

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE) RESOLUTION NO. 03-3305
APPOINTMENT OF MICHAEL J. JORDAN)
AS CHIEF OPERATING OFFICER) Introduced by Council President David Bragdon

WHEREAS, pursuant to Section 26 of the Metro Charter, as amended on November 7, 2000, the Metro Council created the Office of Chief Operating Officer, to take effect on January 6, 2003; and

WHEREAS, the duties and responsibilities of the Chief Operating Officer are described and provided for in the Metro Code; and

WHEREAS, the Metro Council President has the authority to appoint the Chief Operating Officer subject to confirmation of the Metro Council; and

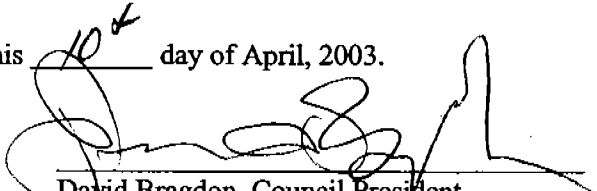
WHEREAS, the Metro Council President has appointed Michael J. Jordan to serve as Chief Operating Officer effective May 1, 2003 subject to Council confirmation; and

WHEREAS, the Metro Code provides that the employment of a Chief Operating Officer shall be subject to the terms of an employment agreement and the Metro Council President has negotiated an employment agreement with Michael J. Jordan, subject to approval by the Council; now, therefore,

BE IT RESOLVED,

1. The appointment of Michael J. Jordan as Chief Operating Officer effective May 1, 2003 is confirmed; and
2. The Metro Council President is authorized to execute an employment agreement with Michael J. Jordan, substantially similar in form to Exhibit A attached to the original only hereto.

ADOPTED by the Metro Council this 10th day of April, 2003.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper Metro Attorney



**EXHIBIT A TO RESOLUTION NO. 03-3305
AT WILL EMPLOYMENT AGREEMENT**

THIS AGREEMENT is entered into by and between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter (herein referred to as "Metro") and Michael J. Jordan (herein referred to as "Jordan").

RECITALS

1. Metro requires the services of a Chief Operating Officer.
2. Michael J. Jordan has the qualifications and the desire to serve Metro as its Chief Operating Officer.
3. This Agreement shall be effective May 1, 2003, and shall be referred to as the "Michael J. Jordan At Will Employment Agreement."

NOW, THEREFORE, IN CONSIDERATION of the compensation to be paid by Metro to Jordan, as specified in this Agreement, and in consideration of the mutual promises contained in this Agreement, the parties hereby agree as follows:

AGREEMENT

1. **Engagement.** Subject to the parties' right to terminate this Agreement as specified below, Metro hereby employs and Jordan hereby accepts employment from Metro for Jordan's services as Chief Operating Officer.
2. **Term of Agreement.** Jordan's employment under this Agreement shall begin on May 1, 2003, and shall continue until terminated as provided herein.
3. **Services.** Jordan shall faithfully, industriously and to the best of his ability provide his services as Chief Operating Officer of Metro, and shall perform all duties as may be required of him by the Metro Charter, Metro Code and the Council.
4. **Exclusivity.** During the term of this Agreement, and except as otherwise provided herein, Jordan shall devote all of his business efforts, time, attention, knowledge, and skills to Metro as its Chief Operating Officer. Jordan shall not actively engage in any other employment, occupation or consulting activity for any direct or indirect remuneration without the prior approval of the Metro Council. It is understood that if Metro exercises its notice provisions under 8.B.1 Jordan can begin to search for other employment while still employed by Metro.
5. **Employment At-Will.** Metro and Jordan understand and acknowledge that Jordan serves at the pleasure of the Metro Council. Metro and Jordan understand and acknowledge that Jordan's employment with Metro constitutes "at-will" employment. Subject to Metro's obligation to provide severance benefits as specified in this Agreement, Jordan and Metro acknowledge that this employment relationship may be terminated at any time, upon written notice to the other

party, with or without cause or good reason and for any or no cause or reason, at the option of either Metro or Jordan. It is further understood and agreed that neither this Agreement, nor service provided under this Agreement, shall create a property interest of any kind. This Agreement has no monetary value.

