

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DELEGATING	)	RESOLUTION NO. 23-5307
AUTHORITY TO THE CHIEF OPERATING	)	
OFFICER TO EXECUTE WRITTEN	)	Introduced by Chief Operating Officer
EMPLOYMENT AGREEMENTS	)	Marissa Madrigal in concurrence with
	)	Council President Lynn Peterson

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

WHEREAS, the amendments made to Metro Code Section 2.02.010 by Ordinance No. 22-1487 are for the purpose of clarifying ambiguities and do not change the substance or scope of the Metro Council’s power to delegate to the COO the authority to execute employment agreements in certain situations; and

WHEREAS, the amendments made to Metro Code Section 2.02.010 by Ordinance No. 22-1487 are not effective until May 10, 2023; and

WHEREAS, the Metro Council believes it is in the best interest of Metro for the COO to directly negotiate and execute written employment agreements for the new Deputy Chief Operating Officer, as well as other director-level positions before the effective date of Ordinance No. 22-1487; now therefore,

BE IT RESOLVED that the Metro Council hereby delegates authority to the Chief Operating Officer to execute written employment agreements in a form approved by the Office of Metro Attorney and identical to the one attached as Exhibit A with the following positions: (1) the new Deputy Chief Operating Officer; (2) the Director of Housing; (3) the Director of Diversity, Equity and Inclusion; (4) the Director of Planning, Development and Research; (5) the Director of Information Services/Chief Information Officer; (6) the Executive Director of the Expo Center; (7) the Executive Director of the Oregon Convention Center; and (8) the Executive Director of Portland’s Centers for the Arts.

ADOPTED by the Metro Council this 23rd day of February 2023.



\_\_\_\_\_  
Lynn Peterson, Council President

Attest:

Approved as to Form:



\_\_\_\_\_  
Connor Ayers, Recording Secretary



\_\_\_\_\_  
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 <Name of Employee> (herein referred to as “Employee”).

### RECITALS

1. Metro requires the services of a <Position Title>.
2. Employee has the qualifications and the desire to serve Metro as its <Position Title>.
3. This Agreement will be referred to as “At-Will Employment Agreement” (herein referred to as “Agreement”).

**NOW, THEREFORE, IN CONSIDERATION** of the compensation Metro will pay to Employee as specified in this Agreement, and in consideration of the mutual promises in this Agreement, the parties 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 <Position Title>.
2. **Term of Agreement.** The terms of this Agreement apply to Employee’s employment upon execution and continue until terminated as provided in this Agreement.
3. **Services.** Employee will faithfully, industriously and to the best of Employee’s ability serve as the <Position Title>, and will perform all duties as may be required of the Employee by the Metro Charter, the Metro Code, the Chief Operating Officer (“COO”), and any designee of the COO.
4. **Exclusivity.** Unless reassigned under Section 8, Employee will primarily devote their business efforts, time, attention, knowledge, and skills to Metro as the <Position Title>. Employee may engage in outside business or professional activities, provided that:
  - (1) Employee obtains the COO’s written consent before engaging in any outside business or professional activities; and
  - (2) the COO determines in the COO’s sole discretion and after consultation with the Metro Attorney that the 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) do not violate or are 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).

5. **Employment At-Will.** Metro and Employee understand and acknowledge that Employee serves at the COO's pleasure. Metro and Employee understand and acknowledge that Employee's employment with Metro is "at-will" employment. Subject to Metro's obligation to provide severance benefits as specified in this Agreement, Employee and Metro acknowledge that either party may terminate this employment relationship 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. The parties further understand and agree that neither this Agreement, nor any service provided under this Agreement, creates a property interest of any kind.
  
6. **Compensation.**
  - A. **Salary.** As compensation for Employee's services, Metro will pay Employee the sum of \$XXX,000.00 per year, payable in the same frequency and manner as other Metro employees. The COO or the COO's designee will annually review Employee's performance as provided below, and thereafter the COO may adjust Employee's salary consistent with the Metro pay plan, including any cost-of-living adjustments and merit increases provided for non-represented employees. Employee's compensation is subject to customary withholdings and other taxes as required with respect to compensation paid by Metro to an employee.
  
  - B. **Benefits.** The COO will determine Employee's benefits package, consistent with Metro's employment policies. 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 will pay the six percent 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 will accrue annual vacation leave as provided in the Metro Personnel Rules, as those Rules 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.

