

METRO - OREGON CITY - REDISCOVER THE FALLS INTERIM AGREEMENT

This Interim Agreement (“Agreement”), effective _____, 2016, is by and between Metro, a municipal corporation (“Metro”), The City of Oregon City, a municipal corporation (“Oregon City”), and Rediscover the Falls (“RTF”), an Oregon non-profit public benefit corporation. Metro and Oregon City are collectively referred to in this document as the “Public Partners.” Metro, Oregon City, and RTF are each a “Party,” and collectively referred to in this document as the “Parties.”

RECITALS

A. Since February 2011, commencing with the Chapter 7 bankruptcy liquidation of the Blue Heron Paper Company mill, located at 419/427 Main Street, Oregon City, Oregon (the “Project Site”), the Public Partners have been cooperating to determine the future of the Project Site.

B. The Project Site has the potential to serve as a gateway to Willamette Falls on the Willamette River, which falls are directly adjacent to the Project Site, and to make a positive impact on the future of Oregon City and the surrounding region.

C. Guided by the four core values of healthy habitat, public access to Willamette Falls, historic and cultural interpretation, and economic development (the “Four Core Values”), the Public Partners, in collaboration with the State of Oregon and Clackamas County, have commenced work to design public open space and a pedestrian parkway on the Project Site that will provide unobstructed views of the Willamette River and Willamette Falls (the “Riverwalk”), and they have started to address the infrastructure and economic development needs of the entire Project Site. These work efforts are known collectively as the “Willamette Falls Legacy Project.”

D. The Parties acknowledge that the success of the Willamette Falls Legacy Project will require significant public and private support. The Parties desire to enter into this Agreement in order to for the Public Partners to help launch RTF as a thriving volunteer support group for the Willamette Falls Legacy Project, and for the Parties to begin to establish the terms of the ongoing working relationship between RTF and the Public Partners.

AGREEMENT

In consideration of the foregoing, and the mutual and reciprocal covenants, obligations and benefits established herein, and other good and valuable consideration hereby acknowledged, the Parties agree as follows:

1. **Term of Agreement.** This Agreement shall become effective when signed by all Parties (the “Effective Date”) and shall terminate on June 30, 2017, unless extended by written amendment signed by the Parties. This Agreement is intended to be an interim agreement to govern the relationship of the Parties during negotiation of a future long term agreement, as described below.

2. **Future Long Term Agreement.** During the term of this Agreement, the Parties shall negotiate a potential future agreement among the Parties that would commence following the term of this Interim Agreement. As of the Effective Date, the future agreement is anticipated to address: (a) fundraising and distribution of funds raised among the Parties; (b) outreach and communications; (c) any future funding by the Public Partners; (d) use of websites, trademarks, and other media; and (e) RTF’s mission and governance in relation to the Willamette Falls Legacy Project and the Public Partners. Each Party may elect to enter into any future long term agreement in their sole and absolute discretion.

3. **Responsibilities of RTF.**

3.1 Corporate and Tax-Exempt Status. RTF shall use reasonable efforts to obtain recognition from the Internal Revenue Service of its tax exempt status under Section 501(c)(3) of the Internal Revenue Code, and once obtained, to maintain such status. RTF shall maintain articles of incorporation establishing that the sole purpose of RTF is to support and benefit the Willamette Falls Legacy Project. RTF shall promptly provide the Public Partners with written notice and an updated copy of its articles of incorporation and corporate bylaws any time they are amended, restated or otherwise changed.

3.2 Books and Records. RTF shall maintain all of its records relating specifically to this Agreement, such as accounting records and receipts for costs incurred, on a generally recognized accounting basis, on its own equipment, and allow the Public Partners the opportunity to inspect and/or copy such records at a convenient place during normal business hours.

3.3 Donor Database. RTF shall create a donor database which shall not be considered part of the books and records that the Public Partners may inspect pursuant to Section 3.2, above. The Public Partners shall provide RTF with its lists of interested parties that the Public Partners have collected at various public events prior to the Effective Date.

3.4 Strategic Plan. RTF shall create a strategic plan by the expiration of the term of this Agreement. The elements of the strategic plan shall be subject to the prior approval of each Party (the “Strategic Plan”).

3.5 Reporting. RTF shall prepare an annual report of its activities and accomplishments by the expiration of the term of this Agreement.

