

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE)	RESOLUTION NO. 21-5199
DIRECTOR FORM EMPLOYMENT)	
AGREEMENT)	Introduced by Chief Operating Officer
)	Marissa Madrigal in concurrence with
		Acting Council President Christine Lewis

WHEREAS, Metro’s Personnel Code, Section 2.02.010, as amended, provides that the Metro Council may delegate authority to the Chief Operating Officer (“COO”) by resolution to execute written employment agreements on a case by case basis, or as group for Director level employment agreements where all terms in those employment agreements are identical except salary; and

WHEREAS, the Metro Council, in Resolution No. 17-4797, delegated authority to the Chief Operating Officer to execute written employment agreements in a form approved by the Office of Metro Attorney with the Metro department directors and substantially similar to a form agreement approved by Metro Council in Resolution No. 17-4797; and

WHEREAS, the Metro Council continues to believe it is in the best interests of Metro for the COO to directly negotiation and execute written employment agreements with the Metro department directors; and

WHEREAS, Metro has updated certain benefits which necessitates amending the form agreement approved by Metro Council in Resolution No. 17-4797; now therefore

BE IT RESOLVED that the Metro Council hereby approves the amended director-level form employment agreement attached as Exhibit A, and reaffirms the Metro COO’s authority to execute written employment agreements with Metro department directors substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 29th day of July 2021.



Christine Lewis, Acting Council President

Approved as to Form:



Carrie MacLaren, Metro Attorney

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 _____ (herein referred to as “Employee”).

RECITALS

1. Metro requires the services of a _____.
2. Employee has the qualifications and the desire to serve Metro as its _____.
3. 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 _____.
2. **Term of Agreement.** The terms of this Agreement shall apply to Employee’s employment upon execution and approval by the Metro Council, and shall continue until terminated as provided herein.
3. **Services.** Employee shall faithfully, industriously and to the best of their ability provide their service as the _____ at Metro, and shall perform all duties as may be required of them by the Metro Charter, the Metro Code, the Chief Operating Officer (“COO”), and any designee of the COO.
4. **Exclusivity.** During the term of this Agreement, and except as otherwise provided herein, Employee shall primarily devote their business efforts, time, attention, knowledge, and skills to Metro as the _____. Employee may engage in outside business or professional activities, provided that Employee obtain the written consent of the COO prior to engaging in any outside business or professional activities and provided that the COO has determined, in the COO’s sole discretion, that such activities: (a) do not impair performance of Employee’s duties under this Agreement, (b) do not make use of Metro resources, (c) are not substantially similar to the services Employee renders to Metro under this Agreement, and (d) are not in violation of or otherwise inconsistent with the

requirements of Metro policies, Metro Charter, Metro Code, or with any other applicable rules, regulations or legal requirements (as amended from time to time). The COO shall consult with the Metro Attorney before making their determination.

5. **Employment At-Will.** Metro and Employee understand and acknowledge that Employee serves at the pleasure of the COO. Metro and Employee understand and acknowledge that Employee's employment with Metro constitutes "at-will" employment. Subject to Metro's obligation to provide severance benefits as specified in this Agreement, 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.

6. **Compensation.**
 - A. **Salary.** As compensation for Employee's services, Metro shall pay Employee the sum of \$_____ - per year, payable in the same frequency and manner as other Metro employees. Employee's performance and salary shall be reviewed annually by Metro as provided below, and thereafter Employee's salary may be adjusted by the COO, consistent with the Metro pay plan. 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 benefits at a level determined by the COO. For the purposes of this section, "benefits" means health insurance, including dental and vision care, life insurance, disability insurance, paid leave, employee assistance, retirement benefits pursuant to the Public Employees Retirement System ("PERS"), and any other benefits which are routinely provided to Metro's non-represented employees. Metro 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. **Annual Vacation Leave.**
 - (1) Employee shall accrue annual vacation leave as provided in the Metro Personnel Rules, as they may be amended from time to time, except that Employee may exceed the annual 350 hour limit on accrued leave and accrue up to 750 hours of leave. Employee shall accrue vacation at a rate of ____ hours per hour paid. This

amounts to ___ hours per year. Employee shall also receive a one-time bank of ___ hours of vacation leave upon initial employment, which may be used at any time.

