METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 05-04

For the Purpose of Approving An At Will Employment Agreement For The MERC General Manager, And Authorizing The Chair And The Secretary-Treasurer To Sign The Agreement On Behalf Of The Commission.

WHEREAS, Section 6.01.040(h) of the Metro Code authorizes the MERC Commission to employ such personnel as the Commission finds necessary, appropriate or convenient for its purposes under personnel rules adopted by the Commission; and

WHEREAS, Section 2, Subsection 8 of the MERC Commission By-Laws authorizes the MERC Commission to hire a MERC General Manager; and

WHEREAS, Jeff Miller is qualified to serve as MERC General Manager; and

WHEREAS, the MERC Commission wishes to enter into an at will employment agreement with Jeff Miller to establish the terms and conditions of his employment as MERC General Manager.

BE IT THEREFORE RESOLVED AS FOLLOWS:

1. The Metropolitan Exposition-Recreation Commission approves the Jeff Miller At Will Employment Agreement in a form substantially similar to Exhibit "A," attached hereto; and

2. The Metropolitan Exposition-Recreation Commission authorizes the Chair and the Secretary-Treasurer to sign the agreement on behalf of the Commission.

Passed by the Commission on January 26, 2005.

Don Trotter
Chair

George G. Forbes
Secretary-Treasurer

Approved As To Form:
Daniel B. Cooper, Metro Attorney

By: [signature]
Lisa M. Umscheid
Senior Attorney

JEFF MILLER AT WILL EMPLOYMENT AGREEMENT

THIS AGREEMENT is entered into by and between the Metropolitan Exposition-Recreation Commission, a commission created by Chapter 6.01 of the Metro Code (herein referred to as "MERC"), and Jeff Miller (herein referred to as "Miller").

RECITALS

1. MERC requires the services of a General Manager.

2. Miller has the qualifications and the desire to serve MERC as its General Manager.

3. This Agreement shall be effective February 7, 2005, and shall be referred to as the "Jeff Miller At Will Employment Agreement."

NOW, THEREFORE, IN CONSIDERATION of the compensation to be paid by MERC to Miller, 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, MERC hereby employs and Miller hereby accepts employment from MERC for Miller's services as General Manager.

2. **Term of Agreement**. Miller's employment under this Agreement shall begin on February 7, 2005, and shall continue until terminated as provided herein.

3. **Services**. Miller shall faithfully, industriously and to the best of his ability provide his services as General Manager of MERC, and shall perform all duties as may be required of him by the Metro Code, MERC resolutions and policies, and the MERC Commission. Miller shall at all times act in a fiduciary capacity towards the Commission.

4. **Exclusivity**. During the term of this Agreement, and except as otherwise provided herein, Miller shall devote all of his business efforts, time, attention, knowledge, and skills to MERC as its General Manager. Miller shall not actively engage in any other employment, occupation or consulting activity for any direct or indirect remuneration without the prior approval of the MERC Commission. It is understood that if MERC exercises its notice provisions under Paragraph 8.B., Miller can begin to search for other employment while still employed by MERC.

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

MERC 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 MERC or Miller. 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. <u>Compensation</u>.

A. <u>Salary</u>. As compensation for Miller's services, MERC shall pay Miller the sum of $145,000 per year, payable in the same frequency and manner as other MERC employees. Miller's performance and salary shall be reviewed annually by MERC as provided below. Any salary increases shall be based on MERC's annual evaluation of Miller's performance, availability of funding, and on MERC's assessment of inflation and a survey of annual salaries paid to comparable positions. The compensation paid to Miller shall be subject to customary withholding taxes and other taxes as required with respect to compensation paid by MERC to an employee.

B. <u>Benefits</u>. Miller shall receive all normal and regular benefits accruing to MERC non-represented employees as provided in the MERC Personnel Policies. 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. Miller shall be entitled to these benefits under the same terms and conditions as provided for MERC's non-represented employees. Except as otherwise expressly provided in this Agreement, the employee benefits provided to Miller under this section are subject to any addition, reduction or other change made by the MERC Commission to the benefits provided to MERC's non-represented employees. Miller shall have an accrued vacation balance of 80 hours as of February 7, 2005 and shall accrue paid vacation leave of 160 hours per year. In all other respects, Miller's vacation and personal leave shall be governed by the Commission's personnel policies, except that any references requiring approval by "the General Manager" shall require approval by the Chair of the Commission. The parties acknowledge that Miller has a previously planned vacation involving international travel scheduled for the period from February 19, 2005 through March 15, 2005. The Chair of the Commission shall determine whether Miller's absence from MERC during this period shall be covered in part through accrued paid vacation leave or shall be treated as leave without pay.

