

**CITY OF TUALATIN
MANAGEMENT AND OPERATIONS AGREEMENT
for Brown’s Ferry Community Center
(5485 SW Nyberg Lane, Tualatin OR 97062)**

This Management and Operations Agreement (“Agreement”) is between the City of Tualatin (“City”) and Willowbrook Arts Camp, a non-profit corporation (“Willowbrook”), (“Provider”) for the facility of “Brown’s Ferry Community Center, located at 5485 SW Nyberg Lane, Tualatin, Oregon 97062” (“Premises”), for the purposes of community education and involvement, and security and safety of the Premises.

Provider will occupy the upstairs office space, as-is, at the Premises, having a building space of approximately 713 square feet. No other use or storage in the building will be permitted, except for meeting or activity space downstairs to be arranged on an as-needed basis. Willowbrook has the non-exclusive right to use the parking areas for up to three (3) parking spaces. No building changes/additions or change in Premise’s current use will be permitted, unless approved in writing from the City’s Parks and Recreation Director.

Section 1. Purpose. The purpose of this Agreement is to set out the terms and conditions Provider agrees to in order to maintain the condition and useful value of the Premises consistent with the terms of City of Tualatin Charter, Ordinances, and parks and recreation policies.

Section 2. Use of Property; Agreement Term. In consideration of the promises and covenants contained herein the receipt and sufficiency of which are hereby acknowledged by the Parties, the City allows Provider to use and occupy Premises for the purposes outlined in this Agreement from the date beginning January 2, 2023 (Commencement Date) and ending January 2, 2024. This Agreement will automatically extend for one year if not terminated by either party with at least 90 days written notice.

Section 3. Caretaker, Maintenance, Security and Safety Responsibilities.

- A. Care & Maintenance.** Provider must operate and use the Premises as it is currently being used and to maintain the Premises’ condition and value to serve Tualatin residents and employees. Provider shall perform the obligations listed in Appendix A which is incorporated by reference herein.
- B. Performance Standards.** The specific performance standards applicable for each obligation listed in Appendix A, such as program coordination, City event participation, and participation in a restoration event outlined in Appendix A. City and Provider may meet as needed to discuss the terms of this Agreement and may modify performance standards to meet City goals.
- C. Access to Tualatin Residents.** The Provider will not allow access to community members or the general public without prior notice to the City.

Section 4. Management of Property.

- A. Provider to Manage.** Provider will occupy the Premises for office purposes, consistent with the policies and procedures of the City of Tualatin and as set forth in Appendix A. Provider shall not use nor allow the Premises to be used in any manner inconsistent with City of Tualatin Park Rules or permit anything to be done upon or about the Premises that creates a nuisance.
- B. Compliance with Laws.** Provider must comply with and faithfully observe in the use and occupation of the Premises all rules, laws, regulations, requirements, and codes of the city, county, state, federal, and other applicable governmental authorities.

Section 5. Acceptance of Current Conditions; Modifications to the Premises.

- A. Acceptance.** Provider acknowledges the condition of the Premises as it currently exists. City, its officers, employees, or agents have made no representations or warranties as to the condition of the Premises except as otherwise provided in this Agreement.
- B. Modifications.** Provider may not modify the Premises without the prior express written consent of City which consent is in the City's sole and absolute discretion. Any such approved modification will be made at Provider's sole expense and becomes the property of the City. If Provider makes any alterations, decorations, additions or improvements to the Premises, Provider must promptly pay all service providers who have furnished labor or materials. Provider agrees to protect, defend, indemnify, and hold harmless City and the Premises from any liens or claims. Should such a lien be filed, Provider must bond against or discharge the lien within ten (10) business days after the lien is filed or attached.

Section 6. Nondiscrimination. Provider acknowledges it will not discriminate against any person, group, or employee due to race, color, creed, religion, sex, sexual orientation, marital status, age, disability, national origin, ancestry, or any other protected class acknowledged under State and Federal law, in the performance of its duties under this Agreement.

Section 7. Insurance.

