaries with the Benefits Manager. The designation may be changed from time to time. The designated beneficiary or other recipient described below shall receive any residual benefit after death of a participant.

6.3.2 If the participant's marital status changes after the participant has designated a beneficiary, the designation shall remain valid, subject to any applicable QDRO under 10.6.2, even if the participant was married to a different spouse at death.

6.3.3 If a beneficiary dies after the death of a participant but before full distribution to the beneficiary, any remaining balance of the benefit to which the beneficiary was entitled shall be paid to the estate of the deceased beneficiary.

6.3.4 If no beneficiary has been named or no named beneficiary is living when the participant dies, the benefit shall be paid in the following order of priority:

- (1) To the participant's surviving spouse.
- (2) To the participant's surviving children in equal shares.
- (3) To the participant's estate.

ARTICLE 7

Plan Administration

7.1 Plan Administrator

7.1.1 The Metro Executive Officer, or person acting in such capacity, shall be the Plan Administrator, and may delegate any or all of his or her administrative responsibilities. To the extent the Plan Administrator has delegated such responsibilities, any reference to the Plan Administrator shall be a reference to the delegate acting within the scope of the delegate's authority.

7.1.2 The Plan Administrator shall interpret this Plan, decide any questions about the rights of participants and their beneficiaries and in general administer the Plan. Any decision by the Plan Administrator within his or her authority shall be final and bind all parties. The Plan Administrator shall have absolute discretion to carry out his or her responsibilities under this Plan. The Plan Administrator shall be the agent for service of process on the Plan at Metro's address.

7.1.3 The Benefits Manager, on behalf of the Plan Administrator, shall keep records of all relevant data about the rights of all persons under the Plan. The Plan Administrator shall determine the time, manner, amount and recipient of payment of benefits and instruct the Trustee regarding distributions. Any person having an interest under the Plan may consult the Plan Administrator at any reasonable time.

7.1.4 The Plan Administrator may retain advisors to assist him or her and may consult with and rely upon the advice of counsel, who may be counsel for Metro. The Plan Administrator shall appoint a qualified independent public accountant if one is required or considered desirable for the Plan.

7.1.5 The Trustee shall be given the names and specimen signatures of the Plan Administrator and all other persons authorized to sign on behalf of the Plan Administrator. The Trustee shall accept and rely on the names and signatures until notified of a change.

7.2 Metro Functions

7.2.1 Except as provided in 7.2.2, all Metro functions or responsibilities shall be exercised by the Metro Executive Officer, who may delegate all or any part of these functions.

7.2.2 The power to amend or terminate the Plan and Trust under 10.1 or 10.2 may be exercised only by the Metro Council, except as provided in 7.2.3.

7.2.3 The Metro Executive Officer may amend the Plan to make technical, administrative or editorial changes on advice of counsel to comply with applicable law or to simplify or clarify the Plan.

7.2.4 The Metro Council shall not necessarily have any administrative or investment authority or function. Membership on the Council shall not, by itself, make a person a Plan fiduciary.

7.3 Claims Procedure

7.3.1 Any person claiming a benefit or requesting an interpretation, a ruling or information under the Plan shall present the request in writing to the Plan Administrator, who shall respond in writing as soon as practicable.

7.3.2 If the claim or request is denied, the written notice of denial shall state all of the following:

- (1) The reasons for denial, with specific reference to the Plan provisions on which the denial is based.
- (2) A description of any additional material or information required and an explanation of why it is necessary.
- (3) An explanation of the Plan's claim review procedure.

7.3.3 Any person whose claim or request is denied or who has not received a response within 30 days may request review by notice in writing to the Plan Administrator. The original decision shall be reviewed by the Plan Administrator, who may, but shall not be required to, grant the claimant a hearing. On review, whether or not

there is a hearing, the claimant may have representation, examine pertinent documents and submit issues and comments in writing.

7.3.4 The decision on review shall normally be made within 60 days. If an extension of time is required for a hearing or other special circumstances, the claimant shall be so notified and the time limit shall be 120 days. The decision shall be in writing and shall state the reasons and the relevant Plan provisions. All decisions on review shall be final and bind all parties concerned.

7.4 Expenses

7.4.1 The Plan Administrator shall be reimbursed for all expenses authorized by the Metro Council. The Plan Administrator shall notify the Metro Council periodically of expenses.

7.4.2 The Trustee shall be paid a fee and reimbursed for expenses to the extent provided by contract or approved by the Plan Administrator. The Trustee shall notify the Plan Administrator periodically of expenses and fees.

7.4.3 Metro may elect to pay any administrative fees or expenses. If it elects not to do so, the expenses and fees shall be paid from the trust fund. Expenses related to the individual account of a participant may be charged directly to that account.

