

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 09-12

For the Purpose of Approving the Employment Separation Agreement and Mutual Release of All Claims between MERC and David Woolson.

WHEREAS, the MERC and David Woolson entered into the David Woolson At-Will Employment Agreement on March 28, 2007 as amended on September 24, 2008; and

WHEREAS, Woolson and MERC have agreed upon an Employment Separation Agreement and Mutual Release of All Claims; and

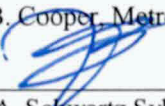
WHEREAS, it is in MERC and David Woolson's best interest to terminate the employment relationship between the parties.


BE IT THEREFORE RESOLVED AS FOLLOWS:

1. That the Metropolitan Exposition Recreation Commission hereby approves the Employment Separation Agreement and Mutual Release of All Claims between MERC and David Woolson in a form substantially similar to Exhibit A attached hereto terminating David Woolson's employment as General Manager with MERC, effective July 2, 2009 and delegates to the Chair of the Commission the authority to execute the Employment Separation and Mutual Release of All Claims.

Passed by the Commission on July 2, 2009.

Approved as to Form:
Daniel B. Cooper, Metro Attorney

By: 
Nathan A. Schwartz Sykes, Senior Attorney


Chair


Secretary-Treasurer

EMPLOYMENT SEPARATION AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

This Employment Separation Agreement and Mutual Release of All Claims (“Agreement”) is entered into between David Woolson (“Woolson”) and the Metropolitan Exposition Recreation Commission, Metro, its parent government (collectively referred to as “MERC”) and all of their administrators, successors, agents, employees, and assigns.

BACKGROUND

- A. Woolson and MERC entered into the David Woolson At-Will Employment Agreement on March 28, 2007 as Amended on September 24, 2008 (“Woolson Agreement”).
- B. Woolson will resign his employment with MERC on July 2, 2009 (the “Resignation Date”).
- C. MERC and Woolson wish to enter into this Agreement to fully resolve all claims arising or that could have arisen between the parties during Woolson’s employment with MERC.

AGREEMENT

The parties agree as follows:

1. Consideration:

In consideration for the Release of All Claims in paragraph 5 below, the obligations in paragraph 6, and the other terms of this Agreement, MERC will pay to Woolson an amount equivalent to three (3) months of his monthly salary, an additional payout of his accrued sick leave through June 30, 2009 and a lump sum payment equivalent to the amount of nine (9) months worth of COBRA payments, for the total sum of \$76,087.31 minus all applicable and lawful withholdings within eight days of the date of this Agreement. Woolson will keep his Blackberry and current cell phone number but must change his phone plan to his own individual plan for which he is financially responsible. MERC makes no guarantees as to the tax status of any payments or other items received by Woolson pursuant to this paragraph. MERC shall mail the above mentioned payment to the home address Woolson has on file with the Metro Human Resources office eight days after Woolson’s execution of this agreement. MERC will place a voice message in Woolson’s voice mail indicating Woolson’s new phone number and an automatic reply to Woolson’s email indicating his new contact information for a period of six months. Woolson agrees that if he is contacted in regard to any MERC business he will immediately direct the person to the Interim MERC General Manager.

2. **Employment:**

Any employment relationship between Woolson and MERC is terminated as of the Resignation Date. The Woolson Agreement shall be terminated as if for convenience under Section 8. Woolson acknowledges that he has received his final paycheck which includes his final wages through the Resignation Date and all accrued but unused vacation pay pursuant to MERC's policies as well as six months of salary in the amount of \$92,181.50 as severance pay required under Section 8 of the Woolson Agreement minus all applicable and lawful withholdings. Woolson acknowledges that he has received all wages owing to him from his employment at MERC and the Woolson Agreement to the date of this Agreement and has no claim that he has not been paid wages in full and in a timely manner.

