

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE ) RESOLUTION NO. 11-4289  
APPOINTMENT OF MARTHA BENNETT )  
AS METRO CHIEF OPERATING OFFICER ) Introduced by Council President Tom Hughes

WHEREAS, on February 24, 2011 the Metro Council adopted Resolution No. 11-4241 ("For the Purpose of Confirming the Appointment of Daniel B. Cooper as Acting Chief Operating Officer") to fill the vacancy resulting from the former COO's resignation effective March 15, 2011, and in that Resolution the Metro Council President appointed and the Metro Council confirmed an Acting Chief Operating Officer until a competitive process was completed to fill the Chief Operating Officer vacancy on a permanent basis; and

WHEREAS, the duties and responsibilities of the Chief Operating Officer are described and provided for in the Metro Charter and the Metro Code; and

WHEREAS, Section 2.20.020(a) of the Metro Code provides that the Chief Operating Officer shall be appointed by the Council President subject to confirmation by the Council by resolution, and that the Council President shall involve the Council in the hiring process; and

WHEREAS, a competitive hiring process was held for the position of Metro Chief Operating Officer and the Metro Council President has involved the Council in the hiring process; and

WHEREAS, on the basis of that competitive hiring process the Metro Council President has appointed Martha Bennett to serve as Chief Operating Officer subject to Council confirmation; and

WHEREAS, Martha Bennett is qualified to be the Chief Operating Officer under the Metro Code and has stated his/her intent to accept the position; and

WHEREAS, Metro Code Section 2.20.060 provides that the Chief Operating Officer shall receive such compensation as the Council shall fix by contract; and

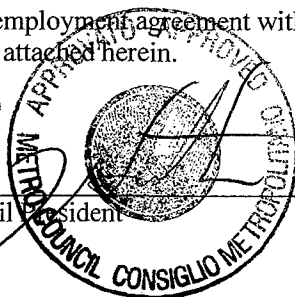
WHEREAS the Metro Council President has negotiated a compensation and employment contract with Martha Bennett in the form attached hereto, subject to approval by the Metro Council; now therefore

BE IT RESOLVED by the Metro Council:

1. The appointment of Martha Bennett as Chief Operating Officer is confirmed; and
2. The Metro Council President is authorized to execute an employment agreement with Martha Bennett substantially similar in form to Exhibit A attached herein.

ADOPTED by the Metro Council this 8 day of SEPT, 2011.

*TH*  
Tom Hughes, Council President



Approved as to Form:  
*[Signature]*  
Alison Kean Campbell, Acting Metro Attorney

## **EXHIBIT A**

### **MARTHA BENNETT AT WILL EMPLOYMENT AGREEMENT**

THIS AGREEMENT is entered into by and between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter (herein referred to as “Metro”) and Martha Bennett (herein referred to as “Bennett” or “employee”).

#### **RECITALS**

1. Metro requires the services of a Chief Operating Officer.
2. Bennett has the qualifications and the desire to serve Metro as its Chief Operating Officer.
3. This Agreement shall be effective once the Agreement is signed by Bennett, approved by the Metro Council and signed by the Council President, and shall be referred to as the “At Will Employment Agreement” or “the Agreement.”

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

#### **AGREEMENT**

1. **Engagement.** Subject to the parties’ right to terminate this Agreement as specified below, Metro hereby employs and Bennett hereby accepts employment from Metro for Bennett’s services as Chief Operating Officer.
2. **Term of Agreement.** Bennett’s employment under this Agreement shall begin on October 31, 2011, and shall continue until terminated as provided herein.
3. **Services.** Bennett shall faithfully, industriously and to the best of her ability provide her services as Chief Operating Officer of Metro, and shall perform all duties as may be required of her by the Metro Charter, Metro Code and the Council.
4. **Exclusivity.** During the term of this Agreement, and except as otherwise provided herein, Bennett shall devote all of her business efforts, time, attention, knowledge, and skills to Metro as its Chief Operating Officer. Bennett shall not actively engage in any other employment, occupation or consulting activity for any direct or indirect remuneration without the prior approval of the Metro Council. It is understood that if Metro exercises its notice provisions under 8.B(ii) Bennett can begin to search for other employment while still employed by Metro.
5. **Employment At-Will.** Metro and Bennett understand and acknowledge that Bennett serves at the pleasure of the Metro Council. Metro and Bennett understand and acknowledge that Bennett’s employment with Metro constitutes “at-will” employment. Subject to Metro’s obligation to provide severance benefits as specified in this Agreement, Bennett and Metro acknowledge that this employment relationship may be terminated at any time, upon written notice to the other party, with or without cause or good reason and for any or no cause or reason, at the option of

either Metro or Bennett. 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.

