

The 575th Policy Board Meeting Fargo-Moorhead Metropolitan Council of Governments

THURSDAY, March 19, 2020 – 4:00 p.m.
Metro COG Conference Room
One 2nd Street North, Suite 232
Fargo, North Dakota

REVISED OVERALL AGENDA

1. Call to Order and Introductions
 - a. Introductions Information Item
 - b. Approve Order and Contents of the Overall Agenda Action Item
 - c. Approve Minutes of the February 20, 2020 Board Meeting Action Item
 - d. Approve March 2020 Bills Action Item
2. Consent Agenda Action Item
 - a. February Month End Report
3. Regular Agenda
 - a. Public Comment Opportunity Public Input
 - b. Personnel Policy Updates Action Item
 - c. COVID-19 Health Emergency Policy and Procedures Action Item
 - d. Property Insurance Action Item
4. Additional Business Information Item
5. Adjourn

REMINDER: The next Metro COG Policy Board Meeting will be held Thursday, April 16, 2020 at 4:00 p.m. in the Metro COG Conference Room. The conference

In response to the national emergency declaration and local efforts to deal with the coronavirus crisis, Metro COG is providing meeting participants with the option to participate remotely. A conference call has been set up for this meeting.

Conference Number: 515-604-9094
Access Code: 994 487 388#

Red Action Items require roll call votes.

Full Agenda packets can be found on the Metro COG Web Site at <http://www.fmmetrocog.org>

NOTE: Given the participation of Fargo City Commissioners at Policy Board meetings, such meetings may constitute open public meetings of the City of Fargo.

Metro COG is committed to ensuring all individuals, regardless of race, color, sex, age, national origin, disability/handicap, sexual orientation, and/or income status have access to Metro COG's programs and services. Meeting facilities will be accessible to mobility impaired individuals. Metro COG will make a good faith effort to accommodate requests for translation services for meeting proceedings and related materials. Please contact Savanna Leach, Metro COG Executive Assistant, at 701-532-5100 at least five days in advance of the meeting if any special accommodations are required for any member of the public to be able to participate in the meeting.

Agenda Item 1c, Attachment 1

**574th Policy Board Meeting
Fargo-Moorhead Metropolitan Council of Governments
Thursday, February 20, 2020 – 4:00 pm
Metro COG Conference Room**

Members Present:

Duane	Breitling	Cass County Commission
John	Gunkelman	Fargo Planning Commission
Steve	Jesme	Dilworth City Council
Johnathan	Judd	Moorhead City Council
Brad	Olson	West Fargo City Commission
Dave	Piepkorn	Fargo City Commission
Rocky	Schneider	Fargo Planning Commission
John	Strand	Fargo City Commission
Sara	Watson Curry	Moorhead City

Members Absent:

David	Fenelon	Horace City Council
Tony	Gehrig	Fargo City Commission
Eric	Gjerdevig	West Fargo City Commission
Tony	Grindberg	Fargo City Commission
Chuck	Hendrickson	Moorhead City Council
Jenny	Mongeau	Clay County Commission
Maranda	Tasa	Fargo Planning Commission

Others Present:

Adam	Altenburg	Metro COG
Luke	Champa	Metro COG
Dan	Farnsworth	Metro COG
Cindy	Gray	Metro COG
Savanna	Leach	Metro COG
Michael	Maddox	Metro COG
Anna	Pierce	Metro COG
Bob	Walton	NDDOT – Fargo District

1a. MEETING CALLED TO ORDER, WELCOME, AND INTRODUCTIONS, convened

The meeting was called to order at 4:00 pm, on February 20, 2020 by Chair Olson, noting a quorum was present. Introductions were made.

1b. Approve Order and Contents of Overall Agenda, approved

Chair Olson asked for approval of the overall agenda.

MOTION: Approve the contents of the Overall Agenda of the February 20, 2020 Policy Board Meeting.

Ms. Watson Curry moved, seconded by Mr. Jesme.

MOTION, passed. 9-0

Motion carried unanimously.

1c. Past Meeting Minutes, approved

Chair Olson asked for approval of the Minutes of the January 16, 2020 Meeting.

MOTION: Approve the January 16, 2020 Policy Board Meeting Minutes.

Mr. Breittling moved, seconded by Mr. Gunkelman.

MOTION, passed. 9-0

Motion carried unanimously.

1d. Monthly Bills, approved

Chair Olson asked for approval of the February 2020 Bills as listed on Attachment 1d.

MOTION: Approve the February 2020 Bills List.

Mr. Piepkorn moved, seconded by Mr. Judd.

MOTION, passed. 9-0

Motion carried unanimously.

2. CONSENT AGENDA

Chair Olson asked for approval of Items a-g on the Consent Agenda.

- a. January Month End Report
- b. Personnel Action – Grade Change
- c. Horace Comprehensive & Transportation Plan Contract Amendment
- d. Moorhead Traffic Counting Addendum with ATAC
- e. MATBUS Transit Development Plan Consultant Selection
- f. 17th Street North Corridor Study Consultant Selection
- g. Performance Measure (PM) 1 – 2020 Safety Target Adoption

MOTION: Approve Items a-g on the Consent Agenda.

Mr. Strand moved, seconded by Mr. Jesme.

MOTION, passed. 9-0

Motion carried unanimously.

3. REGULAR AGENDA

3a. Public Comment Opportunity

No public comments were made or received.

3b. Fargo-Moorhead Bikeways Gap Analysis Final Report

Mr. Farnsworth and Mr. Champa presented the Final Report for the Fargo-Moorhead Bikeways Gap Analysis Study. The jurisdictions of West Fargo, Fargo, Moorhead, and Clay County contracted with Toole Design (prime consultant) and Bolton & Menk (subconsultant) to lead the study. This study looks at 16 key bikeway gaps in the Fargo-Moorhead Metro Area, most of which were originally identified during the development of the 2016 Fargo-Moorhead Metro Bicycle & Pedestrian Plan. These gaps included three in West Fargo, seven in Fargo, two in Moorhead, one Red River crossing, and three in Moorhead/Clay County. The purpose of this study is to analyze the 16 bikeway gaps by obtaining public input, reviewing the existing conditions and local needs, and develop alternatives,

planning level cost estimates, and implementation strategies for the gaps. The Plan was guided by a 14-member Study Review Committee and had extensive public involvement.

The final report was completed in December 2019, and Policy Board approval was recommended by both the Metropolitan Bicycle and Pedestrian Committee and the Transportation Technical Committee.

Mr. Strand asked if the study included information on micro-mobility (rented scooters/bikes). Mr. Farnsworth said the study did not include information on that, however, they would be treated similar to bicycle facilities. Ms. Gray stated that Metro COG staff have researched the pros and cons of micro-mobility and the issues surrounding the use of scooters and dockless shared bicycles and, through our work with the Bicycle and Pedestrian Committee, prepared a pamphlet that provides recommendations for regulations that cities should adopt to address issues that have arisen in other communities. Mr. Farnsworth noted that this information was provided to the local jurisdictions' administrators.

MOTION: Adoption of the Fargo-Moorhead Bikeways Gap Analysis Final Report.

Mr. Gunkelman moved, seconded by Ms. Watson Curry.

MOTION, passed. 9-0

Motion carried unanimously.

3c. City of Fargo Safe Routes to School Plan Final Report

Mr. Farnsworth and Ms. Pierce presented the final report for the City of Fargo Safe Routes to School Plan. The City of Fargo, Fargo Public Schools, West Fargo Public Schools, and representatives from the private schools. Metro COG contracted with consulting firm Alta Planning + Design (with subconsultant KLJ) to carry out the study and complete the Plan. Included in this Plan are all elementary and middle schools located within the City of Fargo (plus Liberty Middle School in the City of West Fargo). In total, 31 K-8 schools are included – all twenty Fargo public schools, five West Fargo public schools, and six private schools. The purpose of the Plan is to provide information, resources, and recommendations to elected officials, city and school staff, and parents to make walking and bicycling safer and more inviting for students traveling to and from school. This Plan incorporates the "Six E's" of Safe Routes to School – Education, Encouragement, Engineering, Enforcement, Evaluation, and Equity.

Mr. Farnsworth and Ms. Pierce explained that the study also includes school siting recommendations aimed at reducing pedestrian/vehicle conflicts and providing improved safety for students to bike or walk to school. Ms. Pierce showed how different school locations, combined with different urban forms, result in higher rates of walking and biking to school. This analysis is included in the plan.

Mr. Strand stated that it would be very advantageous if the Fargo and West Fargo school districts had the same bussing policies and asked if West Fargo has had a safe routes to school study. Staff explained that such a study has not

been completed for West Fargo, and agreed that it would be beneficial to have studied schools both cities, but only the City of Fargo requested the study and budget limitations limited the study to Fargo. Following city limits is the typical approach to SRTS plans since city engineering departments are responsible for street improvements within their jurisdiction.

Ms. Pierce showed how Metro COG's website has been updated to show SRTS plans for each school included in the study.

Upon adoption by the City of Fargo and Metro COG Policy Board, the Plan will become publicly available for use by elected officials, city and school staff, and parents.

MOTION: Adoption of the City of Fargo Safe Routes to School Plan, and sign the Resolution of Adoption for the City of Fargo Safe Routes to School Plan.

Mr. Schneider moved, seconded by Mr. Piepkorn.

MOTION, passed. 9-0

Motion carried unanimously.

3d. Veterans Boulevard Corridor Extension Study RFP

Mr. Farnsworth and Ms. Gray presented the Veterans Boulevard Corridor Extension Study request for proposals (RFP). This study will analyze alternatives and look at the feasibility of extending Veterans Blvd from 52nd Ave S to 100th Ave S. and will also look at future implications of such an extension to the existing roadway segment from 40th Ave S to 52nd Ave S. While this study will be studying Veterans Blvd from 40th Ave S to 100th Ave S, emphasis will be given on the section from 40th Ave S to 76th Ave S. In addition, the travel demand model will be utilized to assess the impacts of a Veterans Blvd extension (or non-extension) on Sheyenne St / CR 17, particularly from 40th Avenue S to 76th Avenue S.

With an overall budget of \$180,000, \$144,000 will be provided by Metro COG CPG funds and \$36,000 will be provided by local funds. The local funds will be provided by the Cities of Fargo and Horace with the exact breakdown currently being discussed.

It is important to note that due to the additional \$30,000 to be added to the study's budget, a UPWP amendment will need to be completed before entering into contract with a consultant. Subject to the addition of two additional planning documents as references for the plan, the TTC recommended Policy Board approval of the RFP at their February 13th meeting.

MOTION: Approve the Veterans Boulevard Corridor Extension Study.

Mr. Gunkelman moved, seconded by Mr. Breittling

MOTION, passed. 9-0

Motion carried unanimously.

4. Additional Business

Ms. Gray noted that an expense was missed on the bills list, and wanted to clarify that the motion to approve the February bills list would include that expense.

5. Adjourn

MOTION: Adjourn the 574th Meeting of the FM Metro COG Policy Board

Mr. Gunkelman moved, seconded by Mrs. Watson Curry.

MOTION, passed. 9-0

Motion carried unanimously.

The 574th Meeting of the FM Metro COG Policy Board held Thursday, February 20, 2020 was adjourned at 5:23 pm.

THE NEXT FM METRO COG POLICY BOARD MEETING WILL BE HELD March 19, 2020, 4:00 P.M. AT THE FM METRO COG CONFERENCE ROOM, ONE NORTH 2ND STREET, CASE PLAZA SUITE 232, FARGO, ND.

Respectfully Submitted,

Savanna Leach
Executive Assistant



To: Policy Board Members
From: Cindy Gray, Executive Director
Date: March 13, 2020
Re: **Updates to Personnel Policies, Article VII – TIME and Article VIII - LEAVE**

Proposed updates to Metro COG's Personnel Policies can be found on pages 13-27 of the attached Personnel Policies Manual (Attachment 1). The proposed changes address Article VII – Time and Article VIII – Leave. The proposed changes have been reviewed by Metro COG's HR resource advisor, Jenna Wilm, HR Director for the City of West Fargo, and by Metro COG's attorney, John Shockley and his colleague Elle Molbert, both of Ohnstad Twichell Law. Their recommendations were incorporated into the language of the proposed changes.

The nature of the most significant changes are summarized below:

Compensatory Time

- The existing language is revised to state that comp time begins after working a 40-hour week versus a 43 hour week (7.08.01, p. 15).
- The existing timeframe for the use of comp time is eliminated, along with some other restrictions that state comp time cannot be used in conjunction with weekends, holidays or other time off.
- The existing limitation of accruing 24 hours of comp time is increased to a proposed 40 hours.
- The attorneys stated that comp time cannot be forfeited upon an employee's termination. It must be paid.
- The existing Absence from Work Station paragraph is eliminated, doing away with the requirement for employees to report in advance to the Executive Director, any time they are going to be away from their work station.

Leave Time

- The proposed changes add another category of leave time, allowing employees with more than 20 years of service to accumulate vacation time at the rate of 14 hours for each month of service (21 days per year). Currently, there is no category beyond five years of service, which allows for 18 vacation days per year.
- Currently, the policies allow part time employees to USE vacation and sick leave, but not to accrue it. This assumes they previously worked full time and accrued leave time. The proposed changes reverse the policy, allowing part time

employees to accumulate leave time at a prorated amount equal to the percentage of time they are working.

- The proposed changes increase the allowed the accumulation of vacation time to 200 hours at year end instead of the current amount of 160 hours.
- FMLA language modeled after the City of Fargo's FMLA policy has been included. The language replaces some former language regarding maternity and paternity leave. One different from the City of Fargo is that employees are not required to exhaust their sick or vacation leave prior to going on unpaid leave. This allows for the cushion of sick and vacation time on the books when they return to work after medical leave.
- Staff at Metro COG have enquired about donation of leave time (either sick or vacation) for colleagues who deplete their leave time due to a medical emergency. The proposed language included in the updated policies (p. 26-27) is modeled after that of the City of Fargo, but includes opportunity to donate either sick time or vacation time rather than limiting the donation to vacation.
- Funeral leave has been updated to include non-exempt employees, which were previously excluded. Additional family members have been identified, and another feature of the City of Fargo's policy was included to clarify that the Executive Director can grant additional time off when reasonable.

The table of contents and formatting of the document is currently incorrect due to the use of Track Changes to show where edits were made. Once the changes are approved by Policy Board, the document will be cleaned up and reformatted.

The Executive Committee reviewed the proposed changes in January and March and recommended approval contingent upon comments received from Metro COG's HR advisor and attorney.

Requested Action: Approve the proposed updates to the Metro COG Personnel Policies, Article VII - TIME and Article VIII – LEAVE, and authorize the Executive Director to update the format and table of contents and make other grammatical and formatting changes as necessary, provided they do not change the meaning and intent of the language as presented.

