

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE) RESOLUTION NO. 11-4221
METRO EMPLOYEE SALARY SAVINGS PLAN)
2010 RESTATEMENT) Introduced by Michael Jordan, Chief
) Operating Officer, with the Consent of the
) Council President

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 401K Plan to reflect changes in applicable law and to provide for changes in administration of the plan; and

WHEREAS, the 401K Plan was last restated effective January 1, 2002, and was last amended effective March 28, 2005; and

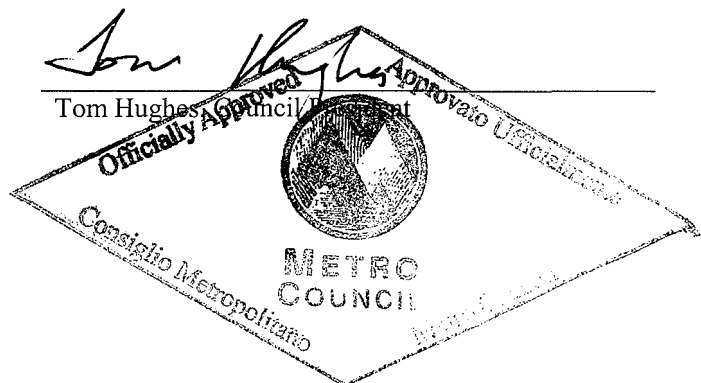
WHEREAS, the Metro Employee Salary Savings Plan 2010 Restatement ("the Plan") is necessary to address numerous technical modifications to the 401K Plan and comply with Pension Protection Act of 2006, §401 of the Internal Revenue Code of 1986, as amended, and applicable laws and regulations; and

WHEREAS the Plan was prepared by outside counsel in conjunction with the Office of Metro Attorney, now therefore,

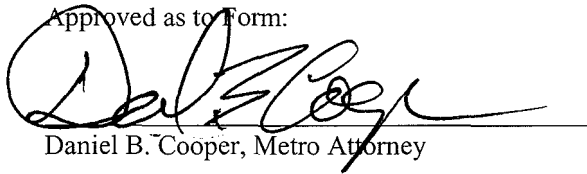
BE IT RESOLVED

1. That the Metro Council adopts the Metro Employee Salary Savings Plan 2010 Restatement, attached as Exhibit "A" to this Resolution.
2. That the Chief Operating Office is authorized and directed to execute the Plan in the form provided by counsel. The Chief Operating Office is further authorized and directed to take any and all actions necessary or appropriate to obtain a favorable determination letter from the Internal Revenue Service on the Plan's tax-qualified status, and to obtain a compliance statement from the Internal Revenue Service under the Voluntary Correction Program. These actions shall include, but not be limited to, the execution of documents on behalf of Metro, including the execution of additional Plan amendments, on the advice of counsel, that are necessary to comply with applicable law or requested by the Internal Revenue Service in connection with the application for a determination letter or compliance statement.

ADOPTED by the Metro Council this 6 day of JAN, 2011.



Approved as to Form:

A handwritten signature in black ink, appearing to read "Daniel B. Cooper", is written over a horizontal line.

Daniel B. Cooper, Metro Attorney

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METRO
EMPLOYEE SALARY SAVINGS PLAN

2010 Restatement

January 1, 2010

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

Metro has established and maintained the Employee Salary Savings Plan (the "Plan") for the exclusive benefit of its eligible employees. The Plan was originally adopted effective July 1, 1985. The Plan was last restated effective generally January 1, 2002, and was last amended effective March 28, 2005. Metro adopts this restatement to add provisions required or permitted by the Pension Protection Act of 2006 and other federal law changes, to update Plan language, ensure compliance with applicable law, and make other clarifying and administrative changes. This Plan and the related trust (the "Trust") are intended to comply with §401 of the Internal Revenue Code of 1986, as amended (the "Code"), and applicable regulations.

ARTICLE 1

General Provisions; Definitions

1.1 Effective Dates; Valuation Dates; Plan Year

1.1.1 This restatement shall be effective January 1, 2010, except as otherwise provided with respect to specific provisions of this restatement.

1.1.2 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 The Plan Year and limitation year shall be the calendar year. The limitation year is the period used for determining compliance with the annual addition limits under 3.3.

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) of the Code, Metro may amend the Plan retroactively to qualify.

1.3 Metro

For purposes of this Plan, “Metro” means the Portland area metropolitan service district authorized by chapter 268 of the Oregon Revised Statutes (“ORS”). Metro was established and is governed by a district charter adopted by the voters pursuant to ORS 268.710 and Article XI, section 14, of the Oregon Constitution (the “Metro Charter”). The Metro Charter was adopted in November 1992 and most recently amended in November 2000. For purposes of §414(d) of the Code, Metro is a political subdivision of the state of Oregon.