3.6 Board Meetings. RTF shall provide the Public Partners reasonable advance notice of its board meetings.

3.7 Funding Feasibility Study. RTF shall develop a funding plan to pay for a fundraising feasibility study that will set a course for RTF's fundraising efforts.

4. **Budget; Funding.** The budget agreed upon by the Parties that will allow RTF to fulfill its responsibilities described above and elsewhere in this Agreement is attached as Exhibit A to this Agreement (the "Interim Budget"). Any amendments or deviations from the Interim Budget by RTF shall require the prior written approval of the Public Partners.

4.1 Metro shall pay RTF Thirty-Five Thousand Dollars (\$35,000), in accordance with and in consideration for the work and services set forth in the Interim Budget.

4.2 Oregon City shall pay RTF Fifty Thousand Dollars (\$50,000), in accordance with and in consideration for the work and service set forth the Interim Budget.

4.3 RTF shall provide the Public Partners monthly statements showing its income and expenses for the prior month. The form of this statement shall be agreed upon by the parties and is intended to be a simple format produced by RTF's accounting software. When requesting reimbursement for work completed, RTF shall invoice both Metro and Oregon City, including an itemized statement of the work performed or costs incurred, and for which reimbursement is sought. Payment to RTF for approved and completed work will be made within 30 days of approval of the invoice.

5. **Fundraising.**

5.1 Grant Funding. With the prior written approval of the Public Partners, RTF may apply to government entities or private foundations for grants that are available only to non-governmental entities, such as RTF. If RTF is successful in its applications and awarded any such grants, it shall use the funds in accordance with the terms of the grant.

5.2 Private Donations. If RTF receives any private donations, it shall report the amount of the donation to the Public Partners, and the Parties shall meet to agree upon the distribution of the donation as between the Willamette Falls Legacy Project and RTF. In any such distribution, at least five percent (5%) of the private donation shall be dedicated to tasks that develop RTF's organizational and fundraising capacity. The parties shall thereafter amend the Interim Budget to reflect the addition of the private donation to RTF's operating budget over the term of this Agreement and to set forth the work or costs for which the increased funds provided by the donation will be used.

6. **RTF Insurance.** RTF shall provide the Public Partners with a certificate of insurance complying with this Agreement within thirty (30) days after the Effective Date. Notice of any material change or policy cancellation shall be provided to the Public Partners thirty (30) days prior to any change. All policies shall name Metro and Oregon City, and their elected officials, officers, employees and agents, as additional insureds. RTF's coverage will be primary as respect to Metro and Oregon City.

6.1 The most recently approved ISO (Insurance Services Offices) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits of not less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate, providing coverage against claims for bodily injury, death, personal injury, property damage, contractual liability, premises and products/completed operations. This insurance is required for RTF as an organization only if RTF hosts events. Coverage of RTF staff through independent contractors' coverage is otherwise acceptable to comply with this paragraph.

6.2 Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, combined single limit for bodily injury and property damage including coverage for owned, non-owned, and hired vehicles, including loading and unloading operations. If coverage is written with an aggregate limit, the aggregate limit shall not be less than \$1,000,000. Coverage of RTF staff through independent contractors' coverage is acceptable to comply with this paragraph.

6.3 Nonprofit Directors and Officers Insurance to protect the directors, officers and board members (past, present, and future) of RTF.

7. Responsibilities of the Public Partners.

7.1 The Public Partners shall invite RTF to all Riverwalk and Willamette Falls Legacy Project public and VIP events.

7.2 The Public Partners shall keep RTF apprised of developments in the design of the Riverwalk and include RTF in the design process, including without limitation, providing a design update at every RTF board meeting. Oregon City and Metro shall each send at least one staff representative to all RTF board meetings.

7.3 The Public Partners shall provide the funds as set forth on the Interim Budget and endeavor to provide non-monetary support to RTF upon reasonable advance notice, including, without limitation, assistance with development of a funding plan and advice on potential grant funding sources.

8. Communications.

8.1 Project Communications. RTF acknowledges and agrees that the Public Partners lead the Willamette Falls Legacy Project's communications strategy. All public communications by RTF regarding the Riverwalk and the Willamette Falls Legacy Project will be subject to the prior approval of the Public Partners. The Public Partners shall provide RTF with the key project messages, and RTF agrees to adhere to these messages in its communications. RTF shall permit the Public Partners to review and approve any promotional materials prepared by RTF. For the term of this Agreement, Metro grants permission to RTF to use the name "Rediscover the Falls."