- A. Personal Property.** Provider shall bear the expense of any insurance maintained by Provider insuring the personal property of Provider on the Premises against risk of theft or damage.
- B. Liability Insurance.** Provider shall procure and maintain during the term of the Agreement public liability, property damage, and renter's insurance with a responsible company with limits of not less than \$1,000,000.00 for injury to one person and \$1,000,000.00 for injury to two or more persons in one occurrence, which insurance shall name the City, its elected officials, officers, employees, agents and insurers as additional named insureds. Provider shall deliver to City a certificate and endorsement of such insurance describing such coverage.

Section 8. Hazardous Materials; Dangerous Conditions; Notification of Dangers.

- A. Hazardous Materials.** Provider must not bring, keep, or use any Hazardous Materials in or about the Premises without the prior written consent of City, which consent is in the City's sole and absolute discretion. As used in this Agreement, "Hazardous Material" means any hazardous or toxic substance, material or waste, including but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49CFR§172.101), or by the United States Environmental Protection Agency as hazardous substances (40CFR pt 302) petroleum products or other such substances, materials and wastes that are or become regulated under applicable local, state or federal law.
- B. Dangerous Conditions.** Provider must not create any dangerous conditions at the Premises, including but not limited to any fire danger, nuisance, or other violation of law.
- C. Notification of Dangers.** Provider must promptly notify City of any dangers to person or property, or any dangerous conditions, that exist on the Premises, which are either known or discovered by Provider. Provider must inform its visitors, guests and service providers of any known or discovered dangers, or any dangerous conditions, that are present at the Premises, until such time as the condition is remedied.

Section 9. Nonassignment. Provider may not assign this Agreement in whole or in part, without the prior written consent of City which consent is in the City's sole and absolute discretion.

Section 10. Signs. No permanent signs are permitted on the Premises.

Section 11. Maintenance of Facility and Common Areas. City will repair and maintain the structural portions of the Facility, including the roof, lighting, heating, air conditioning, plumbing, water, sewage, gas and electrical systems, fixtures and equipment in good condition and repair. If a defect, malfunction, or damage results from the Provider's act or omission, City is not responsible for such repair and may charge to and collect the cost of such repair from Provider.

- A. Areas.** City will maintain the common areas of the Facility consisting of sidewalks and pathways, landscaping, service areas, the driveway and parking lot.
- B. Utility Costs.** Provider will obtain and pay the pro-rated cost of electric, sanitary and storm sewer, road maintenance, parks utility, and water utilities; and provide regular custodial and cleaning consistent with the level of service provided other City-owned buildings. Provider shall be responsible for any paper products and toilet supplies used. Provider shall obtain and pay cost of telephone, fax, cable, and Internet service.
- C. Repairs.** City has no duty to make repairs under this Agreement until Provider gives written notice to City of the repairs to be made or condition to be corrected. In no event will City be liable for nor will City indemnify the Provider for a failure to make repairs to the Premises if the repair is completed within a reasonable time following notice from Provider.
- D. Access to Facility.** The parties agree that the City staff, consultant's and service providers may, upon 24 hours' notice to Provider (except no notice shall be required in an emergency), enter any portion of the Premises at any time and erect all necessary structures to repair, alter, or maintain the Premises. Provider waives any claim to damages resulting from such activities, except those caused by City's negligence.

Section 12. Vacate Premises Upon Termination; Damages for Violations.

- A. Vacate the Premises.** Upon termination of this Agreement, Provider must vacate the Premises and leave the Premises in the same condition as it was at the beginning of this Agreement, except for reasonable wear and tear and damage by unavoidable casualty to the extent that the damage is covered by City's fire insurance policy with extended coverage endorsement. Provider must return all keys for the structures/improvements on the Premises to City, inform City of all combinations on locks, if any, and remove any alterations before vacating the Premises.
- B. Removal of Furnishings.** Upon termination of this Agreement, Provider must remove all of its furnishings and trade fixtures and restore all damage resulting from such removal. Failure to remove shall be an abandonment of the furnishings and fixtures, and City may dispose of it in any manner without liability.
- C. Damages for Violations.** If Provider causes any damage to the Premises, City has the right to recover from Provider the following damages:
 - a.** All costs incurred in the cost of clean-up and repair and preparation for a new use including the cost of correcting any defaults or restoring unauthorized alterations;
 - b.** Reasonable attorney fees incurred in connection with the damage, whether or not any litigation has commenced;
 - c.** City may institute actions to recover such amounts as they accrue and no one action for accrued damages shall bar a later action for damages subsequently accruing.