1.4 Trustee; Trust

The “Trustee” means one or more individuals or entities with which Metro enters into a trust agreement for the holding and investment of Plan assets. As of January 1, 2010, the Trustee is Vanguard Fiduciary Trust Company. Subject to the terms of the applicable trust agreement, Metro may change the Trustee at any time without amending this Plan document by entering into a new trust agreement.

The “Trust” means the trust in which Plan assets are held and invested, and which is created by or maintained pursuant to a trust agreement between Metro and the Trustee. As of January 1, 2010, the Trust is governed by the March 31, 1998, Trust Agreement between Metro and Vanguard Fiduciary Trust Company.

ARTICLE 2

Eligibility and Participation

2.1 Conditions of Eligibility

2.1.1 A qualified employee, as defined in 2.1.2, shall be eligible to participate on the earliest of the following dates:

- (a) The first day of the month that begins after the 30th day of continuous employment as a qualified employee, as defined in 2.1.2.
- (b) For elected officials, the first day of the month that begins on or after the first day of employment as an elected official.
- (c) The first day of the month that begins on or after the date the qualified employee becomes an active member of the Oregon Public Employees Retirement System or the Oregon Public Service Retirement Plan.

2.1.2 “Qualified employee” means an individual described below.

(a) Except as provided in (b) below, the term “qualified employee” means the following individuals:

(1) Employees of Metro, as defined in 1.3, including, but not limited to, employees of the Metropolitan Exposition-Recreation Commission (MERC).

(2) The members of the Metro Council.

(3) The Metro Attorney and all employees of the Office of the Metro Attorney.

(4) The Metro Auditor and all employees of the Office of the Metro Auditor.

(b) Notwithstanding (a) above, the term “qualified employee” does not include the following employees and individuals:

(1) A leased employee who is treated as an employee for pension purposes solely because of §414(n) of the Code. For this purpose, a “leased employee” means any person who is not an employee, but who provides services pursuant to an agreement between the employer and a third party, is under the employer’s primary direction or control and has performed such services on a substantially full-time basis for at least one year.

(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 of Metro.

(4) An employee who is not eligible to participate in the Oregon Public Employees Retirement Plan or the Oregon Public Service Retirement Plan pursuant to ORS chapter 238 or 238A, and who is in at least one of the following categories:

(A) A seasonal or temporary employee.

(B) An intern.

(C) An employee who is subject to the salary and personnel rules established by the Chief Operating Officer of

Metro or the Metro Auditor and who is not regularly scheduled to work at least 20 hours per week. Notwithstanding this provision, a qualified employee of MERC who became eligible to participate in the Plan before July 1, 2010, shall continue to be eligible to participate in the Plan as long as he or she continues to be a qualified employee. If such an employee terminates employment and is later rehired, he or she must satisfy the eligibility and participation rules in effect on the date of rehire before he or she may again participate in the Plan.

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 3.1.3, 3.3, and the provisions of this subsection 3.1.1, a qualified employee who has satisfied the requirements of 2.1.1 may elect to have elective contributions deducted from his or her compensation and contributed to the Trust. Effective June 29, 2006, the term “elective contributions” includes both pre-tax elective contributions and Roth elective contributions, as described in 3.1.2 below.

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

(b) Except as permitted under the catch-up contribution rule in (c), elective contributions by any Plan participant for any calendar year shall not exceed the applicable dollar limitation under §402(g)(1) of the Code, as adjusted by the IRS for increases in cost-of-living. The applicable dollar limitation for 2010 is \$16,500. Such limit is in addition to the limit imposed by 3.3.

(c) Participants who have reached or are expected to reach age 50 before the end of the Plan Year may make catch-up contributions in accordance with §414(v) of the Code.

(d) An employee's compensation shall be reduced by the amount of the elective contributions. An employee may make elective contributions only with respect to compensation that the employee could otherwise elect to receive in cash and that are not currently available to the employee. Effective January 1, 2008, for purposes of this section 3.1, "compensation" is as defined in 3.3.2, excluding the post-severance payments described in 3.3.2(d)(2) and (3) and, effective January 1, 2009, excluding any differential wage payments described in 3.3.2(a).

3.1.2 Effective June 29, 2006, the Plan accepts Roth elective contributions made on behalf of participants.

(a) A "Roth elective contribution" is an elective contribution that is:

(1) Designated irrevocably by the participant at the time of the cash or deferred election as a Roth elective contribution that is being made in lieu of all or a portion of the pre-tax elective contributions the participant is otherwise eligible to make under the Plan; and

(2) Treated as not excludable from the participant's gross income.

