

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE) RESOLUTION NO. 19-4987
APPOINTMENT OF CAROLINE MACLAREN)
AS METRO ATTORNEY) Introduced by Council President Lynn
) Peterson

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 Caroline MacLaren to serve as Metro Attorney subject to Council confirmation starting on July 1, 2019; and

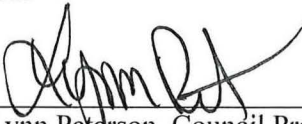
WHEREAS, Caroline MacLaren is qualified to be the Metro Attorney; and

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 Caroline MacLaren, subject to approval by the Council; now therefore

BE IT RESOLVED that the Metro Council:

1. Confirms the appointment of Caroline MacLaren as Metro Attorney as of July 1, 2019; and
2. Approves the execution of an employment agreement with Caroline MacLaren substantially similar in form to Exhibit A attached herein.

ADOPTED by the Metro Council this 6th day of June 2019



Lynn Peterson, Council President

Approved as to Form:



Joyce Y. Wan, Senior Assistant Attorney for
Nathan A. S. Sykes, Acting 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 Metro Charter (herein referred to as “Metro”) and Caroline MacLaren (herein referred to as “Employee”).

RECITALS

1. 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.
2. 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.
3. 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.

4. In accordance with the Metro Charter and Code, the Council President has appointed Employee to be the Metro Attorney, and on June 6, 2019 the Metro Council confirmed her appointment; and
5. 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 Employee 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 Employee hereby accepts employment from Metro for Employee's services as the Metro Attorney.
2. **Term of Agreement.** Employee's employment under this Agreement shall begin July 1, 2019 and shall continue until terminated as provided herein.
3. **Services.** Employee shall faithfully, industriously and to the best of her ability provide her service as Metro Attorney at Metro, and shall perform all duties as may be required of her by the Metro Charter, the Metro Code, and the Council.
4. **Exclusivity.** During the term of this Agreement, and except as otherwise provided herein, Employee shall primarily devote all of her business efforts, time, attention, knowledge, and skills to Metro as its Metro Attorney. Employee 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, Employee shall maintain status as an active member of the Oregon State Bar in good standing. Employee 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 not inconsistent with her service as Metro Attorney. Metro shall pay Employee'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 Employee understand and acknowledge that Employee serves at the pleasure of the Metro Council President and the Metro Council. Metro and Employee understand and acknowledge that Employee's employment with Metro constitutes "at-will" employment. Employee 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 Employee. It is further understood and agreed that neither this

Agreement, nor any 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 Employee's services, Metro shall initially pay Employee the sum of \$200,000 (Two Hundred Thousand Dollars) per year, payable in the same frequency and manner as other Metro Employees. Employee shall be eligible for an increase between 3-4% effective January 1, 2020 provided she receives a successful initial evaluation by the Council and Council President which shall occur in December of 2019. Employee's performance and salary shall be reviewed annually by Metro as provided below. Any salary increases shall be based on the Council and Council President's evaluation of Employee's performance, availability of funding and on Metro's assessment of inflation and a survey of annual salaries paid to comparable positions. The compensation paid to Employee shall be subject to customary withholding taxes and other taxes as required with respect to compensation paid by Metro to an Employee.

B. **Benefits.** Employee 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. Employee shall be entitled to these benefits under the same terms and conditions as provided for Metro's non-represented Employees. Employee shall pay the six percent (6%) employee contribution required by PERS. Except as otherwise expressly provided in this Agreement, the Employee benefits provided to Employee 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.** Employee shall accrue paid vacation leave of 21 days per year, plus personal holiday leave and sick leave accruing to Metro non-represented Employees. Employee may accrue up to 750 hours of vacation leave but Employee's paid vacation leave upon termination will be capped at this amount. Any vacation leave accrued above 750 hours shall be forfeited. Employee will receive 17 days of leave upon appointment which may be used at any time during 2019.

D. **Modifications to Compensation.** Metro may change or modify Employee's salary or benefits on six months' written notice to Employee, or at any time by mutual agreement of the parties.

E. **Dues, Subscriptions, Professional Development, and Civic Involvement.** Metro agrees to budget for and pay for Employee's reasonable costs for continuing legal education and other professional education and for memberships in professional

organizations necessary or beneficial to carrying out her as Metro Attorney. In addition, Metro agrees to budget and pay for Employee's reasonable professional dues, subscriptions, travel, and training for Employee's participation in national, regional, State and local associations necessary and desirable for Employee's professional development and for the good of Metro.

8. **Performance/Compensation Reviews.** Metro Council and Council President shall annually evaluate Employee's performance as soon as practicable after July 1. The performance evaluation will be in accordance with criteria and process developed jointly by the Council and Employee prior to each annual evaluation. Further, Employee shall receive a written copy of the findings of the evaluation and the process will provide an adequate opportunity for Employee and the Metro Council to discuss the evaluation. No failure to evaluate Employee shall limit Metro's right to terminate Employee 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 and 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 Employee, unless it is applied in no greater percentage than the average reduction of all members of the Metro Senior Leadership Team.
- iii. If Employee 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 Employee shall receive the equivalent of six months' salary, plus the cash value of any accrued and unused vacation leave up to a maximum of 750 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 Employee obtains employment with alternative insurance, whichever occurs earlier.

- ii. As a condition of the severance offer, Employee 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 Employee terminates for convenience, no severance pay or pay for benefits shall be due Employee. Employee 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 Employee 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 Employee. "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 Employee 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 Employee'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, Employee 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, Employee 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 Employee, 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 Employee'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).

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

13. Modification. This Agreement can only be modified by a written amendment, signed by Employee 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 Employee and Metro shall modify this Agreement or affect its meaning in any way.

14. 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.

15. 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.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Employee 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.

17. **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 DUPLICATE on _____ to be effective _____
_____.

EMPLOYEE

METRO

Caroline Maclaren (aka Carrie Maclaren)

Lynn Peterson
Metro Council President

APPROVED AS TO FORM:

Joyce Wan
Senior Assistant Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION 19-4987, FOR THE PURPOSE OF CONFIRMING THE APPOINTMENT OF CAROLINE MACLAREN AS METRO ATTORNEY

Date: June 6, 2019

Prepared by: Paul Slyman,
503-797-1510
Roger Gonzalez
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. The Metro Attorney Alison R. Kean resigned her position as of August 3, 2018. Metro Council President Peterson has appointed Caroline MacLaren as the Metro Attorney, subject to confirmation by the Metro Council pursuant to this resolution.

Caroline MacLaren has a long track record as a land use attorney, is experienced as a successful manager, and has understanding of the evolution of Metro's role from convener to leader and implementer.

A graduate of the University of Oregon School of Law, she has been an attorney in Oregon for 20 years, working in the private, nonprofit, and public sectors.

As Deputy Director of the Oregon Department of Land Conservation and Development, she managed and coordinated the Oregon Department of Justice on legal matters, advised the director on policy development, administrative law, and rulemaking. Prior to this role, she was a land use attorney for more than a decade, working for two Portland law firms, as well as 1000 Friends of Oregon.

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 Lynn Peterson has appointed Caroline MacLaren 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 Caroline MacLaren as the Metro Attorney and authorize the Council President to enter into an employment agreement with Caroline MacLaren.
- 4. Budget Impacts** The salary of the Metro Attorney is currently budgeted for in the approved Metro Budget.

RECOMMENDED ACTION

Council President Peterson and staff recommend adoption of Resolution 19-4987.