7.5 Indemnity and Defense

7.5.1 Metro shall indemnify and defend any Plan fiduciary who is an officer, director or employee of Metro from any claim or liability that arises from any action or inaction in connection with the Plan subject to the following rules:

(1) Coverage shall be limited to actions taken in good faith that the fiduciary reasonably believed were not opposed to the best interest of the Plan.

(2) Negligence by the fiduciary shall be covered to the fullest extent permitted by law.

(3) Coverage shall be reduced to the extent of any insurance coverage provided by Metro.

7.5.2 Metro shall indemnify and defend any Plan fiduciary not covered by 7.5.1 from any claim or liability arising from action or inaction based on information or direction from the Plan Administrator or Metro, absent willful misconduct, gross negligence or bad faith.

ARTICLE 8

Investment of Trust Fund

8.1 Trust Fund

8.1.1 Metro shall pay contributions to the Trustee, who shall pool them for investment, subject to participants' or beneficiaries' direction under 8.2.

8.1.2 The Trustee shall accept the sums paid and need not determine the required amount of contributions or collect any contribution not voluntarily paid.

8.2 Participant Direction of Investments

8.2.1 Participants shall direct investment of their accounts among permissible investment options as determined by the Plan Administrator in accordance with rules of the Plan Administrator, which may restrict the method, frequency and timing of investment directions. Any portion of a participant's accounts that is not covered by a timely, proper investment direction shall be invested in a highly liquid, low-risk, interest-bearing fund selected by the Plan Administrator.

8.2.2 Investment of the participant's accounts shall be controlled by the participant. Neither the Plan Administrator, the Trustee nor any investment manager shall have any fiduciary duty with respect to investment of any account.

8.3 Special Additional Trustee

8.3.1 The Plan Administrator may appoint one or more individuals, national or state banks or trust companies as special additional trustees. A special additional trustee shall be included in the term Trustee for purposes of asset management powers but not for purposes of signing amendments.

8.3.2 The Plan Administrator shall specify the responsibilities of a special additional trustee, which may be general or limited. A special additional trustee

shall have no powers, responsibility or liability for anything outside of its specified responsibilities and shall not be liable for any action or inaction of any other trustee with respect to other matters.

8.3.3 The Plan Administrator's statement of appointment of a special additional trustee shall become a part of this Plan and Trust.

8.4 Custodian

The Plan Administrator may employ a bank or other suitable institution to serve as Custodian for all or part of the Trust assets. The Custodian shall have exclusive responsibility for the investment directions of the investment manager or the Trustee. No Custodian shall have any Trustee powers or responsibilities.

ARTICLE 9

Amendment; Termination; Merger

9.1 Amendment

9.1.1 Metro may amend this Plan and Trust at any time by written instrument signed on behalf of Metro, pursuant to 7.5, and the Trustee. No amendment shall revest any of the trust fund in Metro or otherwise modify the Plan and Trust so that it would not be for the exclusive benefit of eligible employees.

9.1.2 Amendments may be made effective retroactively to the extent permitted by applicable law and regulations.

9.2 Termination

9.2.1 Metro may wholly or partially terminate this Plan or discontinue or direct the discontinuance of contributions at any time, pursuant to 7.5.2. Metro may request a ruling from the IRS on the effect of termination on the qualification of the Plan.

9.2.2 Upon termination or discontinuance, Metro may continue the trust to pay benefits as they mature or liquidate and distribute the relevant portion of the Trust fund. On liquidation the net assets shall be allocated by the Plan Administrator among participants and beneficiaries in proportion to account balances.

ARTICLE 10

Miscellaneous Provisions

10.1 Information Furnished

The Plan Administrator may require satisfactory proof of age or other data from a participant, spouse or beneficiary. The Plan Administrator may adjust any benefit if an error in relevant data is discovered.

10.2 Applicable Law

This Plan shall be construed according to the laws of Oregon except as preempted by federal law.

10.3 Plan Binding on All Parties

This Plan shall be binding upon the heirs, personal representatives, successors and assigns of all present and future parties.

10.4 Not Contract of Employment

The Plan shall not be a contract of employment between Metro and any employee. No employee may object to amendment or termination of the Plan. The Plan shall not prevent Metro from discharging any employee at any time.

10.5 Notices

Except as otherwise required or permitted under this Plan or applicable law, any notice or direction under this Plan shall be in writing and shall be effective when actually delivered or, if mailed, when deposited postpaid as first-class mail. Mail shall be directed to the address stated in this Plan or to such other address as a party may specify by notice to the other parties.

10.6 Benefits Not Assignable; Qualified Domestic Relations Orders

10.6.1 This Plan is for the personal protection of the participants. Subject to 10.6.2, no interest of any participant or beneficiary may be assigned, seized by legal process, transferred or subjected to the claims of creditors in any way.