Fargo-Moorhead
Metropolitan
Council of
Governments

Personnel
Policies
Manual

February 22, 2019

DRAFT UPDATES TO ARTICLE VII –
TIME AND ARTICLE VIII – LEAVE

ON PP. 13-27

POLICY BOARD REVIEW, MARCH 19, 2020

METROCOG
FM REGIONAL TRANSPORTATION PLANNING ORGANIZATION

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ARTICLE I. GENERAL

- 1.01. **Introduction.** Metro COG is the Fargo Moorhead Metropolitan Council of Governments. The personnel policies contained in this manual shall govern all Metro COG personnel matters. The Metro COG Executive Director is authorized to implement and be responsible for adhering to the policy and procedures as set forth and referenced in this manual in his or her administration and management of Metro COG personnel.

The information contained in this manual, as well as in additional personnel memos you may receive, has been prepared as an aid and a guideline to give you a better understanding of your job at Metro COG. In this manual you will find information about Metro COG personnel policies, practices and procedures. However, the policies and statements contained in this manual and in other personnel statements that may be issued from time to time are not a contract of any kind. Although they reflect current policy, they may be amended or rescinded without notice at the discretion of the Metro COG Policy Board.

- 1.02. **Authority.** Pursuant to the authority as stated in the Metro COG Articles of Association (as amended), the Metro COG Policy Board is responsible for establishment, adoption and amendment of the *Metro COG Personnel Policy Manual*.
- 1.03. **Purpose.** This *Metro COG Personnel Policy Manual* is adopted for the purpose of establishing a guide for administration and management of all personnel matters concerning Metro COG employees.
- 1.04. **Review of these Policies.** All new employees will be provided a copy of this manual upon employment. Each employee will be required to read and subscribe to the policies identified in this manual and will, as a condition of employment, sign a statement attesting to their understanding of its content and implications (Appendix A). Amendments to these policies shall be guided by the policies stated in Section 17.03.

ARTICLE II. PERSONNEL POLICY

- 2.01. **Equal Employment Opportunity (EEO) Policy.** Metro COG will provide equal opportunity in all aspects of its operations including, but not limited to, employment, contractual assignments and programs to all persons regardless of age, political affiliation, belief, race, creed, color, religion, national origin, sexual orientation, non-job related physical or mental disability or gender. Equal Opportunity is not an end in and of itself.

- 2.02. **Affirmative Action Plan.** The latest amended Affirmative Action Plan for Equal Opportunity as adopted by the Metro COG Board is included in the Metro COG Policy Manual.
- 2.03. **Personnel Actions.** Each employee shall receive a copy of all personnel actions regarding his or her employment.
- 2.04. **Anniversary Date.** The anniversary date of each employee shall be considered the first date of the first full pay period worked by a new employee or worked by a current employee following such employee's promotion or demotion.
- 2.05. **Outside Employment.** Employees desiring to engage in outside employment activity or enterprise that is unrelated, but in addition to their position and responsibilities as employees of Metro COG shall request authorization to do so from the Executive Director. The Executive Director shall not authorize such outside employment, activity or enterprise deemed to be incompatible or inconsistent with Metro COG activities or that is deemed to reduce efficiency of Metro COG employees. Outside employment may be granted based on the restrictions identified in Section 2.05.01 of this manual.
- 2.05.01 **Outside Employment Restrictions.** Employees are permitted to engage in outside employment subject to the following restrictions:
- (a) Any outside employment shall not interfere with proper performance of Metro COG's employment, except for military service obligations.
 - (b) Employees will not accept pay or compensation from any other employer for time during which they are on duty with Metro COG.
 - (c) Employees are prohibited from working on any Metro COG project for any contractor or company that has a current contract with Metro COG or for an employer that would constitute a conflict of interest with Metro COG. The Executive Committee shall determine whether a conflict of interest exists.
 - (d) Employees will not accept outside employment which requires the use of Metro COG's equipment, facilities or materials unless a separate agreement for rental of equipment, facilities or materials exists and is approved by Metro COG.
 - (e) Employees will not accept or solicit private work at any time during which they are on duty with Metro COG.
 - (f) Employees will not accept or solicit private work as a result of their employment with Metro COG.
 - (g) For reasons of emergency notification, Workers' Compensation claims management and avoidance of conflict of interest, any employee engaged in outside employment shall notify the Executive Director of the name, location, and telephone number of the secondary employer.

2.06. **Employment of Relatives.** Additional members of the immediate family of current regular employees of Metro COG shall not be considered for employment by Metro COG. Such immediate family members shall include father, mother, sister, brother, spouse or child.

2.07. **Political Activity.** Metro COG employees' political activity shall be governed by the Federal Employees Political Activities Act of 1939 (Hatch Act), as amended 1993 and the North Dakota Century Code. The Act prohibits federal employees, employees of the District of Columbia and certain employees of state and local governments from engaging in partisan political activity. North Dakota law prohibits engaging in political activities while on duty. This prohibition does not include voting in any legal authorized Federal, state, county or local election. Nor does it mean to limit an employee's right to express his or her opinion or to support parties or candidates.

It is Metro COG policy, due to the agency's mission, role and relationship with government officials that employees may not engage in political activities affecting local or state elections such as seeking office, campaigning for or against any candidate, soliciting funds for campaign expenses for any candidate or soliciting or urging any other employees to vote for or against any candidate.

Additionally, current regular employees of Metro COG shall not:

- Use his or her official authority or influence for the purpose of interfering with or affecting the result of election or nomination for office;
- Directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes.

2.08. **Professional Deportment.** Metro COG is committed to maintaining a workplace where a professional and business-like atmosphere prevails. Employees are expected and required to deport themselves professionally at all times.

2.08.01 **Dress for your Day Guidelines.** "Dress for your Day" means using good judgement when deciding what to wear to work every day, with just a few basic guidelines. Consider what your workday looks like in terms of your own scheduled activities and other activities going on in the office, and take it from there.

For example:

- If you have a big day, such as a TTC meeting, Policy Board meeting or another committee meeting, you might wear something like a dress, a jacket, a tie, or dress pants and a blazer/sport coat.
- If your day is more low-key, jeans and a nice polo, dress shirt, blouse, sweater or tunic might be fine.
- If you are meeting with a local staff person, and you know that person generally dresses casually, such as jeans and a polo/shirt/blouse, you might choose to dress in a similar manner.
- If you are making a field visit, setting traffic counters, or spending time outdoors, dress for safety and comfort, which will depend on the weather.

The list below contains examples of items that are never acceptable at Metro COG:

- Heavily worn shoes (e.g. worn out shoes, or shoes with holes worn in them), rubber or foam style flip flops and generally flip flops of any kind, or Birkenstock-style sandals
- Worn out clothing, such as clothes with holes or stains (an exception could be distressed denim, for example, provided it cannot be seen through – use your best judgement).
- Clothing with potentially offensive graphics or words
- Shorts, overalls, sweats, workout clothes, or jogging suits
- Hats or caps, unless medically necessary
- Leggings unless worn with an appropriate length dress, skirt or top that would not fall into the category of short mini-skirt
- Halter tops, sheer or revealing clothing (e.g. bare midriffs, short miniskirts, tube tops)
- Spaghetti-strap tops or dresses unless covered by a jacket or sweater

Dressing for your day is all about showing your individuality in an appropriate, good-judgement kind of way. Use the general rule that if you are questioning whether a certain piece should be worn, it's probably best to not wear it. If you are unsure of whether you should dress more casually or more formally, it might be safest to lean toward the more dressy, professional attire.

Amended December 20, 2018.

2.08.02 Harassment and Threats. Metro COG is committed to maintaining a workplace where a professional and business-like atmosphere prevails. Title VII of the Civil Rights Act of 1964 guarantees employee the right to work in an environment free from harassment of any sort. Metro COG reaffirms its intent to create a stable and productive environment for all employees; an environment

which is based on an individual's ability and performance. Policies prohibiting harassment and threats are included in the *Metro COG Administrative Policies and Procedures Manual* and include policies related to:

- (a) Sexual Harassment
- (b) Discriminatory Harassment
- (c) Intimidation
- (d) Workplace Threats and Violence

A copy of the *Metro COG Administrative Policies and Procedures Manual* containing policy related to discrimination and harassment will be distributed to each new Metro COG employee upon their hire.

Metro COG expects employees to operate in a professional manner while respecting the reasonable wishes and rights of co-workers. Accordingly, employees (supervisory and non-supervisory) who violate these established policies will be subject to disciplinary action including, but not limited to, verbal or written reprimands, probation or termination of employment.

ARTICLE III. PERSONNEL ADMINISTRATION

3.01. **Responsibility of Executive Director.** The Executive Director is hereby authorized and directed to administer the personnel program, in consultation with its designated human resources professional, as provided herein and he or she shall recommend to the Policy Board from time to time such changes or revisions as he or she feels are necessary to keep the personnel program current. The Executive Director shall develop and keep such records as are necessary to administer the personnel program. The Executive Director may promulgate such administrative directives as are necessary to clarify or implement the provisions of these policies. Such directives shall be in written form and a copy filed with the Chair of the Policy Board.

The Executive Director is hereby directed to have the Personnel Policies printed and distributed to all employees of Metro COG. It is the intent of Metro COG that employees become familiar with these policies, as well as their responsibilities as an employee of Metro COG in order to encourage a harmonious and efficient working force.

The Executive Director is hereby directed to annually make public, by way of presentation to the Policy Board, all employee compensation and benefits. The Executive Director shall list the applicable Grade and Step of each employee, the status of each employee, and the benefits package that is offered to employees. The Executive Director shall also certify that these

benefits are in accordance with this document as well as Policy Board expectations.

3.02. **Responsibility of the Policy Board.** The Policy Board should, with the assistance of the Executive Director and Metro COG's designated human resources representative should annually review the personnel policies to determine the need for revisions or amendments. The provisions herewith may be amended by the majority vote of the members of the Policy Board at any regular meeting of the Policy Board, or at any special meeting thereof, provided that notice of such regular or special meeting shall state the proposed amendment and the fact it is to be voted upon at the meeting.

3.03. **Conflicting Requirements.** If Metro COG Personnel Policies are found to be in conflict with changes in Federal or state laws, the Federal or state requirements will prevail and supersede Metro COG's policies.

ARTICLE IV. APPOINTMENT TO POSITIONS

4.01. **General.** Metro COG employment opportunities shall be open to all persons that meet reasonable standards as may be proposed by Metro COG. These standards shall relate to the ability of the candidates to perform with reasonable efficiency the duties of the position. In no event shall there be any discrimination toward applicants on the basis of race, color, creed, gender, sexual orientation, national origin, political, religious or union affiliation, age or disability.

4.02. **Advertising.** Employee recruitment advertising or notices will be placed with one or more of the following:

- a) general circulation newspapers;
- b) professional placement publications;
- c) government employment offices; or
- d) private personnel placement offices that may solicit position opening listings.

Notice of position openings will be posted on the Metro COG bulletin board and web page simultaneously when advertising in newspapers, publications and employment agencies.

Public notice for all Metro COG employment shall be provided at least one week in advance of the last day for filing of applications. Efforts to recruit among disadvantaged groups shall be made when possible. All employee recruitment advertising will include a statement of the minimum professional or technical education, experience and skills required for each open position and the following statement: "An Equal Opportunity Employer" or "EOE".

The Executive Director, with approval of the Executive Committee, is authorized to advertise for existing employee replacements, if the position is vacant, or known to become vacant.

- 4.03. **Recruitment.** The Executive Director has the duty of recruiting qualified candidates for Metro COG employment and maintaining records which will facilitate the discovery of employees who should be considered for promotion to higher positions.

Recruitment of employees to fill position openings may be conducted by appropriate and feasible means in schools, colleges and universities within the Metro COG region. Similar recruitment may also be extended to schools, colleges and universities beyond the Metro COG region in an attempt to obtain an adequate list of qualified applicants.

All employees shall submit to a criminal background check as part of their recruitment to the organization. All offers of employment shall be contingent upon the successful/satisfactory criminal background check. Past offenses will not necessarily disqualify applicants for employment with Metro COG. This will be decided on a case-by-case basis and will be determined by the seriousness of the offense as well as the time since the offense was committed.

New Metro COG employees shall attend "Respectful Workplace" training within six (6) months of their official start date. Such training will be at no expense to the employee and shall be provided by Metro COG's Employee Assistance Program.

- 4.04. **Internal Recruitment.** At the request of the Executive Director, Metro COG may open employment opportunities to only existing employees of Metro COG who meet the requirements of the position. It is the policy of Metro COG to promote employees to higher positions based on merit, so far as possible. Each promotional determination shall consist in part of a rating by the Executive Director regarding the applicant's performance in his or her present position and his or her predicted performance in the position for which he or she is applying.

- 4.05. **Referral.** Employee applicant referrals will be received from Metro COG officials, Metro COG employees and from other private and governmental agencies and organizations. Such referrals will be considered, without preference, along with other applicants for employment.

- 4.06. **Interviews.** All applicants for position openings will be required to complete a Metro COG Application for Employment for the particular open position for which they are applying. Supplemental documents;

resume, information, letters of recommendation and personal references may also be required. Metro COG will interview candidates most qualified for the position. From the initial interviews, the list of applicants may be reduced to two or three candidates for the open position. A subsequent interview may be scheduled for the selected candidates following which a candidate may be offered the appointment to fill the open position.

- 4.07. **Examinations.** All applicants may be requested to undergo examination or testing to demonstrate skills and capabilities applicable to the open position for which they have applied. Such examinations may be formal or informal and may be oral, written or performance in nature. Results of such examination may be considered in the appointment to fill the open position. The Executive Director is responsible for administering appropriate competitive and promotional exams.
- 4.08. **Appointments.** The Executive Director will recommend to the Executive Committee appointments to fill open positions. All appointments will be approved by the Policy Board.
- 4.09. **Appointment Classifications.** Appointment classifications may be full or part time contingent on the mission and requirements of Metro COG.
 - 4.09.01 **Full-Time.** A full time appointment is defined as one in which the employee works 40 hours per week or more on an annual basis. This can apply to employees in probationary, regular or acting appointment status.
 - 4.09.02 **Part-Time.** A part-time appointment classification is defined as one in which the employee works less than 40 hours per week on an annual basis. This can apply to employees in probationary, regular, acting or temporary appointment status.
- 4.10. **Employee Appointments.** Employee appointments may be probationary, regular, acting or temporary. The Policy Board shall approve all probationary, regular and acting employee appointments. The Executive Director will make all appointments to fill temporary positions. Each applicant will be notified of their consideration for such appointment.
 - 4.10.01 **Probationary.** Probationary Appointment status is the initial appointment of a new employee or of a current employee upon promotion or reclassification. Duration of the Probationary Appointment status is six months from Anniversary Date and may be extended for cause as deemed appropriate by the Executive Director. An employee who has been promoted or reclassified into a more responsible position may be returned to his/her prior position if his/her performance is unsatisfactory.

