

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE ) RESOLUTION NO. 12-4331  
APPOINTMENT OF ALISON KEAN )  
CAMPBELL AS METRO ATTORNEY ) Introduced by Council President Tom Hughes

WHEREAS, pursuant to Section 25 of the Metro Charter and Chapter 2.08 of the Metro Code, the Metro Council President has the authority to appoint the Metro Attorney subject to confirmation of the Metro Council; and

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

WHEREAS, the Metro Council President has appointed Alison Kean Campbell to serve as Metro Attorney subject to Council confirmation; and

WHEREAS, Ms. Kean Campbell is qualified to be the Metro Attorney; and

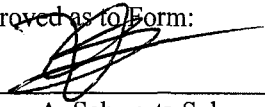
WHEREAS, the Metro Code provides that the employment of the Metro Attorney shall be subject to the terms of an employment agreement and the Metro Council President has negotiated an employment agreement with Alison Kean Campbell, subject to approval by the Council; now therefore

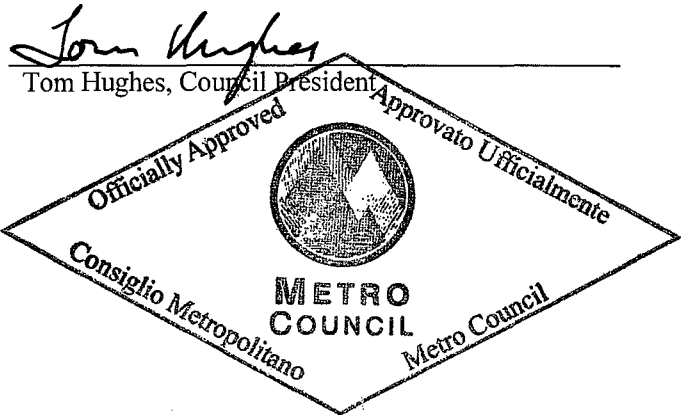
BE IT RESOLVED by the Metro Council:

1. The appointment of Alison Kean Campbell as Metro Attorney is confirmed; and
2. The Metro Council President is authorized to execute an employment agreement with Alison Kean Campbell substantially similar in form to Exhibit A attached herein.

ADOPTED by the Metro Council this 16 day of February 2012.

Approved as to Form:

  
\_\_\_\_\_  
Nathan A. Schwartz Sykes  
Senior Metro Attorney



**EMPLOYMENT AGREEMENT FOR METRO ATTORNEY**

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 Alison Kean Campbell (herein referred to as “Ms. Kean Campbell” or “Metro Attorney”).

**RECITALS**

- A. The Metro Charter, Section 25 (2), as amended in November 2000, provides for the creation of the office of Metro Attorney and provides that “the Council President appoints the Metro Attorney subject to the confirmation by the Council.” The powers and duties of the Metro Attorney are set forth in Chapter 2.08 of the Metro Code.
- B. The Metro Code, Section 2.08.030, provides that the Metro Attorney shall have the following powers:
  - a. General control and supervision of all civil actions and legal proceedings in which Metro may be a party or may be interested; and
  - b. Full charge and control of all the legal business of all departments and commissions of Metro, or of any office thereof, which requires the services of an attorney or counsel in order to protect the interests of the district.
- C. The Metro Code, Sections 2.08.040 and 2.08.080, provide that the Metro Attorney shall have the following duties:
  - a. Give legal advice and opinions orally and in writing and prepare documents and ordinances concerning any matter in which Metro is interested in when requested by the Council, the Chief Operating Officer, the Auditor, or any Metro commission;
  - b. Review and approve as to form all written contracts, ordinances, resolutions, executive orders, bonds, or other legally binding instruments of the district;
  - c. Appear for, represent, and defend the district, and its departments, officers, commissions and employees and other persons entitled to representation by Metro;
  - d. Submit to the Council, Chief Operating Officer and Auditor annually a formal report of all suits or actions in which the district is a party, and at any time the Metro Attorney shall at the request of the Council, the Chief Operating Officer, or the Auditor, report on the status of any or all matters being handled by the Metro Attorney;
  - e. Appear, commence, prosecute, defend or appeal any action, suit, matter, cause or proceeding in any court or tribunal when requested by the Council, the Chief Operating Officer, or any Metro commission when, in the discretion of the Metro Attorney, the same may be necessary or advisable to protect Metro’s interests; and
  - f. Prepare formal written opinions regarding interpretations of federal and Oregon law, the Metro Charter, and Metro ordinances.
- D. In accordance with the Metro Charter and Code, the Council President has appointed Alison Kean Campbell to be the Metro Attorney, and on February 16, 2012 the Metro Council confirmed her appointment; and
- E. The Metro Code provides that the employment of the Metro Attorney shall be subject to a contract in regard to compensation.