(b) Contributions of Roth elective contributions will be credited and debited to the Roth 401(k) account maintained for each participant. The Plan will retain a record of the amount of Roth elective contributions in each participant's account. Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each participant's Roth 401(k) account and the participant's other accounts under the Plan. No contributions other than Roth elective contributions and properly attributable earnings will be credited to a participant's Roth 401(k) account.

3.1.3 Elections shall be governed by the following rules:

(a) 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.

(b) 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.

3.1.4 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:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

3.1.5 If a participant has an excess deferral as described in §402(g) of the Code (an excess of elective contributions and other elective deferrals over the applicable dollar limitation described in 3.1.1(b)), a corrective distribution may be made in accordance with this subsection 3.1.5, unless the excess deferral is attributable to a catch-up contribution made in accordance with §414(v) of the Code and 3.1.1(c).

(a) A participant may receive a corrective distribution of an excess deferral (and any income allocable to the excess) after the end of the calendar year with respect to which the excess deferral was made, provided that, no later than March 1 following the end of the calendar year, the participant notifies the Benefits Manager of the excess deferral received by this Plan in accordance with (c) below. If the notice is timely provided, the excess deferral (and any income allocable to it) may be distributed to the participant no later than April 15 following the close of the calendar year.

(b) A participant who has an excess deferral for a calendar year may receive a corrective distribution of the excess (and any income allocable to the excess) during the same year if the participant designates the distribution as an excess deferral in accordance with (c) below, the corrective distribution is made after the date on which the Plan received the excess deferral, and the Plan Administrator designates the distribution as a distribution of excess deferrals.

(c) To receive a distribution of excess deferrals pursuant to (a) or (b) above, a participant must certify or otherwise establish that the specified amount is an excess deferral. However, a participant will be deemed to have

notified the Plan of excess deferrals to the extent he or she has excess deferrals for the calendar year, calculated by taking into account only elective contributions under this Plan.

(d) If a participant has made any Roth elective contributions for the calendar year, the participant's notification under (c) must identify the extent, if any, to which the excess deferrals are comprised of Roth elective contributions. In the absence of a different designation by a participant, excess deferrals identified under the notification or deemed notification rules in (c) shall consist of pre-tax elective contributions first.

3.2 No Employee Contributions

No employee contributions are required or permitted, other than rollover contributions pursuant to 4.3. Under IRS rules, elective contributions under 3.1 are technically employer contributions by Metro.

3.3 Limit on Annual Additions

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

(a) The limit in §415(c)(1)(A) of the Code, as adjusted by the IRS pursuant to §415(d). The limit from all sources for 2009 and 2010 is \$49,000.

(b) 100 percent of the employee's compensation under 3.3.2.

3.3.2 Effective January 1, 2008, "compensation" means wages within the meaning of §3401(a) of the Code and all other payments of compensation to an employee by Metro (in the course of Metro's trade or business) for which Metro is required to furnish the employee a written statement under §§6041(d), 6051(a)(3), and 6052 of the Code, determined without regard to any rules under §3401(a) of the Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed. This definition of "compensation" is subject to the following adjustments:

(a) Compensation shall include amounts that would have been received and includible in gross income, but for an election under §125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Code. Effective for remuneration paid after December 31, 2008, this amount shall include any differential wage payment, as defined in §3401(h)(2) of the Code, that is treated as a payment of wages by Metro to the employee pursuant to §3401(h)(1) of the Code.

(b) The maximum amount of an employee's annual compensation taken into account for any Plan purpose 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 2010 is \$245,000. If any period over which compensation

is determined (determination period) consists of fewer than 12 months, the applicable dollar limitation determined under this section shall be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

(c) Amounts that are paid after an employee's severance from employment, as defined in 5.1.2, shall be excluded from the employee's compensation for all Plan purposes, except as provided in (1), (2), or (3) below.

(1) Back pay, within the meaning of Treasury Regulation §1.415(c)-2(g)(8), shall be included in compensation for the Plan Year to which the back pay relates, to the extent that it otherwise satisfies the basic definition in this paragraph.

(2) Compensation shall include regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, provided that: (A) absent a severance from employment, the compensation would have been paid to the employee while the employee continued in employment with Metro; (B) the compensation otherwise satisfies the basic definition in this paragraph; and (C) the compensation is paid to the employee by the end of the Plan Year that includes the date of the employee's severance from employment or, if later, within 2½ months after the employee's severance from employment.

(3) Compensation shall include payment of unused accrued bona fide sick, vacation, or other leave, provided that the employee would have been able to use the leave if his or her employment had continued, and that the payment satisfies the requirements in (2)(B) and (C) above.