- 4.10.02 **Regular.** Regular Appointment status is the appointment by the Executive Director of an employee following satisfactory completion of Probationary Appointment. Duration of the Regular Appointment status is continuous until status is altered due to resignation, discharge, disciplinary action, promotion or reclassification of employee by the Executive Director.
- 4.10.03 **Acting.** Acting Appointment status is an appointment by the Executive Director or the Policy Board, of an employee to serve temporarily in a capacity other than the Regular Appointment of the employee. Duration of the Acting Appointment status is for an indefinite term.
- 4.10.04 **Temporary.** Temporary Appointment status is an appointment by the Executive Director of an employee hired to ease overload of work. Employees receiving Temporary Appointment may be hired directly by Metro COG or under a service contract between the person's employer and Metro COG. Duration of Temporary Appointment status is for an indefinite period as may be required to resolve work overload. Temporary Appointment status will also apply to interns.
- 4.11. **At-will Employment.** Per Chapter 34-03 of the North Dakota Century Code (NDCC), an employment having no specified term may be terminated at the will of either party on notice to the other. Metro COG will follow direction stated in the NDCC in matters related to at-will employment (Appendix B).
- 4.12. **Drug Free Workplace.** Metro COG believes strongly in making the work environment of all employees free of drugs and the accompanying abuses. Further, the Drug-Free Workplace Act of 1988 mandates that federal contractors initiate and maintain a drug free workplace for their employees. Accordingly, all employees are informed as follows:

The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace and employees found to have engaged in any of the above activities will be subject to disciplinary action, up to and including termination.

Metro COG will make available information on drug counseling and rehabilitation to employees who inform the Executive Director of any drug related problem or disabilities prior to:

- (a) Notification of any investigation concerning their conduct;
- (b) arrest; or,
- (c) discipline for engaging in the conduct described above.

- 4.13. **Drug Free Workplace Policy.** Metro COG maintains a policy to maintain a drug free workplace. The Metro COG Drug Free Workplace Policy which explains in more detail the prohibitions, restrictions, actions and procedures is contained in Appendix C of this manual.

As a condition of employment and remaining an employee of Metro COG, all employees must abide by the terms of the policy and notify the Executive Director of any criminal drug statute conviction for a violation occurring in the workplace, no later than five (5) days after such conviction. Metro COG is also required to notify the federal contracting agency of such convictions.

ARTICLE V. CAREER DEVELOPMENT AND TRAINING

- 5.01. **On-the-Job Training.** The Executive Director is responsible for on-the-job training related to the immediate job assignment of the employee. As proficiency is demonstrated, additional work assignments designed to enhance the employee's experience and skills will be assigned.
- 5.02. **Outside Training.** Outside training opportunities will be provided as deemed beneficial to the employee and Metro COG and as determined by the Executive Director. Specifically, attendance and participation in technical and non-technical courses of instruction, workshops, seminars, meetings and conferences which may be conducted or sponsored by Federal, state and local agencies will be encouraged and financed by Metro COG. The training leave will be with pay, the expenses of attendance will be paid by Metro COG, subject to successful completion of such courses and conferences. Such attendance and participation shall be subject to administrative and budgetary constraints.
- 5.03. **Formal Education and Professional Development.** All employees will be afforded the maximum opportunities to further their formal education and professional development. Metro COG does not provide financial support for formal education and professional development, but may adjust an employee's work schedule to accommodate such education and development. All requests for adjusted work hours to accommodate development and training activities is at the discretion of the Executive Director.

Metro COG may, at the discretion of the Executive Director, and with approval of the Executive Committee, pay for continuing education if that coursework directly benefits Metro COG.

- 5.04. **Professional Dues and Certifications.** Metro COG reimburses employees, or pays directly, for professional dues, the costs to be certified or recertified by a professional or semi-professional organization, and any such expenses related to professional accreditation or membership, provided that the professional organization membership and certification/license is, at the discretion of the Executive Director, relevant to the position held by the Metro COG staff member. *Amended February 21, 2019.*

ARTICLE VI. POSITION CLASSIFICATION SYSTEM

- 6.01. **General.** All employee positions at Metro COG shall be classified under a position classification system. Such position classification system shall be supported by position descriptions, each having been assigned a pay range code to correspond with the salary schedule and shall be the basis of the position categories.
- 6.02. **Maintenance of Position Classification System.** The position classification system and above named related documents shall be reviewed and amended periodically to meet the needs of Metro COG that may be due to changes in the purpose or responsibilities of the agency or to more adequately reflect the required qualifications and work of employees.
- 6.03. **Position Descriptions.** Each position of the position classification system shall be supported by a position description which shall set forth the nature of the work, the primary duties of the position, the requisite knowledge, skills, abilities and minimum experience, or training as may be deemed appropriate by the Executive Director. Each position description shall be assigned a pay grade to coordinate with the salary schedule for similar positions in the City of Fargo.
- 6.03.01 **Reclassification of Positions.** Positions may be reclassified by changing the assigned pay range code to correspond with changes in expectations of the positions. Position reclassification will require review and recommendation by the Executive Committee and approval of the Policy Board.
- 6.04. **Exempt and Non-exempt Employees.** For the purposes of classifying positions as exempt or non-exempt, Metro COG has matched determinations made by the City of Fargo for comparable positions and is based upon which the “primary duty” test as outlined in the Fair Labor Standards Act (FLSA).
- (a) **Non-exempt.** As defined by the Federal Fair Labor Standards Act (FLSA), eight (8) hours of work shall constitute the standard work day, while the normal work

week shall consist of forty (40) hours of work. The 7-day period constituting the work week will start at 12:01am on Monday and ends at 12:00midnight on Sunday. Metro COG, in compliance with the FLSA will pay time and a half to all employees classified as "non-exempt" for qualified hours worked beyond the regular forty-hour work week as defined herein. However, such instances will be minimized through administrative management of the employees' work flow by the Executive Director. Any time worked beyond the regular work week for "non-exempt" employees must be approved in advance by the Executive Director. For example, overtime costs associated with occurrences such as afternoon to evening meetings that can be predicted are expected to be averted through cooperation between staff and the Executive Director by scheduling time-off in advance or immediately after the event, so that the employee does not exceed the forty (40) hour standard work week.

Paid time-off for vacation, holidays, jury duty, witness duty, bereavement and sick leave are not considered hours worked for purposes of calculating overtime. Therefore, if an employee uses vacation or sick time, for example, on Monday and then worked the following Saturday, the Saturday pay would be paid at the straight time rate.

Per FLSA, non-exempt employees accrue compensatory time at a rate of one and one half (1½) hours for every one (1) hour worked. Also in compliance with FLSA, earned compensatory time, for non-exempt employees can be accumulated up to twenty-four (24) hours (sixteen (16) actual hours worked) in lieu of overtime compensation; however, it is expected that such time will be taken as soon as possible after it has been earned, and only with the approval of the Executive Director. Upon separation a non-exempt employee shall be reimbursed for accumulated compensatory time at their current hourly/billable rate.

- (b) **Exempt.** Those positions defined as exempt by the FLSA (i.e., executive, administrative, professional) are not considered to be on a standard forty (40) hour work week and are required to work those hours necessary to perform their assigned duties and responsibilities. Through program management, staff efficiency, and team cooperation, Metro COG desires that hours in excess of the standard be minimized when possible for these exempt employees.

Per the FLSA, all employees classified as "exempt" will not be eligible for time and a half pay since they hold positions fulfilling executive, administrative, or professional capacities within Metro COG.

- 6.05. **Salary Schedule.** Metro COG shall follow the approved City of Fargo Pay Plan, unless otherwise determined by the Policy Board. This Pay Plan utilizes a grade and step system. A position's grade is classified by the responsibilities listed in the position's description as determined by the Executive Director. The steps represent the minimum and

maximum pay for that position. The City of Fargo Pay Plan has 11 steps, which reflect how the position grows with seniority.

Metro COG will, at the Policy Board's direction, use the City of Fargo salary schedule with Metro COG positions represented by those comparable positions within the City of Fargo.

- 6.06. **Annual Review of Salary Schedule.** The salary schedule will be reviewed annually by the Executive Director, and necessary modifications may be recommended to the Policy Board. Pay grades, steps and annual salaries published by the City of Fargo will be used, unless otherwise determined by the Policy Board. It will be the responsibility of the Executive Director to track salary and COLA decisions, especially when they differ from the City of Fargo's Pay Plan.
- 6.07. **Garnishments.** All employers are required by law to accept legal assignments or garnishments against the wages of employees in satisfaction of legal judgments.

ARTICLE VII. TIME

- 7.01. **Office Hours.** The Metro COG offices will be open for business between the hours 8:00 a.m. to 5:00 p.m. Monday through Friday.
- 7.02. **Defined Workweek.** The defined workweek for all Metro COG employees begins at 12:01am on Monday and ends at 12:00 midnight on ~~the following Monday-Sunday~~. The regular schedule for all Metro COG employees is 40 hours per week.
- 7.03. **Employee Work Time.** The regular work time for Metro COG employees shall be from 8:00 a.m. to 5:00 p.m. Monday through Friday of each week with one hour off for lunch. Employees must notify the Executive Director prior to 8:30 a.m. if they are unable to report to work or if they will be late in reporting.
- 7.04. **Unauthorized Work.** Any work deemed as unauthorized work for "off-the-clock" (work outside of scheduled hours that has not been approved by the Executive Director) is strictly prohibited for non-exempt employees. Employees must record all hours worked. Under-reporting or over-reporting of work time is prohibited and will be considered falsification of time recorded, resulting in possible disciplinary action up to and including termination of employment.
- 7.05. **Alternate Work Schedules.** The Executive Director may establish adjusted work hours for employees who desire work hours different from those stated in Section ~~5~~7.03. Requests for an alternate work

Commented [CG1]: This edit corrects the existing language by correctly describing a full week.

schedule will be determined on a case-by-case basis. Requests for alternate work schedules may only be approved by the Executive Director under the following conditions:

- (a) Metro COG remains open between the regular office hours;
- (b) Effective staff communication and programming continuity is retained; and,
- (c) Metro COG's functions are sufficiently staffed to handle the needs of the Metro COG staff, the public and member governments.

7.06. **Work Week.** The work week for either a regular or alternate schedule shall consist of forty (40) hours for full time employees. All hours utilized, including annual leave or sick leave, holiday or compensatory time, shall be included in computing the number of hours in the work week.

7.07. **Additional Work Time.** Additional work time shall be that work time in excess of the work week defined in Section ~~5~~7.06 of this manual. Hours worked in excess of the work week shall be paid to non-exempt personnel at the rate of one and one-half times (1 ½) for each over-time hour worked. All over-time shall require prior approval of the Executive Director. Non-exempt personnel shall include all positions classified ~~at pay range code 6 and below~~ in Section 6.04(a) above.

Exempt employees by virtue of their position may be required to work additional time to complete work assignments on time or to attend meetings or events outside of normal business hours. Such additional work time is not compensated unless as qualified in Section 7.08 of these policies.

7.08. **Compensatory Time.** Work required by an exempt employee outside of the alternate work schedule during any pay period may be eligible for compensatory time. For example, compensatory time may include the work time performed by an exempt staff person after their normal scheduled hours while attending City Commission or Council meetings or County Commission meetings to present reports or provide staff assistance. In addition to night meetings, compensatory time may also be claimed for special projects, special events, public comment opportunities, field monitoring of services or programs, meeting preparation, workload demands and emergencies. All compensatory time off requests shall be made in advance of the accrual use of such time and approved by the Executive Director.

Additional time spent by an employee (not required by supervisor) to finish an assigned task at home or in the office is considered discretionary time and does not qualify as compensatory time unless approved by the Executive Director.

Non-exempt employees will accrue compensatory time at a rate of 1 ½ times the hourly rate. Such instances will be minimized through administrative management of the employees' work flow by the Executive Director. Any time worked beyond the regular work week for "non-exempt" employees must be approved in advance by the Executive Director.

7.08.01 **Accrual of Compensatory Time.** ~~The first three (3) hours in excess of a 40-hour work week for Exempt employees is not eligible for Compensatory Time.~~ An exempt employee's compensatory time will accumulate at the end of a pay period based on an hour-for-hour rate, ~~beginning with the fourth hour as certified by the Executive Director.~~ Non-exempt employees will accumulate Compensatory time in the amount of 1 ½ hours for each hour in excess of 40 hours per pay period.

7.08.02 **Use of Compensatory Time.** Compensatory time may be used in hourly increments in the same manner as annual or sick leave ~~and for exempt employees must be used within two pay periods following accumulation.~~ Approval of Compensatory Time will be contingent on maintaining sufficient staffing to handle the needs of Metro COG, the public and member governments. All Compensatory Time used must be approved in advance by the Executive Director. ~~Compensatory Time may not be used in conjunction with holidays, weekends or requested days off.~~

~~Compensatory time used by a non-exempt employee must be used within the established work week (Section 5.02) in which is claimed.~~

7.08.03 **Loss of Compensatory Time.** Employees may not accrue more than ~~twenty-four (24)~~ forty (40) hours of Compensatory Time ~~within any two (2) pay periods or~~ accumulated at any given time. Upon reaching the maximum forty (40) hours of accrued compensatory time, employees required to work overtime will be paid overtime at the employee's overtime rate. Upon separation from Metro COG, any accumulated Compensatory Time not used shall be forfeited. An Employee will be paid for any accrued compensatory time upon termination from Metro COG.

7.09. **Meals.** Time which is to be taken for meals is the employee's own time. A maximum of a sixty (60) minute meal period shall be provided to employees. Lunch will generally be taken between the hours of 11:00 a.m. and 2:00 p.m.; however, Metro COG staff sometimes attend meetings or make presentations to groups over typical lunch

times, necessitating a lunch break at another time. Lunch regularly taken outside of this time shall constitute an alternate work schedule and will follow procedures as addressed in 57.05 of these policies.

- 7.10. **Breaks.** Employees may be permitted paid rest periods to give employees time to relax, care for personal needs, etc. Employees may take two (2) fifteen (15) minute break periods during the work day, one during each half of a normal eight (8) hour shift. Use of this time shall be at the discretion of the employee; however, work breaks must be arranged so as to not interfere with Metro COG business. Unused breaks may not be accumulated nor shall break periods be utilized for extended lunch periods, early departure or late arrivals during the course of the normal work day.

~~**Absence from Work Station.** An employee shall report in advance to the Executive Director any anticipated, approved absence from their assigned work station with an indication as to the time of departure, where employee may be contacted and the estimated time of return. The employee will use existing media to record any absence from his or her work station.~~

~~7.12-7.11.~~ **Timesheets.** Employee timesheets shall be signed and submitted to the Executive Director. The Executive Director shall verify and sign timesheets before submitting such reports to be entered into the payroll system. The timesheets, as approved by the Executive Director, shall be the basis of payroll preparation. The approved timesheets shall become part of the official fiscal records of Metro COG. Falsifying or misrepresenting time recorded by employees on their timesheets shall not be tolerated and may subject the employee to disciplinary action up to and including termination.