**NOW, THEREFORE, IN CONSIDERATION** of the compensation to be paid by Metro to Ms. Kean Campbell, 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 Ms. Kean Campbell hereby accepts employment from Metro for Ms. Kean Campbell's services as the Metro Attorney.
2. Term of Agreement. Ms. Kean Campbell's employment under this Agreement shall begin on February 16, 2012, and shall continue until terminated as provided herein.
3. Services. Ms. Kean Campbell shall faithfully, industriously and to the best of her ability provide her services as Metro Attorney, 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, Ms. Kean Campbell shall devote all of her business efforts, time, attention, knowledge, and skills to Metro as its Metro Attorney. Ms. Kean Campbell shall not actively engage in any other paid employment for any direct or indirect remuneration without the prior approval of the Metro Council.
5. Attorney Status. As a condition of employment, Ms. Kean Campbell shall maintain status as an active member of the Oregon State Bar in good standing. Ms. Kean Campbell 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 her service as Metro Attorney. Metro shall pay Ms. Kean Campbell'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.
6. Employment At-Will. Metro and Ms. Kean Campbell understand and acknowledge that the Metro Attorney serves at the pleasure of the Metro Council President and the Metro Council. Metro and Ms. Kean Campbell understand and acknowledge that Ms. Kean Campbell's employment with Metro constitutes "at-will" employment. Ms. Kean Campbell 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 Ms. Kean Campbell. 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.
7. Compensation.
  - A. Salary. As compensation for Ms. Kean Campbell's services, Metro shall initially pay Ms. Kean Campbell the sum of One Hundred Sixty Five Thousand Dollars (\$165,000) per year, payable in the same frequency and manner as other Metro employees. Ms. Kean Campbell shall be eligible for an increase of between 3-4% effective January 1, 2013 provided she receives a successful initial evaluation by the Council and Council President which shall occur in December of 2012. Ms. Kean Campbell'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 Ms. Kean Campbell's performance, availability of funding, and on Metro's assessment of inflation and a survey of annual salaries paid to comparable positions. For the purpose of this Agreement, comparable positions shall include but not be limited to, the head attorney position of the Metro Area's largest city and the head attorney position at other Metro-area regional government entities. The compensation paid to Ms. Kean Campbell shall be subject to customary withholding taxes and other taxes as required with respect to compensation paid by Metro to an employee.

