

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution 96-6

Whereas, On February 1, 1994 the Commission appointed Harriet Sherburne as Facility Director of the Portland Center for Performing Arts for a six month period; and

Whereas, On May 11, 1994 the Commission appointed Sherburne as Director of the PCPA for a period ending on June 30, 1996; and

Whereas, The Commission finds that Sherburne's services as Facility Director have been exemplary; and

Whereas, The Commission wishes to extend Sherburne as Director of the PCPA for an additional two year period; and


Whereas, The Commission and Sherburne have agreed on the terms for a two year extension of the employment agreement;

BE IT THEREFORE RESOLVED that the Commission approves and authorizes the Chairman and Secretary-Treasurer of the Commission to sign the At Will Employment Agreement which is attached as Exhibit A.

BE IT FURTHER RESOLVED that this Resolution shall be effective immediately.

Passed by the Commission on January 10, 1996.


Chairman


Secretary-Treasurer

APPROVED AS TO FORM:
Daniel B. Cooper, General Counsel

By: 

Mark B. Williams
Senior Assistant Counsel

AT WILL EMPLOYMENT AGREEMENT

THIS AGREEMENT is entered into on this 10th day of January 1996, to be effective immediately, between the Metropolitan Exposition-Recreation Commission (Commission), a subdivision of Metro, a municipal corporation of the State of Oregon, and Harriet Sherburne (Sherburne).

WITNESSETH:

RECITALS:

Whereas, The Commission initially appointed Harriet Sherburne as its interim Director of the Portland Center for the Performing Arts (PCPA) for a six-month term; and

Whereas, The PCPA was then in a period of transition; and

Whereas, The Commission later determined that it was desirable to appoint a Director of the PCPA for a longer defined period of time; and

Whereas, The Commission appointed Sherburne as Director of the PCPA for a period ending on June 30, 1996; and

Whereas, The Commission wishes to appoint Sherburne as Director of the PCPA for an additional two year period, and Sherburne has indicated that she is willing to accept an additional two year appointment; and

Whereas, Sherburne has the qualifications and the desire to continue serving the Commission as its Director of the PCPA;

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

1. **Engagement.** Subject to the Commission's right to terminate this Agreement as specified herein, below, the Commission hereby employs and Sherburne hereby accepts employment from the Commission for Sherburne's services as Director of the PCPA, for the period beginning July 1, 1996, and continuing through June 30, 1998.

2. **Services.** Sherburne shall at all times be subject to the direction and control of the Commission's General Manager. The General Manager shall have full authority to act on behalf of the Commission in all aspects of Sherburne's employment with the Commission, including full authority to take any actions contemplated by this at will employment agreement, including but not limited to termination thereof. Sherburne shall faithfully, industriously, and to the best of her ability, provide her services as Director of the PCPA and shall perform all duties as may be required of her by the General Manager. Sherburne shall execute, maintain, and carry out all directives of the General Manager, and shall at all times act in a fiduciary capacity towards the Commission.

3. **Exclusivity.** During the term of this Agreement, Sherburne shall devote her time, attention, knowledge, and skills to the Commission as Director of the PCPA, and shall not accept any other employment without the General Manager's written consent.

4. **Salary.** As compensation for Sherburne's services, the Commission shall pay Sherburne the sum of \$75,000 per year through the completion of the Agreement, payable in the same frequency and manner as other Commission employees. During the term of this

Agreement, Sherburne shall also receive any cost of living adjustments which the Commission grants generally to its non-represented employees.

5. Benefits. In addition to the salary specified above, the Commission shall provide Sherburne all employee benefits provided by the Commission to its employees generally, including health and dental insurance, retirement benefits, life insurance, Social Security, Workers' Compensation, paid holidays, paid vacations, sick leave, funeral leave, military leave, leave for jury duty, and credit union options. In addition to the vacation benefits normally provided to Commission employees, however, Sherburne shall accrue two additional weeks of vacation leave on July 1, 1996, and again on July 1, 1997, provided, that these additional two weeks must be used during the fiscal year of accrual, and shall not carry forward to the following fiscal year if unused, in which event the leave shall be forfeited.