ARTICLE VIII. LEAVE

- 8.01. **Vacation Leave.** Each full time employee having Probationary, Regular or Acting Appointment status in Metro COG service customarily working forty (40) hours per week will accumulate vacation leave.
- 8.01.01 **Vacation Leave Preference.** Employees will have the ability in January of each year to schedule extended vacations (vacations of forty (40) or more hours) or other requested time off within the calendar year. Preference for requests at this time will be given those employees with the longest service with Metro COG. All other vacation requests will be made on a first come-first served basis. All vacation requests are contingent on operational readiness as stated in Section 8.01.02 of these policies.
- 8.01.02 **Operational Readiness.** Vacation leave will be scheduled so as to meet the operating requirements of Metro COG first and the preference of the

employees second. Attempts will be made to accommodate employees' desires; however, situations may arise due to workload, deadlines or other factors that vacation requests may be denied by the Executive Director.

8.01.03 Use of Vacation Leave. Each employee shall make an advance request to use accrued vacation leave. It is preferred that vacation requests of five (5) days or more be provided to the Executive Director at least two (2) weeks in advance of the leave. Before an employee may use accrued leave, such request shall be approved by the Executive Director. The Employee Leave Authorization form shall be reviewed and approved by the Executive Director at the end of each pay period. Use of vacation leave shall not be approved prior to accrual of such leave.

8.01.04 Vacation Leave Accrual. Vacation leave will be based on the following rates:

- (a) Regular employees with less than three (3) years of service with Metro COG will be entitled to the accumulation of vacation time with pay at the rate of eight (8) hours for each month of service— (12 days per year).
- (b) Regular employees with three (3) to five (5) years of service with Metro COG will be entitled to the accumulation of vacation time with pay at the rate of ten (10) hours for each month of service— (15 days per year).
- (c) Regular employees with more than five (5) years of service with Metro COG will be entitled to the accumulation of vacation time with pay at the rate of twelve (12) hours for each month of service— (18 days per year).

(d) Regular employees with more than ten (10) years of service with Metro COG will be entitled to the accumulation of vacation time with pay at the rate of fourteen (14) hours for each month of service (21 days per year).

Vacation shall be accrued each weekly based on the following formula:

$$\frac{(\# \text{ of days of vacation } \times 8 \text{ hours})}{52} = \text{vacation earned per week multiplied by the \# of weeks worked}$$

8.01.05 Prorated Leave. In the instance of regular employees customarily working less than forty (40) hours per week, ~~after the successful completion of a six-month probationary period~~ the employee will ~~be eligible to utilize~~ earn vacation leave ~~earned~~ on a prorated basis that is equal to the percentage of the forty-hour work week that is being worked. ~~The p~~Prorated formulas ~~are is~~ as follows:

$$\frac{\# \text{ of hours worked}}{40} = \text{percentage work week}$$

The prorated percentage shall be applied to the vacation leave accrual for which the employee is eligible as identified above in Section 8.01.04.

~~(# of days of vacation x 8 hours)/52 = vacation earned per week multiplied by the # of weeks worked~~

8.01.06 **Accumulation Rate Changes.** Changes in the accumulation rate of eligible employees shall be made effective at the beginning of the next payroll period following completion of the specified amount of service based on the employee's anniversary date.

8.01.07 **Probationary Vacation Leave.** The use of vacation leave will not be permitted during employee's first six months of probationary service with Metro COG. Upon satisfactory completion of such a period, vacation leave which accrued to the employee from the beginning of the employment period may be taken. Exceptions may be made on a case-by-case basis at the discretion of the Executive Director. ~~Employees that are not retained after the completion of probation will be required to reimburse Metro COG for any vacation leave the employee used while on probation.~~

8.01.08 **Temporary Employees.** Temporary employees (i.e. part-time, seasonal, interns or emergency employees) will not be eligible for vacation leave.

8.01.09 **Vacation Leave Accumulation.** The maximum allowable accumulation of unused vacation leave for each employee shall not exceed ~~160~~200 hours. Carryover of vacation leave exceeding the maximum allowable accumulation shall not be permitted. Leave in excess of the maximum allowable accumulation which is not used by December 31 of each calendar year shall be forfeited.

8.01.10 **Termination Pay for Vacation Leave.** Termination pay shall be the unused accrued vacation leave remaining on each employee's records on the effective date of such employee's resignation or discharge from employment. An employee shall receive compensation for vacation leave as part of the employee's termination pay at a rate of 100%. Such compensation for vacation leave shall be based on each employee's rate of pay at termination.

8.02. **Sick Leave.** Each full time employee having Probationary, Regular or Acting Appointment status shall be entitled to sick leave with pay when meeting one or more of the qualifying sick leave requirements stated in Section 86.02.06. Such employees shall also be entitled to sick leave with pay when, through exposure to contagious disease, presence of such exposed employees would jeopardize the health of others. Contagious disease shall be, as deemed by appropriate health authorities, such disease requiring isolation or quarantine to prevent

infection of other persons. Part time employees having probationary, regular or acting appointment status shall be entitled to sick leave on a prorated basis consistent with the percentage of the 40-hour work week they are working. Employees having ~~part-time status of less than forty (40) hours per work week or~~ Temporary Appointment status shall not be entitled to sick leave with pay.

- 8.02.01 **Sick Leave Accrual.** Eligible employees shall accrue sick leave at the rate of one day per month (96 hours or 12 working days per year). Employees shall begin accruing sick leave at the start of the first full pay period of employment by Metro COG and shall cease accruing sick leave at the end of the last full pay period of employment by Metro COG. Employees shall continue to accrue sick leave while on any leave with pay status.

Part-time employees working less than 40 hours per week shall accrue sick leave at a prorated amount consistent with the percentage of a 40-hour work week being worked.

~~with sick leave accounts of less than 96 hours shall have the sick leave account liquidated at the end of the Fiscal Year following one full year of part-time status. Part-time employees working less than 40 hours per week with more than 96 hours of sick leave shall be paid at the termination pay rate at the end of the Fiscal Year following one full year of part-time status.~~

- 8.02.02 **Sick Leave Accumulation.** The maximum allowable accumulation of unused accrued sick leave for each employee shall be 120 working days (960 hours) as of December 31 of each year.
- 8.02.03 **Use of Sick Leave.** Each employee shall make an advance request to use accrued sick leave for medical, dental or optical examination or treatment whenever possible. Such request shall be approved by the Executive Director at the end of each pay period. Each employee absent from work due to personal illness or injury or due to contagious disease, isolation or quarantine shall notify the Executive Director, and other personnel that may be designated by the Executive Director, as early as possible on each day of absence; upon the employee's return to duty, a sick leave request form shall be completed for the time of absence and shall be submitted to the Executive Director for approval.
- 8.02.04 **Sick Leave Verification.** The Executive Director may require a physician's certificate or other appropriate documentation to support a sick leave claim prior to approval of such request or for any absence exceeding five

(5) days. Sick leave shall not be used for purposes other than as provided in Section 8.02.06 of this manual.

8.02.05 **Termination Pay for Sick Leave.** Any Metro COG employee who resigns or is separated from Metro COG shall receive compensation of all sick leave hours up to 960 at a rate of 25%, and over 960 at a rate of 50%. The amount of compensation in this instance shall be computed by multiplying by 0.25 the number of sick leave hours up to 960 by the employee's current hourly rate at the end of such calendar year and by multiplying by 0.50 the number of sick leave hours over 960 by the employee's current hourly rate at the end of such calendar year.

8.02.06 **Qualifying Sick Leave.** An eligible employee may use sick leave with pay for:

- (a) absences necessitated by injury or illness of him- or herself;
- (b) a member of his or her immediate family;
- (c) required dental care;
- (d) exposure to contagious disease; or
- (e) death or serious injury in his or her immediate family.

Metro COG's definition of immediate family, ~~which~~ includes spouse, child and parent. For a child, spouse, or parent, the term serious health condition covers conditions or illnesses that affect the health of that person, such that he or she is unable to participate in school or in regular daily activities.

8.03. **Family Medical Leave.** ~~In accordance with the Federal Family and Medical Leave Act (FMLA), Metro COG grants leave without pay to eligible employees. This FMLA leave is a guaranteed period of time eligible employees can be absent from work with job protection. The time off is not paid, unless the employee is taking sick leave, vacation, or compensatory time off concurrently with FMLA leave. Where an unannounced medical emergency requires a Metro COG employee take leave, they have 10 working days to notify the Executive Director of their intent to take leave, and the leave period will become retroactive to the first day the employee was absent from work. The employee and the Executive Director shall mutually develop a Family Medical Leave Plan. This plan will identify the dates and specific type of leave to be used, and where appropriate will establish a monitoring plan. The Family Medical Leave Plan may consist of a combination of sick leave, annual leave, and leave with or absence without pay. The Family Medical Leave Plan will spell out the terms of the leave period.~~

Eligible employees are entitled to take up to 12 weeks of unpaid leave during a 12 month period for the following qualifying basic leave entitlements:

- For birth of a son or daughter, and to care for the newborn child;
- For placement with the employee of a son or daughter for adoption or foster care;
- To care for the employee's spouse, son, daughter, or parent with a serious health condition;
- Because of a serious health condition (including any period of incapacity due to pregnancy, prenatal medical care, or childbirth) that makes the employee unable to perform the functions of the employee's job;

Eligible employees are entitled to take leave for the Military Family Leave Entitlements as follows:

- Up to 12 weeks of leave because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation; and/or
- Up to 26 weeks of leave to care for a covered servicemember with a serious injury or illness incurred in the line of duty for which he or she is undergoing medical treatment, recuperation, or therapy, if the employee is the spouse, son, daughter, parent or next of kin of the servicemember.

Serious Health Condition. FMLA defines serious health condition as an illness, injury, impairment, or physical or mental condition that involves "inpatient care" (which is defined by the FMLA as an overnight stay in a hospital, hospice, or residential medical care facility) or "continuing treatment" (which is defined by the FMLA as an incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition). Employees with questions about what illnesses are covered under this FMLA policy are encouraged to consult with Human Resource expertise provided to Metro COG.

Serious Injury or Illness for a covered servicemember. FMLA defines serious injury or illness as an injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank or rating.

Eligibility. To be eligible for FMLA leave, an employee must have worked for Metro COG for at least 12 months and performed at least 1,250 hours of work during the previous 12 months.

12-month period. Metro COG utilizes a “rolling” 12-month period measured backward from the date an employee uses any FMLA leave under this policy. Each time an employee requests leave under this policy, the Metro COG will compute the amount of leave the employee has taken under this policy in the 12 month period immediately prior to the day the requested leave will commence, and subtract it from the number of weeks of available leave. The balance remaining is the amount the employee is entitled to take at that time.

A single 12-month period for military caregiver leave begins on the first day the employee takes leave to care for a covered servicemember with a serious injury or illness and ends 12 months later.

Requesting leave. Employees who know they need FMLA leave a month before the leave begins MUST give their supervisors 30 calendar days advance notice. Employees who cannot foresee the need for FMLA leave 30 days in advance must give as much notice as they can. This generally means notifying the Metro COG within one or two workdays of the time an employee first learns of the need for leave, unless extenuating circumstances exist. Requests for leave under this policy shall be made upon a “Request for FMLA Leave” form timely submitted to the Executive Director.

Eligibility, Rights and Responsibilities, Designation and Certification. Employees who request FMLA will be supplied with: 1) a Notice of Eligibility, and 2) a Notice of Rights and Responsibilities. Employees who request FMLA leave may also receive an appropriate certification form that must be completed and returned to the Executive Director within 15 days after receiving the form. A Designation Notice will be issued to the employee once the leave certification form is received by the Executive Director. Metro COG uses the Department of Labor’s certification forms to include Certification of Health Care Provider for Family Member’s Serious Health Condition, Certification of Health Care Provider for Employee’s Serious Health Condition, Certification of Qualifying Exigency for Military Family Leave and Certification for Serious Injury or Illness of Covered Service member – for Military Family Leave.

Intermittent leave. Employees taking leave because of their own or a relative’s serious health condition can take their allotment of FMLA leave intermittently or in accordance with a reduced work schedule if this is medically necessary. Where employees have some control over the timing of their leave, they are expected to consult with their supervisors to try to arrange a mutually acceptable time.

Birth of a child: Special requirements and exceptions. Employees can take 12 weeks of FMLA leave, less any FMLA leave already taken, for the birth of a child. Leave for the

birth of a child is available to either men or women and must be completed within 12 months of the date of birth. Employees taking leave to care for a newly born or newly placed child do not have a legal right to take intermittent leave and can do so only with their supervisor's consent.

Adoption or foster placement: Special requirements and exceptions. Leave for adoption or foster placement of a child must be taken within 12 months of the date of placement or adoption, rather than 12 months from the date the leave is requested. Leave may begin before the actual start of adoption or foster care placement when the employee needs to be absent from work to proceed with adoption or foster care arrangements. Foster care must be officially designated by the state and must be 24-hour care for children who are away from their parent(s) to be covered by FMLA. Employees taking leave to care for a newly placed child do not have a legal right to take intermittent leave and can do so only with their supervisor's consent.

Leave because of a qualifying exigency. Eligible employees may take FMLA leave while the employee's spouse, son, daughter, or parent is on active duty status as defined by FMLA for the following qualifying exigencies:

- Short-notice deployment – can be used for a period of seven calendar days beginning on the date a covered military member is notified of an impending call or order to active duty.
- Military events and related activities
- Childcare and school activities – can be used to arrange for childcare, provide childcare on an urgent, immediate need basis, to enroll in or transfer to new school, to attend meetings with staff of a school or daycare facility.
- Financial and legal arrangements
- Counseling
- Rest and recuperation – up to five days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment
- Post-deployment activities
- Additional activities may be considered provided that Metro COG and the employee agree that such leave shall qualify as an exigency

Privacy and leave requests. Employees must inform the Executive Director of their intentions to take family or medical leave and when they expect to be absent. However, supervisors should not ask or inquire about the reasons for the employee's leave request. Instead, to ensure the worker's privacy, Metro COG's Human Resource advisor makes any necessary inquiries and evaluates whether the requested leave qualifies under this policy. The Human Resource Department is responsible for ensuring that all medical information provided by employees is maintained in the strictest confidence.

Compensation during leave. Employees may elect to use accrued sick, vacation, or compensatory time ("paid time") during their leave. The substitution of paid time for unpaid FMLA leave time does not extend the length of FMLA leave and the paid time will run concurrently with an employee's FMLA entitlement to the extent permitted by law.