- B. Benefits. Ms. Kean Campbell shall receive all normal and regular benefits accruing to Metro 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") for existing employees. Ms. Kean Campbell shall be entitled to these benefits under the same terms and conditions as provided for Metro's non-represented employees. She will continue to have her employee portion of PERS paid by Metro. Except as otherwise expressly provided in this Agreement, the employee benefits provided to Ms. Kean Campbell 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.
  - C. Vacation Leave. Ms. Kean Campbell shall accrue paid vacation leave of five weeks per year, plus personal holiday leave and sick leave accruing to Metro non-represented employees. Ms. Kean Campbell may accrue up to 1080 hours of vacation leave but Ms. Kean Campbell's paid vacation leave upon termination will be capped at this amount. Any vacation leave accrued above 1080 hours shall be forfeited. Ms. Kean Campbell 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.
  - D. Modifications to Compensation. Metro may change or modify Ms. Kean Campbell's salary or benefits on six months' written notice to Ms. Kean Campbell, or at any time by mutual agreement of the parties.
  - F. Dues, Subscriptions, Professional Development, and Civic Involvement. Metro agrees to budget for and pay for Ms. Kean Campbell'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. In addition, Metro agrees to budget and pay for Ms. Kean Campbell's reasonable professional dues, subscriptions, travel, and training for Ms. Kean Campbell's participation in national, regional, State and local associations necessary and desirable for Ms. Kean Campbell's professional development and for the good of Metro.
8. Performance/Compensation Reviews. Metro shall annually evaluate Ms. Kean Campbell'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 Ms. Kean Campbell prior to each annual evaluation. Further, Ms. Kean Campbell shall receive a written copy of the findings of the evaluation and the process will provide an adequate opportunity for Ms. Kean Campbell and the Metro Council to discuss the evaluation. No failure to evaluate Ms. Kean Campbell shall limit Metro's right to terminate Ms. Kean Campbell as specified in this Agreement.

9. Termination

- A. Termination for Convenience. 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 9(C):
- i. If the Council President or Metro Council discharges or dismisses the employee without prior written notice of a “cause” identified in paragraph 9(C).
  - ii. If Metro reduces the base salary, compensation or any other financial benefit of Ms. Kean Campbell, unless it is applied in no greater percentage than the average reduction of all members of the Metro Senior Leadership Team.
  - iii. If Ms. Kean Campbell resigns following an offer to accept resignation, whether formal or informal, by the Council President or Metro Council that the employee resign.
- B. Payments Upon Termination for Convenience.
- i. In the event that this Agreement is terminated for convenience by Metro or its lawful successor, as severance pay Ms. Kean Campbell shall receive the equivalent of six months’ salary, plus the cash value of any accrued and unused vacation leave up to a maximum of 1080 accrued vacation hours. In addition, the severance will require Metro to continue to pay the employer portion of the premium for medical and dental insurance coverage for up to six months or until the last day of the month in which Ms. Kean Campbell obtains employment with a alternative insurance, whichever occurs earlier.
  - ii. As a condition of the severance offer, Ms. Kean Campbell will be required to release Metro, its officers, representatives, insurers and employees from claims arising from employment with Metro and separation of employment.
  - iii. In the event Ms. Kean Campbell terminates for convenience, no severance pay or pay for benefits shall be due Ms. Kean Campbell. Ms. Kean Campbell shall use her best efforts to provide a minimum of 30 days notice prior to terminating this Agreement for convenience.
- C. Termination for Cause. Metro may terminate this Agreement for “cause” by giving Ms. Kean Campbell 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 Ms. Kean Campbell. “Cause” shall be 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 Metro Attorney (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 Ms. Kean Campbell 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 ) Significant violation of the written work rules or written policies of Metro that bring doubt on Ms. Kean Campbell's ability to adequately perform the functions of the Metro Attorney after written notice of violation from the Metro Council President.

10. Termination Authority. In accordance with the Metro Code, the Council President has the sole authority to terminate this Agreement on behalf of Metro, subject to concurrence of the Council by resolution. The Council President may terminate this Agreement in writing pursuant to any provision of Paragraph 9 of this Agreement. Upon receipt of a termination notice, Ms. Kean Campbell 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.

11. Disability or Death.

A. If, as the result of any physical or mental disability, Ms. Kean Campbell shall have failed or is unable to perform her duties for more than twenty-four (24) consecutive weeks, Metro may, by subsequent written notice to Ms. Kean Campbell, 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 Ms. Kean Campbell'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 Ms. Kean Campbell 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 Ms. Kean Campbell 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. Ms. Kean Campbell 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**

\_\_\_\_\_  
Alison Kean Campbell

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Nathan A. Schwartz Sykes  
Senior Metro Attorney

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 12-4331, FOR THE PURPOSE OF CONFIRMING THE APPOINTMENT OF ALISON KEAN CAMPBELL AS METRO ATTORNEY**