Section 13. Indemnity and Status

Indemnification by Provider. Provider must indemnify and hold City, its officers, agents, employees, elected officials, and volunteers harmless from and against any and all claims, actions, liabilities, costs, including costs of defense, arising out of or in any way related to any act or failure to act by Provider and its visitors, guests and agents in connection with this Agreement including but not limited to any injury or

property damage that occurs on the Premises.

Indemnification by City. To the extent allowed under the Oregon Constitution and the Oregon Tort Claims Act and notwithstanding anything to the contrary herein, City must indemnify and hold Provider, its visitors, guests and agents harmless from and against any and all claims, actions, liabilities, costs, including costs of defense, arising out of or in any way related to any act or failure to act by City and its employees, agents, officers, volunteers in connection with this Agreement.

Nothing herein is intended to nor does it create an employment relationship between the Provider and City. Provider is not an "officer", "employee", or "agent" of the City, as those terms are used in ORS 30.265.

Section 14. Damage by Casualty or Fire and Duty to Repair. If the Premises is damaged by fire or other casualty, City may use its discretion to repair the damage. If the City chooses not to repair the damage, this Agreement may be terminated by either party after providing written notice to that effect to the other party. If the City chooses to make repairs, City may take possession of and occupy, to the exclusion of Provider, all or part of the Premises to make the necessary repairs. Provider agrees to temporarily vacate, upon request, all or any part of the Premises that City may require to make necessary repairs. City will endeavor to minimize disruption associated with repair. Provider waives all claims for recovery from City for loss or damage to the Premises insured under the City's casualty or fire insurance policies to the extent of any recovery collectable under such insurance.

Section 15. Performance by City. City will not be in default for the nonperformance or interruption or delay in performance of any of the terms, covenants, or conditions of this Agreement if due to a labor dispute, strike, lockout, civil commotion or like operation, government regulation or controls, inability to obtain labor or materials, or through an act of God or other cause beyond the reasonable control of City, if such cause is not due to the willful act or neglect of City.

Section 16. Default; Termination.

- A. For Cause Termination.** If Provider fails to perform any of the terms, conditions, or covenants of this Agreement, City will provide written notice of the default and a reasonable opportunity to cure. If Provider fails to cure the default within thirty days, then City may terminate this Agreement. This remedy is not exclusive but in addition to all other remedies and rights provided by law.
- B. Termination for Convenience.** The parties may terminate this Agreement by mutual written agreement at any time. In addition, either party may terminate this Agreement by giving the other party at least 90 days prior written notice.

Section 17. Entire Agreement; Waiver. This Agreement, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will bind the parties unless in writing and signed by both parties and all necessary City approvals have been obtained.

Section 18. Notice to Parties. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder must be given in writing by personal delivery, mail facsimile, or email.

- A. Notice by Personal Delivery.** Any communication or notice given by personal delivery is effective when actually delivered.
- B. Notice by Mail.** Notice given by mail must be by postage prepaid, to Provider or City at the address, set forth herein, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed is effective five (five) days after mailing.

- C. Notice by Email.** Any communication or notice given by email is effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- D. Party to be Notified.** Unless otherwise notified in writing as set forth above, notices must be given to the Project Managers. If a Party's Project Manager is changed, notification of the change must be promptly made in writing to the other party. If a party receives a communication from the other party not executed by the Project Manager, the party may request clarification by the other party's Project Manager, which must be promptly furnished.