Benefits during leave. Metro COG will continue to pay the employer portion (70%) of the health care premium throughout the leave. The employee's contribution to the health care premium (30%) continues to be the responsibility of the employee throughout the leave. During unpaid leave, the employee has the option of pre-paying the employee contribution to the health care premium (pre-tax) or by paying double premiums (pre-tax) upon returning from the leave. If the employee chooses to pre-pay his/her employee contribution, the employee will work with the Executive Assistant to set up the pre-payment plan. If the employee chooses to pay double premiums upon returning from the leave, the employee contribution amounts will go into arrears until the employee returns from the leave. Once the employee has returned, Metro COG will deduct double premiums of coverage until the employee is caught up with payments. The employee may be required to repay Metro COG's portion of the premium payment if the employee fails to return to work following the FMLA leave, unless the employee does not return because of circumstances that are beyond the employee's control, including a FMLA-qualifying medical condition. FMLA does not cause employees to lose any previously accrued employment benefits.

Reinstatement following leave. Upon returning from a FMLA leave of absence, employees normally are restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. There may be exceptions to this restoration procedure such as for certain key employees and other circumstances permitted by the FMLA.

Post FMLA unpaid leave. In some circumstances, Metro COG may allow employees who have exhausted the leave available to them under FMLA to take additional unpaid leave. Refer to Section 8.10 Leave Without Pay. Metro COG does not guarantee that it will be able to reemploy individuals who take post-FMLA leave. Further, during a period of post-FMLA leave, an employee's health care benefits do not continue in force, unless the worker elects to pay the full cost of COBRA coverage. Employees should be aware

that a lapse in benefits coverage or plan participation during a period of post-FMLA leave might affect a worker's coverage after the employee returns to work.

Worker's Compensation and FMLA. If an employee's work related injury meets the definition of a serious health condition, FMLA will run concurrently with worker's compensation leave.

Compliance with FMLA requirements. This policy is intended to comply with FMLA and should be interpreted in light of regulations implementing that act. In particular, terms used in this policy have the meanings they are given in the regulations implementing FMLA. United States Department of Labor, Wage and Hour Division, 29 CFR Part 825 The Family and Medical Leave Act. (www.dol.gov/esa/whd/fmla)

~~Metro COG will follow all requirements assigned to it under the Family Medical Leave Act (FMLA). A copy of the FMLA is included in the Metro COG Administrative Policies and Procedures.~~

~~8.04. **Maternity Leave**—Pregnancy is to be treated as any other temporary disability. Metro COG will extend a maximum of 12 unpaid weeks of unpaid maternity leave to each female employee. Each female full time employee having Probationary, Regular or Acting Appointment status shall be allowed to expend accumulated allowances of sick leave when unable to perform their normal work duties by reason of pregnancy. However, a medical certificate from the employee's physician, attesting to the incapacity of the employee to perform her normal work duties shall be required. An employee will not be required to exhaust any vacation or sick leave that has been accumulated prior to going on unpaid maternity leave.~~

~~The employee may take vacation or sick leave at her discretion throughout the unpaid maternity leave; however, the use of such leave will not accrue additional unpaid leave as it normally would unless used in forty (40) hour blocks. The employee on unpaid leave will not be eligible for holidays pursuant to 8.07.02. The employee will not be eligible for the holiday while on unpaid leave even if vacation or sick time is used on the day before.~~

~~The employee, who is absent for maternity reasons, shall be assured continued employment in her position or a position of like seniority, status and pay. For such an employee, the commencement and termination of the period of absence shall be determined by her physician. A physician's certificate must be submitted to the Executive Director.~~

~~8.04.01 **Medically Certified for Incapacitation.**—Periods of absence related to —pregnancy and confinement which are not medically certified as due to~~

~~—incapacitation to perform the normal work duties shall not be charged to
—sick leave.~~

~~8.04.02 **Part Time.** If the employee wishes to come back on a part-time basis
—during the maternity leave, Metro COG will pay that employee based upon
—her current hourly rate for any hours worked. The employee must
—document all time worked and submit a timesheet at the end of each pay
—period. The employee will not accrue paid leave time during part-time or
—unpaid leave.~~

~~8.04.03 **Benefits.** Metro COG will continue to pay the employer portion (70%) of
—the health care premium throughout the leave. The employee's
—contribution to the health care premium (30%) continues to be the
—responsibility of the employee throughout the leave. During unpaid leave,
—the employee has the option of pre-paying the employee contribution to
—the health care premium (pre-tax) or by paying double premiums (pre-tax)
—upon returning from the leave. If the employee chooses to pre-pay his/her
—employee contribution, the employee will work with the Executive
—Secretary to set up the pre-payment plan. If the employee chooses to pay
—double premiums upon returning from the leave, the employee
—contribution amounts will go into arrears until the employee returns from
—the leave. Once the employee has returned, Metro COG will deduct double
—premiums of coverage until the employee is caught up with payments.~~

~~8.03.01 **Paternity Leave.** Metro COG will extend two (2) weeks of unpaid
—paternity leave within the first four (4) months of the birth or adoption of
—child. This time must be taken in one (1) week blocks. The employee shall
—notify the Executive Director of such an absence at least two (2) weeks in
—advance of the paternity leave. The employee shall submit a written
—letter requesting the leave including start and end dates of the leave along
—with a Verification of Pregnancy Letter signed by the healthcare provider.~~

Donation of Leave. Metro COG provides a donation of sick and vacation leave program to enable employee support of one another due to unforeseen circumstances beyond the control of the employee. A donor must be a current employee of Metro COG. A recipient must be a current benefited employee of Metro COG.

The receiver must demonstrate a compelling reason or situation which meets the provisions of the Family & Medical Leave Act. Donations may be received up to a maximum (which when donations are added to the existing leave balance of the receiver) amount not to to exceed 12 work weeks.

Donations may be made in hourly increments to a maximum of forty (40) hours to each receiver per qualifying event. Donation requests must be made in writing and require approval of the

Executive Director and the designated Human Resource professional. Donations are non-refundable. Donations are calculated on an hour-for-hour basis.

Donations involving birth or adoption must be made in advance of the actual date.

8.05-8.04. Funeral Leave. In the case of a death of a spouse, domestic partner, child, sibling or parent, grandparent, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, or other next of kin as may be determined at the discretion of the Executive Director, the employee will be granted a leave with pay of up to three (3) days. ~~Non-exempt employees may use accumulated sick leave or vacation leave of up to three (3) days. Other funeral leave~~Additional time off may be approved by the Executive Director, within reasonable limits, without pay, if circumstances such as travel distances or responsibility for settling the affairs of the deceased warrant such additional time. may be granted at the discretion of the Executive Director.

8.06-8.05. Jury Duty Leave. Each full time employee having Probationary, Regular or Acting Appointment status shall be entitled to jury duty leave with pay when called to serve. Jury duty pay shall be calculated at the employee's regular pay rate less the amount of jury duty compensation received by the employee for such services. Proof of the amount of such compensation shall be provided to Metro COG by the employee.

8.06-018.05.01 Use of Jury Leave Each employee shall make an advance request to use jury duty leave. Before an employee may use jury duty leave, such request shall be approved by the Executive Director. Documentation of summons to serve may be required by the Executive Director prior to or subsequent to approval of leave for such jury duty service.

8.07-8.06. Holiday Leave. Each full time employee having Probationary, Regular or Acting Appointment status shall be entitled to holiday leave with pay on each of the following holidays:

New Year's Day	Labor Day
Good Friday	Veteran's Day
President's Day	Thanksgiving Day

Memorial Day	*December 24 th (1/2 Day)
Independence Day	December 25th
	Own Birthday

**Amended Dec. 20, 2019*

Good Friday and Own Birthday shall be considered floating, and if an employee decides to work these days, the employee's vacation time will be credited eight (8) hours on Good Friday and eight (8) hours upon the employee's birthday if not used by the end of the pay period in which Good Friday or Own Birthday occur.

Compensated and Prorated Holiday Leave. Probationary, Regular or Acting employees of Metro COG who are required to work an approved holiday will be compensated for such work by being permitted to take off the hours worked at another time, upon approval of the Executive Director.

Probationary, Regular or Acting employees customarily working less than 40 hours per week will have holiday leave prorated as stated in Section 6.01.05. Part-time, seasonal, and emergency employees will not be eligible for holiday pay or leave.

~~8.07.01~~8.06.01 **Holiday Closures.** The Metro COG offices will close on designated holidays. If one of these regular holidays as enumerated above falls on a Sunday, the following Monday will be observed as a holiday. If one of these regular holidays as enumerated above falls on a Saturday, the prior Friday will be observed as a holiday.

~~8.07.02~~8.06.02 **Leave Status.** Metro COG employees must be in a pay status before and after the holiday to be eligible for holiday leave with pay.

~~8.08.~~8.07. **Military Leave.** An employee who is either enlisted or an officer in the National Guard, Armed Forces Reserves or recalled to active duty shall be granted military leave in accordance with Sections 37-01-25 (Retain Status) and 37-01-25.1 (Reinstatement) of the North Dakota Century Code.

Metro COG employees will be granted military leave with pay up to a maximum of twenty (20) working days per 160 hours per calendar year based on 2080 hours per year, for those employees who have been employed continuously for a period of ninety (90) calendar days or more. Employees scheduled less than 2080 hours per year will receive pro-rated military leave hours based on the approved full-time equivalent (FTE).

~~8.08.01~~8.07.01 **Non-Active Duty.** During periods of non-active duty, employees may request to use annual leave to pay for this time; may request leave without

pay; or may request a schedule change. (Regular guard weekend drills and training)

~~8.08.028.07.02~~ **Active Duty.** Metro COG employees will receive up to twenty (20) days/160 hours paid leave. This includes training periods which are defined as active duty periods only. Written confirmation of assignment to active duty will be necessary to establish the employee basic eligibility for protection under Uniformed Services Employment and Reemployment Rights Act (USERRA).

(a) **Active Duty – Full or Partial Mobilization.** Any leave of absence necessitated by a full or partial mobilization of the reserve and National Guard forces of the United States of America, or emergency state of active duty, must be without loss of pay for:

- The first thirty (30) days in the first year (240 hours) (Fire Suppression 336 hours) less any other paid military leave of absence which may have been granted during the calendar year.
- The first twenty (20) days in year two and successive years (160 hours) (Fire Suppression 224 hours) less any other paid military leave of absence which may have been granted during the calendar year. (NDCC 37-01.25)

~~8.08.038.07.03~~ **Military Pay.** Military leave pay shall be calculated at the employee's regular pay rate less the amount of military pay received for such services. Proof of the amount of military pay received shall be provided to Metro COG by the employee.

~~8.08.048.07.04~~ **Military Leave Request.** Each eligible employee shall make an advance request to use military leave. Such request shall be approved by the Executive Director. The Executive Director may require a copy of official orders to report for training or other appropriate documentation to support the use of military leave.

~~8.08.058.07.05~~ **Reinstatement to Former Position.** Any employee who, within ninety (90) days after receiving a discharge other than dishonorable form such active non-civilian service, and who is not physically or otherwise incapacitated to perform the duties of the position formerly held, applies for such position held by the person at the time of entering such active service, must be given such position or one of like seniority, status, and pay, and may not be discharged from said position except for cause, as defined by the Department of Veteran's Affairs, for a period of one year after entering upon the duties of the person's civilian position.

Employees returning to work must have all licenses or certificates required to perform their duties. If the licenses or certifications have lapsed, employees will be unable to perform the duties requiring the license or certificate and may be temporarily reassigned without loss of status, seniority or pay. Employees will be given a reasonable time to secure the required licensure, at the employer's discretion. Failure to obtain the required licensure or certification may result in termination of employment, with cause. Any such person not so reemployed or who is discharged within a period of one year without cause has the right of appeal to the Department of Veterans' Affairs under such rules and regulations as the Administrative Committee on Veterans' Affairs may promulgate. If the Department of Veterans' Affairs finds that such person was not reemployed or was discharged within one year without cause, it may order any officer or other appointing power to comply with the provisions of NDCC 37-01-25.1.

8-09-8.08. **Professional Development Leave.** Employees shall be encouraged to further their vocational proficiency through the granting of professional development leave time. Metro COG, at the discretion of the Executive Director may allow paid time off to an employee to attend educational opportunities that would be beneficial to both the employee and Metro COG.

8-10-8.09. **Administrative Leave.** Administrative leave with pay is an absence from regular work assignments which does not result in a charge against any other kind of accrued leave or leave without pay. Any employee may be placed on administrative leave by the Executive Director or the Executive Committee, in consultation with the designated human resources professional, for conditions or circumstances deemed appropriate by the Executive Committee or the Executive Director.

8-11-8.10. **Leave Without Pay.** An employee shall be placed on leave without pay by the Executive Director or Executive Committee, in consultation with the designated human resources professional, for absence in excess of accrued leave and for absence not authorized by the Executive Director.

An employee may make an advance request to be placed on leave without pay. Such request shall be reviewed and approved by the Executive Director. A full-time or part-time benefited employee who has maintained a satisfactory service record may be granted a leave of absence without pay for a period not to exceed thirty (30) calendar days with the approval of the Executive Director. Leave without pay may be granted for a period not to exceed ninety (90) calendar days with the approval of the Executive Committee provided, that such period may be extended for sickness, disability, jury duty or other good and sufficient reason. Request for such leave shall

be submitted in writing, stating the reasons for the request, the effective date, and the date of termination of such leave.

An employee on leave without pay for greater than 30 calendar days is responsible for paying health insurance premiums in order to remain covered.

An employee shall be returned to her or his former position or one of like seniority, status and pay. An employee shall retain his or her years' service rights and accumulated benefits, but shall earn no additional benefits during this period. An employee failing to return to duty upon completion of a leave of absence without pay shall be considered voluntarily separated from employment, effective on the intended date of return.

8.12.8.11. **Absence Without Leave.** An employee that is absent without prior approval shall be recorded as being absent without leave by the Executive Director. An employee that is absent without leave is subject disciplinary action up to and including dismissal by the Executive Director at his or her discretion. During absence without leave, such absent employee shall not receive pay or accrue any leave or other employee benefits.

8.13.8.12. **Absenteeism and Tardiness.** The Executive Director defines for his or her employees what constitutes the standard for unexcused absence or tardiness. Once defined, the standard should be consistently enforced among all employees. Employees must notify the Executive Director prior to their normal starting times if they are unable to report to work or if they will be late in reporting.

8.14.8.13. **Records.** Each employee shall record all used leave on his or her employee timesheet for each pay period. An appropriately processed Employee Leave Authorization form(s) shall accompany the Employee Time Sheet to document authorization for use of leave. A leave account record shall be maintained for each employee. Each leave account record shall report each month the employee's accrued leave, used leave and remaining balance of unused accrued leave. Each employee shall receive a copy of his or her leave account record each month.

