

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING THE ) RESOLUTION NO. 17-4815  
AMENDED AND RESTATED )  
INTERGOVERNMENTAL AGREEMENT ) Introduced by Chief Operating Officer Martha  
AMONG THE STATE OF OREGON, METRO, Bennett in concurrence with Council  
CLACKAMAS COUNTY, AND OREGON CITY President Tom Hughes  
FOR THE WILLAMETTE FALLS LEGACY  
PROJECT

WHEREAS, Metro, the State of Oregon, Clackamas County and the City of Oregon City (the public partners) have been working together since the bankruptcy liquidation of the Blue Heron Paper Company in 2011, in order to investigate the former paper mill site’s potential and future;

WHEREAS, the public partners recognized four core values for the property early in the investigations and have carried these four core values of public access, economic redevelopment, healthy habitat, and historic and cultural interpretation through to today;

WHEREAS, in fall 2014, following on the success of Oregon City’s 2014 land use framework plan and rezone process, which established a broad vision for the property, with the consent and cooperation of the property’s private owner, Falls Legacy LLC, the public partners entered into a Memorandum of Understanding to start work creating public access to Willamette Falls (the riverwalk);

WHEREAS, in June 2015, following extensive outreach, Metro awarded a contract for design of the riverwalk;

WHEREAS, in June 2015, Oregon City, Clackamas County, and Falls Legacy LLC were awarded a Community Planning and Development Grant from Metro to complete a development opportunity study for the property, to examine the potential of the whole site to achieve the four core values;

WHEREAS, the State of Oregon awarded \$7.5 million and \$5 million to Metro to support capital construction of the riverwalk;

WHEREAS, in December 2016, the nonprofit “friends” group, known as Rediscover the Falls obtained formal Section 501c(3) tax status from the Internal Revenue Service and has begun forming a \$15 million fundraising campaign to support the riverwalk;

WHEREAS, in May 2017, the public partners approved the overall design for the riverwalk and selected a Phase 1 riverwalk project;

WHEREAS, there is now a need to continue and update the decision-making and organizational structure among the public entities so that the public partners can continue working in a unified direction on the riverwalk and the overall redevelopment of the property (the “Legacy Project”), and the public partners can effectively deliver the first phase of the riverwalk;

WHEREAS, the proposed amended and restated intergovernmental agreement (IGA) attached as Exhibit A to this Resolution 17-4815, provides the governance structure needed for the Legacy Project

over the next six (6) years, continuing the "Partners Group," established in Metro Council Resolution No. 16-4676;

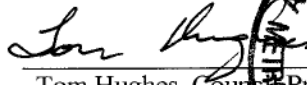
WHEREAS, the proposed IGA gives Metro overall project management responsibilities for the first phase of the riverwalk, commits Metro to leading the project management and construction management effort for this phase, and commits funds and staff to the Legacy Project as set forth in the project budget and staffing commitments attached to the proposed IGA;

WHEREAS, the proposed IGA memorializes responsibilities and funding and staffing commitments of the other public partners to the first phase of the riverwalk and the Legacy Project;

WHEREAS, the public partners, including the Partners Group, have approved the IGA, in the form attached to this Resolution; now therefore,

BE IT RESOLVED that the Metro Council hereby approves the proposed Amended and Restated Intergovernmental Agreement regarding the Willamette Falls Legacy Project, substantially in the form attached as Exhibit A to this Resolution 17-4815, with such changes as may be approved by the Office of Metro Attorney, and commits to the decision-making structure, budget and staffing requirements, and the terms and conditions set forth in the proposed IGA.

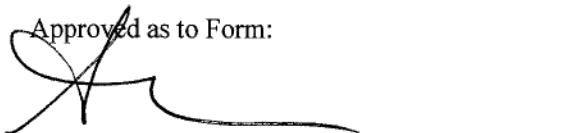
ADOPTED by the Metro Council this 20th day of July 2017.