6. Compensation.

- A. Salary. As compensation for Bennett's services, Metro shall pay Bennett the sum of One Hundred Seventy Five Thousand Dollars (\$175,000.00) per year, payable in the same frequency and manner as other Metro employees. Bennett's performance and salary shall be reviewed annually by Metro as provided below. Any salary increases shall be based on Metro's annual evaluation of Bennett's performance, availability of funding, and on Metro's assessment of inflation and a survey of annual salaries paid to comparable positions in the Metro region. The compensation paid to Bennett shall be subject to customary withholding taxes and other taxes as required with respect to compensation paid by Metro to an employee.
- B. Benefits. Bennett shall receive all normal and regular benefits accruing to Metro non-represented employees as provided in Metro Code Chapter 2.02. 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"). Bennett shall pay the six percent (6%) employee contribution required by PERS. Bennett 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 Bennett under this section are subject to any additions, reductions or other changes made by the Metro Council to the benefits provided to Metro's non-represented employees. To the extent Bennett has a gap in insurance coverage due to her October 31, 2011 start date, Metro will pay for one month's COBRA coverage for that month. If Bennett does not have a gap in coverage, this payment will not apply.
- C. Vacation Leave. Bennett shall accrue paid vacation leave of 192 hours per year, plus personal holiday leave accruing to Metro non-represented employees, currently two days per year. Bennett's paid vacation leave may accumulate up to a maximum of 520 hours per fiscal year. Any accruals beyond 520 hours not used in a fiscal year will be lost. Bennett will also receive forty (40) hours of administrative leave per year but these hours must be used in the fiscal year received or be lost at the end of the fiscal year. In no circumstance will Metro payout upon termination more than 520 hours of vacation leave. Metro will also credit ten (10) days of vacation leave to Bennett's account upon employment, which shall be in addition to the vacation time that Bennett would otherwise accrue.
- D. Modifications to Compensation. Metro may change or modify Bennett's salary or benefits on three months' written notice to Bennett, or at any time by mutual agreement of the parties.
- E. Relocation Expenses. Metro will reimburse Bennett for reasonable expenses for relocation to the Metro Region in an amount not to exceed Ten Thousand Dollars (\$10,000.00). Metro will only pay for moving expenses allowable under applicable IRS regulations.

- F. Dues, Subscriptions, Professional Development, and Civic Involvement. Metro agrees to budget for and pay for Bennett's reasonable professional dues, subscriptions, travel, and training for Bennett's participation in national, regional, State and local associations necessary and desirable for Bennett's professional development and for the good of Metro. Metro further acknowledges the benefit of having Bennett participate and be involved directly in local civic clubs and organizations, and Metro shall pay for reasonable membership fees and/or dues to enable Bennett to be an active member in said civic clubs or organizations.
- G. Expenses. Metro recognizes that certain expenses of a job related nature will be incurred by Bennett and agrees to reimburse direct expenses in accordance with Metro policy.
7. Performance/Compensation Reviews. Metro shall annually evaluate Bennett's performance as soon as practicable after July 1. The performance evaluation will be in accordance with criteria and process developed jointly by Metro and Bennett prior to each annual evaluation. Further, Bennett shall receive a written copy of the findings of the evaluation and the process will provide an adequate opportunity for Bennett and the Metro Council to discuss the evaluation. No failure to evaluate Bennett shall limit Metro's right to terminate Bennett as specified in this Agreement.
8. Termination
- A. Termination for Convenience.
- i. Either party may terminate this Agreement whenever it determines that it would be convenient and/or desirable to do so. In the event that either party elects to terminate this Agreement for convenience, this Agreement shall terminate upon a date chosen by the terminating party, unless another termination date is mutually agreed upon. In the event of a termination for convenience, the terminating party shall provide the other party with a written notice of termination that specifies the date the termination becomes effective. Examples of termination for convenience include but are not limited to the following situations, unless they also accompany "cause" as provided for in paragraph C:
    1. If the Council President or Metro Council discharges or dismisses the employee without prior written notice of a "cause" identified in paragraph C.
    2. If the Council President or Metro Council discharges or dismisses the employee at any time during the first six months after a new Council takes office in January of every odd numbered year.
    3. If Metro, its citizens, or the Oregon Legislature acts to amend any provisions of the Metro Charter or related laws pertaining to the role, powers, duties, authority, responsibilities of the Chief Operating Officer that substantially changes the form of government in such a way to substantially reduce or limit the responsibilities of the COO.
    4. If Metro reduces the base salary, compensation or any other financial benefit of Bennett, unless it is applied in no greater percentage than the average reduction of all members of the Metro Senior Leadership Team.