3.3.3 For any limitation year, "annual addition" means the sum of the following amounts allocated to a participant's accounts as of any date within the limitation year:

(a) Employer contributions (excluding forfeitures) made directly or indirectly;

(b) The participant's contributions (whether mandatory or voluntary, but not including rollover contributions), if any; and

(c) Forfeitures.

3.3.4 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, all members of Metro's affiliated service group under §414(m) of the Code, and all other entities required to be

aggregated with Metro under regulations issued pursuant to §414(o) of the Code shall be considered a single employer.

3.3.5 If Metro maintains another qualified defined contribution plan or plans, the annual additions under all such plans shall be combined for purposes of applying the limit in this section.

3.3.6 If an annual addition for a participant would otherwise exceed the limit in 3.3.1, the Plan Administrator may prospectively reduce or stop the participant's elective contributions, other than any catch-up contributions made pursuant to 3.1.1(c), to the extent necessary to avoid exceeding the annual addition limit.

3.4 Time of Payment; Reports to Plan Administrator

3.4.1 Metro shall pay contributions to the Trustee, subject to the following:

(a) Elective contributions shall be paid as soon as the amount can reasonably be identified and separated from Metro's general assets. Generally, elective contributions shall be paid to the Trustee within five business days following the day on which the amounts would otherwise have been payable to the participant in cash.

(b) 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 regular or extended time for filing Metro's federal information return for the Metro reporting year in which the Plan Year ends.

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

(c) Effective January 1, 2006, except as provided in Treasury Regulation §1.401(k)-1(a)(3)(iii)(C)(2) for bona fide administrative considerations, elective contributions shall be made after: (1) the employee's election is made; and (2) the earlier of the employee's performance of services with respect to which the elective contributions are made, or the date the compensation would be currently available.

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

3.5 In-Service Withdrawals

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

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

(b) To the extent approved by the Plan Administrator because of financial hardship under 3.5.2, an employee not covered in (a) may withdraw all or part of the employee's rollover and transfer 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.

3.5.2 "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:

(a) Expenses for, or necessary to obtain, medical care that would be deductible under §213(d) of the Code (determined without regard to whether the expenses exceed 7.5 percent of adjusted gross income) or that are incurred by the employee's primary beneficiary.

(b) Payment of tuition, related educational fees, and room and board for the next 12 months of post-secondary education for the employee or the employee's spouse, children, dependents (as defined in §152 of the Code, without regard to §152(b)(1), (b)(2), and (d)(1)(B) of the Code) or primary beneficiary.

(c) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the employee.

(d) Payments necessary to prevent the employee's eviction from his or her principal residence or the foreclosure on the mortgage of the employee's principal residence.

(e) Payments for burial or funeral expenses for the employee's deceased parent, spouse, children, dependents (as defined in §152 of the Code, without regard to §152(d)(1)(B) of the Code), or primary beneficiary.

(f) Expenses for the repair of damage to the employee's principal residence that would qualify for the casualty deduction under §165 of the Code (determined without regard to whether the loss exceeds 10 percent of adjusted gross income).

For purposes of this section 3.5, an employee's primary beneficiary is an individual who is named as a beneficiary under section 6.3 and who has an unconditional right to all or a portion of the employee's accounts upon the employee's death.

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

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

(b) 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.

(c) 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.

(d) 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 maintain the accounts listed below for each participant, to the extent applicable. Each account will be adjusted to reflect its share of the net annual earnings or losses of the Trust fund, and the appreciation or depreciation in the value of the assets of the Trust fund.

(a) A pre-tax elective contributions account.

(b) A Roth elective contributions account.

(c) A rollover account, to be credited with the participant's rollover contributions under 4.3, other than rollovers from a Roth elective deferral account.

(d) A Roth rollover account, to be credited with the participant's direct rollovers from a Roth elective deferral account under an applicable retirement plan described in §402A(e)(1) of the Code, to the extent such rollovers are permitted by the Plan Administrator in accordance with 4.3. The Roth rollover account is subject to the separate accounting rules in 3.1.2(b).

(e) A Transferred 5% Employer Contribution Account.

(f) Any other separate account that is necessary for the proper administration of the Plan.

4.1.2 At least annually, the Plan Administrator shall furnish each participant 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

4.2.2 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.

4.2.3 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 Rollovers

4.3.1 Subject to the provisions of this section, the Plan Administrator may, in its discretion, direct the Trustee to accept rollover contributions on behalf of a qualified employee, the amount of which shall be credited to the employee's rollover account or Roth rollover account, as applicable, and which shall at all times remain fully vested and nonforfeitable.