- (2) Employee shall annually forfeit any vacation leave that both (a) exceeds the 350 hour limit; and (b) is accrued in a fiscal year in which Employee has not taken at least 80 hours of annual leave (“minimum leave”). The “minimum leave” requirement may be waived by the COO or their designee under extraordinary circumstances.
- (3) Upon voluntary resignation of their 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 350 hours. If Employee is terminated by Metro without cause, Employee shall be compensated as provided in Section 9(B).

7. **Performance/Compensation Reviews.** The COO or their designee and Employee shall mutually agree on an annual work plan for Employee. In evaluating Employee’s performance, the COO or their designee may consider how Employee’s performance is consistent with standard management practices, personnel policies and performance measures adopted by the COO or their designee.

8. **Reassignment.** Upon written notice by Metro’s COO or their designee, 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 higher salary during the reassignment period, Employee shall be returned in good standing to their 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.

9. **Termination.**

A. **Termination by the Parties.**

- (1) **Termination by Metro:** Employee understands and agrees that Employee serves at the pleasure of Metro’s COO and that the COO may terminate Employee’s employment with Metro at any time, with or without cause, by giving Employee a 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 on which the written notice was given. Cause is defined in section 9C of this Agreement.

- (2) Termination by Employee: Employee may terminate their 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.
 - (3) Upon termination, accrued leave shall be paid as provided by law and the terms of this Agreement.
- 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 as follows:
- (1) Severance pay shall be guaranteed at three (3) months' salary. Severance pay shall be subject to usual and customary withholdings under applicable local, state, and federal taxes.
 - (2) 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 (6) months, whichever is less.
 - (3) Employee shall receive payment for all accrued and unused vacation leave up to a maximum of 750 hours.
- C. Termination for "Cause." Metro may terminate this Agreement for "cause" by giving Employee written notice of intent to terminate for "cause." The written notice shall set forth the reasons for termination constituting cause and provide an opportunity for Employee to respond. In the event that Metro elects to terminate this Agreement for "cause," neither severance pay nor employer paid COBRA benefits shall be due to Employee. At any time prior to the effective date of a termination for cause, Metro may provide written notice withdrawing the notice of proposed termination for cause, and following such withdrawal may elect

to terminate this Agreement pursuant to the provisions of Section 9B. "Cause" shall include one or more of the following:

- (1) 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 COO in their reasonable discretion.
- (2) Violation of the Oregon Government Ethics and Practices Act.
- (3) Violation of the Code of Ethics for Metro Officials. Metro Code Chapter 2.17.

10. **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.
11. **Termination Authority.** The COO has the sole authority to terminate this Agreement on behalf of Metro. The COO may terminate this Agreement in writing pursuant to any provision of Paragraph 9 of this Agreement.
12. **Disability or Death.**
 - A. If, as the result of any physical or mental disability, Employee shall have failed or is unable to perform their duties for more than twelve (12) consecutive weeks, the COO may, by subsequent written notice to Employee, terminate their 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 Employee's death. In the event of Employee's death, Metro shall provide payment of all accrued salary and benefits, but shall not furnish any of the benefits designated under Section 9B of this Agreement.
13. **Successorship.** This Agreement shall inure to and shall be binding upon Metro's successors, assigns, trustees, executors, and administrators.
14. **Modification.** This Agreement can only be modified by a written amendment, signed by Employee and the COO. 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.

- 15. **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the parties' rights to enforce the provision, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of the provision itself or of any other provision.
- 16. **Construction.** This At-Will Employment Agreement is the final, entire 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.

EXECUTED IN DUPLICATE on _____ to be effective _____
_____.

EMPLOYEE

METRO

NAME

Chief Operating Officer

APPROVED AS TO FORM:

Carrie MacLaren
Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 21-5199, FOR THE PURPOSE OF AMENDING THE DIRECTOR FORM EMPLOYMENT AGREEMENT

Date: July 27, 2021
Department: Office of the COO
Meeting Date: July 29, 2021

Prepared by: Val Galstad,
val.galstad@oregonmetro.gov
Presenter(s) (if applicable): n/a
Length: n/a

ISSUE STATEMENT

Under Metro Code Section 2.02.010, the Chief Operating Officer may enter into and amend employment agreements on a case by case basis, or as a group for Director-level employment agreements. Metro has executed at-will employment agreements for a number of its director level positions, as follow: Deputy Chief Operating Officer, General Manager of Visitor Venues, the Chief Financial Officer, the Zoo Director, the Parks and Nature Director, and the Human Resources Director. As a best practice, Metro intends to enter into at-will employment agreements with all future director level hires at Metro.