5. If Bennett resigns following an offer to accept resignation, whether formal or informal, by the Council President or Metro Council that the employee resign.

ii. In the event Bennett terminates for convenience, no severance pay shall be due Bennett. Bennett shall use her best efforts to provide a minimum of 30 days notice prior to terminating this Agreement for convenience.

B. Payments Upon Termination for Convenience. In the event that this Agreement is terminated for convenience by Metro or its lawful successor, Bennett shall receive six (6) months' salary as severance pay, along with the cash value of any accrued and unused vacation leave. In addition, the severance will require Metro to continue to pay the employer portion of the premium for medical and dental insurance coverage through the end of the month that Bennett's severance pay is intended to cover or until the last day of the month in which Bennett obtains employment with alternative insurance, whichever occurs earlier.

As a condition of the severance offer, Bennett will be required to release Metro, its officers, representatives, insurers and employees from claims arising from employment with Metro and separation of employment.

In the alternative, Metro, at its sole discretion and option, may elect to give Bennett notice of its intent to terminate this Agreement. Such notice shall be in lieu of severance pay for the equivalent period. The combined total of notice and severance pay under this section shall not exceed six (6) months, exclusive of accrued vacation pay.

C. Termination for Cause. Metro may terminate this Agreement for "cause" by giving Bennett 72 hours written notice of its intent to terminate for "cause." In the event that Metro elects to terminate this Agreement for "cause," no severance pay shall be due Bennett. "Cause" shall include one or more of the following:

- (i) Willful failure to follow lawful resolutions or directives of the Metro Council or the Metro Charter or Metro Code;
- (ii) Willful failure to attempt to substantially perform her duties as Chief Operating Officer (other than any such failure resulting from her incapacity due to physical or mental impairment), unless such failure is corrected within thirty (30) days following written notice by the Metro Council President that specifically identifies the manner in which the Metro Council President believes Bennett has substantially not attempted to materially perform her duties;
- (iii) Misappropriation of funds or property of Metro;
- (iv) Fraud or gross malfeasance;
- (v) Conduct of a felonious or criminal nature which would tend to bring discredit or embarrassment to Metro or its operations;
- (vi) Commission of any act, the nature of which would tend to bring discredit or embarrassment to Metro or its operations

- (vii) The habitual use of drugs or intoxicants to an extent that it impairs Bennett's ability to properly perform her duties;
- (viii) Significant violation of the written work rules or written policies of Metro that bring doubt on Bennett's ability to adequately perform the functions of the COO after written notice of violation from the Metro Council President.

9. 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 Paragraphs 7 or 8 of this Agreement. Upon receipt of a termination notice, Bennett 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.

10. Disability or Death.

A. If, as the result of any physical or mental disability, Bennett shall have failed or is unable to perform her duties for more than twelve (12) consecutive weeks, Metro may, by subsequent written notice to Bennett, terminate her employment under this Agreement as of the date of the notice without any further payment or the furnishing of any benefit by Metro under this Agreement (other than accrued and unpaid salary and accrued benefits), subject to compliance with all applicable laws and regulations including the Americans With Disabilities Act.