4.3.2 A "rollover contribution" is:

(a) An amount received by the Trustee from a qualified employee who, having received an eligible rollover distribution, as defined in §402(c)(4) of the Code, from a qualified trust described in §401(a) of the Code, a qualified annuity plan described in §403(a) of the Code, an annuity contract described in §403(b) of the Code, or an eligible plan described in §457(b) of the Code that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state (governmental §457(b) plan), transfers any portion of the amount received in the distribution to the Trustee on or before the 60th day after the day on which the employee received the distribution (unless this 60-day requirement is waived pursuant to §402(c)(3)(B) of the Code);

(b) An amount received by the Trustee on behalf of a qualified employee in a direct trustee-to-trustee transfer of an eligible rollover distribution from a qualified trust described in §401(a) of the Code, a qualified annuity plan described in §403(a) of the Code, an annuity contract described in §403(b) of the Code, or a governmental §457(b) plan, in accordance with §401(a)(31) of the Code; or

(c) An amount distributed to a qualified employee from an individual retirement account or individual retirement annuity under §408(a) or (b) of the Code, that qualifies as a rollover contribution under §§408(d)(3) of the Code and that is transferred by the qualified employee to the Trustee on or before the 60th day after the day on which the employee received the amount (unless this 60-day requirement is waived pursuant to §408(d)(3)(I) of the Code).

4.3.3 Rollover contributions made under this section may include after-tax employee contributions that are satisfactorily substantiated by the employee. Rollover contributions that include after-tax amounts shall be separately accounted for, including separately accounting for the portion of the contribution that is includible in gross income and the portion of the contribution that is not includible in gross income. Roth rollover contributions are subject to the requirements of 4.3.4.

4.3.4 A rollover contribution to an employee's Roth rollover account must be a direct rollover from another Roth elective deferral account under an applicable retirement plan described in §402A(e)(1) of the Code. The Plan will not accept 60-day rollovers of the taxable portion of an eligible rollover distribution from a Roth elective deferral account.

4.3.5 Before accepting a rollover contribution, the Plan Administrator shall obtain a statement from the plan administrator of the distributing plan that the distributing plan is intended to comply with the applicable Code provision or such other statement or verification required by the IRS. If a direct rollover includes amounts from a Roth elective deferral account and amounts from other accounts, the distributing plan must identify the portion of the direct rollover that consists of amounts from the Roth elective deferral account. In addition, the Plan Administrator shall not accept a direct rollover from a Roth elective deferral account unless the distributing plan provides either:

(a) A statement indicating the first taxable year in which the employee first had Roth elective deferrals made under the distributing plan, and the portion of the distribution that is attributable to investment in the contract under §72 of the Code; or

(b) A statement that the distribution is a qualified distribution.

4.3.6 All qualified employees, as defined in 2.1.2, are eligible to make rollover contributions to the Plan, even if they have not yet become participants.

4.4 Transfers from Other Plans

4.4.1 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:

- (a) The individual involved has requested the transfer and is a qualified employee under 2.1.2 at the time the transfer is made.
- (b) None of the funds are subject to distribution requirements inconsistent with the distribution options in this Plan.
- (c) The Plan Administrator determines that the transfer will not impair the qualified status of this Plan.

4.5 Loans to Participants

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

- (a) The minimum loan amount shall be \$1,000. A reasonable fee may be charged to the participant for making and administering the loan.
- (b) The participant must show the intention and capacity to repay the loan and interest when due.
- (c) Receipt of a loan shall constitute consent by the participant to withdrawals under 4.5.6 before normal retirement age.
- (d) A loan shall be held as a promissory note for the separate account of the participant.
- (e) The participant 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.
- (f) Loan repayments shall be invested in the same investment funds and in the same percentages as are the participant's new contributions.
- (g) A participant may not have more than one loan outstanding at a time.
- (h) A participant who has defaulted on a Plan loan may not take another Plan loan for five years after the date of the default.

4.5.2 Loans shall be funded as follows:

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

(b) All loans shall be repaid by an assignment of current pay of the participant or other automatic payment arrangement sufficient to service the loan as determined by the Plan Administrator and 4.5.5 shall apply.

4.5.3 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 participant has defaulted and accrued interest on such loans, shall not exceed the lesser of the following:

(a) 50 percent of the participant's vested account balances.

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

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

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

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

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

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

(e) If a participant 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.

(f) If a participant performs service in the uniformed services, whether or not the participant 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.

4.5.5 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 4.5.6.

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

(a) 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.

(b) After the participant has reached age 59½ or has a separation from employment, the outstanding balance, including accrued interest, plus any applicable withholding, may be withdrawn on default.

(c) Withdrawals on default shall be debited against the participant'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 severance from employment. Retirement shall occur on the employee's severance from employment after reaching a retirement date under 5.1.3.