6. Compensation.

- A. Salary. As compensation for Jordan's services, Metro shall pay Jordan the sum of \$ 147,500 per year, payable in the same frequency and manner as other Metro employees. Jordan's performance and salary shall be reviewed annually by Metro as provided below. Any salary increases shall be based on Metro's annual evaluation of Jordan's performance, availability of funding, and on Metro's assessment of inflation and a survey of annual salaries paid to comparable positions in the Metro region. The compensation paid to Jordan shall be subject to customary withholding taxes and other taxes as required with respect to compensation paid by Metro to an employee.
- B. Benefits. Jordan shall receive all normal and regular benefits accruing to Metro non-represented employees as provided in Metro Code Chapter 2.02. For the purposes of this section, "benefits" means health insurance, including dental and vision care, life insurance, disability insurance, sick leave, employee assistance, and retirement benefits pursuant to the Public Employees Retirement System ("PERS"), including the 6% employee contribution. Jordan shall be entitled to these benefits under the same terms and conditions as provided for Metro's non-represented employees. If Jordan elects to pursue a Master's degree in Public Administration he shall be eligible for tuition reimbursement according to Metro's standard Education, Training, and Development Policy. Except as otherwise expressly provided in this Agreement, the employee benefits provided to Jordan under this section are subject to any addition, reduction or other change made by the Metro Council to the benefits provided to Metro's non-represented employees. Jordan shall have an accrued vacation balance of 120 hours as of May 1, 2003 and shall accrue paid vacation leave of 192 hours per year, and paid vacation leave may accumulate without limitation.
- C. Deferred Compensation. If the Metro Council approves participation by Metro in a deferred compensation plan (Section 457 plan) for any class of Metro employees, Jordan may participate in such plan. If Jordan elects to participate in such plan, Metro agrees to match on a dollar for dollar basis Jordan's voluntary salary deferral, up to a maximum Metro contribution of 3% of Jordan's annual base salary, subject to applicable limitations of federal law.
- D. Modifications to Compensation. Metro may change or modify Jordan's salary or benefits on three months' written notice to Jordan, or at any time by mutual agreement of the parties. Except as provided in Paragraph 7(B), below, Jordan shall not receive any cost of living adjustment to his salary that is otherwise provided to Metro employees unless specially authorized by the Metro Council.
- E. Performance Incentives. In addition to the salary and benefits described in this paragraph, Jordan shall also be eligible to receive annual performance incentives as described in this subparagraph. Prior to July 1 of each fiscal year Jordan and the Metro Council shall mutually agree on an annual work plan for Jordan. The work plan shall be adopted by the Council and shall include measurable performance goals for Jordan. The

work plan shall provide for a review methodology to measure Jordan's accomplishment of the annual work plan and shall specify the performance incentive to be awarded for the attainment of each goal. The total annual performance incentive shall not exceed 10% of Jordan's annual base salary for the fiscal year. Jordan shall not be eligible for a performance incentive bonus for any fiscal year in which he voluntarily terminates his Metro employment.

7. Performance/Compensation Reviews

- A. Metro shall annually evaluate Jordan's performance as soon as practicable after July 1. No failure to evaluate Jordan shall limit Metro's right to terminate Jordan as specified in this Agreement.
- B. If Metro fails, for any reason within its control, to perform the annual evaluation within 60 days after July 1 compensation shall be adjusted consistent with the cost-of-living increase for non-represented Metro employees approved by Metro for that fiscal year and Jordan shall be granted the full performance incentive bonus for the preceding fiscal year.

8. Termination

- A. Termination for Convenience. Either party may terminate this Agreement whenever it determines that it would be convenient and/or desirable to do so. In the event that either party elects to terminate this Agreement for convenience, this Agreement shall terminate upon a date chosen by the terminating party, unless another termination date is mutually agreed upon. In the event of a termination for convenience, the terminating party shall provide the other party with a written notice of termination that specifies the date the termination becomes effective.
- B. Payments Upon Termination for Convenience. In the event that this Agreement is terminated for convenience by Metro or its lawful successor, Jordan shall receive six (6) months' salary as severance pay, along with the cash value of any accrued and unused vacation leave. In the alternative, Metro, at its sole discretion and option, may elect to give Jordan notice of its intent to terminate this Agreement. Such notice shall be in lieu of severance pay for the equivalent period. The combined total of notice and severance pay under this section shall not exceed six (6) months, exclusive of accrued vacation pay.
- C. Termination for Cause. Metro may terminate this Agreement for "cause" by giving Jordan 72 hours written notice of its intent to terminate for "cause." In the event that Metro elects to terminate this Agreement for "cause," no severance pay shall be due Jordan. "Cause" shall include one or more of the following:
 - (i) Willful failure to follow lawful resolutions or directives of the Metro Council;
 - (ii) Willful failure to attempt to substantially perform his duties as Chief Operating Officer (other than any such failure resulting from his incapacity due to physical or mental impairment), unless such failure is corrected within thirty (30) days

following written notice by the Metro Council President that specifically identifies the manner in which the Metro Council President believes Jordan has substantially not attempted to materially perform his duties;