10.6.2 Benefits may be paid in accordance with a QDRO under §414(p) of the Code pursuant to procedures of the Plan Administrator. Benefits may be paid to an alternate payee under a QDRO before payment to the participant would be permitted.

10.7 Nondiscrimination

Metro, the Plan Administrator and the Trustee shall to the fullest extent possible treat all persons who are similarly situated alike under this Plan.

10.8 Nonreversion of Assets

10.8.1 Subject to 10.8.2, no part of the contributions or the principal or income of the Trust shall be paid to or revested in Metro or be used other than for the exclusive benefit of the participants and their beneficiaries.

10.8.2 A contribution may be returned to Metro to the extent that the contribution was made by mistake of fact, subject to the following rules:

- (1) Any return must occur within one year of the mistaken payment.
- (2) The returnable amount shall be reduced by a pro rata share of any investment losses attributable to the contribution and by any amounts that cannot be charged under (c) below.
- (3) The amounts returned shall be charged to participants' accounts in the same proportion as the accounts were credited with the contribution. No participant's account shall be charged more than it was previously credited.

METRO

By: _____

Executed: _____, 2000

OPERATIONS COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 00-2961, FOR THE PURPOSE OF ADOPTING THE PLAN RESTATEMENT FOR THE METRO 401(K) EMPLOYEE SALARY SAVINGS PLAN

Date: June 29, 2000

Presented by: Councilor Atherton

Committee Recommendation: At its June 21, 2000, meeting, the Operations Committee voted 3-0 to recommend Council adoption of Resolution No. 00-2961. Voting in favor: Councilors Washington, Atherton, and Monroe. Voting against: none. Absent: none.

Background: Lydia Neill, Chair of the Metro 401(k) Employee Salary Savings Plan Advisory Committee, presented the staff report, explaining that when updates are made to Metro's 401(k) Employee Salary Savings Plan, such updates and/or plan restatements must be approved by Council, in accordance with the provisions of Section 401 of the Internal Revenue Code of 1986.

The existing Plan document has been unchanged since its adoption in 1992. The proposed restatement accomplishes the following:

- Adds a year-of-service requirement for eligibility to participate (changing the entry date to conform with both employee benefits and PERS eligibility dates)
- Allows the Plan to conform to the Uniformed Services Employment and Reemployment Rights Act of 1994; the Small Business Job Protection Act of 1996; and the Taxpayer Relief Act of 1997
- Updates Plan language, deletes trust provisions which will be placed in a separate trust document, and ensures compliance with applicable law.

Proposed changes to the Plan document have been prepared in consultation with outside counsel specializing in 401(k) administration and with the Plan's current trustee, the Vanguard Group. These changes were reviewed and approved by the Metro 401(k) Advisory Committee at their meeting of June 7, 2000.

Committee Issues/Discussion: There was no committee discussion.

STAFF REPORT

FOR THE PURPOSE OF ADOPTING THE PLAN RESTATEMENT FOR THE METRO 401(k) EMPLOYEE SALARY SAVINGS PLAN

Date: June 29, 2000

Presented by: Mike Burton, Executive Officer
Lydia Neill, Chair, 401(k)
Advisory Committee

PROPOSED ACTION

Adoption of the plan restatement for the Metro 401(k) Employee Salary Savings Plan.

EXISTING LAW

In accordance with provisions of §401 of the Internal Revenue Code of 1986 restatements and plan updates must be approved by the governing body.

BACKGROUND AND ANALYSIS

Metro established an Employee Salary Savings Plan and Trust, which was originally effective on July 1, 1981 under its former name, The Metropolitan Service District. This plan was a nonstandardized prototype document that was signed on December 3, 1992, effective generally on July 1, 1987. This originally adopted plan document has been in place since that date.

The purpose of this plan restatement is to add a year-of-service requirement for eligibility to participate, conform to the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997. In addition, the restatement updates plan language, deletes trust provisions, which will be placed in a separate trust document, ensures compliance with applicable law and makes other clarifying and administrative changes.

The plan restatement document complies with §401 of the Internal Revenue Code of 1986, as amended and applicable regulations.

Outside counsel with specific expertise in 401(k) plan administration was retained to provide the plan restatement. In addition, The Vanguard Group (the Plan's current recordkeeper and trustee, has reviewed and approved the restatement. In addition, the 401(k) Advisory Committee reviewed and approved the plan restatement at the June 7, 2000 meeting.

FISCAL IMPACT: None

EXECUTIVE OFFICER RECOMMENDATION: The Executive Officer recommends Council adoption of the plan restatement for the Metro 401(k) Employee Salary Savings Plan.