5.1.2 For purposes of the Plan, a participant has a "severance from employment" when he or she ceases to be an employee of Metro and all other entities that are required to be aggregated with Metro under §414(b), (c), or (m) of the Code or under regulations issued pursuant to §414(o) of the Code. A participant does not have a severance from employment under the following circumstances:

(a) In connection with the change in employment, the participant's new employer maintains the Plan with respect to the participant; or

(b) The participant's employment status changes from an employee to a leased employee, as defined in 2.1.2(b)(1).

5.1.3 Retirement dates are as follows:

(a) Normal retirement date shall be age 65.

(b) Deferred retirement date shall be any day after normal retirement date, but no later than the participant's required beginning date under 5.4.1(a).

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

5.1.4 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:

(a) 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.

(b) 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 \$1,000, 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 \$1,000, 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:

(a) In a single sum.

(b) In installments, subject to the following provisions:

(1) The participant may elect to receive the installment payments described in (2) on a monthly, quarterly, semi-annual, or annual basis.

(2) The amount of each installment payment, and the period over which installments will be paid, may be determined using one of the following methods, as elected by the participant, subject to the limitation described in (3):

(A) A fixed dollar amount, or fixed percentage of the participant's Plan accounts, with payments to continue until the Participant's accounts have been fully distributed.

(B) Installment payments over a fixed period elected by the participant, with payments designed to be substantially equal to the extent administratively feasible, based on reasonable earnings assumptions adopted by the Plan Administrator.

(3) In no event shall the period over which installment payments are to be made exceed the greater of the participant's life expectancy or the joint life expectancies of the participant and his or her beneficiary.

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, subject to the required distribution rules in 5.4.1.

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 at least 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.

(a) The Benefits Manager shall provide the participant or beneficiary with the notice required by §402(f) of the Code and the regulations thereunder (the distribution notice). The participant or beneficiary shall have at least 30 days after receipt of the distribution notice to consider whether to elect payment in the form of a direct rollover. Effective January 1, 2007, the distribution notice shall not be provided more than 180 days before the distribution is to be made or begun.

(b) The participant may waive the 30-day waiting period described in (a) by making an affirmative benefit election. Such waiver shall become irrevocable seven days after it is made.

(c) 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 distribution notice to the participant.

5.3.3 If a participant has had a severance from employment and either has reached normal retirement age, or is entitled to a benefit that does not exceed \$1,000, the Plan Administrator shall direct the Trustee to pay benefit as soon as practicable, whether or not an

application is filed. The participant shall be provided with the distribution notice described in 5.3.2(a). If the participant's benefit does not exceed \$1,000, it shall be paid in a single lump sum as described in 5.2.2. If the participant's benefit exceeds \$1,000 and the participant does not elect a different payment form after receiving the distribution notice, the benefit shall be paid in a single lump sum. In all other situations, subject to 5.4, payment shall be made or begin as soon as practicable after the participant has had a severance from employment with Metro and applied for payment of benefits.

5.3.4 To the extent required by law, and except as otherwise provided in this section, any portion of an eligible rollover distribution that would otherwise be includible in the distributee's gross income if not rolled over shall, at the election of and in lieu of distribution to the distributee, be paid directly to the eligible retirement plan specified by the distributee.

(a) For purposes of this subsection, an "eligible rollover distribution" is any distribution of Plan benefits to a participant, a participant's surviving spouse, or a participant's spouse or former spouse pursuant to a qualified domestic relations order ("distributee"), except the following distributions:

(1) Any distribution that is one of a series of substantially equal periodic payments made at least annually over one of the following periods: (A) the life (or life expectancy) of the distributee, or the joint lives (or life expectancies) of the distributee and a designated beneficiary; or (B) a specified period of ten years or more.

(2) Any distribution to the extent it is required under §401(a)(9) of the Code.

(3) Any hardship distribution.

For purposes of this section, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, any such portion may be transferred only to an individual retirement account or annuity described in §408(a) or (b) of the Code, to a qualified plan described in §401(a) or 403(a) of the Code, or (effective January 1, 2007) an annuity contract described in §403(b) of the Code, that provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not includible in gross income. The amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income, determined without regard to §402(c)(1) of the Code. A direct rollover of a distribution from a participant's Roth 401(k) account or Roth rollover account will be made only to the extent the rollover is permitted under the rules of §402(c) of the Code.

(b) For purposes of this subsection, an "eligible retirement plan" is:

- (1) An individual retirement account described in §408(a) of the Code;
- (2) An individual retirement annuity described in §408(b) of the Code (other than an endowment contract);
- (3) A qualified trust under §401(a) of the Code;
- (4) An annuity plan described in §403(a) of the Code;
- (5) An eligible deferred compensation plan described in §457(b) of the Code that is maintained by an eligible governmental employer described in §457(e)(1)(A) of the Code, and that agrees to separately account for amounts transferred into such plan from this Plan; or
- (6) An annuity contract described in §403(b) of the Code.
- (7) Effective January 1, 2008, a Roth IRA, to the extent provided in §408A(e)(1) of the Code.