Tom Hughes, Council President



Approved as to Form:



Alison R. Kean, Metro Attorney

**Amended and Restated  
INTERGOVERNMENTAL AGREEMENT  
Willamette Falls Legacy Project**

This AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into by and among the State of Oregon, through its Portland Metro Regional Solutions Office and its Parks and Recreation Department (the “State”), Clackamas County (the “County”), the City of Oregon City (the “City”) and Metro (“Metro”) (each a “party” and collectively, the “parties”), effective as of the last date of signature below (the “Effective Date”).

**RECITALS**

A. In February 2011, the former Blue Heron Paper Company located at 419/427 Main Street, Oregon City, Oregon (the “Property”) entered Chapter 7 bankruptcy, resulting in the loss of skilled jobs and leaving the mill property vacant, under the control of a bankruptcy trustee.

B. The parties began investigating the Property due to its proximity to Willamette Falls, a natural, cultural and historic wonder, and conducted environmental, structural, and historical analyses to better understand the Property, including the potential for public access to Willamette Falls and future redevelopment.

C. With the cooperation and contributions of the bankruptcy trustee, the parties commenced a land use master plan and rezoning effort, guided by four core values endorsed by the parties: public access, historic and cultural interpretation, economic redevelopment, and healthy habitat (the “Four Core Values”).

D. On July 29, 2013, the governor signed Senate Bill 5506 (“SB 5506”), and on August 14, 2013, signed Senate Bill 5533, together authorizing the sale of lottery-backed bonds to provide \$5 million for a public access project to Willamette Falls, so long as certain conditions set forth in SB 5506 were met (the “\$5M of State Funds”).

E. In May 2014, Falls Legacy, LLC, a Washington limited liability company (the “Owner”) purchased the Property from the bankruptcy trustee, and submitted the land use master plan and rezone application developed by the parties to the City, which was adopted in September 2014 as Master Plan CP 14-02, Zone Change and Text Amendment ZC 14-03, and Comprehensive Plan Amendment PZ 14-01.

F. On September 26, 2014, the parties entered into a Memorandum of Understanding (the “MOU”) regarding the former Blue Heron Paper Company property, documenting the parties’ shared commitment to the Four Core Values and to design and construction of public open space(s) and parkway on the Property with unobstructed views of the Willamette River and Willamette Falls (the “Riverwalk”).

G. On December 11, 2014, Portland General Electric Company (“PGE”) donated an option to Metro allowing Metro to acquire an easement over PGE property adjacent to Willamette Falls (the “PGE Option”), which PGE Option and future easement will allow design and construction of the Riverwalk, which may include a viewpoint of Willamette Falls on property owned by PGE.

H. On December 15, 2014, the Owner donated an easement to Metro, recorded in the Clackamas County Official Records as Document No. 2014-064826, to facilitate the design and construction of the Riverwalk on the Property (the “Easement”).

I. On December 29, 2014, the governor determined that the conditions of SB 5506 had been met, and the State of Oregon Parks and Recreation Department provided the \$5M of State Funds to Metro in accordance with an Intergovernmental Agreement between Metro and the State (Agreement No. 7554), dated June 1, 2015, which was amended by a First Amendment to Intergovernmental Agreement, dated May 26, 2017.

J. On May 29, 2015, Metro issued a Notice of Intent to Award for RFP 2903 selecting the design team of Mayer/Reed, Snøhetta, and DIALOG for design of the Willamette Falls Riverwalk, and has subsequently entered into two Professional Services Contracts with Snøhetta, the first dated February 11, 2016 and a second dated January 30, 2017, for the design of the Riverwalk.

K. On August 12, 2015, the governor signed House Bill 5030 and Senate Bill 5507 approving an additional \$7.5 million of State funding for the Riverwalk, and the State of Oregon Parks and Recreation Department is currently negotiating an agreement to transfer the \$7.5 million of State funds to Metro.

L. On September 24, 2015, the Metro Council awarded the City and the County a Community Planning and Development Grant (the “CPDG”) to conduct development opportunity studies on the Property.

M. With the award of the CPDG, the parties’ efforts now include more than the Riverwalk, working to address, among other things, potential future open space and connections to the Property and infrastructure and economic development needs for the Property (the “Willamette Falls Legacy Project” or simply, the “Legacy Project”).