- (2) Employee will 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 vacation leave (“minimum leave”). The COO or the COO’s designee may waive the “minimum leave” requirement under extraordinary circumstances.
- (3) If Employee voluntarily resigns or Metro terminates for cause as defined in Section 9(C), Employee is only entitled to payment for accrued and unused vacation leave up to a maximum of 350 hours. If the COO terminates Employee without cause, Metro will compensate Employee as provided in Section 9(B).

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

8. **Reassignment.** Upon written notice by the COO or the COO’s designee, the COO may temporarily or permanently reassign Employee to another Metro position or reassign Employee 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, Metro will return Employee in good standing to Employee’s 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 will reflect all work during the period, and compensation adjustments will 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 the 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 is the date on which the COO gave the written notice. Cause is defined in section 9(C).

- (2) Termination by Employee: Employee may terminate employment with Metro at any time by giving the COO a written notice of termination specifying the effective date of termination. To terminate in good standing, Employee must provide at least thirty days written notice of termination. If the written notice of termination does not specify the effective date of termination, the effective date of termination is the date that is thirty days after the date on which Employee gave the written notice.
  - (3) Upon termination, Metro will pay accrued leave as provided by the terms of this Agreement.
- B. Termination Without Cause. The COO may, at their sole election, may terminate this Agreement without cause and without prior notice to Employee. Upon termination of employment without cause, Employee will receive severance pay and benefits in exchange for a signed release of any and all claims as follows:
- (1) Severance pay of three months' salary. Severance pay is subject to usual and customary withholdings and taxes under applicable local, state, and federal law.
  - (2) Upon the effective date of termination, Employee is eligible for continued health insurance as established by law ("COBRA"). Metro will pay an amount equivalent to six months of the premium cost of Employee's health insurance at the level utilized by Employee at the time of termination. This payment is subject to usual and customary withholdings and taxes under applicable local, state, and federal law.
  - (3) Metro will pay Employee for all accrued and unused vacation leave up to a maximum of 750 hours. This payment is subject to usual and customary withholdings and taxes under applicable local, state, and federal law.
- C. Termination for "Cause." The COO may terminate this Agreement for "cause" by giving Employee written notice of intent to terminate for "cause." The written notice will set forth the reasons for cause and provide an opportunity for Employee to respond. In the event that the COO elects to terminate this Agreement for "cause," none of the payments identified in Section 9(B) are due to Employee. At any time before the effective date of a termination for cause, the COO may provide written notice withdrawing the notice of proposed termination for cause. Following this withdrawal, the COO may elect to terminate this Agreement pursuant to the provisions of Section 9(B). "Cause" includes 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 will 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.
12. **Disability or Death.**
- A. If, as the result of any physical or mental disability, Employee fails or is unable to perform Employee's duties for more than twelve consecutive weeks, the COO may terminate Employee's employment under this Agreement. The COO will provide written notice to Employee. The termination of Employee's employment will be effective as of the date of the notice and Metro will not be obligated to make any further payment or furnish any benefit 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. Employee's employment term terminates upon Employee's death. In the event of Employee's death, Metro will pay all accrued salary and benefits, but will not furnish any of the benefits designated under Section 9(B).
13. **Successorship.** This Agreement inures to and is binding upon Metro's successors, assigns, trustees, executors, and administrators.
14. **Modification.** Only a written amendment signed by Employee and the COO can modify this Agreement. The Metro Council must approve the amendment. No oral or written statements, promises, or course of conduct modifies the Agreement in any way. No practices or customs which may arise between Employee and Metro modifies this Agreement or affects its meaning in any way.

- 15. **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement does not limit the parties' rights to enforce the provision, nor will 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, is to 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 supersedes all prior discussions or agreements.
- 17. **Severability.** If any court of competent jurisdiction determines that one or more portions of this Agreement are invalid or unlawful, the remaining portions remain in full force and effect.
- 18. **Governing Law.** This Agreement is 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.