Effective June 29, 2006, notwithstanding the foregoing, with respect to any portion of an eligible rollover distribution that is attributable to payments or distributions from a Roth 401(k) account or a Roth rollover account, an “eligible retirement plan” shall include only another designated Roth account under an applicable retirement plan described in §402A(e)(1) of the Code that agrees to separately account for the amount of the distribution not includible in income (determined without regard to the rollover), or a Roth IRA described in §408A of the Code.

(c) Effective January 1, 2010, if a distribution would qualify as an “eligible rollover distribution” under (a) except that it is payable to a deceased participant’s designated beneficiary, the beneficiary may elect to have the distribution paid in a direct rollover to his or her individual retirement plan. For this purpose, a “designated beneficiary” means the participant’s designated beneficiary for purposes of the required minimum distribution requirements of §401(a)(9) of the Code. An “individual retirement plan” means an individual retirement account described in §408(a) of the Code or an individual retirement annuity described in §408(b) of the Code, other than an endowment contract, that is established for the purpose of receiving the distribution on behalf of the designated beneficiary.

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 All distributions under this Plan shall be determined and made in accordance with a reasonable and good faith interpretation of §401(a)(9) of the Code. The provisions of this Plan reflecting the requirements of §401(a)(9) of the Code shall take precedence over any inconsistent provisions of this Plan. Those requirements include the following:

(a) Distributions to a participant shall be made or begun not later than the participant's required beginning date, and shall be made over a period not to exceed the participant's life (or life expectancy) or the joint lives (or life expectancies) of the participant and his or her designated beneficiary. A participant's "required beginning date" is April 1 of the calendar year immediately following the calendar year in which the participant has both reached age 70½ and has retired.

(b) If a participant dies after distributions have begun in accordance with (a) above, but before receiving the entire amount of his or her Plan benefits, the remaining portion of the benefits shall be distributed at least as rapidly as under the distribution method being used at the time of the participant's death.

(c) If a participant dies before distributions have begun in accordance with (a) above, the entire amount of the participant's Plan benefits shall be distributed within five years after the participant's death, except as otherwise provided in (1) or (2) below.

(1) If any portion of the participant's Plan benefit is payable to, or for the benefit of, a designated beneficiary, that portion may be distributed over a period not to exceed the designated beneficiary's life (or life expectancy), provided that the distributions begin not later than one year after the participant's death or, if later, by the date prescribed in regulations issued under §401(a)(9) of the Code.

(2) If the designated beneficiary is the participant's surviving spouse, the rules in (1) shall apply, except that the distributions to the surviving spouse are not required to begin before the date on which the participant would have reached age 70½, and if the surviving spouse dies before distributions to the spouse begin, paragraphs (b) and (c) of this 5.4.1 shall be applied as if the surviving spouse were the employee.

5.4.2 If, after the date on which any distribution of any portion or all of a Participant's accounts is distributable to any person under the Plan, the distribution cannot be made because the identity or whereabouts of such person cannot be ascertained, that portion of or all of the accounts shall constitute a forfeiture and shall be used to reduce future profiting sharing contributions to the Plan or to pay the reasonable and necessary expenses of administering the Plan. The Plan Administrator's determination of when a distribution cannot be made shall be final. Notwithstanding the foregoing, if, at any time after the forfeiture, the person entitled to the

distribution makes a claim to the Plan Administrator for the distribution, the amount of the forfeiture shall be reinstated and distributed to the person. The amount restored shall be funded from additional Metro contributions.

5.4.3 If a participant or beneficiary entitled to receive any Plan benefit is a minor or is determined to be legally incompetent by a court or in the reasonable judgment of the Plan Administrator, the Plan benefit shall be paid to a parent, guardian, conservator, or such other person as may be designated by the court or deemed appropriate by the Plan Administrator to receive the payment for the benefit of the participant or beneficiary. Any payment made under this section shall be considered a payment to the participant or beneficiary and, to the extent made, shall be deemed a complete discharge of any liability for the payment of benefits under the Plan.

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 5.4.1, the beneficiary shall select whether benefits shall be paid in a lump sum or in substantially equal monthly installments. If the beneficiary does not make a timely 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.

6.1.3 If a participant dies on or after January 1, 2007, while performing qualified military service, as defined in §414(u) of the Code, the participant's survivors shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under this Plan if the participant had resumed active employment and then terminated employment on account of death.

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 5.4.1, 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 a participant designates his or her spouse as a beneficiary and the participant's marriage to that spouse is later dissolved or annulled, the designation of the former spouse as a beneficiary shall be void unless the participant submits a subsequent designation naming the former spouse as the beneficiary. Notwithstanding the foregoing, the participant's beneficiary designation shall remain in effect to the extent required by a QDRO under 10.6.2.

