

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE) RESOLUTION NO. 03-3265
APPOINTMENT OF DANIEL B. COOPER AS)
METRO ATTORNEY) Introduced by Council President David
) Bragdon

WHEREAS, pursuant to Section 26 of the Metro Charter, as amended on November 7, 2000, the Metro Council created the Office of Metro Attorney, to take effect on January 6, 2003;

WHEREAS, the duties and responsibilities of the Metro Attorney are described and provided for in the Metro Code;

WHEREAS, the Metro Council President has the authority to appoint the Metro Attorney subject to confirmation of the Metro Council;

WHEREAS, the Metro Council President has appointed Daniel B. Cooper to serve as the Metro Attorney subject to Council confirmation;

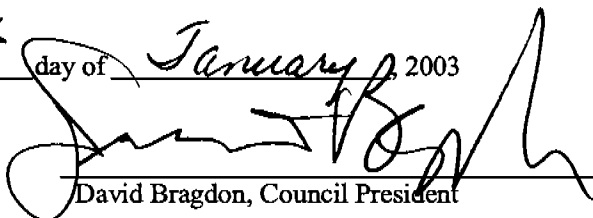
WHEREAS, Daniel B. Cooper is qualified to be the Metro Attorney; and

WHEREAS, the Metro Code provides that the employment of the Metro Attorney shall be subject to the terms of an employment agreement and the Metro Council President has negotiated an employment agreement with Daniel B. Cooper, subject to approval by the Council; now therefore

BE IT RESOLVED by the Metro Council:

1. The appointment of Daniel B. Cooper as Metro Attorney is confirmed; and
2. The Metro Council President is authorized to execute an employment agreement with Daniel B. Cooper, substantially similar in form to Exhibit A attached hereto.

ADOPTED by the Metro Council this 6th day of January, 2003



David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney



**EXHIBIT A TO RESOLUTION NO. 03-3265
EMPLOYMENT AGREEMENT FOR METRO ATTORNEY**

THIS EMPLOYMENT AGREEMENT (the "Agreement") is entered into on this 6th day of January, 2003, to be effective immediately between Metro, a municipal corporation of the State of Oregon and Daniel B. Cooper ("Cooper").

RECITALS

WHEREAS, pursuant to Section 26(2) of the Metro Charter, as amended in November 2000, the Metro Council ("Council") has created the Office of the Metro Attorney, effective January 6, 2003. The powers and duties of the Metro Attorney are set forth in the Metro Code. Prior to January 6, 2003, Metro obtained its legal services from the Office of Metro General Counsel. The Office of Metro Attorney will provide services to Metro similar to that provided by the Office of General Counsel; and

WHEREAS, the creation of the Office of Metro Attorney was one of several other material changes made to Metro's governance structure by the amendments adopted by the voters in November 2000. The amendments also included the creation of the elected position of Metro Council President (the "Council President"), the abolition of the elected Executive Officer and Council Presiding Officer and the creation of the Office of Chief Operating Officer. The Metro Attorney and Metro Chief Operating Officer are positions that report directly to the Council; and

WHEREAS, pursuant to the Metro Charter and Code, the Council President appoints the Metro Attorney subject to confirmation by the Council; and

WHEREAS, the Council President has appointed Daniel B. Cooper to be the Metro Attorney and the Council has confirmed the appointment; and

WHEREAS, the Metro Code provides that the employment of the Metro Attorney shall be subject to an employment agreement;

NOW, THEREFORE, IN CONSIDERATION of the compensation to be paid by Metro to Cooper, as specified in this Agreement, and in consideration of the mutual promises contained in this Agreement the parties hereby agree as follows:

1. Engagement. Subject to Metro's right to terminate this Agreement as specified below, Metro hereby employs and Cooper hereby accepts employment as the Metro Attorney.
2. Services. Cooper shall faithfully, industriously, and to the best of his ability, provide services as the Metro Attorney, and shall perform all duties as may be required of him by the Metro Charter, Metro Code and the Council.
3. Exclusivity. During the term of this Agreement, and except as otherwise provided herein, Cooper shall devote his time, attention, knowledge, and skills to Metro as its Metro Attorney, and shall not accept any other paid employment without Metro's written consent.
4. Term of Agreement. This Agreement shall begin January 6, 2003. This Agreement shall continue in effect until terminated as provided for herein.