**EMPLOYEE**

**METRO**

\_\_\_\_\_  
<Name of Employee>

\_\_\_\_\_  
Marissa Madrigal  
Chief Operating Officer

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Carrie MacLaren  
Metro Attorney

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 23-5307, FOR THE PURPOSE OF DELEGATING AUTHORITY TO THE CHIEF OPERATING OFFICER TO EXECUTE WRITTEN EMPLOYMENT AGREEMENTS**

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Date: February 7, 2023  
Department: Office of the COO  
Meeting Date: February 23, 2023

Prepared by: Summer Beanland  
summer.beanland@oregonmetro.gov

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## **ISSUE STATEMENT**

On January 26, 2023, the Office of the Chief Operating Officer (“COO”) and the Office of Metro Attorney presented Ordinance No. 22-1487 to the Metro Council for its first reading. This ordinance, which amends code language to clarify certain ambiguous terms relating to employment agreements, will not become effective until May 10, 2023. The COO would like to execute written employment agreements for certain positions now (i.e., before Ordinance No. 22-1487 becomes effective). Incumbents in a number of positions are working without any employment agreement in place, and the COO would like to remedy this issue as soon as possible.

Pursuant to current Code Section 2.02.010, the Metro Council may delegate by resolution to the COO the authority to execute written employment agreements on a case-by-case basis, or as a group for Director-level employment agreements where all terms in those employment agreements are identical except salary. Resolution No. 23-5307 delegates authority to the COO to execute written employment agreements consistent with existing code language for the following positions: (1) the new Deputy Chief Operating Officer; (2) the Director of Housing; (3) the Director of Diversity, Equity and Inclusion; (4) the Director of Planning, Development and Research; (5) the Director of Information Services/Chief Information Officer; (6) the Executive Director of the Expo Center; (7) the Executive Director of the Oregon Convention Center; and (8) the Executive Director of Portland’s Centers for the Arts.

After Ordinance No. 22-1487 becomes effective, the COO will return to the Metro Council for approval of the use of a form employment agreement that is consistent with new code language.

## **ACTION REQUESTED**

The Office of the COO requests approval of Resolution 23-5307 delegating authority to the COO to execute written employment agreements in a form approved by the Office of Metro Attorney and identical to the one attached as Exhibit A to the Resolution with the eight positions identified above.



## **IDENTIFIED POLICY OUTCOMES**

This would allow the COO to provide an employment agreement to the newly created Deputy COO position as well as to others and thus establish consistency amongst director-level positions. This also allows Metro to be a more competitive employer and supports the agency goal of being an “Employer of Choice.”

## **POLICY QUESTION(S)**

N/A

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

Approve Resolution No. 23-5307

- The approval of this resolution will allow Metro’s COO to enter into employment agreements for specified positions at Metro using the form employment agreement approved by the Office of Metro Attorney.

Do not approve Resolution No. 23-5307

- If Metro Council does not approve this resolution, COO Madrigal will not be able enter into employment agreements with specified positions.

## **STAFF RECOMMENDATIONS**

Staff recommends that Council approve the resolution delegating authority to the COO to execute written employment agreements with eight specific positions.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

**Legal Opposition:** None

**Legal Antecedents:** Metro Code Section 2.02.010; Ordinance No. 22-1487

## **BACKGROUND**

In response to the Employment Agreements audit and the recommendations in it, in March 2020 and on December 13, 2022 the COO came before Council to receive direction on the following questions:

- Does Metro Council wish to continue to delegate authority to the COO to enter into employment agreements with certain employees?
- Should OMA clarify language in Code Section 2.02.010 to ensure consistent and transparent execution of employment agreements?

At the December 2022 work session, Council indicated its assent to both questions and instructed staff to proceed with clarification of language in Code Section 2.02.010 and an update to the Employment Agreement Template that the COO is authorized to use when delegated authority by Council. After additional discussion with the Metro Auditor, the Office of Metro Attorney and Chief Operating Officer agreed to propose mutually acceptable updates to Council. On January 26, 2023 Ordinance No. 22-1487 clarifying language in Code Section 2.02.010 was brought before Council for its first reading. On February 9, 2023, Ordinance No. 22-1487 came before Council for second reading and vote. Because Amendments made to Code Section 2.02.010 will not be effective until April 18, 2023, the resolution before you (Resolution No. 23-5307) is based on current Code Section 2.02.010. It delegates authority to the COO to execute written employment agreements with specified positions using the attached form employment agreement. After Ordinance No. 22-1487 becomes effective, the COO will return to the Metro Council for approval of the use of a form employment agreement that is consistent with new code language.

**ATTACHMENTS**

Ordinance No. 23-5307

Exhibit A - Form Employment Agreement