3. **Benefits:**

Woolson will receive COBRA notification in accordance with applicable law. All other pensions or other benefits will be handled in accordance with the benefit plan documents. MERC agrees that it will report to PERS that Woolson's termination from employment was involuntary. MERC shall make the PERS contribution in accordance with MERC's usual practice on both salary payments provided in paragraphs 1 and 2 above and shall report to PERS that Woolson's separation was an involuntary termination.

MERC shall make contributions to Woolson's 401(k) and 457 accounts in accordance with Woolson's directions.

4. **No Admission of Liability:**

This Agreement and compliance with this Agreement may not be construed as an admission by MERC or Woolson of any liability whatsoever, or an admission by MERC or Woolson of any violation of the rights of the other party or any person, violation of any order, law, statute, duty, or contract whatsoever against either party or any person. Both parties disclaim any liability to the other party or any other person for any alleged violation of the rights of either party or any persons, or for any alleged violation of any order, law, statute, duty, or contract.

5. **Mutual Release of All Claims.**

In consideration for the provisions of this Agreement, the parties and on behalf of their heirs, executors, administrators, successors and assigns, fully and forever release, acquit and discharge the other party including all administrators, successors, councilors, commissioners, agents, employees, and assigns of and from any and all claims, demands, damages, causes of action, and any and all known and unknown personal injuries, property damages and claims therefore, which were or which could have been asserted by either party or which are in any way related to the transactions and occurrences

constituting Woolson's employment with MERC including Woolson's resignation of employment. This Mutual Release includes, but is not limited to, any grievances, claims, actions, or suits which have or might have been asserted under common law (including but not limited to any claims for defamation, libel or slander), the Oregon Fair Employment Practices Act, Oregon Revised Statutes, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Fair Labor Standards Act, the Equal Pay Act, the Age Discrimination in Employment Act ("ADEA"), the Employee Retirement Income Security Act, the Americans with Disabilities Act, Executive Order 11246 as amended, any and all local, state, or federal civil rights statutes or ordinances, including 42 U.S.C. §§ 1981, 1983 and 1985, and ORS Chapters 659 and 659A, as well as under any and all other federal, state, or local statutes, ordinances, regulations, constitutions, or executive orders, and under any personnel rules, employee handbooks or employment contracts, collective or individual (express or implied) otherwise governing or allegedly governing the employment relationship previously existing between MERC and Woolson, whether such claims arose or may have arisen individually, through a governmental agency, class of employees or union representation. Woolson specifically withdraws and/or agrees not to file any grievances that have been filed or could be filed pursuant to any personnel rules, employee handbooks, or collective bargaining agreement. Woolson hereby waives any and all reinstatement rights under any policies, contracts, laws, statutes, or administrative regulations whatsoever. Woolson agrees that Woolson will return to MERC any keys, ID badges, or other property of MERC, which may have been in Woolson's possession, no later than July 2, 2009. This release does not release any claims arising after the date of this Agreement or any claims against Woolson that would not require indemnification under the Oregon Tort Claims Act for any conduct outside the course and scope of his employment.

6. **Cooperation:**

In the event that litigation should arise in which MERC reasonably determines that Woolson's cooperation and assistance would be desirable, Woolson will cooperate in the defense or prosecution of such litigation, subject to the payment of reasonable expenses. In the event that litigation should arise in which Woolson is named as an individual defendant as a result of work performed in the course and scope of his employment with MERC, MERC shall defend and indemnify him in such litigation to the same extent as if Woolson's employment with MERC had not terminated.

7. **Resignation Approval.**

Woolson and MERC will agree upon an announcement of resignation for disclosure to the public and internally to MERC.