8.2 RTF Communications. The Public Partners shall provide RTF with the opportunity to review publicity and printed materials produced by the Public Partners regarding RTF, and to review and approve communications regarding RTF by the Public Partners.

9. **Termination**. This Agreement may be terminated by any Party for cause, subject to the requirements set forth in this section.

9.1 Termination for Cause. If any Party determines that a material breach of the terms of this Agreement has occurred, the aggrieved Party shall promptly provide written notice of such breach to the other parties, reasonably documenting said breach and demanding that the breach be cured. The breaching Party shall thereafter cure said breach within 10 days of receipt of said notice. If the breaching Party fails to so cure, or under circumstances where the breach cannot reasonably be cured within a 10-day period, fails to begin curing such violation within the 10-day period, or after 10 days has expired fails to continue diligently to cure the breach until finally cured, the aggrieved Party may, at its sole discretion, immediately terminate this Agreement. The exercise of this termination right shall not extinguish or prejudice the terminating Party's right to seek damages and enforcement of the terms of this Agreement in a court of competent jurisdiction with respect to any breach that has not been cured.

9.2 Dissolution. In the event RTF must dissolve, after payment or provision for payment of all RTF liabilities, the assets of RTF shall be distributed to Oregon City and Metro equally to be used for purpose of the Willamette Falls Legacy Project. Upon termination of this Agreement, if no long term Agreement is in place, RTF shall dissolve and cease fundraising for the Willamette Falls Legacy Project.

10. **Indemnification**.

10.1 RTF agrees to defend, indemnify and hold harmless Metro and Oregon City, their elected officials, officers, agents and employees, against all loss, damages, expenses, and liability, whether arising in tort, contract or by operation of any statute or common law, relating to or arising out of RTF's performance of, or failure to perform, this Agreement.

10.2 Metro shall defend, indemnify and hold harmless RTF and Oregon City and their officers, agents and employees, against all loss, damage, expenses, judgments, claims and liability, whether arising in tort, contract or by operation of any statute or common law, arising out of or in any way connected to Metro's performance of, or failure to perform, this Agreement, subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30.

10.3 Oregon City shall defend, indemnify and hold harmless RTF and Metro, and their officers, agents and employees, against all loss, damage, expenses, judgments, claims and liability, whether arising in tort, contract or by operation of any statute or common law, arising out of or in any way connected to Metro's performance of, or failure to perform, this Agreement, subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30.

10.4 The foregoing indemnification, defense, and hold harmless provisions are for the sole and exclusive benefit of the Parties, and their respective elected officials, officers, employees, and agents, and shall survive termination or expiration of this Agreement. They are not intended, nor shall they be construed, to confer any rights on or liabilities to any person or persons other than the Parties and their respective elected officials, officers, employees and agents.

11. **Miscellaneous Provisions.**

11.1 Authorization. The Parties have obtained all approvals required by law, bylaws, operating agreements, and pertinent corporate documents in order to enter into this Agreement. Approval of the Public Partners shall mean the approval of both Kathleen Brennan-Hunter, Director of Metro's Parks and Nature Department, and Tony Konkol, City Manager of the City of Oregon City. Metro or Oregon City may change its authorized representative at any time upon written notice to the other Parties.

11.2 No Joint Venture; Several Obligations. The Parties agree that, during the term hereof, each Party shall act in its individual capacity and not as agents, employees, partners, joint ventures or associates of one another, and that nothing in this Agreement, nor the Parties' acts or failures to act hereunder, shall constitute or be construed by the parties, or by any third person, to create an employment, partnership, joint venture, association or joint employer relationship between them. The Parties agree that, as independent and separate entities, each shall maintain a management structure independent of the other during the term hereof. The agreements of Metro and Oregon City under this Agreement are several (and not joint) in all respects.

11.3 Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the matter addressed herein, and supersedes all prior or contemporaneous oral or written communications, agreements or representations relating to its subject matter. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by all Parties. The failure of a Party to enforce any provision of this Agreement shall not constitute a waiver by any Party of that or any other provision.