1. City's Project Manager
Julie Ludemann
Recreation Manager
18880 SW Martinazzi Avenue
Tualatin, OR 97062
503 691-3082
jludemann@tualatin.gov
2. Provider Project Manager
Tafflyn Williams
Executive Director
PO Box 3546
Tualatin, OR 97062
Phone: 961-415-8844
Email: tafflyn@willowbrookartscamp.org

Section 19. Public Contracting Requirements. Provider must comply with provisions of ORS 279A.110; 279B.220, 279B, 225, 279B.230, and 279B.235, which are incorporated by reference herein. City's performance under the Agreement is conditioned upon Provider's compliance.

Section 20. Certification of Compliance with Tax Laws. As required by ORS 279B.110(2)(e), Provider represents and warrants that it has complied with the tax laws of this state, the City, and applicable political subdivisions of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318, hereafter ("Tax Laws"). Provider further covenants to continue to comply with the Tax Laws during the term of this Agreement and Provider covenants and acknowledges that the failure to comply with the Tax Laws is a default for which City may terminate this Agreement and seek damages.

Section 21. Tax Exempt Status. Provider shall provide to City proof of filing for property tax exemption with the Clackamas County Assessor's Office. Provider must apply for this exemption in a timely manner. Application fees will be the expense of Provider. Any fees associated with a late filing must be paid by Provider. If Provider fails to file for such exemption, or is not eligible for such exemption as determined by Clackamas County, Provider will be responsible for all real property taxes assessed to City as a result of the Agreement.

Section 22. Dispute Resolution.

- A. Process.** If Provider disagrees with a decision of the City under this Agreement, Provider must provide written notice to the City's Project Manager of Provider's disagreement, and include all relevant information and exhibits, within thirty (30) days of Provider's knowledge of the decision to which Provider disagrees. The City's Project Manager will review the information and meet with Provider to attempt to come to resolution on the dispute. If City and Provider are unable to come to resolution, the City's Project Manager will issue a written decision outlining the City's reasons to decline Provider's request regarding the dispute.
- B. Complaint.** Any claim that cannot be resolved between the parties as set forth herein shall be initiated by filing a complaint in the appropriate court as provided in this Agreement. The

claim and all cross and counter-claims filed in response to the complaint shall be submitted to mediation. If the parties cannot agree on a mediator, the Presiding Judge for Washington County will select the mediator. Only if the dispute cannot be resolved by mediation, will the parties proceed to litigate the claim within the Circuit Court of Washington County for the State of Oregon. Provider, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT.

Section 23. Execution of Agreement; Electronic Signature. This Agreement may be executed in one or more counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original. A signature of a party provided by email, "pdf," or other electronic data file constitutes an original signature of that party.

Section 24. Governing Law. This Agreement is governed by and will be construed in accordance with the laws of the State of Oregon without regard to principles of law.

APPROVED AND ENTERED this ____ day of _____.

PROVIDER

CITY OF TUALATIN

By _____

By _____
Sherilyn Lombos
City Manager

By _____

APPROVED AS TO LEGAL FORM

City Attorney

WILLOWBROOK ARTS CAMPS PUBLIC BENEFITS

In accordance with the City of Tualatin's Management and Operations Agreement for Browns Ferry Community Center, Willowbrook Arts Camp (Provider) will address community involvement and education consistent with the Metro Greenspaces Master Plan, City of Tualatin Parks & Recreation System Plan, and the Tualatin Vision 2030 goals, adhering to the agreement terms outlined in the agreement.

Provider agrees to perform the following public benefits:

Community Involvement and Education

Willowbrook will collaborate with City, as deemed appropriate by the City. This may include but is not limited to Parks & Recreation programs and events, and Tualatin Public Library programs.

Willowbrook will participate in and promote City special events including the annual Blender Dash, ¡Viva Tualatin!, and West Coast Giant Pumpkin Regatta by offering fun, family-friendly activities.

Willowbrook will ensure City of Tualatin residents receive a five percent (5%) discount on Willowbrook Arts Camp summer camps.

Willowbrook staff will coordinate with the City of Tualatin to participate in a natural space native plant restoration/tree planting or invasive plant removal event during calendar year 2023.

By offering a continued presence in occupying the Browns Ferry Community Center, Willowbrook will enhance safety and security of the facility.