ARTICLE IX. COMPENSATION

9.01. **General.** It is the policy of Metro COG to compensate its personnel in a manner that will attract and retain competent people. Metro COG expects that its staff will reward the area with competency and an acceptable level of performance that sufficiently meets all expectations. To insure competitive, uniform and equitable compensation, Metro COG adopted a new pay classification system in

June, 2011 in conformance with the City of Fargo, which took effect July 1, 2011.

- 9.02. **Pay Classification System.** The Executive Director will maintain the pay classification system which will cover all designated and approved Metro COG positions. The City of Fargo Pay Plan shall be used, unless otherwise designated by the Policy Board.
- 9.03. **Pay Periods.** There are two pay periods in each month. The first day of the month through the 15th day and the 16th day through the last day of the month. Pay day shall be by the 15th day and last day of the month by direct deposit. If the 15th or the last day of the month falls on a Saturday, Sunday or holiday, pay day will be on the preceding working day.
- 9.04. **Payroll Hours.** For purposes of payroll, an employee's hourly rate of pay shall equal his or her salary divided by 2080. Part-time and non-exempt employees will be paid on an hourly basis. Metro COG will pay at least Federal minimum wage to all employees, "exempt or non-exempt," within the provisions of the Fair Labor Standards Act (FLSA), and recent court interpretations.
- 9.05. **Adjustments.**
 - 9.05.01 A salary adjustment may occur for a variety of reasons including internal equity or market equity. A salary adjustment occurs when an employee's job classification changes without changes in the job duties or responsibilities. Generally, adjustments are initiated by the Executive Director or the Policy Board. Salary adjustments must be approved by June 1st to become effective the following budget year.
 - 9.05.02 Employees receiving a salary adjustment will move into the step closest to their current salary, but not below their current salary. Most down-grading adjustments will be initiated when the current person holding the position leaves employment and a new person is hired or transferred into that position. The employee will not receive a new anniversary date and will proceed through the steps as normal. No probationary period is served. The occasion may arise where the incumbent in a position may have his/her salary "frozen" until the pay plan catches up with the salary. This will normally only happen as a result of the implementation of a new salary structure.
 - 9.05.03 Adjustments may be recommended by the Executive Director to the Executive Committee, to be voted on at the Policy Board's discretion. Such recommendations will be as a result of an annual review of the salary

schedule, taking into consideration the economy, statistics from comparable regions, and Metro COG's budgetary constraints.

- 9.06. **Pay Plan.** The Policy Board has adopted an official pay plan which establishes the specific salaries for each job classification. There are eleven steps (A-K) listed for each classification through which all full-time and part-time regular, and full-time temporary employees progress over the course of their employment with Metro COG.

The amount of time generally spent in each of the steps is outlined as follows:

Step On Plan	Duration
Step A	1 year
Step B	1 year
Step C	1 year
Step D	1 year
Step E	1 year
Step F	1 year
Step G	1 year
Step H	1 year
Step I	1 year
Step J	1 year
Step K	Duration in classification

Incremental step increases within established salary ranges are provided as a means of recognizing satisfactory performance. Increments will not be awarded on an automatic basis. They will be contingent upon annual performance evaluations, budgetary restrictions and the approval of the Executive Director. Employees with **satisfactory performance** will be considered for step advancement on an annual basis on an employee's anniversary date based on his or her annual performance evaluation. Satisfactory Performance is defined as a total score of 3.0 or more on the employee's annual performance evaluation.

- 9.07. **Six-month Probation.** After a probationary employee's successful completion of his or her six-month probationary period, and then upon their anniversary date, he or she will be eligible to move to the next consecutive step on the pay plan.
- 9.08. **Transfer.** Transfer means the change from one job classification to another within the same pay grade. The employee will be placed in the same grade and step as was occupied prior to the transfer. There will be no change in the employee's anniversary date, only an effective date of transfer for pay and classification purposes. No probationary period will be served.

- 9.08.01 The effective date for a successful reclassification shall be a date approved by the Policy Board. Placement on the pay plan for a higher classification will be a minimum of three percent over the existing pay rate. There will be no change in the employee's anniversary date, only an effective date of reclassification for pay and classification purposes. No probationary period is served.
- 9.08.02 Any employee who has been formally appointed to a higher position classification on an interim basis by the Policy Board shall be paid according to the pay grade assigned to the higher classification. The appropriate step within that pay grade will be determined by awarding an incentive pay amount of a minimum of three percent above the employee's normal base salary. The Policy Board must authorize incentive pay amounts higher than three percent in advance of assignment.
- 9.08.03 The employee will be placed in the step most closely matching the normal base salary, plus the incentive percentage. In no instance will the out-of-grade salary be less than the normal base salary, plus the additional incentive percentage.
- 9.08.04 For employees functioning out-of-grade where there is no corresponding higher classification, the out-of-grade amount shall be a minimum of three percent of the employee's normal base salary. The Policy Board must authorize incentive pay amounts higher than three percent in advance of assignment.
- 9.08.05 Out-of-grade pay for non-exempt employees will be calculated and paid from the first day of assignment and will continue until the assignment has concluded. Out-of-grade pay shall be added to the employee's salary and is to be included in the calculation of overtime pay as required by the Fair Labor Standards Act (FLSA). Requests for out-of-grade pay must be submitted to and approved by the Policy Board prior to assignment.
- 9.08.06 Exempt employees must be functioning in all out-of-grade capacity for sixty (60) consecutive days before the incentive percentage pay will be applied. Out-of-grade pay will be assigned on the sixty-first (61st) day, with a retroactive payment made for the previous sixty (60) days. All requests for out-of-grade pay for exempt employees must be approved in advance of assignment by the Policy Board. Out-of-grade pay will not be taken into consideration for promotional increases or reimbursement of banked sick leave.
- 9.08.07 The Policy Board may amend the official pay plan and/or the method or movement through the pay plan at any time.

- 9.09. **Cost of Living.** A Cost of Living Adjustment (COLA) may be annually provided by the Policy Board, in addition to the possible pay steps noted above. The COLA increase will become effective the month following Policy Board approval of such adjustments. COLAs, and the amount of COLA offered, will be provided at the discretion of the Policy Board and contingent on budgetary requirements. Such a salary adjustment shall be effective January 1st of the applicable year.
- 9.10. **Termination Pay Due to Resignation or Discharge.** This pay shall be at the employee's rate of pay at termination and shall include all unused accrued vacation leave remaining on the employee's records on the effective date of such employee's resignation or discharge day plus that proportionate share of sick leave credits as described in Section 8.02.05.
- 9.11. **Termination Pay Due to Death.** This pay shall be at the rate of pay on the last day the employee worked and shall include all unused accrued vacation leave remaining on the books plus that proportionate share of sick leave credits as described in Section 8.02.05 on the date the employee was deceased. A deceased employee's estate will be entitled to all accrued, unused vacation leave. The final paycheck will be deposited into the employee's existing account through direct deposit unless a written notification has been received authorizing payment to a designated beneficiary or the estate.
- 9.12. **Payroll Deductions.** Payroll deductions may be required or optional as defined in Sections 9.12.01 and 9.12.02.
- 9.12.01 **Required Deductions.** Each employee shall have deducted from his or her salary the following sums as required by federal, state or local laws:
- (a) Federal income taxes
 - (b) State income taxes
 - (c) Federal Insurance Contribution Act (FICA)
- 9.12.02 **Optional Deductions** Each employee may have deducted from his or her salary the following:
- (a) Metro COG Retirement Fund
 - (b) Metro COG Morale Fund
 - (c) Flexible Spending Account (FSA)
 - (d) Health Savings Account (HSA)
 - (e) Insurance
 - (f) Others as approved by the Board of Directors

- 9.13. **Records.** The records concerning the compensation, payroll deductions, annual leave and merit increases shall be kept in proper order and are available to the employee upon request.

ARTICLE X. Promotions, Demotions and Transfers

- 10.01. **General.** All promotions or transfers will follow Metro COG hiring procedures.
- 10.01.01 **Promotion.** A promotional position may become available by reason of an open position created through additional budgeted funds, promotion, resignation, retirement, disability, death, demotion or discharge. The criteria for eligibility and consideration for promotion shall be experience and successful on the job performance in the present position as evidenced by a general evaluation of at least satisfactory on the current Performance Appraisal and the ability to successfully meet the expectations of the promotional position as set forth in the Position Description of the promotional position. All promotions will be based on qualifications and availability of funds.

A promotion occurs when a current employee is selected to fill a job vacancy in a higher level job classification and pay grade than the job classification and pay grade the employee is currently assigned. Metro COG encourages its employees to apply for job vacancies above their current level for which they possess the necessary knowledge, skills and abilities. Promotions will be made on the basis of current job performance, past performance and job qualifications.

Any employee who is promoted to a higher classification will be placed into the step awarding a minimum three percent increase over current base salary (excluding out-of-grade pay). In no instance will the new salary be less than the pre-promotional salary, plus the additional promotional percentage increase. There will be no change in the employee's anniversary date, only an effective date of promotion for pay and classification purposes. A six-month probationary period will be served for all promoted employees.

- 10.01.02 **Demotion.** Demotion means either a voluntary or involuntary movement to a lower classification. The Policy Board will determine whether a salary reduction is warranted. If a salary reduction is warranted as part of the demotion, the employee will be placed in the new pay grade in the same step as is occupied prior to the demotion. For example, if the pre-demotion placement is Grade 14, step E, and the new classification is rated as Grade 13, then the employee will be placed in grade 13, step E. There will be no change in the employee's anniversary date, only an effective date of demotion for pay and classification purposes. A probationary period will be served to ascertain the employee's performance. The Policy

Board may elect to “freeze” the salary of the employee receiving the demotion depending on the circumstances of the demotion.

Unsatisfactory performance during probationary appointment of a current employee promoted or reclassified to a more responsible position shall be considered cause to return the employee to the prior position of like seniority, status and pay.

10.01.03 **Transfer.** A transfer occurs when a current employee is selected to fill a job vacancy which results in the change from one job classification to another within the same pay grade. Employees may request transfer from one position to another, provided qualifications are met for the vacant position.

ARTICLE XI. TERMINATIONS

11.01. **Resignations.** Employees wishing to leave in good standing shall notify the Executive Director in writing at least three (3) weeks prior to the effective date of termination. It is requested however, especially among professional staff, that a resignation notice be provided four (4) weeks in advance of planned departure.

11.02. **Disability.** Employees terminating with Metro COG due to a disability may obtain proper forms for completion from Metro COG. Completed forms are to be returned to Metro COG for filing with the insurance carrier.

11.03. **Death.** Beneficiaries of deceased employees may obtain proper forms for completion from Metro COG. Completed forms are to be returned to Metro COG for filing with the insurance carrier.

11.04. **Retirement.** See ARTICLE XIII Employee Benefits.

11.05. **Reduction in Force.** Any Metro COG employee may be laid off without reflection on his or her standing for lack of work or funds. At least three (3) weeks’ notice of the effective date of a layoff shall be given each employee affected of by such a layoff. Regular appointees that are laid off will be reemployed if still interested in Metro COG employment when work or funds become available, and if the employee is qualified for the open position.

11.06. **Dismissal.** Employment at Metro COG is “at will.” Any employee may be dismissed at any time by the Executive Director with direction and concurrence of the Executive Committee. Dismissal can be defined by, but not necessarily limited to, the occurrence of any of the following:

- (a) Excessive, unexplained or unexcused absenteeism;
- (b) discourteous treatment of the public or work associates, including the use of abusive language;
- (c) failure to report an accident;
- (d) falsifying employment information;
- (e) releasing confidential information;
- (f) carelessness or negligence in the performance of duties, including safety rule violations;
- (g) refusal or failure to accept job assignments;
- (h) abuse, deliberate distribution or unauthorized use of Metro COG property or the property of others;
- (i) immoral and indecent conduct; horseplay; fighting; use of profane, threatening or abusive language; acting in a disorderly manner or gross discourtesy to others;
- (j) possession or partaking of alcoholic beverages or unlawful drugs on Metro COG property at any time or arriving at work under the influence of same; or
- (k) violations of approved Metro COG policies and procedures identified in these personnel policies, administrative policies and procedures, Articles of Association or other such approved policies and guidance.

11.06.02 Progressive Disciplinary Actions. Any infraction of administrative or personnel procedures shall be cause for progressive disciplinary measures. This encompasses three levels of disciplinary action. Such actions based upon the circumstances and seriousness of the infraction, consist of:

- (a) *Verbal Warning.* Used in cases of minor infractions which may or may not require further disciplinary action. The verbal warning shall explain the nature of the violation and the consequences of repeat and/or continued inappropriate behavior. Although this is a verbal warning, a record of the warning shall be completed and placed in the employee's file.
- (b) *Letter of Reprimand.* Used in cases involving more serious infractions or in cases where verbal warnings are not heeded. The letter of reprimand shall include the nature of the violation, reference to the previous verbal warning (if one was given), and the consequences of repeat and/or continuing inappropriate behavior. The documentation procedure outlined above should be followed. The Executive Director must obtain the employee's signature and any comments the employee may wish to make regarding the letter of reprimand. It is emphasized that signing a letter of reprimand only indicates that the employee has received the letter, not that the employee necessarily agrees with its contents.
- (c) *Letter of Reprimand with Suspension without Pay.* Used in cases of serious infractions. The letter of reprimand shall include the nature of the violation, reference to any previous warnings and/or probation (if administered), and the length of the suspension. Further infractions after suspension may result in immediate termination.

(d) *Letter of Reprimand and Termination.* Used in cases of continued unsatisfactory performance and/or misconduct or in cases of gross negligence following review by the Executive Director and the Executive Committee. Written notification of termination will include reasons and effective date.

Copies of all warnings and reprimands, signed by the employee, will be placed in the employee's personnel file and will be removed after one year providing there are no similar infractions during that period. In cases where the employee refuses to sign a verbal warning or letter of reprimand, the Executive Director will note for the file the refusal of the employee to sign the letter.

11.06.03 **Performance.** Two consecutive performance appraisals containing unsatisfactory general ratings shall be cause for discharge by the Executive Director.

11.07. **Termination (Exit) Interview.** A termination interview, if requested by the employee, shall be conducted with the employee by an appropriate administrative officer of Metro COG prior to the employee's leaving on the last day of employment.

ARTICLE XII. PERFORMANCE APPRAISALS

12.01. **Policy.** Periodic evaluation of general performance shall be conducted for all employees annually by the Executive Director within 15 days of the employee's anniversary date. Procedures and documents used in the performance appraisal are identified in the *Metro COG Administrative Policies*.

12.02. **Purpose.** Performance appraisals are intended as an aid to the employee in improving his or her job performance, by the Executive Director in:

- (a) developing the employee's potential to the fullest extent;
- (b) as an aid to perceive and identify training needs; and
- (c) as an aid in counseling the individual employee.