C. <u>Deferred Compensation</u>. Miller may participate in the Section 457 deferred compensation plan provided by Metro for Metro and MERC employees. If Miller elects to participate in such plan, MERC agrees to match on a dollar for dollar basis Miller's voluntary salary deferral, up to a maximum MERC contribution of 3% of Miller's annual base salary, subject to applicable limitations of federal law.

D. <u>Modifications to Compensation</u>. MERC may change or modify Miller's salary or benefits on three months' written notice to Miller, or at any time by mutual agreement of the parties.

E. Performance Incentives. In addition to the salary and benefits described in this paragraph, beginning with the 2005-2006 fiscal year, Miller shall also be eligible to receive annual performance incentives as described in this subparagraph. Prior to July 1 of each fiscal year, Miller and the MERC Commission, acting through its Executive Committee, shall mutually agree on an annual work plan for Miller for that fiscal year. The work plan shall include measurable performance goals for Miller. The work plan shall provide for a review methodology to measure Miller'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 12% of Miller's annual base salary for the fiscal year. Miller shall not be eligible for a performance incentive bonus for any fiscal year in which he voluntarily terminates his MERC employment. Any performance incentive paid to Miller shall be paid as a lump sum bonus payment, and shall not be added to Miller's base pay.

7. **Performance/Compensation Reviews**. MERC shall annually evaluate Miller's performance as soon as practicable after July 1. No failure to evaluate Miller shall limit MERC's right to terminate Miller as specified in this Agreement.

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.

(i) *Termination for Convenience Before August 8, 2005.* In the event that this Agreement is terminated for convenience by MERC or its lawful successor before August 8, 2005, Miller shall receive six (6) weeks' salary as severance pay, along with the cash value of any accrued and unused vacation leave. In the alternative, MERC, at its sole discretion and option, may elect to give Miller 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) weeks, exclusive of accrued vacation pay.

(ii) *Termination For Convenience On Or After August 8, 2005.* In the event that this Agreement is terminated for convenience by MERC or its lawful successor on or after August 8, 2005, Miller shall receive three (3) months' salary as severance pay, along with the cash value of any accrued and unused vacation leave. In the alternative, MERC, at its sole discretion and option, may elect to give Miller 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 three (3) months, exclusive of accrued vacation pay.

C. Termination for Cause. MERC may terminate this Agreement for "cause" by giving Miller 72 hours' written notice of its intent to terminate for "cause." In the event that MERC elects to terminate this Agreement for "cause," no severance pay shall be due Miller. "Cause" shall include one or more of the following:

(i) Willful failure to follow lawful resolutions or directives of the MERC Commission;

(ii) Willful failure to attempt to substantially perform his duties as General Manager (other than any such failure resulting from his incapacity due to physical or mental impairment);

(iii) Misappropriation of funds or property of MERC;

(iv) Fraud or gross malfeasance;

(v) Conduct of a felonious or criminal nature which would tend to bring discredit or embarrassment to MERC or its operations;

(vi) Commission of any act, the nature of which would tend to bring discredit or embarrassment to MERC or its operations;

(vii) Violation of the Government Standards And Practices Act;

(viii) The habitual use of drugs or intoxicants to an extent that it impairs Miller's ability to properly perform his duties;

(ix) Violation by Miller of any of the written work rules or written policies of MERC.

9. **Disability or Death.**

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

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

10. **Successorship.** This Agreement shall inure to and shall be binding upon MERC's successors, assigns, trustees, etc.

11. **Modification**. This Agreement can only be modified by a written amendment, signed by Miller and the MERC Chair and MERC Secretary-Treasurer. 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 Miller and MERC shall modify this Agreement or affect its meaning in any way.

12. **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.

13. **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.

14. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Miller 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 ____________________, 2005, to be effective immediately.

JEFF MILLER

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METROPOLITAN EXPOSITION-RECREATION COMMISSION

By: ______________________________
Chair

By: ______________________________
Secretary-Treasurer