N. On May 20, 2016, the federal Environmental Protection Agency awarded Metro, the County, and the City a \$600,000 Coalition Assessment Grant for the McLoughlin Corridor, which funds are to be used, in part, to further assess the environmental condition of the Property.

O. On October 27, 2016, Metro and the City entered into an interim agreement with Rediscover the Falls to assist the nonprofit “friends” group in building capacity to create enduring public interest in the Riverwalk, and since this time, Rediscover the Falls has been actively and successfully fundraising on behalf of the Riverwalk.

P. On April 11, 2017, Metro submitted a request to the U.S. Army Corps of Engineers to initiate review under Section 106 of the National Historic Preservation Act of the Riverwalk.

Q. On May 17, 2017, the Partners approved the Riverwalk design and a phase one Riverwalk project that provides a prominent view of the falls from the southwest portion of the site as well as demolition and site preparation within portions of the Riverwalk (“Phase 1 Project”); and as depicted in the Riverwalk design presentation.

R. The parties recognize the need to create a decision-making and organizational structure among the public entities so that (a) the parties can deliver unified direction and messages to outside parties, (b) the Legacy Project is a model of fiscal discipline, efficiency and accountability, (c) the parties have clarity on scope, schedule and budget for all aspects of the Legacy Project, and (d) the parties can effectively collaborate with the Owner, PGE, and other third parties, and to this end, the parties entered into the first Intergovernmental Agreement on July 7, 2016 (the “Original Governance IGA”).

S. Under the authority of ORS 190.010 and ORS 190.110, the parties now desire to enter into this Agreement for the purpose of amending and restating the Original Governance IGA, in order to, among other things, update the governance structure needed for the Legacy Project during design and construction of the Phase 1 Project, on the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants and agreements herein contained, the parties agree as follows:

## **AGREEMENTS**

**1. Restatement; Term.** The Original Governance IGA is amended and restated in its entirety as set forth in this Agreement. The term of this Agreement shall commence on the Effective Date and expire on June 30, 2023, unless amended and extended by written agreement of the parties.

**2. Definitions.** In addition to the definitions set forth in the Recitals, above, capitalized terms used in this Agreement shall have the definitions set forth in this Section 2, below.

2.1 Legacy Project. The Willamette Falls Legacy Project as defined in Recital M, above, which as of the Effective Date, includes the following sub-components or sub-projects: the Riverwalk, Phase 1 Project, and economic development.

2.2 Legacy Project Budget. The budget for the Legacy Project compiled by the Legacy Project Manager and approved by the Partners Group showing sources and uses of all Legacy Project funds, to be updated from time to time. The Legacy Project Budget approved and authorized by the parties as of the Effective Date is attached as Exhibit A.

2.3 Legacy Project Milestones. Key decision points for the Legacy Project, as determined by the TAC, including design milestones for the Riverwalk.

2.4 Legacy Project Manager. Staff person employed by Metro to be the project manager for the Legacy Project.

2.5 Partners Group. The advisory governing body for the Legacy Project, comprised of two (2) elected officials and the chief administrator from each of Metro, the County and the City, and two (2) elected officials and high-level staff from the State, as set forth on the attached Exhibit B.

2.6 TAC. The Technical Advisory Committee for the Legacy Project, comprised of non-elected staff from each of the parties and that reports to the Partners Group, as described further in Section 4, below.

### **3. Authority**

3.1 ***Reservation of Regulatory and Legislative Authority***. Each party expressly reserves its regulatory and legislative authority with respect to the Legacy Project and the Property, including, for example, the City's regulatory authority over land use approvals, the State's authority over submerged lands, and each party's legislative authority to appropriate funds.

3.2 ***Legacy Project Budget; Appropriation of Funds***. As of the Effective Date, each party represents that it has appropriated or received the funds set forth on the Legacy Project Budget for such party, for the fiscal year(s) covered by such party's appropriation. Each party represents that it has authorized use during such fiscal year(s) of the appropriated funds in accordance with the Legacy Project Budget and this Agreement. The Legacy Project Budget may be revised from time to time by the Partners Group, within the amounts appropriated by the parties in their individual capacities. Spending in future fiscal years is subject to appropriation by each party's governing body, in such body's sole legislative discretion, and this Agreement may be amended by the parties to reflect such future budget approvals. All spending under this Agreement is subject to audit.

