

AMENDMENT AND RESTATEMENT OF INTERIM AGREEMENT

This Amendment and Restatement of Interim Agreement (this “Amendment”) is entered into effective as of _____, 2017 (the “Effective Date”), by and among Metro, an Oregon municipal corporation (“Metro”), The City of Oregon City, an Oregon municipal corporation (“Oregon City”), Clackamas County, an Oregon municipal corporation (the “County”), and Rediscover the Falls, an Oregon nonprofit public benefit corporation (“RTF”). Metro, Oregon City, the County, and RTF may be referred to herein individually as a “Party,” or collectively as the “Parties.” Metro, Oregon City, and the County are collectively referred to in this Amendment as the “Public Partners.”

RECITALS

A. Metro, Oregon City, and RTF are parties to an Interim Agreement effective October 27, 2016 (the “Original Agreement”), which provided grant funding to RTF to help launch RTF as a volunteer support group for the Willamette Falls Legacy Project, which project will, among other things, create public open space and a pedestrian parkway on the former site of the Blue Heron Paper Mill in Oregon City to provide the public unobstructed views of the Willamette River and Willamette Falls (the “Legacy Project”).

B. RTF has fully complied with the requirements of the Original Agreement, and now would like additional grant funding to launch its first capital campaign to support a first phase of the Legacy Project, known as the “riverwalk.”

C. In addition, the County desires to be added as a party to the Original Agreement in order to help support the work of RTF.

D. For the sake of clarity, the Parties now desire to enter into this Amendment for the purpose of amending and restating the Original Agreement, on the terms and conditions set forth below.

AMENDMENT

In consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the Parties agree as follows:

1. Restatement; Term of Agreement. The Original Agreement is amended and restated in its entirety as set forth in this Amendment. The term of this Amendment shall commence on the Effective Date and expire on June 30, 2018.

2. Future Long Term Agreement. During the term of this Amendment, the Parties will negotiate a potential future agreement among the Parties that would commence following the term of this Amendment. 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 in relation to the 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. Organization and Capacity Building.

3.1. Corporate and Tax-Exempt Status. RTF shall maintain its tax exempt status under Section 501(c)(3) of the Internal Revenue Code. RTF shall maintain articles of incorporation establishing that the sole purpose of RTF is to support and benefit the 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 Amendment, such as accounting records and receipts for costs incurred, on a generally recognized accounting basis, on its own equipment. RTF shall prepare and maintain a budget that will allow completion of the requirements of this Amendment. The Public Partners shall have the opportunity to inspect and/or copy such records at a convenient place during normal business hours.

3.3. Update Strategic Plan. RTF shall update its strategic plan, which strategic plan will include: (a) a plan for carrying out a private fundraising campaign to support the first and second phases of the riverwalk; (b) a plan to advance community engagement relating to the Legacy Project; and (c) a plan to ensure RTF is a fully functioning and sustainable organization over the long term.

3.4. Develop Business Plan. RTF shall develop a business plan, which plan will: (a) prioritize using RTF's financial resources to ensure organizational capacity and fundraising success; (b) develop mid- and long-term RTF operational funding plans (not connected to any capital campaign); (c) identify "friend-raising" rationale, roles and goals; and (d) identify achievable level of community engagement by RTF, such as Friday site tours, donor prospecting, leadership recruitment, and other events.

3.5. Update RTF Leadership Structure. RTF shall endeavor to increase the number of people on its governing board and shall establish a fundraising campaign committee.

3.6. Annual Report. RTF shall prepare an annual report of its activities and accomplishments and deliver the annual report to the Public Partners on or prior to the expiration of the term of this Amendment.

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

4. Capital Fundraising & Development.

4.1. Donor Database; Donor Prospecting Pipeline. During the term of this Amendment, RTF shall maintain and expand its donor database, and develop and implement a donor prospecting pipeline (including identification of likely donors, identification of steps necessary to progress likely donors to actual donors, demonstration of actions taken to secure

donors, and report of successful donations). The Parties shall establish a minimum goal for donors and/or donations to be obtained during the term of this Amendment.

4.2. Riverwalk Projects; Fundraising Plan. By December 31, 2017, and in collaboration with the Public Partners, RTF shall develop a list of capital projects connected to the riverwalk that may be eligible for fundraising by RTF. Once agreed upon, RTF shall revise and test the fundraising feasibility of this capital projects list. Based on the results of this fundraising feasibility analysis, RTF shall (a) finalize its capital campaign fundraising goal, (b) create and begin implementation of a capital fundraising plan to raise funds for the capital projects with the highest likelihood of success, utilizing the donor database and donor prospecting pipeline, and (c) take all reasonable steps to secure and obtain the Five Million Dollar lead grant whose sponsor has, as of the date of this Amendment, indicated interest in providing to RTF for the Legacy Project.

4.3. Use of Donated Funds. It is the understanding of the Parties that any funds and donations secured by RTF during the term of this Amendment may be used to support the organizational capacity of RTF while maximizing support for the riverwalk and the capital project(s) for which the funds were donated.