11.4 Notices. Notices will be deemed received upon personal service or upon deposit in the United States Mail, certified mail, postage prepaid, return receipt requested addressed as follows:

To RTF: Rediscover the Falls
 PO Box 2588
 Oregon City, OR 97045

To Metro: Metro
 Office of Metro Attorney
 600 NE Grand Avenue
 Portland, Oregon 97232-2736

Phone No. (503) 797-1534

To Oregon City: City of Oregon City
Office of the City Manager
PO Box 3040
Oregon City, OR 97045
Phone No. (503) 496-1582

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the Party for whom it is intended. Telephone numbers are for information only.

11.5 No Benefit to Third Parties. Metro, Oregon City and RTF are the only Parties to this Agreement and as such are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

11.6 Severability. If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part, or in any other respect, then such provision or provisions shall be deemed null and void and shall not affect the validity of the remainder of the Agreement, which shall remain operative and in full force and effect to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Agencies have executed this AGREEMENT effective as of the date set forth above.

METRO

REDISCOVER THE FALLS

By: _____
Martha J. Bennett

By: _____
Name: _____

Title: Chief Operating Officer

Title: Board Chair

OREGON CITY

By: _____
Name:
Title:

EXHIBIT A

Interim Budget

In total, Metro and Oregon City have expressed willingness to each provide \$50,000 to Rediscover the Falls for staffing and other seed funding expenses.

- Prior to the effective date of this Agreement, Metro has paid \$15,000 of its \$50,000 to RTF and has \$35,000 remaining
- Oregon City has \$50,000 available

Sources and uses of funds

Project costs		Project funds		
Budget item	Cost	Metro Funds	Oregon City Funds	Total funds
Interim ED contract (spent)	\$10,000	\$10,000 ¹	\$0	\$10,000
Miscellaneous admin expenses already incurred (spent) ²	\$5,000	\$5,000	\$0	\$5,000
Staffing	\$50,000	\$18,000	\$32,000	\$50,000
Insurance and other	\$4,000	\$2,000	\$2,000	\$4,000
Technology and donor management	\$5,000	\$2,500	\$2,500	\$5,000
Match or seed for fundraising feasibility assessment	\$20,000	\$10,000	\$10,000	\$20,000
Printing and supplies	\$1,000		\$1,000	\$1,000
Contingency	\$5,000	\$2,500	\$2,500	\$5,000
Total	\$100,000	\$50,000	\$50,000	\$100,000

¹ Final \$1000 will be disbursed on September 15, 2016 once the interim ED contract is completed

² IRS filing costs, consultant work for board selection and refreshments for RTF meetings early on

Disbursement schedule

Date	Funding Amount	Uses for funds	Deliverables to be completed before disbursement (or prior to next disbursement as indicated by an *asterisk)	Metro funds	Oregon City funds
Execution of this contract (9/30/16)	\$25,000	Staffing	Staffing roles and responsibilities determined by contract execution more specific budget for \$85,000 submitted	\$10,000	\$15,000
Execution of this contract (9/30/16)	\$10,000	insurance technology and supplies	Directors and Operators insurance purchased by 10/30/16* Donor database and independent electronic records established by 11/30/16*	\$4,500	\$5,500
January 2017	\$25,000	Staffing	Completion of RTF strategic plan Commencement of conversations about process for long term agreement	\$8,000	\$17,000
March 2017 or when requested	\$20,000	Contribution to fundraising feasibility study	Funding plan for fundraising feasibility study completed Continued discussion on plans for longer term agreement with WFLP	\$10,000	\$10,000
Date TBD ³	\$5,000	Contingency	For reimbursement of unanticipated expenses incurred by RTF and approved by the Public Partners. If not requested by March 2017, funds will be added to staffing or feasibility study budget, upon request by RTF	\$2,500	\$2,500
Total	\$85,000			\$35,000	\$50,000

³ Can be requested by RTF at any point until June 30, 2017, but needs approval from Public Partners

Deliverables: Work

- 1) Continued work on long term agreement. This agreement is expected to cover, at a minimum:
 - a) future funding
 - b) fundraising
 - c) communications
 - d) mission in relation to the public project
- 2) RTF strategic plan, which is expected to include the following, as approved by the Parties:
 - a) Staffing models
 - b) Administrative overhead (i.e. office)
 - c) Funding plan
 - d) shared communications with WFLP
 - e) capacity building
- 3) Pursue funding for a fundraising feasibility study
- 4) RTF establishes a donor database and an independent electronic records
- 5) Budget for use of \$85,000 and annual budget for all funds including \$85,000