12.03. **Effects of Appraisals.** Performance appraisals shall be a consideration for either successful completion of a probationary period, a merit adjustment, a promotion or a discharge.

ARTICLE XIII. EMPLOYEE BENEFITS

This section outlines the current benefits Metro COG has extended to its employees. All such benefits are to be upheld by the Executive Director, who shall inform the Policy Board of any modifications to these benefits. Benefits are extended to Metro COG employees at the discretion of Policy Board. Any benefits

13.01. **Qualifying Benefits.** If the employee qualifies for sick leave benefits, Metro COG will pay the employee's individual and if appropriate and desired, the family health insurance coverage up to Metro COG's established financial cap. Furthermore, Metro COG will not permit its employees to "double dip," (i.e., if an employee's spouse, domestic partner or other dependent family members prefer to be covered by another employer-paid policy, Metro COG will not pay for health insurance on these persons). In the event a Metro COG employee can attain health coverage through a spouse or domestic partner at a lesser "out of pocket" cost than is possible through Metro COG, Metro COG would provide that employee a stipend covering the "out of pocket" difference to the employee, provided it is in Metro COG's best interest to do so.

At the beginning of an employee's tenure with Metro COG, and annually during Metro COG's open enrollment period or during a qualified life event, each employee will be requested to document his or her choice for the type of Metro COG coverage desired and to certify that those covered by Metro COG are not utilizing other employer-paid health insurance as well. Metro COG's health insurance contribution will be prorated if an employee is eligible, but customarily works less than forty (40) hours per week. For an employee on leave without pay due to documented illness or injury, Metro COG agrees to pay employee health insurance premiums for thirty (30) days while the employee is on leave without pay, and after that time the premium becomes the obligation of the employee.

13.01.01 **Flexible Spending Account.** Metro COG will offer its employees the option of participating in an approved Flexible Spending Account (FSA) program. FSA participation costs will be covered jointly by Metro COG and the employee. The terms and procedures regarding Metro COG contributions to an FSA's are determined by the Policy Board, and may fluctuate as needed, and shall be done so in accordance with Federal and state rules. Metro COG employees are capped at the Federal limit for dependent care reimbursements. All FSA amounts are to be deducted directly from the Metro COG employee's salary, on a pre-tax basis. The reimbursement of FSA funds will be handled by the FSA program provider. Metro COG and its employees are subject the rules and terms of the FSA program provider.

13.01.02 **Health Savings Account.** Metro COG participates in a High Deductible Health Plan (HDHP) through a health insurance carrier designated by the Policy Board. Metro COG will match an employee's contribution into their Health Saving Account up to 50% of the deductible. Metro COG's Policy Board may act to change this policy as it sees fit. All prior contributions will remain with the employee upon severance or change of this benefit.

13.02. **Retirement.** Metro COG will provide a retirement program for its regular employees. Metro COG will match up to 3% of an employee's

annual salary if the employee agrees to participate at the same or greater rate. Participation in the retirement program is optional for each employee; however, if an employee decides not to participate, Metro COG will be under no obligation to provide its share of the matching fund.

- 13.03. **Worker's Compensation Insurance.** The agency shall provide for medical care and compensation in illness or injury connected with employment, as provided in Worker's Compensation Laws of North Dakota and Minnesota.
- 13.04. **Group Travel Insurance.** Employees participate in the Group Travel Plan upon the first day of employment. Travel from employee's residence to regular place of employment is not covered. Travel while conducting the business of the agency is covered for bodily injury or death. Metro COG employees using their own automobiles for Metro COG business are personally liable. Authorized Metro COG drivers shall be required to submit a certificate of insurance.
- 13.05. **State Unemployment Insurance.** Metro COG is subject to the North Dakota Employment Security Law and is required to make State unemployment insurance contributions for each employee. Each employee who resigns, is discharged or laid off is to obtain the appropriate paperwork to determine eligibility for unemployment benefits.
- 13.06. **Personnel Training and Development.** Employees are encouraged to further their vocational proficiency by enrolling in recognized colleges, universities and schools. The Executive Director may excuse the employee for a limited time each day in pursuit of training if job related without loss of pay. The Executive Director may, at agency expense, send employees to workshops or seminars for additional specialized training.
- 13.07. **Life and Accidental Death and Dismemberment Insurance.** As part of its benefit package to full-time employees, Metro COG provides a \$50,000 life insurance policy and a \$50,000 accidental death and dismemberment policy. These policies are active as of the employees first day of employment, and are at the discretion of the Policy Board.

ARTICLE XIV. Employee Assistance Program

- 14.01. **General.** Metro COG provides each employee access to an Employee Assistance Program (EAP), which can help with financial problems, relationship or family difficulties, depression, drug and alcohol abuse, or work conflicts. The program is strictly confidential.

Employees can either seek assistance on their own, or may be referred by a supervisor. A supervisor should consult with Metro COG's designated human resources professional before referring a subordinate. It is not the duty of any employee or supervisor to diagnose personal problems with other employees. The decision to seek assistance for personal distress is the responsibility of each individual employee.

EAP literature is included in an employee's new hire packet. Such literature or ways to access EAP benefits will always be available upon request. Details on the individual benefits of the EAP can be found by contacting a representative or reviewing the literature that is provided.

ARTICLE XV. GRIEVANCES AND APPEALS

15.01. **Grievances.** A grievance is a wrong, real or perceived, considered by an employee as grounds for complaint. An employee shall have the right to file a grievance if he or she believes an injustice has been done because of:

- (a) Lack of policy;
- (b) a policy is unfair;
- (c) a deviation from or misinterpretation of an official policy;
- (d) a disagreement with another employee or supervisor; or
- (e) an unfair application of procedures or regulations.

15.02. **Appeals.** Grievances of the nature described in Section 15.01 of these policies shall first be presented to the Executive Director. The Executive Director shall make every effort to conclude the matter in a way satisfactory to all parties concerned. If the matter is not concluded by the Executive Director, the employee may make an oral or written complaint to the Executive Committee, who shall investigate the matter with the assistance of the Executive Director and render a decision on the grievances.

Grievances resulting in a personnel action arising out of position classification, suspension, dismissal or other disciplinary action may be appealed to the Executive Committee by the employee, notifying the Executive Director of his or her desire to appeal. The Executive Director shall furnish each member of the Executive Committee at least seven (7) days prior to the meeting with written statements by the employee and by all concerned with the matter. The decision of the Executive Committee shall be final.

ARTICLE XVI. PERSONNEL RECORDS

16.01. **Personnel Files.** Official personnel files shall be maintained by the Executive Director I. The "record" copy of all personnel information

shall be filed in the employee's personnel file. The designated human resources professional shall maintain the Executive Director's personnel file. Any employee has the right to review his or her personnel file. This will be done under supervision of the Executive Director.

- 16.02. **Confidentiality.** Metro COG will file and maintain separately those personnel records that are open records available for public review and those that contain personal information (e.g. medical records, insurance, etc.). Files containing sensitive information shall be available to the Executive Director, the designated human resources professional, and the Executive Committee as required in handling of personnel matters.
- 16.03. **Employee Information Record and Personnel Data Record.** All personnel files shall contain an employee information record and a personnel data record, each of which is to contain current information at all times. As information changes, employees shall promptly inform the business office of personal matters recorded in the employee information record, such as home address, telephone number, person to be notified in emergencies, etc. or professional development matters recorded in the personnel data record, such as courses completed, degrees attained, etc.

ARTICLE XVII. AMENDMENTS

- 17.01. **Approval.** These personnel policies as adopted by the Metro COG Policy Board may be subject to change at any time. Amendments to these personnel policies must be approved by the Metro COG Policy Board.
- 17.02. **Incorporation by Reference.** All amendments to these personnel policies shall be incorporated by reference into this manual.
- 17.03. **Amended Policies and Procedures.** Upon approval by the Policy Board, the Executive Director will inform Metro COG staff of all amendments to these policies. After being informed of, and the reading of, any amendment(s) to these policies, each employee will be required to subscribe to the policies identified in these policies, as amended, and will sign a statement attesting to their understanding of its content and implications.

ARTICLE XVIII. Severability.

- 18.01. **Severability.** Should any section, paragraph, sentence, or clause of these personnel policies be deemed unlawful by a Court of competent

jurisdiction, no other provision hereof shall be affected and all other provisions of these policies shall continue in full force and effect.

Appendix A. Employee Signature Form

Fargo Moorhead Metropolitan Council of Governments

PERSONNEL POLICIES MANUAL

I have received a copy of and have read the Fargo Moorhead Metropolitan Council of Governments Personnel Policy Manual.

Employee Signature

Date

Witness:

Signature

Date

Appendix B.

**CHAPTER 34-03 North Dakota Century Code
TERMINATION OF EMPLOYMENT**

34-03-01. Termination of employment at will - Notice required.

An employment having no specified term may be terminated at the will of either party on notice to the other, except when otherwise provided by this title.

34-03-02. How employment terminated.

Every employment is terminated by:

1. The expiration of its appointed term;
2. The extinction of its subject;
3. The death of the employee; or
4. The employee's legal incapacity to act.

34-03-03. Termination of employment not coupled with an interest.

Every employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to the employee of:

1. The death of the employer; or
2. The employer's legal incapacity to contract.

34-03-04. Continuance of employment required after death or incapacity of employer - Exceptions.

Unless the term of an employee's service has expired or unless the employee has a right to discontinue the employee's service at any time without notice, an employee shall continue the employee's service after the employee has notice of the death or incapacity of the employee's employer to such extent as is necessary to protect the interests of the employer's successor in interest from serious injury and until a reasonable time after notice of the facts has been communicated to the successor. The successor shall compensate the employee for such service according to the terms of the contract of employment.

34-03-05. Termination by employer for breach or neglect of duty or incapacity to perform.

Every employment may be terminated at any time by the employer in case of any willful breach of duty by the employee in the course of the employee's employment, in case of the employee's habitual neglect of duty, or in case of the employee's continued incapacity to perform the employee's duty.

34-03-06. Employee may terminate employment because of breach of obligations by employer.

Every employment may be terminated by the employee at any time in case of any willful or permanent breach of the obligations of the employee's employer to the person as an employee.

34-03-07. Compensation of employee after discharge for cause.

Repealed by S.L. 1961, ch. 233, § 2.

34-03-08. Employee quitting for cause - Compensation.

Repealed by S.L. 1961, ch. 233, § 2.

34-03-09. Compensation of employees upon termination of employment.

An employee who quits the service of the person's employer for good cause and an employee who is dismissed by the person's employer for good cause are entitled to such proportion of the compensation which would have become due upon full performance of the contract of employment as the services already rendered by such employee bear to the services the employee was obligated to render had the contract of employment been fully performed.

APPENDIX C. Metro COG Drug Testing Program

Fargo Moorhead Metropolitan Council of Governments

DRUG TESTING PROGRAM

MANAGEMENT GUIDELINES IN ADMINISTERING POLICY (as stated in the *Metro COG Administrative Policies and Procedures*)

Metro COG has a vital interest in maintaining safe and efficient working conditions for its employees. Being impaired as a result of the use of drugs may pose serious safety and health risks not only to the user but to all employees who work with the user. The possession, use or sale, or manufacture of an illegal drug in the workplace poses unacceptable risks for safe and efficient operations.

Metro COG recognizes that its own health and future are dependent upon the physical and mental health of its employees. Accordingly, it is Metro COG's right, obligation and intent to maintain a safe and efficient working environment for all of its employees and to protect Metro COG property, equipment and operations.

The Agency's group health plans contain provisions for treatment of employees who seek assistance for drug abuse.

With these basic objectives in mind, the Metro COG establishes the following policy with regard to use, possession or sale of drugs effective, September 28, 1989.

Policy Statement

I. PRE-EMPLOYMENT SCREENING

Metro COG maintains pre-employment screening practices designated to prevent hiring individuals who use illegal drugs or individuals whose use of legal drugs indicates a potential for impaired or unsafe job performance.

II. ON THE JOB USE, POSSESSION OR SALE OF DRUGS

A. Legal Drugs**

Except as provided below, the use or being under the influence* of any legally obtained drug by any employee while performing Agency business or while in the Metro COG offices is prohibited to the extent such use or influence may affect the safety of co-workers or members of the public, the employee's job performance, or the safe or efficient operations of the Agency. An employee may continue to work, even though under the influence of a legal drug, if

Management has determined that the employee does not pose a threat to his or her own safety or the safety of co-workers and that the employee's job performance is not significantly affected by the drug. Otherwise, the employee may be required to take a leave of absence or comply with other appropriate action determined by Management.

B. Illegal Drugs

The use, sale, purchase, manufacture, transfer or possession of an illegal drug by an employee while in the Metro COG office, vehicle or while performing agency business is prohibited.

- (a) **"Under the influence"** means, for the purposes of this Policy, that the employee is affected or impaired by a drug in any detectable manner. The symptoms of influence are not confined to those consistent with misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. A determination of influence or impairment can be established by a professional opinion, a scientifically valid test, and, in some cases, by a layperson's opinion.
- (b) **"Legal Drug"** includes prescribed drugs and over-the-counter drugs which have been legally obtained and are being used for the purpose for which they were prescribed or manufactured.
- (c) **"Illegal Drug"** means: Any drug (a) which is not legally obtainable; or (b) which is legally obtainable but has not been legally obtained. The term includes prescribed drugs not legally obtained and prescribed drugs not being used for prescribed purposes. This also includes marijuana. The presence in any detectable amount of any illegal drug in any employee while performing agency business or while in the Metro COG office is prohibited.

III. DISCIPLINARY ACTION

Violation of this Policy can result in a disciplinary action, up to and including termination, even for a first offense.

IV. WORK RULES

Nothing in this policy precludes Metro COG from establishing work rules which apply to employment by Metro COG. Where any state or federal law or final ruling of a court imposes restrictions on implementation of this Policy, Metro COG will modify this Policy in accord with such restrictions.

V. DRUG SCREENING

Metro COG may require a blood test, urinalysis, or other drug screening of those persons seeking employment with the Agency; for employees reasonably suspected of using or being under the influence of or impaired by a drug; following any accident or

injury on the job where Metro COG has reasonable cause to believe the employee involved was impaired; or where circumstances or workplace conditions justify it. An employee's consent to submit to such a test is required as a condition of employment and the employee's refusal to consent will result in termination.

VI. EMPLOYEES' REPORTING REQUIREMENTS - LEGAL DRUGS

An employee's use of even a legal drug can pose a significant risk to the safety of the employee or others. Employees who feel or have been informed by their physician that the use of a legal drug may present a safety risk, are to report such drug use to the Executive Director to determine job-related consequences.

VII. BENEFITS PROVIDED FOR TREATMENT OF DRUG USE

Metro COG maintains a Group Health Program which provides help to employees who suffer from drug abuse. However, it is the responsibility of each employee to seek assistance under the plan before drug problems lead to disciplinary action which can include discharge for a first offense. Once a violation of this Policy occurs, subsequently using the plan benefits on a voluntary basis will not necessarily lessen disciplinary action and may, in fact, have no bearing on the determination of appropriate disciplinary action.