5. Responsibilities of the Public Partners.

5.1. The Public Partners shall invite RTF to all riverwalk and Legacy Project public and VIP events.

5.2. The Public Partners shall keep RTF apprised of developments in the permitting and construction of the riverwalk and include RTF in the process, including without limitation, providing an update at every RTF board meeting. Oregon City, the County and Metro shall each send at least one staff representative to all RTF board meetings.

5.3. Promptly following execution of this Amendment, Oregon City shall provide RTF with a \$50,000 grant payment. At the end of the first quarter, second quarter and third quarter of the term of this Amendment, RTF shall send a statement to the Public Partners describing work and deliverables completed during such quarter. After receipt of each statement, Metro and/or the County shall provide grant payments to RTF in accordance with the procedures described in Exhibit A attached to this Amendment and the schedule of grant payments below. Statements shall include the information set forth on Exhibit A to this Agreement, and shall be submitted to the Public Partners in accordance with the procedures set forth on Exhibit A.

Execution of Agreement:	\$50,000 – to be paid by Oregon City
1st Quarter (July-Sept.):	\$40,000 – to be paid by Metro
2nd Quarter (Oct.-Dec.):	\$30,000 – to be paid by the County
3rd Quarter (Jan.-March):	\$30,000 – to be paid 1/3 by Metro and 2/3 by the County

6. Communications.

6.1. Project Communications. RTF acknowledges and agrees that the Public Partners lead the Legacy Project's communications strategy. All public communications by RTF

regarding the riverwalk and the 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. Metro grants permission to RTF to use the name “Rediscover the Falls.”

6.2. 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.

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

7.1. Termination for Cause. If any Party determines that a material breach of the terms of this Amendment 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 withdraw as a party to this Amendment, or if there are only two parties to the Amendment, terminate this Amendment. 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 Amendment in a court of competent jurisdiction with respect to any breach that has not been cured.

7.2. Dissolution. If RTF must dissolve, after payment or provision for payment of all RTF liabilities, the assets of RTF shall be distributed forty percent (40%) each to Oregon City and Metro, and twenty percent (20%) to the County, to be used by the Public Partners for the purpose of the Legacy Project. Upon termination of this Amendment, if no long term agreement is in place, RTF shall dissolve and cease fundraising for the Legacy Project.

8. Insurance. RTF shall provide the Public Partners with a certificate of insurance complying with this Section 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, the County and Oregon City, and their elected officials, officers, employees and agents, as additional insureds. RTF’s coverage will be primary as respect to Metro, the County and Oregon City.

8.1. 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.

8.2. 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.

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

9. Indemnification.

9.1. RTF agrees to defend, indemnify and hold harmless Metro, Oregon City, and the County, 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, its promises in this Amendment.

9.2. The County shall defend, indemnify and hold harmless RTF, Oregon City, 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 the County's performance of, or failure to perform, its promises in this Amendment, subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30.

9.3. Metro shall defend, indemnify and hold harmless RTF, the County 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, its promises in this Amendment, subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30.

9.4. Oregon City shall defend, indemnify and hold harmless RTF, the County, 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, its promises in this Amendment, subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30.

9.5. 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 Amendment. 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.

10. Miscellaneous Provisions.

10.1. 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 Don Robertson, Interim Director of Metro's Parks and Nature Department, and Tony Konkol, City Manager of the City of Oregon City, and Gary Barth, Business and Community Services Director of Clackamas County. Metro, the County, or Oregon City may change its authorized representative at any time upon written notice to the other Parties.

10.2. 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 Amendment, 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, the County, and Oregon City under this Amendment are several (and not joint) in all respects.

10.3. Entire Agreement. This Amendment 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 Amendment shall bind any 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.

10.4. 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

To Oregon City: City of Oregon City
Office of the City Manager
PO Box 3040
Oregon City, OR 97045

To County: Clackamas County
 Business & Community Services
 150 Beaver Creek Road
 Oregon City, OR 97045

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.

10.5. No Benefit to Third Parties. Metro, Oregon City, the County and RTF are the only Parties to this Amendment and as such are the only Parties entitled to enforce its terms. Nothing in this Amendment 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.

10.6. Severability. If any one or more of the provisions of this Amendment 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 Amendment, which shall remain operative and in full force and effect to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

METRO

REDISCOVER THE FALLS

By: _____
Martha J. Bennett, Chief Operating Officer

By: _____
Shelly Parini, Executive Director

OREGON CITY

CLACKAMAS COUNTY

By: _____
Anthony J. Konkol, III, City Manager

By: _____
Don Krupp, County Administrator

EXHIBIT A

Invoice Requirements

1. RTF shall send its statements to Metro, Oregon City, and the County.
 - To Metro: the statement shall be sent to brian.moore@oregonmetro.gov and metroaccountspayable@oregonmetro.gov, and the statement shall include the Metro contract number and RTF's name in the email subject line.
 - To Oregon City: the statement shall be sent to kreid@orccity.org.
 - To County: the statement shall be sent to LZentner@clackamas.us, and the statement shall include RTF's name in the email subject line.
2. The statement shall include:
 - The Metro contract number
 - RTF's name, remittance address, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of work performed and deliverables completed during the prior quarter.
3. With respect to the grant payments to be made by Metro, or Metro and the County, per the schedule below, Metro and the County (as applicable) shall make the payment on a Net 30 day basis upon approval of the invoice.

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