3.3 ***Delegation of Administrative Authority***. The work of the Legacy Project and its participants is advisory, structured such that the Partners Group can make unified recommendations to each of the governing bodies of the parties. In addition, upon approval of this Agreement by a party, that party's staff and elected representatives that participate in the Legacy Project, including the Partners Group or the TAC shall have the authority to fully participate in the Legacy Project and to make non-legislative or administrative decisions on behalf of such party in accordance with this Agreement.

3.4 ***Staff Participation***. The parties intend that staff participating in the Legacy Project and the various project groups will work on behalf of the best interests of the Legacy Project, representing not only the best interests of their employer but also of the Legacy Project itself. In that manner, staff will freely communicate and share information with other agency staff and generally support each other with respect to the Legacy Project.

Notwithstanding the foregoing, finance and legal staff participating in the Legacy Project and in the various project groups represent solely their employers, as they owe a professional duty of loyalty and a fiduciary duty solely to their respective agencies.

#### **4. TAC**

4.1 **Membership.** Each party shall designate two (2) representatives of such party to attend the TAC meetings and shall send alternate(s) if one or both designated representatives are unable to attend or participate by telephone.

4.2 **Meetings.** The TAC meets biweekly, or as otherwise agreed upon by the TAC, and shall keep minutes documenting its consideration and approval of any items. Items requiring TAC approval shall be emailed to the TAC at least two (2) business days in advance of the TAC meeting so that any party can be sure to send a representative or call into the meeting when that party desires to weigh in on a Legacy Project decision. Any member of the TAC can call an emergency meeting of the TAC by notification to the Legacy Project Manager, who will use best efforts to schedule a meeting as soon as practical. Parties shall use best efforts to participate in emergency meetings of the TAC.

4.3 **Work.** Except with regard to the Phase 1 Project, as set forth in Section 10, below, the TAC shall consider for approval individual contracts, scopes of work, requests for proposals or bids, budgets, contract modifications, Legacy Project Milestones, responses to significant external opportunities or threats, and decisions whether to recommend future intergovernmental agreements among the parties to the Partners Group or to pursue grant or funding opportunities. The TAC shall prepare the agenda of the Partners Group. The specific work of the TAC and the party responsible for such work is set forth on Exhibit C. The TAC may create subcommittees to complete the work of the TAC, as the TAC deems necessary.

4.4 **Decisions.** Decisions of the TAC will be noted in the minutes for the TAC meeting. Should a TAC member disagree with a TAC decision, he or she may express such disagreement at the TAC meeting. If the TAC is unable to resolve the issue, the TAC member may elect to put it on the agenda for consideration at the next Partners Group meeting (as further described in Section 5.2 and Section 7.2, below).

4.5 **Communication.** Members of the TAC shall have the responsibility to communicate with their representatives on the Partners Group in between Partners Group meetings and with regard to agendas of the TAC and the Partners Group, to ensure each party is internally apprised of Legacy Project direction, as each party deems necessary.

4.6 **Finance Oversight Subcommittee.** The TAC shall create a Finance Oversight Subcommittee made up of at least one member from each party. The Finance Oversight Subcommittee shall provide advice and direction on the Legacy Project Budget and expenditures of the Legacy Project. The subcommittee will design a financial reporting format and meet with the Legacy Project Manager quarterly to review reports.

## **5. Partners Group**

5.1 The Partners Group meets quarterly, or as otherwise agreed upon by the Partners Group or the TAC, and shall keep minutes. Without objection from any member of the Partners Group at a Partners Group meeting, matters considered by the Partners Group for approval will be deemed approved and so noted in the minutes. The Partners Group is considered a public body in accordance with Oregon Public Meeting Law, providing recommendations and advice to each of the parties' governing bodies. The Partners Group may adopt procedures, as deemed necessary by the Partners Group, for orderly conduct of its meetings.