The Chief Operating Officer has been delegated the authority to enter into employment agreements substantially similar to the form employment agreement approved by Metro Council in 2017.

The Chief Operating Officer updated certain benefits to all non-represented employees which necessitates altering the director form employment agreement, and now seeks approval to amend the form employment agreement to reflect these changes.

ACTION REQUESTED

The COO requests approval of the resolution to amend the director form employment agreement.

IDENTIFIED POLICY OUTCOMES

This resolution will allow the Chief Operating Officer to offer equitable vacation and retirement benefits to any newly hired department directors. By amending the form employment agreement, the Chief Operating Officer will have the authority to enter into new employment agreements substantially similar to the form employment agreement in Exhibit A.

POLICY QUESTION(S)

N/A

POLICY OPTIONS FOR COUNCIL TO CONSIDER

Approve Resolution No. 21-5199

- The approval of this resolution will amend the form employment agreement for directors at Metro. This will allow the Chief Operating Officer to enter into employment agreements substantially similar to the form agreement in Exhibit A. New directors will receive the same vacation accrual and retirement benefits as all other non-represented employees.

Do not approve Resolution No. 21-5199

- If Metro Council does not approve this resolution, the form employment agreement for directors at Metro will not be amended. Metro Council will need to approve each employment contract on a case-by-case basis if the new director is to receive the same vacation accrual and retirement benefits as all other non-represented employees.

STAFF RECOMMENDATIONS

Staff recommends that Council approve the resolution to amend the director form employment agreement.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

This resolution allows the Chief Operating Officer to offer the same vacation and retirement benefits to newly hired department directors as to all non-represented employees at Metro. This will allow the Chief Operating Officer to have a consistent approach to wage and benefit negotiations with new directors.

Known Opposition: None

Legal Antecedents: Metro Code Section 2.02.010; Resolution No. 17-4797

BACKGROUND

Metro's Personnel Code, Section 2.02.010, as amended, provides that the Metro Council may delegate authority to the Chief Operating Officer by resolution to execute written employment agreements on a case by case basis, or as group for Director level employment agreements where all terms in those employment agreements are identical except salary.

In Resolution No. 17-4797, Metro Council delegated authority to the Chief Operating Officer to execute written employment agreements in a form approved by the Office of Metro Attorney with the Metro department directors and substantially similar to a form agreement approved by Metro Council in Resolution No. 17-4797. This form agreement has been utilized for department directors hired since 2017.

The Chief Operating Officer updated certain benefits to all non-represented employees in Fiscal Year 2021-2022. Effective July 1, 2021, Metro will pay the 6% contribution to PERS Individual Account Plans (IAP) for all non-represented employees. Prior to July 1, 2021 some non-represented employees paid their own 6% contribution and Metro paid the 6% for others.

Effective July 1, 2021, the Chief Operating Officer expanded vacation accrual benefits for non-represented employees, adding an additional accrual tier. Additionally, the vacation accrual cap was extended from 275 hours to 350 hours.

Former non-represented vacation accrual rates

Level	Total years of continuous service	Accrual rate per hour paid	*Equivalent annual hours for full-time employees working 2080 hours per year
Level 1	Date of hire through completion of 3rd year	.0577 hours	120 hours
Level 2	4th year through completion of 7th year	.0692 hours	144 hours
Level 3	8th year through completion of 11th year	.0808 hours	168 hours
Level 4	12th year or more	.0923 hours	192 hours

Current non-represented vacation accrual rates

Level	Total years of continuous service	Accrual rate per hour paid	*Equivalent annual hours for full-time employees working 2080 hours per year
Level 1	Date of hire through completion of 3rd year	.0577 hours	120 hours
Level 2	4th year through completion of 7th year	.0692 hours	144 hours

Level 3	8th year through completion of 10th year	.0808 hours	168 hours
Level 4	11 th year through completion of 13 th year more	.0923 hours	192 hours
Level 5	14th year or more	0.1038 hours	216 hours

Newly hired Metro directors are subject to the non-represented vacation policy.

ATTACHMENTS

Resolution No. 21-5199

Exhibit A to Resolution No. 21-5199