5. Salary. As compensation for Cooper's services, Metro shall initially pay Cooper the sum of \$ 122,115.00 per year, payable in the same frequency and manner as other Metro employees. Cooper's performance and salary shall be reviewed annually by Metro, as provided below. Any annual salary increases shall be based on performance, availability of funding, and on Metro's assessment of inflation and a survey of annual salaries paid for comparable positions. For the purpose of this Agreement, comparable positions shall include but not limited to, the head attorney position of the Metro Area's largest city and other regional government entities.

6. Performance/Salary Reviews. The Council and Council President shall annually evaluate Cooper's performance based on his performance of assigned duties and responsibilities, and any other matters deemed appropriate for consideration by the Council. Any salary adjustments shall be based on Metro's annual evaluation of Cooper's performance. No failure to evaluate Cooper shall limit Metro's right to terminate Cooper as specified in this Agreement. Either Cooper or the Council President and Council may propose other amendments to this Agreement for consideration at the time of the annual evaluation. All salary adjustments and any other amendments to this Agreement are subject to determination by the Council President and Council approval and on other factors set forth in Section 5 of this Agreement.

7. Benefits. In addition to the salary specified herein, Metro shall provide Cooper all employee benefits provided by Metro to Metro's non-represented employees. For the purposes of this section, "benefits" means health insurance, including dental and vision care, life insurance, disability insurance, sick leave, employee assistance, and retirement benefits pursuant to the Public Employees Retirement System ("PERS"), including the 6% employee contribution. Cooper shall be entitled to these benefits under the same terms and conditions as provided for Metro's non-represented employees. Except as otherwise expressly provided in this Agreement, the employee benefits provided to Cooper under this Section are subject to any addition, reduction or other change made by the Metro Council to the benefits provided to Metro's non-represented employees. Cooper shall accrue paid vacation leave of six (6) weeks a year and paid vacation leave may accumulate from year to year without limitation. Cooper may elect in writing to transfer up to 160 unused hours of sick leave to vacation leave effective July 1 of each year this Agreement is in effect.

8. Employment to be At Will. It is understood and agreed between the parties that Cooper shall be employed solely and exclusively as an at will employee, and shall serve purely at the pleasure of the Council. It is further understood and agreed that neither this Agreement, nor service provided under this Agreement, shall create a property interest of any kind. This Agreement has no monetary value.

9. Attorney Status. As a condition of employment, Cooper must maintain status as an active member of the Oregon State Bar in good standing. Cooper shall be permitted to engage in pro bono activities required or encouraged for members of the Oregon State Bar, to the extent that such activities present no conflict and are non inconsistent with Cooper's service as Metro Attorney. Metro shall pay Cooper's Oregon State Bar annual membership fee and any other fees required by the Oregon State Bar as a condition of practice of law in the State of Oregon. In addition, subject to annual budgetary approval, Metro shall pay Mr. Cooper's reasonable costs for continuing legal education and other professional education and for memberships in professional organizations necessary or beneficial to carrying out his duties as Metro Attorney.

10. Successorship. This Agreement shall inure to and shall be binding upon Metro's successors, assigns, and trustees of the parties to it.

11. Termination. This Agreement may be terminated in any of the following manners. In each case, the severance provisions applicable to each type of termination shall govern.

A. Metro's Annual Termination Right.

- (1) Metro may terminate this agreement if the Council President gives written notice of termination at any time between December 1st and December 31st of any year.
- (2) In the event that this Agreement is terminated pursuant to this subsection 11A, Metro shall pay Cooper: (a) 90 days salary as severance pay, not including benefits or the value of any benefits, and (b) the cash value of any accrued and unused vacation leave.

B. Termination for Convenience.

- (1) Metro may terminate this agreement whenever it determines that it would be convenient and/or desirable to do so. In the event that Metro elects to terminate this Agreement for convenience, this Agreement shall terminate upon a date of Metro's choosing.
- (2) Metro shall provide Cooper with written notice of termination of convenience, including the date that the termination becomes effective.
- (3) In the event of a termination for convenience, Metro shall pay Cooper: (a) six (6) months salary as severance pay, not including benefits or the value of any benefits, and (b) the cash value of any accrued and unused vacation leave.