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:

- (a) To the participant's surviving spouse.
- (b) To the participant's surviving children in equal shares.
- (c) To the participant's estate.

ARTICLE 7

Plan Administration

7.1 Plan Administrator

7.1.1 The Metro Chief Operating 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 Chief Operating 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 9.1 or 9.2 may be exercised only by the Metro Council, except as provided in 7.2.3.

7.2.3 The Metro Chief Operating 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:

(a) The reasons for denial, with specific reference to the Plan provisions on which the denial is based.

(b) A description of any additional material or information required and an explanation of why it is necessary.

(c) 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 officer, director, or employee of Metro (including, but not limited to, the Plan Administrator) from any claim or liability that arises from any action or inaction in connection with the Plan, subject to the following rules:

(a) Coverage shall be limited to actions (or failures to act) that are taken in good faith and with the reasonable belief that the actions (or failures to act) were not opposed to the best interest of the Plan.

(b) Negligent actions and failures to act shall be covered by this section to the fullest extent permitted by law.

(c) Coverage under this section 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 Custodian

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

ARTICLE 9

Amendment and Termination

9.1 Amendment

9.1.1 Metro may amend this Plan at any time by written instrument signed on behalf of Metro, pursuant to 7.2. No amendment shall revest any of the Trust fund in Metro or otherwise modify the Plan 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 7.2. Metro may request a ruling from the IRS on the effect of termination on the qualification of the Plan.

9.2.2 The Plan may be amended to permit the distribution of accounts upon the termination of the Plan, subject to the following limitations:

(a) All distributions on account of a Plan termination must be made in the form of a lump sum, as defined in Treasury Regulation §1.401(k)-1(d)(4)(ii).

(b) Pursuant to Treasury Regulation §401(k)-1(d)(4)(i), no distributions may be made on account of a Plan termination if an alternative defined contribution plan is established or maintained by Metro or any entity that is required to be aggregated with Metro under §414(b), (c), or (m) of the Code or under regulations issued pursuant to §414(o) of the Code. For this purpose, an “alternative defined contribution plan” does not include an employee stock ownership plan as defined in §4975(e)(7) of the Code, a simplified employee pension as defined in §408(k) of the Code, or a SIMPLE IRA plan as defined in §408(p) of the Code.

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 in accordance with the laws of the state of Oregon and applicable 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. 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, except as provided by law, including payments pursuant to 10.6.2 or, effective August 5, 1997, certain judgments and settlements described in §401(a)(13)(C) of the Code.

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:

- (a) Any return must occur within one year of the mistaken payment.
- (b) 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.
- (c) 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: _____
Michael Jordan
Chief Operating Officer

Executed: January __, 2011

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 11-4221, FOR THE PURPOSE OF ADOPTING THE METRO EMPLOYEE SALARY SAVINGS PLAN 2010 RESTATEMENT

Date: December 9, 2010

Prepared by: Lisa Cohen Greenfield
Senior Assistant Attorney,
Office of Metro Attorney

BACKGROUND

Metro has established and maintained an Employee Salary Savings Plan (the “401K Plan”) for the exclusive benefit of eligible employees. At times it is necessary to amend the 401K Plan to reflect changes in applicable laws and comply with the Internal Revenue Service’s filing requirements. The 401K Plan was last restated effective January 1, 2002, and was last amended effective March 28, 2005. Metro is now required to file an updated Restatement by January 31, 2011, as well as other documentation to obtain a determination letter from the Internal Revenue Service on the Plan's tax-qualified status and a compliance statement from the Internal Revenue Service under the Voluntary Correction Program. The updated Restatement called the Metro Employee Salary Savings Plan 2010 Restatement (“the Plan”). The Restatement and other filing documents were prepared by outside counsel in conjunction with the Office of Metro Attorney.

ANALYSIS/INFORMATION

1. **Known Opposition.**

None

2. **Legal Antecedents.**

Numerous technical modifications to the 401K Plan are required in order to comply with the Pension Protection Act of 2006, §401 of the Internal Revenue Code of 1986, as amended, and applicable laws and regulations.

3. **Anticipated Effects.**

Approval of the Plan and authorization for Chief Operating Officer Michael Jordan to take any and all actions necessary or appropriate to obtain a favorable determination letter from the Internal Revenue Service on the Plan's tax-qualified status, and to obtain a compliance statement from the Internal Revenue Service under the Voluntary Correction Program.

4. **Budget Impacts**

None

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 11-4221 to confirm the adoption of the Plan Restatement for the Metro 401K Employee Salary Savings Plan as of January 6, 2011.