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Date: February 7, 2012

Prepared by: Andy Shaw,  
503-797-1746

## **BACKGROUND**

Pursuant to the Metro Charter and the Metro Code, the Metro Council President appoints the Metro Attorney subject to Council confirmation. In January 2012, after having served Metro as head attorney for twenty-five (25) years, Metro Attorney Daniel B. Cooper announced his intention to retire as of November 2012, and to resign his Metro Attorney position effective at the end of the day on February 15, 2012. Metro Council President Tom Hughes has appointed Alison Kean Campbell as the Metro Attorney, subject to confirmation by the Metro Council pursuant to this resolution.

Ms. Kean Campbell has practiced law for 23 years. She has worked for Metro for 16 years. Kean Campbell graduated from the University of Michigan Law School in 1988, where she was an associate editor of the Michigan Law Review. She holds a degree in economics from Case Western Reserve University. In 1996, Ms. Kean Campbell was hired as the lead lawyer in charge of implementing Metro's first natural area acquisition program. In 2006 Ms. Kean Campbell drafted the Construction Excise Tax (CET) ordinance and administrative rules, and negotiated intergovernmental agreements with the region's cities and counties to collect CET tax revenues and to distribute to CET grants to local jurisdictions.

Ms. Kean Campbell also negotiated and drafted the legal documents related to Metro's multi-year investigation of the potential development of a convention center headquarters hotel, and she advised the Metro Council and the MERC Commission on the legal aspects of the project. Ms. Kean Campbell currently provides legal counsel to the Community Investment Initiative (CII), working with the CII Leadership Counsel, the Metro Council, the Metro COO and agency staff providing legal advice on the evolving project. Ms. Kean Campbell has been a member of Metro's Senior Leadership Team since 2008, and has advised the Metro Council, the MERC Commission, the Metro COO, and agency staff regarding state and federal constitutional, statutory, and regulatory law and the requirements of the Metro Code and Charter. She also provides training throughout Oregon to elected officials and agency staff on public records laws, the Oregon Ethics Act, and other public law issues.

In 2007 the Metro Council recommended that a Deputy Metro Attorney position be created and that Mr. Cooper prepare a succession plan for the Office of Metro Attorney. After a competitive process, Alison Kean Campbell was appointed as the Deputy Metro Attorney in 2008. The selection of a Deputy Metro Attorney was the first step in a succession plan for the Office of Metro Attorney, and Mr. Cooper and Ms. Kean Campbell, along with the Metro Chief Operating Officer, have been working together to implement the various stages of that succession plan since 2008. From March through October 2011, Ms. Kean Campbell served as the Acting Metro Attorney while Mr. Cooper served as the agency's Acting Chief Operating Officer during the recruitment process for a new Metro Chief Operating Officer.

Prior to joining Metro, Kean Campbell worked in private practice in Washington D.C., Seattle, and Portland, focusing on complex civil and commercial litigation. Kean Campbell is licensed to practice law



in both Oregon and Washington.

#### **ANALYSIS/INFORMATION**

1. **Known Opposition.** None
2. **Legal Antecedents.** Metro Charter Chapter V, Section 25(2) and Metro Code Chapter 2.08 govern the creation, duties, powers, and other functions of the Metro Attorney. Section 2.08.020(a) of the Metro Code provides that the Metro Attorney shall be appointed by the Council President subject to confirmation by the Council by resolution. Metro Council President Tom Hughes has appointed Alison Kean Campbell as the Metro Attorney subject to the Metro Council's confirmation via this resolution.
3. **Anticipated Effects** This resolution will confirm the Council Presidents appointment of Alison Kean Campbell as the Metro Attorney and authorize the Council President to enter into an employment agreement with Alison Kean Campbell.
4. **Budget Impacts.** The salary of the Metro Attorney is currently budgeted for in the approved Metro Budget.

#### **RECOMMENDED ACTION**

Council President Hughes and staff recommend adoption of Resolution No. 12-4331.