8. **Knowing and Voluntary Waiver.**

This Employment Separation Agreement and Release of all Claims is subject to the terms of the Older Workers Benefit Protection Act of 1990 ("OWBPA"). The OWBPA provides that an individual cannot waive a right or claim under the Age Discrimination in Employment Act ("ADEA") unless the waiver is knowing and voluntary. Pursuant to the terms of the OWBPA, Woolson acknowledges and agrees that he has executed this Agreement voluntarily, and with full knowledge of their consequences. In addition, Woolson hereby acknowledges and agrees as follows:

- a. This Agreement has been written in a manner that is calculated to be understood, and is understood by Woolson;
- b. This Agreement applies to any rights Woolson may have under the ADEA;
- c. This Agreement does not apply to any rights or claims Woolson may have under the ADEA that arise after the date he executes this Agreement;
- d. MERC hereby advises Woolson to consult with an attorney prior to executing this Agreement;
- e. MERC is giving Woolson a period of twenty-one (21) days to consider this Agreement. Woolson may accept and sign this Agreement before the expiration of the twenty-one (21) day period, but he is not required to do so by MERC; and
- f. For a period of seven (7) days following the signing of this Agreement, Woolson may revoke this Agreement by delivering or mailing by Certified Mail, Return Receipt Requested, such revocation to Daniel B. Cooper, Metro Attorney, 600 NE Grand Avenue, Portland, Oregon 97232-2736. Woolson understands that this Agreement shall not become effective or enforceable until that seven (7) day revocation period has expired, and that no consideration shall transfer to Woolson, or otherwise be due under the Agreement, until that seven (7) day revocation period has expired.

9. Unemployment.

Woolson may make application for unemployment compensation benefits and represent that that his resignation was requested. MERC agrees not to challenge his application for unemployment benefits. MERC acknowledges that whether he qualifies for such benefits is a matter between himself and the State, and that MERC is not in a position to guarantee him such benefits.

10. Right To Seek Counsel:

Woolson represents that he had an opportunity to seek legal advice before he signed this Agreement. Woolson also represents that he has reviewed all aspects of this Agreement including the Release of All Claims, that he carefully read and fully understands the provisions of this Agreement, that he understands that in agreeing to this documents he is

releasing MERC from any and all claims he may have against MERC, that he voluntarily agrees to all the terms set forth in this Agreement, that he knowingly and willingly intends to be legally bound by the same, and that the terms of this Agreement were determined through negotiation between Woolson and MERC.

11. Entire Severance and Release:

The Agreement constitutes the entire Agreement between Woolson and MERC. No other promises or agreements are binding unless in writing and signed by all parties to the Agreement. This Agreement must be authorized by a vote of MERC in a public meeting and will be a public record.

12. Severability.

The parties agree that any provision of this Agreement that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The parties further agree that this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of them and the remaining provisions of the documents shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid and enforceable shall be automatically added to this Employment Separation Agreement and Release of All Claims in lieu of the illegal, invalid, or unenforceable provision. Any failure by MERC to enforce a provision of the Agreement is not to be construed as a waiver by MERC of this right to do so.

13. Non-Use:

Woolson and MERC agree that the Agreement may not be used as evidence in any subsequent proceeding of any kind (without written consent of all other parties) except one that any of the parties to this Agreement institutes alleging a breach of this Agreement.

14. Binding on Assigns and Successors:

This Agreement is binding upon the parties hereto and upon their heirs, administrators, representatives, executors, successors, and assigns, and will inure to the benefit of said parties and each of them and to their heirs, administrators, representatives, executors, successors and assigns. Both parties expressly warrant that they have not transferred to any person or entity any rights, causes of action, or claims released in this Agreement.

15. Controlling Law:

This Agreement was entered into in the State of Oregon. This Agreement will be interpreted, construed, and enforced in accordance with the laws of the State of Oregon. Both parties agree that exclusive jurisdiction for any claim under this Agreement will be in Multnomah County, Oregon.

16. Counterparts:

This Agreement may be executed in counterparts or multiples, any one of which will have the force of any original.

IT IS SO AGREED.

**METROPOLITAN EXPOSITION-
RECREATION COMMISSION**

DAVID WOOLSON

By _____
MERC, Chair

David Woolson

Date: _____

Date: _____