The employee's decision to seek prior assistance under the group health plan will not be used as the basis for disciplinary action and will not be used against the employee in any disciplinary proceeding. On the other hand, utilization of plan benefits will not be a defense to the imposition of disciplinary action where facts proving a violation of this Policy are independently obtained.

Accordingly, the purposes and practices of this Policy and the group health plan are not in conflict and are distinctly separate in their applications.

VIII. IMPLEMENTATION GUIDELINES

Metro COG's Drug Testing Policy provides that individuals may be tested in three different circumstances:

1. As part of the pre-employment process;
2. After any accident or injury where Metro COG has reasonable cause to believe the employee involved was impaired;
3. Whenever management has reasonable cause to believe that an employee is impaired by drugs;
4. The first two circumstances are easily identified and require little or no independent discretion as to when the tests needs to be performed. This

guideline is intended to assist management personnel in determining when there is "reasonable cause" to believe that an employee is impaired;

5. to ensure that the policy is administered fairly and uniformly; and,
6. most importantly, to promote a safe and healthful working environment.

A. When should an employee be tested?

It is their responsibility of the Executive Director to determine when they believe an employee is impaired and, as a result, be removed from the working environment for the safety of themselves and other employees. There are many different ways in which impairment can be manifested by employees. As examples:

1. The employee is unable to walk without holding on to something; or is falling, staggering, or stumbling;
2. Their speech is slurred or they are incoherent or rambling;
3. There is a marked change in their behavior in that they have become hyperactive, threatening, hostile, or drowsy.

The foregoing is certainly not an exhaustive list, but only some examples of where marked changes in an employee's behavior may cause the Executive Director to believe that the individual is impaired. The Executive Director may also learn of impairment from complaints by fellow employees or the general public about the individual and his or her performance.

Once an individual is believed to be impaired, the Executive Director shall remove them from the working environment and escort them to a safe location. The Executive Director will then determine whether the employee is impaired and should be tested.

During this interview with the employee, the employee shall be asked whether they are currently under a doctor's care and what medications they are taking. The name, address and phone number of the physician shall also be obtained. The Executive Director shall also find out when the last medication was taken by the employee and whether they have a prescription for it. If the employee has

the medication with them, request to see the medication and take down all pertinent information as to the type of medication, how frequently it is to be taken by the employee, and the extent of the dosage. The Executive Director shall also find out if the employee is taking any non-prescription medication and ask the employee if they have consumed alcohol or taken drugs which are not prescribed. Find out when the drug was taken, what kind or kinds, and how much.

If, after the investigation, it is determined that the employee is not impaired, they shall be returned to their work station with no loss in pay.

B. How the drug test is conducted.

Once it is determined that an employee is to be referred for testing, then arrangements shall be made by the Executive Director to transport and accompany the employee to the testing facility. Under no circumstances shall the employee believed to be impaired be allowed to drive or transport themselves home or to a testing facility. If the employee becomes belligerent and insists upon leaving the premises, the Executive Director shall discourage them from doing so and advise them that, if they leave, the Executive Director will be forced to call local law enforcement officials. If the employee continues to insist upon leaving, the Executive Director shall obtain the make of automobile and license number and immediately call the local police, advise them of the situation, seek their assistance, and provide them with the make, model and license number of car, in addition to the employee's name.

Prior to actual testing, the employee shall sign the Drug Testing Consent Form if they have not already done so. If the employee refuses to sign the form or submit to the test, they shall be advised that their refusal may lead to their termination. The refusal to consent should be documented by at least one other witness. If they continue to refuse, then the employee shall be suspended with pay pending the outcome of termination proceedings. However, even if the employee is suspended they should not leave the premises and attempt to drive themselves home. Metro COG will offer to give them a ride or call a cab. Should they refuse, take the same steps noted above. Testing shall not be done by the agency. Only independent, qualified organizations shall administer any drug test.

C. Actual Testing

The actual test shall not be administered by Metro COG, but only by competent laboratories or testing facilities under contract with Metro COG or a health care provider selected by Metro COG who is qualified to administer such tests and evaluate the results thereof.

D. Report Each Incident

For each instance where management believes there is reasonable cause for an employee to be tested, the Executive Director will document the instance supporting his or her decision to have the employee tested. The documentation shall describe those actions of the employee which led the Executive Director to believe that the employee was impaired. Such things as the manner in which the employee walked, spoke, acted, stood, and the employee's demeanor, shall be described in detail.

E. Maintaining Confidentiality.

The results of any drug test shall be returned to the Executive Director or his or her designee. These results will remain confidential. Only those persons who have a need to know will be provided information necessary to enable them to make an informed decision regarding employment or treatment.

IX. TESTING PROCEDURE

1. Those selected for testing for reasonable cause will report to the facility selected by Metro COG.
2. The drug test will be evaluated for evidence of usage of substances including, but not limited to: marijuana, cocaine, amphetamines, barbiturates, and heroin.
3. The employee will be notified as soon as practical if the test shows any evidence of illegal drugs or excessive amounts of legal prescription drugs;
4. If the initial drug screen is positive, the initial test will be re-run with the same sample to ensure accuracy;
5. If this screen is positive, a confirmatory test shall be performed by the testing laboratory or public health facility utilizing an approved methodology;
6. Results of all tests will be made available only to those with a legitimate need to know. All results will be secured and will not be made available to outside parties except when needed for evaluation by medical or treatment personnel.

X. PROCEDURE OF EMPLOYEES TESTING POSITIVE

1. Employees testing positive will be notified of the results in a conference attended by the Policy Board Chair and the Executive Director.
2. Employees testing positive will be required to successfully complete a treatment program recommended by appropriate medical personnel and approved by the Executive Director.

3. As a part of the treatment program, employees testing positive will be required to submit to follow-up treatment.
4. Employees who refuse to undertake prescribed treatment will be subject to discharge. In addition, failure to complete prescribed treatment without due cause, is also grounds for discharge.

XI. HEALTH INSURANCE COVERAGE

1. Metro COG will attempt to have available to employee's health insurance coverage that will assist in defraying costs of drug rehabilitation. However, cost to the employee is not sufficient cause for refusal to undertake or complete treatment.

To: Policy Board Members
From: Cindy Gray, Executive Director
Date: March 16, 2020
Re: **COVID-19 Health Emergency Policy and Operational Procedures**

In response to the health emergency related to COVID-19, the attached Policy and Operational Procedure was prepared (Attachment 1). The City of West Fargo's COVID-19 Policy and Procedure was used as a reference. For now, the attached Metro COG policy and procedures have been put into practice since this is a health emergency situation, and we have already needed to make some decisions relative to asking people to stay home due to travel or illness.

Since we have an opportunity for Policy Board review and approval at our regularly scheduled meeting, updates or changes to the policy and operational procedures can be made at that time, or the document can be approved as is.

The main goal is to ensure that our organization, both internally and externally, is contributing to maintaining the health of the community.

Requested Action: Approve Metro COG's COVID-19 Pandemic Health Emergency Policy and Procedures.



Fargo-Moorhead Metropolitan
Council of Governments

Case Plaza Suite 232 | One 2nd Street North
Fargo, North Dakota 58102-4807
p: 701.532.5100 | f: 701.232.5043
e: metrocog@fmmetrocog.org
www.fmmetrocog.org

COVID-19 PANDEMIC HEALTH EMERGENCY POLICY AND PROCEDURES

March 16, 2020

In response to the Center for Disease Control (CDC) direction about limiting the spread of COVID-19, which is a respiratory illness that can spread from person to person, FM Metro COG is currently operating under the following health emergency policy and procedures. These operational procedures may be updated on short notice, pending updated recommendations from the CDC, ND Department of Health and MN Department of Health.

Metro COG Policy Objectives

- Preserve and protect the health and safety of metro area residents.
- Maintain the governing structure of Metro COG to assure that the administrative and organizational structure of Metro COG will continue to operate.

Metro COG will use a two level system to monitor the COVID-19 outbreak in Minnesota, North Dakota and the Fargo-Moorhead metropolitan area. The procedures consist of two levels that differ based on the number of individuals who have tested positive for COVID-19 in Minnesota, North Dakota, and the Fargo-Moorhead metropolitan area.

As of March 16, Metro COG is at Level One due to confirmed cases in North Dakota, Minnesota and South Dakota.

Metro COG Policy and Procedure

Level One – Initiated after COVID-19 cases were confirmed in North Dakota, Minnesota and South Dakota

As of March 16, 2020 there are over 50 confirmed cases of COVID-19 in Minnesota, one in North Dakota, and nine in South Dakota. Minnesota's first community-spread cases were recently identified, meaning the virus has the potential to spread within communities and is not limited to individuals who have recently traveled to high-risk areas.

- **Office Environment** – Additional sanitation and disinfection measures will be taken at Metro COG's offices. Metro COG staff members shall ensure that high touch surfaces, such as desks, counter tops, tables, doorknobs, coffee dispensers, tables, doorknobs, bathroom fixtures, toilets, phones, keyboards, computers, etc. are being cleaned with disinfectants on a daily basis, or more frequently as needed.

- **Personal Hygiene** – Hand sanitizer is available to all staff, and they are encouraged to use it frequently, especially after sneezing, coughing, touching their faces, or touching other high-touch surfaces. Frequent hand-washing must be practiced by all staff, and paper towels should be used to open restroom doors. Staff shall avoid sharing personal items with others.
- **Social Distancing** – In person meetings in the office should be minimized, but when they occur, Metro COG's large conference room will be used to allow for spacing of at least six feet between participants. Interpersonal communication will be carried out with ample space between people (six feet whenever possible).
- **Public Meetings** – For the next eight weeks, Metro COG will work with our partners to find alternatives to in-person public meetings. This will include conference calls, video conferences, email, on-line input opportunities, and social media. As a public agency, we need to maintain open public meeting opportunities, particularly for Transportation Technical Committee and Policy Board meetings, but measures will be put in place to minimize the need for in-person participation. Public input on projects, if it is necessary over the next eight weeks, will be structured to allow for on-line public participation.
- **Staff Sickness, Exposure or Illness** – Staff who are not well are asked to stay home, except to get medical care. Staff who are sick should restrict activities outside their home and avoid public areas, except for getting medical care.

Employees who have symptoms of acute respiratory illness are recommended to stay home and not come to work until they are free of a fever, signs of a fever, and any other symptoms for at least 24 hours.

Staff who have recently traveled to a high-risk area, or have been exposed to someone who has recently been in a high-risk country, or to someone who has tested positive for COVID-19 will be asked to self-quarantine for a minimum of one week, and possibly up to 14 days. CDC guidance will be monitored for the latest recommendations, and a decision will be made as to an employee's return to the office after one week, based on their health and any additional guidance that has become available.

Staff who are at high risk for complications of COVID-19 may choose to work from home. Other staff who would prefer to work from home to limit exposure to others are welcome to do so.

- **Travel and Group Training** – Metro COG staff will not travel outside the Fargo-Moorhead area for meetings or training for a minimum of eight weeks.

Level 2 – Initiated after confirmation of COVID-19 cases in the Fargo-Moorhead Metropolitan Area

- **Working Remotely** – Metro COG's offices will close to the public. Staff will have the option of working from home. After 25 cases of COVID-19 have been confirmed in the metro area, staff will be required to work remotely. Essential staff may be asked to come into the office to ensure that necessary bills are paid, payroll is processed, and to operate technology needed for remote meetings, but only if these tasks are urgent and cannot be delayed.

- **Cancellation or Delay of Meetings** – conference calls, group emails, and video conferencing will be used for meetings. Metro COG’s normal monthly Policy Board meetings will be canceled or delayed except for non-essential items such as approval of monthly bills. Transportation Technical Committee meetings and in-person project-related study review committee (SRC) meetings will be delayed unless they can be handled remotely, and public meetings will be delayed for a minimum of eight weeks, with substitutions of on-line meetings and social media applications being used if they can be structured to provide a comparable level of information and input as an in-person meeting.
- **Travel and Group Training** – Metro COG staff will not travel outside the Fargo-Moorhead area for meetings or training for a minimum of eight weeks from March 16, 2020.
- Any applicable **Level 1** procedures will continue to apply.

Metro COG Employment Compensation Policy for Pandemic

All employees who notify the Metro COG Executive Director and stay home to self-quarantine shall be compensated at their normal hourly or salary rate and shall not be required to take sick, paid time off, or vacation time. Metro COG will make every effort to provide employees who self-quarantine at home with work that can be completed outside the office and the computer technology that will allow them to stay productive while in self-quarantine. For those employees who are unable to perform work tasks at home, Metro COG will compensate those employees, but those employees should call into applicable staff and project meetings to stay informed, and make themselves available for communication with team members who need to communicate about projects, unless they are ill and unable to do so.

All of the above are subject to change based on recommendations, guidance, and information from the CDC, North Dakota Department of Health, Minnesota Department of Health, Fargo-Cass Public Health, and the Clay County Health Department.

To: Executive Committee
From: Cindy Gray, Executive Director
Date: March 16, 2020
Re: **Metro COG Property Insurance**

Metro COG's property, general liability, automobile and computer equipment insurance was due for renewal at the end of February. The invoice was included in the list of bills at the February Policy Board meeting and the bill has been paid. However, prior to that meeting, during a discussion with our new insurance representative from Marsh & McLennan Agency, LLC (Dawson Insurance), we discussed concern over the amount of property insurance coverage included in the policy. Our new representative agreed to visit with Metro COG's former representative, and I wanted to follow up by reviewing our lease and discussing coverage with the owners of the building, to ensure that our coverage picks up where theirs leaves off.

In short, I am concerned that we may need to increase our property coverage to include components of the new space that may not be covered or replaced by the owners of the building in the event of a fire, smoke, sprinkler, water or other form of damage. For example, our glass walls are considered moveable (i.e. we could take them with us in the event we moved to a different location). We now have new furniture and the value of that furniture can be quantified. Our agent was unaware that we have basement storage where all of our traffic counting equipment is stored.

Despite the fact that computer equipment is covered separately, our current coverage of \$102,000 seems inadequate, and I am thinking we need to at least double the value of our property coverage. Additional coverage to the \$200,000 level will cost an additional \$400. Coverage to the \$300,000 level will cost an additional \$765. I am recommending we increase coverage to the \$300,000 level.

I've also asked our insurance agent to review the requirements of our lease to ensure we're meeting the insurance requirements. One of the requirements is for Business Interruption Insurance. This needs to be further explored, because I do not see any documentation of business interruption insurance in the materials provided to us by our agent. I am waiting for our agent to provide further information.

Requested Action: Authorize the Executive Director to increase Metro COG's property insurance coverage from \$102,000 to \$300,000.