C. Termination for "Cause". Metro may terminate this Agreement for "cause" by giving Cooper 72 hours written notice of intent to terminate for "cause." The written notice shall set forth the reasons for termination constituting cause and provide an opportunity for Cooper to meet with the Council President prior to the effective date of termination to address the reasons for the termination and to provide any additional information. If Cooper elects to meet with the Council President, the Council President shall provide a subsequent second written notice reconfirming or rescinding termination based upon the meeting. In the event that Metro elects to terminate this Agreement for "cause," no severance pay shall be due Cooper, however Cooper shall receive the cash value of any accrued and unused vacation leave. "Cause" shall include one or more of the following:

- (1) Willful failure to follow lawful resolutions or directives of Metro.
- (2) Misappropriation of funds or property of Metro.
- (3) Commission of any act, the nature of which would tend to bring discredit or embarrassment to Metro or the Council.
- (4) Conviction of any offense, the nature of which would tend to bring discredit or embarrassment to Metro or the Council.

- (5) Conviction of official misconduct.
- (6) Failure to maintain any qualification required for office, including failure to remain a member in good standing of the Oregon State Bar.

D. Termination by Resignation. Cooper may terminate this Agreement by submitting his written resignation to the Council President. In the event Cooper submits his resignation, Metro shall pay Cooper: (a) 90 days salary as severance pay, not including benefits or the value of any benefits, and (b) the cash value of any accrued and unused vacation leave.

12. Termination Authority. The Council President has the sole authority to terminate this Agreement on behalf of Metro. The Council President may terminate this Agreement in writing pursuant to any provision of Section 11 Termination of this Agreement. Upon receipt of a termination notice, Cooper may accept the termination or request in writing within 48 hours that the Council President submit the termination to the Council for its concurrence. Concurrence in the termination by the Council is a final decision.

13. Applicable Law. This Agreement shall be construed consistent with the laws of the State of Oregon and the Metro Charter, Code and regulations.

14. Notices. Notices under this Agreement will be given to Cooper at the Metro Attorney's Office and to the Council President at the Council President's Office.

15. Arbitration.

- (1) Agreement. Metro and Cooper agree that any dispute or controversy arising out of, relating to, or in connection with this Agreement, or the interpretation, validity, construction, performance, breach, or termination thereof shall be settled by binding arbitration to be held in Portland, Oregon, or such other location agreed by the parties, in accordance with the National Rules for the Resolution of Employment Disputes then in effect of the American Arbitration Association ("AAA"). The arbitration shall be conducted by one (1) arbitrator. The parties shall agree upon the arbitrator or, if the parties do not agree, the arbitrator shall be selected according to AAA's procedures then in effect for selecting an arbitrator for an employment dispute. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction.
- (2) Governing Law. The arbitrator shall apply Oregon law to the merits of any dispute or claim, without reference to the rules of conflicts of law. Metro and Cooper consent to the personal jurisdiction of the federal courts in the district of Oregon and the circuit court in Multnomah County for any action or proceeding arising from or relating to this Agreement or relating to any arbitration in which the parties are participants.
- (3) Costs and Fees of Arbitration; Attorney's Fees. The fees and costs of the arbitration shall be determined by AAA's schedule of fees and costs for disputes arising out of individually negotiated employment agreements. The filing party shall pay the initial filing fee required when a claim, counterclaim, or additional claim is filed. Metro and Cooper shall each pay one-half of the additional fees and expenses (including the arbitrator's compensation) of the arbitration. The prevailing party shall be entitled to

recover arbitration costs and expenses and reasonable attorney's fees (including the reasonable value of services which may have been provided by in-house counsel or their designees).

16. **Entire Agreement.** This Agreement is the final agreement between the parties. It is intended to be a complete and final expression between the parties, and supersedes any and all prior discussion or agreements.

17. **Modification.** This Agreement can only be modified by a written amendment, approved by the Metro Council and signed by Cooper and the Council President. No oral or written statement, promises, or course of conduct shall serve to modify this Agreement in any way. No practices or customs which may arise between Cooper and Metro shall modify this Agreement or affect its meaning in any way.

18. **Severability.** In the event that any court of competent jurisdiction determines that one or more portions of this Agreement are invalid or unlawful, the remaining portions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the effective date specified above.

DANIEL B. COOPER

METRO

Metro Attorney

David Bragdon
Council President