

WILLAMETTE FALLS LEGACY PROJECT

WILLAMETTE FALLS TRUST

2020-22 GRANT AGREEMENT

This Grant Agreement (“Agreement”) is entered into on the last day signed below (“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 (“County”), and Willamette Falls Trust, an Oregon nonprofit public benefit corporation (“WFT”). Metro, Oregon City, County, and WFT may be referred to individually as a “Party” or collectively as the “Parties.” Metro, Oregon City, and County are collectively referred to in this Agreement as “Public Partners.”

RECITALS

A. WFT is a volunteer support group for the Willamette Falls Legacy Project, which project will, among other things, provide public access at the site of the former Blue Heron Paper Mill in Oregon City (“Property”) consisting of a linear connection from Highway 99E in downtown Oregon City to the PGE Property; linear connection to the Canemah neighborhood, including nonmotorized bridge or overpass; sufficient property to accommodate the landing of a nonmotorized bridge from the Oregon City promenade to the Property; sufficient width or adjacent property to provide public amenities and programming on the riverwalk, including restrooms, visitor center, maintenance and service access, an administrative office, docks and viewing platforms, and the like; the entire clarifier area adjacent to Willamette Falls and Portland General Electric Company (PGE) Property; views of Willamette Falls; habitat restoration; and cultural and historic interpretation of the Property (the “Legacy Project”).

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

C. WFT has a unique relationship with private funders that enables WFT to be well positioned to articulate “world class” with regard to design and programming.

D. WFT has successfully raised more than \$7,000,000 for the Willamette Falls Legacy Project since its founding in 2015.

E. Metro Resolution Number 17-4824 and Oregon City Resolution Number 18-04 approved a master plan for the Willamette Falls Legacy Project riverwalk (“Master Plan”).

F. In December 2014, Metro secured an easement over the Property that provides a real estate interest necessary to design and construct the capital improvements identified within the Legacy Project.

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, 2021. The term of this Agreement may be extended for one (1) year periods by written agreement between all parties. The Agreement may be extended for no more than two (2) one (1) year periods.

2. **Capital Fundraising & Development.**

2.1. Capital Projects Generally. WFT will seek funding for capital projects identified within the Legacy Project and described in greater detail in the Master Plan. Funds raised will correspond with phasing developed by the Partners with input from WFT. Notwithstanding anything to the contrary, the Public Partners retain the authority, in their sole discretion, to determine the sequence of construction of the riverwalk.

2.2. Capital Funding Minimum. WFT agrees to provide at least \$5,912,939 in support of design of capital improvements for the Legacy Project when the project meets criteria, including design of elements supporting 'world class' programming and formal construction project approval by the Partners to develop 90% construction drawings for the first phase of construction, matching the \$19,299,203 provided by the Partners in the initial Legacy Project Partners Intergovernmental Agreement dated July 7, 2016.

2.3. Additional Funds. Funds raised in excess of \$5,912,939 will be allocated according the needs of the project and as agreed to in writing by the Parties.

2.4. Uses of Donated Funds. WFT will use any funds and donations secured by WFT to support the riverwalk design, programming, 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 WFT's administrative operation costs or expenses.

3. **Organizational Governance.**

3.1. Implement WFT Business Plan. WFT will, for the duration of this Agreement, implement a business plan that has: (a) prioritized using WFT's financial resources to ensure organizational capacity and fundraising success; (b) developed mid- and long-term WFT operational funding plans (not connected to any capital campaign); (c) identified fund raising goals for capital campaign(s); (d) identified achievable level of community engagement by WFT, such as site tours, donor prospecting, leadership recruitment, and other events; (e) implementation of all tasks identified within this agreement such as property tours and programming. Business Plan to be approved by the WFT Board.

3.2. Maintain WFT Leadership Structure. WFT will maintain the number of people on its governing board to between 8 and not more than 21. With at least one member who is currently a Metro Councilor.

3.3. Policies and Procedures. WFT will keep comprehensive policies and procedures in accordance with non-profit best practices.

3.4. Corporate and Tax-Exempt Status. WFT will maintain its tax exempt status under Section 501(c)(3) of the Internal Revenue Code. WFT will maintain articles of incorporation establishing that the sole purpose of WFT is to support and benefit the Legacy Project and champion a world-class experience at Willamette Falls. WFT 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.

3.5. Books and Records. WFT 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. WFT 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.

3.6. Annual Report. WFT 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.

3.7. Board Meetings. WFT will provide the Public Partners reasonable advance notice of its board meetings.

4. **Approvals; Approval Standards.** The Legacy Project Manager may, on behalf of the Public Partners, approve or disapprove deliverables provided by WFT 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 WFT signed by all of the Project Partners. Except where expressly stated elsewhere in this Agreement, approval by Public Partners' of any WFT deliverable will not be unreasonably withheld, conditioned, or delayed.

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

5.1. The Public Partners will invite WFT to all riverwalk and Legacy Project public and VIP events, Core Team meetings, and Technical Advisory Committee meetings. WFT will invite the Public Partners to all WFT events.

5.2. The Public Partners will keep WFT apprised of developments in the permitting and construction of the riverwalk and include WFT in the process, including without

limitation, providing an update at every WFT board meeting. Oregon City, the County, and Metro will each send at least one staff representative to all WFT board meetings.

5.3. Promptly following execution of this Agreement, the Partners will provide funding in accordance with the schedule as follows. At the end of the first, second, third, and fourth quarters of each fiscal year for the term of this Agreement, WFT will send a statement to the Public Partners describing work and deliverables completed during such quarter, deliverables are to include an ongoing fundraising plan with quarterly updates, an indigenous community engagement plan, design recommendations that reflect indigenous community needs, and any additional deliverables determined during the course of this agreement and agreed to in writing by the parties. After receipt of each statement, Oregon City, Metro, and/or the County will provide grant payments to WFT 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.

