

WILLAMETTE FALLS LEGACY PROJECT

REDISCOVER THE FALLS

2018-19 GRANT AGREEMENT

This Grant Agreement (this "Agreement") is entered into effective as of July 1, 2018 (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 Agreement as the "Public Partners."

RECITALS

A. RTF is 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 (the "Property") to provide the public unobstructed views of the Willamette River and Willamette Falls (the "Legacy Project").

B. The Public Partners have supported the creation and growth of RTF, and wish to provide additional grant funding to help RTF launch its first capital campaign to support the first phase of the Legacy Project, known as the "riverwalk."

AGREEMENT

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

1. **Term.** The term of this Agreement commences on the Effective Date and expires on June 30, 2019.

2. **Capital Fundraising & Development.**

2.1. **Capital Projects List.** RTF will create a list of capital projects connected with the riverwalk for which RTF will seek funding ("Capital Projects List"). The Capital Projects List will be based on the most current plans for the riverwalk. Notwithstanding anything to the contrary, the Public Partners retain the authority to determine the sequence of construction of the riverwalk, in the Public Partners' sole discretion.

2.2. **Campaign Case Statement.** RTF will develop a capital campaign case statement (the "Campaign Case Statement"), which will describe the scope and goals of a capital fundraising campaign for the riverwalk.

2.3. **Campaign Action Plan.** RTF will create a campaign action plan, which will identify and describe the activities to be undertaken as part of RTF's capital campaign (the "Campaign Action Plan"). The Campaign Action Plan will include the following elements: a

campaign pyramid, top 100 qualified prospects, a communications plan, feasibility analysis, foundation strategy, individualized solicitation strategies, metrics for measurable progress, milestones for reporting, and a donor packet (including project overview, budget, letters of support, media articles, etc.)

2.4. Collaboration; Implementation. RTF will develop the Capital Projects List, the Campaign Case Statement, and the Campaign Action Plan and its elements in collaboration with the Public Partners, and these deliverables will be subject to the prior review and approval of the Public Partners. Following completion and approval by the Public Partners of the Capital Projects List, Campaign Case Statement, and Campaign Action Plan, RTF will begin implementation of the Campaign Action Plan.

2.5. Use of Donated Funds. RTF will use any funds and donations secured by RTF to support the organizational capacity of RTF while maximizing support for the riverwalk and the capital project(s) for which the funds were donated. No more than 20% of the funds and donations raised will be used for RTF's administrative operation costs or expenses.

3. Organizational Development.

3.1. Develop Business Plan. RTF will 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" roles and goals; and (d) identify achievable level of community engagement by RTF, such as site tours, donor prospecting, leadership recruitment, and other events.

3.2. Update RTF Leadership Structure. RTF will endeavor to increase the number of people on its governing board by at least 3 and not more than 12.

3.3. Policies and Procedures. RTF will develop comprehensive financial, investment, and giving policies and procedures in accordance with non-profit best practices.

4. Organizational Maintenance.

4.1. Corporate and Tax-Exempt Status. RTF will maintain its tax exempt status under Section 501(c)(3) of the Internal Revenue Code. RTF will maintain articles of incorporation establishing that the sole purpose of RTF is to support and benefit the Legacy Project. RTF will promptly provide the Public Partners with written notice and an updated copy of its articles of incorporation and corporate bylaws if they are amended, restated or otherwise changed.

4.2. Books and Records. RTF will maintain all of its records relating to this Agreement, such as accounting records and receipts for costs incurred, on a generally accepted accounting principles, on its own equipment. RTF will prepare and maintain a budget that will allow completion of the requirements of this Agreement. The Public Partners will have the opportunity to inspect and/or copy such records. In addition, the public partners will be provided an electronic copy of a financial report on a quarterly basis.

4.3. Annual Report. RTF will 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 Agreement.

4.4. Board Meetings. RTF will provide the Public Partners reasonable advance notice of its board meetings.

5. **Approvals; Approval Standards.** The Legacy Project Manager may, on behalf of the Public Partners, approve or disapprove deliverables provided by RTF under this Agreement. As of the Effective Date, the Legacy Project Manager is Brian Moore, brian.moore@oregonmetro.gov. The Public Partners may change the party authorized to issue approvals on their behalf by written notice delivered to RTF signed by all of the Project Partners. Except where expressly stated elsewhere in this Agreement, approval by Public Partners' of any RTF deliverable will not be unreasonably withheld, conditioned or delayed.

6. **Responsibilities of the Public Partners; Funding.**

6.1. The Public Partners will invite RTF to all riverwalk and Legacy Project public and VIP events. RTF will invite the Public Partners to all RTF events.

6.2. The Public Partners will 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 will each send at least one staff representative to all RTF board meetings.

6.3. Promptly following execution of this Agreement, Oregon City will 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 Agreement, RTF will 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 will provide grant payments to RTF in accordance with the procedures described in Exhibit A attached to this Agreement and the schedule of grant payments below. Statements will include the information set forth on Exhibit A to this Agreement, and will 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

6.4 **Oregon Constitutional Limitations.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein, which would conflict with such law, are deemed inoperative to that extent.

7. **Communications.**

7.1. Project Communications. RTF acknowledges and agrees that the Public Partners determine the Legacy Project's communications strategy. All written 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 will provide RTF with the key project messages, and RTF will adhere to these messages in its communications. RTF will 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.”