6. Expenses. In addition to the salary specified above, the Commission shall reimburse Sherburne for reasonable expenses incurred by her which directly benefit the Commission, as deemed appropriate and necessary by the General Manager.

7. Employment to be At Will. It is understood and agreed between the parties that Sherburne shall be employed solely and exclusively as an at will employee, and shall serve purely at the pleasure of the General Manager. 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.

8. Termination. This Agreement may be terminated in any of the following manners:

a. Termination by Expiration. This Agreement shall terminate automatically, without further action, on June 30, 1998.

b. Termination for Convenience. The General Manager may terminate this Agreement whenever he determines that it would be convenient and/or desirable to do so. In the event that the General Manager elects to terminate this Agreement for convenience, this Agreement shall terminate upon a date of the General Manager's choosing. In the event that the General Manager elects to terminate this Agreement for convenience, Sherburne shall receive 60 days salary as severance pay, (not including benefits or the value of any benefits) or, in the alternative, the General Manager, at his sole discretion and option, may elect to instead give Sherburne 60 days notice of his intent to terminate this Agreement.

c. Termination for Cause. The General Manager may terminate this Agreement for "cause" by giving Sherburne 72 hours notice of intent to terminate for "cause." In the event that the General Manager elects to terminate this Agreement for "cause," no severance pay shall be due Sherburne. "Cause" shall include one or more of the following:

- (1) Willful failure to follow lawful resolutions or directives of the Commission or the General Manager;
- (2) Misappropriation of funds or property of the Commission;
- (3) Commission of any act, the nature of which would tend to bring discredit or embarrassment to the Commission or its operations;
- (4) Conviction of any offense, the nature of which would tend to bring discredit or embarrassment to the Commission or its operations.

9. Performance Evaluations. The General Manager may perform performance evaluations of Sherburne in any manner and on any schedule that the General Manager finds convenient. No failure by the General Manager to evaluate Sherburne's performance shall limit the General Manager's right to terminate this Agreement, as specified above.

10. Entire Agreement. This Agreement is the entire agreement between the parties. It is intended to be a complete and final expression of the agreement between the parties, and supersedes any and all prior discussions or agreements.

11. Modification. This Agreement can only be modified by a written amendment, signed by Sherburne and by the Chairman and Secretary/Treasurer of the Commission on behalf of the Commission and pursuant to a formal resolution of the Commission. No oral or written statements, promises, or course of conduct shall serve to modify this Agreement in any way. No practices or customs which may arise between Sherburne and the Commission shall modify this Agreement or affect its meaning in any way.

12. Severability. In the event that any authority 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.

13. Assignment. The parties agree that Sherburne has been selected as PCPA Director due to her unique skills and abilities, and therefore this contract may not be assigned by Sherburne under any circumstances. It is recognized by the parties that discussions are currently underway regarding the future organization and existence of the Commission, and that the possibility exists that the Commission will cease to exist, and that its operations and responsibilities may be taken over by a successor organization. In such

event, Commission shall have the right to assign this agreement to any successor organization which assumes responsibility for management and operation of PCPA. In the event of such an assignment, (a) Sherburne shall receive whatever benefits (including but not limited to retirement benefits) which are generally provided to employees of the successor organization, and any diminution in benefits from those provided to Sherburne by Commission shall not constitute a breach of this agreement by Commission or any successor organization; (b) the rights and abilities of the General Manager to terminate and interpret this agreement as provided herein shall be transferred to the chief executive officer of any successor organization; and (c) the duties and obligations owed by Sherburne to the Commission shall be transferred to any successor organization.

14. Interpretation. In the event of a dispute regarding the meaning, application, or interpretation of this Agreement, the decision of the General Manager shall be final and binding.


EXECUTED IN QUADRUPLICATE on January 10, 1996, to be effective immediately.


HARRIET SHERBURNE

METRO
acting by and through its
**METROPOLITAN EXPOSITION-
RECREATION COMMISSION**

APPROVED AS TO FORM:
Daniel B. Cooper, General Counsel

By: 
Chairman


By: Mark B. Williams
Senior Assistant Counsel

By: 
Secretary/Treasurer