1st Quarter (July-Sept. 2020):	\$40,000 – to be paid by Metro
2nd Quarter (Oct.-Dec. 2020):	\$30,000 – to be paid by the County
3rd Quarter (Jan.-March 2021):	\$30,000 – to be paid 1/3 by Metro and 2/3 by Clackamas County
4th Quarter (April-June 2021):	\$50,000 – to be paid by Oregon City

5.3.1. Payments for prior services. WFT performed services for fiscal year 2020 pursuant to the agreement preceding this Agreement and in accordance with verbal commitments made in WFLP TAC meetings by the parties, the services include tribal outreach, program planning, and participation in the WFLP meetings during fiscal year 2020. These services were not invoiced prior to the expiration of the preceding agreement. The Partners will provide payments to WFT in accordance with the following schedule, which constitutes payment in full for fiscal year 2020:

<u>Date of Payment (on or before):</u>	<u>Amount:</u>	<u>To be paid by:</u>
June 15, 2020	\$50,000	Clackamas County
June 15, 2020	\$50,000	Metro
July 15, 2020	\$50,000	Oregon City

5.4. 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 Agreement provisions which would conflict with such law are deemed inoperative to that extent.

6. Communications.

6.1. **Project Communications.** WFT acknowledges and agrees that the Public Partners determine the Legacy Project’s communications strategy. All written public communications by WFT regarding the riverwalk and the Legacy Project will be subject to the prior approval of the Public Partners. The Public Partners will provide WFT with the key project messages, and WFT will adhere to these messages in its communications. WFT will permit the Public Partners to review and approve any promotional materials prepared by WFT.

6.2. **WFT Communications.** The Public Partners will provide WFT with the opportunity to review publicity and printed materials produced by the Public Partners regarding WFT, and to review and approve communications regarding WFT by the Public Partners.

7. **Property Tours.** The easement agreement benefiting Metro, dated December 15, 2014, recorded December 17, 2014 in the Clackamas County Official Records as Doc. No. 2004-064826 (“Riverwalk Easement”), allows Metro and its assigns to conduct site tours and outreach efforts on the Property. Metro hereby grants to WFT a revocable license to conduct tours of the Property in accordance with this Section 7. Prior to conducting any tours, Metro and WFT will agree 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, “Tour Procedures”). When Metro and WFT have agreed to the Tour Procedures, Metro will provide WFT written notice setting forth the complete Tour Procedures, and WFT may thereafter commence providing tours in accordance with the Tour Procedures. Prior to commencing any tours, WFT will comply with the insurance requirements in Section 10, below.

8. **Programming.** The Public Partners authorize WFT to lead initial planning for active programming of the riverwalk for the Legacy Project. This planning will define the scope of “world class” active programming and articulate design requirements. This will also establish the baseline for determining programming feasibility and may include recommending organizational relationships to deliver “world class” active programming. The programming planning will include approaches and recommendations for curating narratives and options for scaling programming in conjunction with completion and opening of each phase of the riverwalk. WFT must include staff from Oregon City, Clackamas County and Metro to provide input on the feasibility of proposed planning. WFT must provide regular progress updates at Legacy Project Technical Advisory Committee and Core Team meetings. Final deliverables must be approved by the Legacy Project Manager. Funds used to develop the Programming Plan cannot be considered administrative costs as identified in section 2.4. WFT will participate in the design of Phase 1 of the riverwalk to ensure the physical design does not preclude future programming and interpretation opportunities and collaborate with indigenous people and affected tribes to understand how they may be included in future programming of the riverwalk.

9. **Termination.** This Agreement may be terminated by any Party 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. This Agreement only continues as long as there are two Parties to the Agreement. If a withdraw occurs and results in only one Party remaining, this Agreement is terminated. Termination 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. If this Agreement is terminated, WFT is required to legally dissolve.

9.3. Dissolution. If WFT dissolves, after payment or provision for payment of all WFT liabilities, the assets of WFT 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.** WFT 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. WFT's coverage will be primary as respect to Metro, the County, and Oregon City. Prior to WFT providing any tours of the Property, as set forth in Section 7, above, Confederated Tribes of Grand Ronde and PGE (and any successor-in-interest to any portion of the Property) must be named as an additional insured on all WFT policies.

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 WFT 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. WFT 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. WFT 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 WFT's performance of, or failure to perform, its promises in this Agreement.

11.2. The County will defend, indemnify, and hold harmless WFT, 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 WFT, 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 WFT, 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 is 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 or Partnership; 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 are deemed received upon personal service or upon deposit in the United States Mail, certified mail, postage prepaid, return receipt requested addressed as follows:

To WFT: Willamette Falls Trust
 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 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 WFT 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 is any reason held 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.]

METRO

WILLAMETTE FALLS TRUST

By: _____
Marissa Madrigal, Chief Operating Officer

By: _____
Andrew Mason, Executive Director

OREGON CITY

CLACKAMAS COUNTY

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

By: _____
Gary Schmidt, County Administrator

EXHIBIT A

Invoice Requirements

1. WFT 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 WFT's name in the email subject line.
 - To Oregon City: the statement will be sent to LTerway@orc.city.org.
 - To County: the statement will be sent to LZentner@clackamas.us, and the statement will include WFT's name in the email subject line.

2. The statement will include:
 - The Metro contract number
 - WFT'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, Oregon City, and/or the County, per the schedule below, Metro, Oregon City and the County (as applicable) will make the payment on a Net 30 day basis upon approval of the invoice. Unless otherwise agreed upon in writing, payments associated with any extension of this agreement will follow the following schedule:

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
4th Quarter (April-June):	\$50,000 – to be paid by Oregon City