- (iii) Misappropriation of funds or property of Metro;
- (iv) Fraud or gross malfeasance;
- (v) Conduct of a felonious or criminal nature which would tend to bring discredit or embarrassment to Metro or its operations;
- (vi) Commission of any act, the nature of which would tend to bring discredit or embarrassment to Metro or its operations;
- (vii) The habitual use of drugs or intoxicants to an extent that it impairs Jordan's ability to properly perform his duties;
- (viii) Violation by Jordan of any of the written work rules or written policies of Metro after written notice of violation from the Metro Council President.

9. Termination Authority.

The Council President has the sole authority to terminate this Agreement on behalf of Metro. The Council President may terminate this Agreement in writing pursuant to any provision of Paragraph 8 of this Agreement. Upon receipt of a termination notice, Jordan may accept the termination or request in writing within 48 hours that the Council President submit the termination to the Council for its concurrence. Concurrence in the termination by the Council is a final decision.

10. Disability or Death.

A. If, as the result of any physical or mental disability, Jordan shall have failed or is unable to perform his duties for more than twelve (12) consecutive weeks, Metro may, by subsequent written notice to Jordan, terminate his employment under this Agreement as of the date of the notice without any further payment or the furnishing of any benefit by Metro under this Agreement (other than accrued and unpaid salary and accrued benefits).

B. The term of Jordan's employment under this Agreement shall terminate upon his death without any further payment or the furnishing of any benefit by Metro under this Agreement (other than accrued and unpaid salary and accrued benefits).

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

12. Modification. This Agreement can only be modified by a written amendment, signed by Jordan and the Metro Council President. No oral or written statements, promises, or course of conduct shall serve to modify the Agreement in any way. No practices or customs which may arise between Jordan and Metro shall modify this Agreement or affect its meaning in any way.

13. Construction. This At Will Employment Agreement is the final agreement between the parties, shall be construed as having been drafted jointly by the parties, is intended to be a complete and final expression of the agreement between the parties, and shall supersede any and all prior discussions or agreements.
14. Severability. In the event that any court of competent jurisdiction determines that one or more portions of this Agreement are invalid or unlawful, the remaining portions shall remain in full force and effect.
15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Jordan consents to the personal jurisdiction of the state and federal courts located in Multnomah County, Oregon for any action or proceeding arising from or relating to this Agreement.

EXECUTED IN TRIPLICATE on _____, to be effective immediately.

METRO

MICHAEL J. JORDAN

David Bragdon
Metro Council President

APPROVED AS TO FORM:

Daniel B. Cooper
Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 03-3305, FOR THE PURPOSE OF CONFIRMING THE APPOINTMENT OF MICHAEL J. JORDAN AS CHIEF OPERATING OFFICER

Date: March 28, 2003

Prepared by: Jeff Stone

BACKGROUND

Effective January 6, 2003, the Metro Charter as amended by the voters in November 2000 took effect creating the office of Metro Council President. Under the authority of this new office, the Council President nominates all members of committees, commissions, boards and appointments.

The Metro Charter is specific about the role and duties of the members of the Metro Council. This section, in part, reads as follows:

“Section 26. Appointive Offices and Commissions

(1) Chief Operating Officer. . . . The Council President appoints the Chief Operating Officer subject to confirmation by the Council. The Chief Operating Officer serves at the pleasure of the Council and is subject to removal by the Council President with the concurrence of the Council.”

A National Search for a Chief Operating Officer Was Conducted

The Council President, through a consultant, led an effort to search for a permanent Chief Operating Officer on a national level. The Council interviewed final candidates along with stakeholder groups that included labor, employees and outside interested parties. The Council President took into consideration the views of the Council and stakeholder groups and has appointed Michael J. Jordan effective May 1, 2003.

Mr. Jordan, if confirmed by the Metro Council, will assume his duties as Chief Operating Officer on May 1, 2003.

ANALYSIS/INFORMATION

1. Known Opposition: None.
2. Legal Antecedents: Appointment and confirmation must be consistent with Metro Code Section 26.
3. Anticipated Effects: Confirmation of Mr. Jordan would set a permanent Chief Operating Officer in place.
4. Budget Impacts: This appointment does not create any additional budget impact.