7.2. **RTF Communications.** The Public Partners will 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.

8. **Property Tours.** The Easement Agreement between Metro and Falls Legacy, LLC, dated December 15, 2014, recorded December 17, 2014 in the Clackamas County Official Records as Doc. No. 2004-064826 (the “Riverwalk Easement”), allows Metro and its assigns to conduct site tours and outreach efforts on the Property. Metro hereby grants to RTF a revocable license to conduct tours of the Property in accordance with this Section 8. Prior to conducting any tours, Metro and RTF will agree, each in their sole discretion, on tour guide qualifications, tour guide training requirements, tour route and content, tour materials (including handouts and participant liability waivers), pre-tour procedures and scheduling arrangements and the like (collectively, the “Tour Procedures”). When Metro and RTF have agreed to the Tour Procedures, Metro will provide RTF written notice setting forth the complete Tour Procedures, and RTF may thereafter commence providing tours in accordance with the Tour Procedures. Prior to commencing any tours, RTF will comply with the insurance requirements in Section 10, below.

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 will promptly provide written notice of the breach to the other parties, reasonably documenting the breach and demanding that the breach be cured. The breaching Party will 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 Agreement, or if there are only two parties to the Agreement, terminate this Agreement. The exercise of this termination right will 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.** If RTF must dissolve, after payment or provision for payment of all RTF liabilities, the assets of RTF will be distributed one-third (1/3) each to each Public Partner to be used by the Public Partners for the purpose of the Legacy Project.

10. **Insurance.** RTF will 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 must be provided to the Public Partners thirty (30) days prior to any change. All policies must 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. Prior to RTF providing any tours of the Property, as set forth in Section 8, above, Falls Legacy, LLC (and any successor-in-interest to any portion of the Property) must be named as an additional insured on all RTF policies, as well.

10.1. 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.

10.2. 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 may not be less than \$1,000,000.

10.3. Nonprofit Directors and Officers Insurance to protect the directors, officers and board members (past, present, and future) of RTF with limits of not less than \$1,000,000.

10.4. Workers' Compensation. All subject employers working under this Agreement must either maintain workers' compensation insurance as required by ORS 656.017, or qualify for an exemption under ORS 656.126. RTF will maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

10.5. Cross Liability Clause. A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by this Agreement

11. Indemnification.

11.1. 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 Agreement.

11.2. The County will 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 Agreement, subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30.

11.3. Metro will 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 Agreement, subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30.

11.4. Oregon City will 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 Oregon City's performance of, or failure to perform, its promises in this Agreement, subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30.

11.5. 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 will survive termination or expiration of this Agreement. They are not intended, nor may 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.

12. Miscellaneous Provisions.

12.1. Counterparts. This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same agreement. Facsimile copy or electronic signatures shall be valid as original signatures.

12.2. Assignment. This Agreement may not be assigned in whole or in part without the express written approval of all of the Parties.

12.3. Authorization. The Parties have obtained all approvals required by law, bylaws, operating agreements, and pertinent corporate documents in order to enter into this Agreement.

12.4. No Joint Venture; Several Obligations. The Parties agree that, during the term hereof, each Party will 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, may 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 will maintain a management structure independent of the other during the term hereof. The agreements of Metro, the County, and Oregon City under this Agreement are several (and not joint) in all respects.

12.5. 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 will bind any Party unless in writing and signed by all Parties.

12.6. No Waiver. The failure of a Party to enforce any provision of this Agreement will not constitute a waiver by any Party of that or any other provision.

12.7. 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 Beavercreek 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 will be effective when received by the Party for whom it is intended.

12.8. No Benefit to Third Parties. Metro, Oregon City, the County 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 will 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.

12.9. Severability. If any one or more of the provisions of this Agreement will 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 will be deemed null and void and will not affect the validity of the remainder of the Agreement, which will remain operative and in full force and effect to the fullest extent permitted by law.

[Signatures follow on next page; remainder of page left blank.]

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

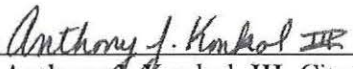
METRO

By: 
Martha J. Bennett, Chief Operating Officer

REDISCOVER THE FALLS

By: 
Andrew Mason, Executive Director

OREGON CITY

By: 
Anthony J. Konkol, III, City Manager

CLACKAMAS COUNTY

By: _____
Don Krupp, County Administrator

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

METRO

REDISCOVER THE FALLS


By: _____
Martha J. Bennett, Chief Operating Officer

By: _____
Andrew Mason, Executive Director

OREGON CITY

CLACKAMAS COUNTY

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

By:  _____
Don Krupp, County Administrator

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11-1-18

EXHIBIT A

Invoice Requirements

1. RTF will send its statements to Metro, Oregon City, and the County.
 - To Metro: the statement will be sent to brian.moore@oregonmetro.gov and metroaccountspayable@oregonmetro.gov, and the statement will include the Metro contract number and RTF's name in the email subject line.
 - To Oregon City: the statement will be sent to LTerway@orc.org.
 - To County: the statement will be sent to LZentner@clackamas.us, and the statement will include RTF's name in the email subject line.
2. The statement will 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) will make the payment on a Net 30 day basis upon approval of the invoice.

Execution of Agreement:	\$50,000 – to be paid by Oregon City
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