

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE) RESOLUTION NO. 20-5084
APPOINTMENT OF MARISSA MADRIGAL)
AS CHIEF OPERATING OFFICER) Introduced by Council President Lynn
) Peterson

WHEREAS, pursuant to Chapter V, Section 25 of the Metro Charter and Section 2.20.020 of the Metro Code, the Metro Council President has the authority to appoint the Chief Operating Officer subject to confirmation of the Metro Council; 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, a competitive hiring process was held for the position of 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 Marissa Madrigal to serve as Chief Operating Officer subject to Council confirmation; and

WHEREAS, the Council finds that Marissa Madrigal is qualified to be the Chief Operating Officer under the Metro Code and she has stated 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

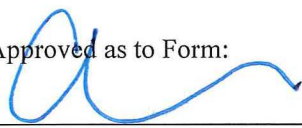
WHEREAS the Metro Council President has negotiated a compensation and employment contract with Marissa Madrigal in the form attached hereto as Exhibit A, subject to approval by the Metro Council; now therefore



BE IT RESOLVED by the Metro Council:

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

ADOPTED by the Metro Council this 27 day of February 2020

Approved as to Form:


Carrie MacLaren, Metro Attorney


Lynn Peterson, Council President


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 Metro Charter (herein referred to as “Metro”) and Marissa Madrigal (herein referred to as “Employee”).

RECITALS

1. The Metro Charter, Section 25(1), provides for the creation of the Office of the Chief Operating Officer and provides that “the Council President appoints the Chief Operating Officer subject to the confirmation by the Council.” The powers and duties of the Chief Operating Officer are set forth in Chapter 2.20 of the Metro Code.
2. Metro requires the services of a Chief Operating Officer.
3. Employee has the qualifications and the desire to serve Metro as its Chief Operating Officer.
4. The Metro Code provides that the employment of the Metro Chief Operating Officer shall be subject to a contract in regard to compensation.
5. This Agreement shall be referred to as “At-Will Employment Agreement” (herein referred to as “Agreement”).

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 Chief Operating Officer.
2. **Term of Agreement.** Employee’s employment under this Agreement shall begin March 9, 2020 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 Chief Operating Officer 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 devote all of her business efforts, time, attention, knowledge, and skills to Metro as its Chief Operating Officer on a full-time basis. 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. **Residence.** During the term of this Agreement, Employee shall reside within the boundaries of Clackamas, Multnomah, or Washington County.

6. **Employment At-Will.** Metro and Employee understand and acknowledge that Employee serves at the pleasure of 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 \$249,000 per year, payable in the same frequency and manner as other Metro Employees. Employee shall be eligible for an increase between 3-4% effective September 1, 2020 provided she receives a successful initial evaluation by the Council and Council President which shall occur in August of 2020. 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. For the purpose of this Agreement, comparable positions shall include but not be limited to, the city manager of the Metro Area's largest city and the chief operating officer at other Metro-area regional government entities. 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.

- (1) Employee shall accrue paid vacation leave as provided in the Metro Personnel Rules, as they may be amended from time to time. Upon initial hire, Employee shall accrue 192 hours of vacation leave per year, plus personal holiday leave and sick leave accruing to Metro non-represented employees.
- (2) Employee shall annually forfeit any vacation leave that both (a) exceeds 520 hours; and (b) is accrued in a fiscal year in which Employee has not taken at least 40 hours of annual leave (“minimum leave”). The “minimum leave” requirement may be waived by Metro under extraordinary circumstances. Employee will receive 112 hours of leave upon appointment.
- (3) Upon voluntary resignation of her employment or termination for cause as defined in Section 9(C), Employee shall only be entitled to payment for accrued and unused vacation leave up to a maximum of 520 hours. If Employee is terminated by Metro without cause, Employee shall be compensated as provided in Section 9(B).

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.

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. **Reassignment.** Upon written notice, Employee may be temporarily or permanently reassigned to another Metro position or, if to another entity, pursuant to Metro’s “Loaned Executive” policy. If a temporary reassignment results in Employee receiving a different salary during the reassignment period, Employee shall be returned in good standing to her previous position and salary range upon completion of the reassignment.

Performance reviews covering periods while Employee is temporarily reassigned or on loan to another entity shall reflect all work during the period, and compensation adjustments shall be commensurate with performance during the entire period under review.

10. Termination.

A. Termination by the Parties.

- (1) Termination by Metro. Employee understands and agrees that she is an at-will employee who serves at the pleasure of the Metro Council. Employee may be terminated at any time, with or without cause, by the Metro Council President with the concurrence of the Council. Should the Metro Council President decide to remove Employee, written notice of termination will be provided to Employee. If the written notice does not specify the effective date of termination, the effective date of termination shall be the date on which the written notice was given.
- (2) Termination by Employee. Employee may terminate her employment with Metro at any time by giving Metro a written notice of termination specifying the effective date of termination. To terminate in good standing, employee must provide thirty (30) days written notice of termination. If the written notice of termination does not specify the effective date of termination, the effective date of termination shall be the date that is thirty (30) days after the date on which the written notice was given. In the event Employee terminates her employment, no severance pay or pay for benefits shall be due Employee.

B. Termination Without Cause. Metro may terminate this Agreement without cause and, at Metro's sole election may do so without prior notice to Employee. Upon termination of employment without cause, Employee shall receive severance pay and benefits in exchange for a signed release of any and all claims against Metro, its officers, representatives, insurers and employees arising from employment and separation of employment with Metro. Severance pay shall be as follows:

- i. Severance pay shall be guaranteed at six months' salary. Severance pay shall be subject to usual and customary withholdings under applicable local, state, and federal taxes.
- ii. Upon the effective date of termination, Employee shall be eligible for continued health insurance as established by law ("COBRA"), including any premiums subsidy currently in effect. Metro shall pay for the cost of said insurance to the level utilized by Employee at the time of termination until Employee has become employed in another position, with health coverage in effect, or for six months, whichever is less.
- iii. Employee shall receive payment for all accrued and unused vacation leave up to a maximum of 520 hours.

C. Termination for Cause. Metro may terminate this Agreement for "cause" by giving Employee written notice of 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” includes 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 substantially perform the duties of the Chief Operating Officer (other than any such failure resulting from 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 materially performed her duties;
- iii. Violation of the Oregon Government Ethics and Practices Act or the Code of Ethics for Metro officials, Metro Code Chapter 2.17;
- iv. Commission of any act specified as a basis for disciplinary action in the Metro Personnel Policies (as it may be amended from time to time), the nature of which would tend to bring discredit or embarrassment to Metro or the Council, as determined by the Metro Council President.

11. **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.

12. **Non-Disclosure of Confidential Information.** To the extent allowable under Oregon public records law, Employee agrees that during employment and following separation, Employee shall not disclose confidential information obtained during the scope of employment at Metro.

13. **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 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).
14. **Successorship.** This Agreement shall inure to and shall be binding upon Metro's successors, assigns, trustees, etc.
15. **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.
16. **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.
17. **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.
18. **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.
19. **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

Marissa Madrigal

Lynn Peterson
Metro Council President

APPROVED AS TO FORM:

Carrie MacLaren
Metro Attorney