B. The term of Bennett's employment under this Agreement shall terminate upon her death without any further payment or the furnishing of any benefit by Metro under this Agreement (other than accrued and unpaid salary and accrued benefits).

11. Successorship. This Agreement shall inure to and shall be binding upon Metro's successors, assigns, trustees, etc.

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

13. Construction. This At Will Employment Agreement is the final agreement between the parties, shall be construed as having been drafted jointly by the parties is intended to be a complete and final expression of the agreement between the parties, and shall supersede any and all prior discussions or agreements.

14. 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.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Bennett consents to the personal jurisdiction of the state and federal courts located in Multnomah County, Oregon for any action or proceeding arising from or relating to this Agreement.

16. Waiver: No waiver by Metro of any default shall operate as a waiver of any other default on a future occasion or the same default. No delay or omission by Metro in exercising any right or remedy shall operate as a waiver thereof, and no single or partial exercise of a right or remedy shall preclude any other or further exercise thereof, or the exercise of any other right or remedy.

**EXECUTED IN TRIPLICATE** on \_\_\_\_\_, to be effective immediately.

**METRO**

\_\_\_\_\_  
Martha Bennett

\_\_\_\_\_  
Tom Hughes  
Metro Council President

APPROVED AS TO FORM:

\_\_\_\_\_  
Alison Kean Campbell  
Acting Metro Attorney

## STAFF REPORT

### FOR THE PURPOSE OF CONFIRMING THE APPOINTMENT OF MARTHA BENNETT AS CHIEF OPERATING OFFICER

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Date: September 8, 2011

Prepared by: Andy Shaw,  
503-797-1746

## BACKGROUND

On February 24, 2011 the Metro Council adopted Resolution No. 11-4241 (“For the Purpose of Confirming the Appointment of Daniel B. Cooper as Acting Chief Operating Officer”) to fill the vacancy resulting from the former Metro Chief Operating Officer’s resignation. In accordance with the Metro Charter and Metro Code, that resolution appointed and confirmed Daniel B. Cooper as the Acting Chief Operating Officer, effective March 15, 2011, until a competitive process could be completed to fill the Chief Operating Officer vacancy on a permanent basis.

A competitive hiring process ensued for the position of Metro Chief Operating Officer. That process included a wide group of stakeholders, including regional elected officials and city managers, private business leaders, citizens, all Metro Councilors, the MERC Commission, the Metro Senior Leadership team, and Metro staff. An extensive background check was conducted. On the basis of this competitive process the Metro Council President has appointed Martha Bennett to serve as Chief Operating Officer subject to Council confirmation. Subject to that confirmation, Metro has negotiated a compensation and employment contract with Martha Bennett in the form attached to the resolution.

## ANALYSIS/INFORMATION

1. **Known Opposition** None
2. **Legal Antecedents** Metro Charter Chapter V, Section 25(1) and Metro Code Chapter 2.20 govern the creation, duties, powers, and other functions of the Metro Chief Operating Officer.

Metro Code Section 2.20.020(a) states that the Council President shall appoint the COO subject to confirmation by the Council by resolution, and that the Council President shall involve the Council in the hiring process. That section also states that the COO shall be chosen “solely on the basis of executive and administrative qualifications with special reference to actual experience in or knowledge of accepted practice in respect to the duties of the office set forth in this Chapter.” That Code section also provides that at the time of appointment, the appointee need not be a resident of Clackamas, Multnomah, or Washington County, but that during the COO’s tenure of office shall reside within the boundaries of one of those counties.

Section 2.20.060 of the Metro Code provides that the Chief Operating Officer shall receive such compensation as the Council shall fix from time to time by contract.

3. **Anticipated Effects.** This appointment will fill the vacancy in the position of Chief Operating Officer, currently being filled on an interim basis.
4. **Budget Impacts.** The COO’s salary is in the current Metro budget.

## RECOMMENDED ACTION

Council President Hughes recommends adoption of Resolution No. 11-4289.