5.2 Except with regard to the Phase 1 Project, as set forth in Section 10, below, the Partners Group sets policy direction for the Legacy Project, approves Legacy Project Milestones and the Legacy Project Budget on a quarterly basis, sets direction in response to significant threats or opportunities (as determined by the TAC), recommends future intergovernmental agreements among the parties (to be approved by each party's governing body, if required), and makes recommendations that involve any material trade-offs among the Four Core Values. In addition, the Partners Group shall consider decisions that lack consensus at the TAC if added to the Partners Group agenda by a member of the TAC (as described in Section 4.4, above).

5.3 Members of the Partners Group shall communicate with their respective agency or government to ensure each party is apprised of Legacy Project direction and to ensure any decisions of the Legacy Project that require approval of such party's governing body are brought to the party's governing body for consideration.

## **6. Legacy Project Manager**

6.1 The Legacy Project Manager will manage the Legacy Project by, among other things, coordinating the work of the TAC, and collaborating with PGE, the Owner, Rediscover the Falls, and other third parties. The Legacy Project Manager shall track the Legacy Project Budget and provide reporting on the Legacy Project Budget to the TAC and the Partners Group. The Legacy Project Manager may request that a party lead a portion of the work of the TAC, with the approval of such party.

6.2 The Legacy Project Manager has day-to-day management authority of the Legacy Project in order to lead the Legacy Project forward consistent with the approvals provided by the Partners Group and the TAC, and consistent with the Legacy Project Budget. The Legacy Project Manager shall have the authority to approve *de minimus* changes to scopes of work or spending within the Legacy Project Budget (including contingencies), without the need for further consideration at the TAC or by the Partners Group; provided that the Legacy Project Manager shall keep the TAC apprised if multiple *de minimus* changes may have a cumulative impact on the Legacy Project.



## **7. Project Decision-making**

7.1 **Consensus.** Decision-making for the Legacy Project at the TAC and Partners Group shall be by consensus. Consensus is defined as the point where all parties agree on an option with which they are willing to move forward, and includes the opportunity for a party to express reservations or dissent while nevertheless agreeing to allow the Legacy Project to move forward. Each party, by signing onto this Agreement, commits its confidences to the Legacy Project's decision-making structure, recognizing this project structure and the collaboration it represents among the parties as the Legacy Project's best chance for success.

### **7.2 Protocols for Disagreement.**

7.2.1. If there is no consensus at the TAC level, the majority decision of the TAC shall be deemed the decision of the TAC, unless a member of the TAC elects within three (3) days of the TAC meeting at which the decision was made, to place the decision on the next Partners Group meeting agenda. This will ensure that decisions made at the TAC level can be relied upon to move the Legacy Project forward.

7.2.2. If there is no consensus on a decision at the Partners Group (whether or not such decision is brought to the Partners Group by a member of the TAC, in accordance with Section 7.2.1, above), the Partners Group will provide direction and recommendations to the TAC for discussion and consideration of the issue.

7.2.3. After discussion of the issue at the TAC, taking into account the direction and recommendations of the Partners Group, the decision will be considered at the next Partners Group meeting. The members of the Partners Group shall strive to make a decision to keep the Legacy Project moving forward. At this stage of disagreement, on matters that are critical to long-term operations and maintenance of the Riverwalk, any parties that are identified as a future owner in accordance with Section 9, below, shall be given deference. Any resolution or conclusion in this circumstance that lacks consensus at the Partners Group will not bind the dissenting party.

7.2.4. If the need for a decision is urgent, the Legacy Project Manager may set emergency meetings of both the TAC and the Partners Group. The parties shall use best efforts to attend any emergency meetings.

## **8. General Obligations the Parties Regarding the Legacy Project Work**

8.1 **Reporting Expenditures.** Parties shall report all expenditures to the Legacy Project Manager, including copies of invoices and any reasonable supporting documentation. The Legacy Project Manager shall provide a quarterly report on the Legacy Project Budget and expenditures to the TAC and the Partners Group to ensure that the Project is remaining coordinated and on budget.

8.2 **Contracts.** Parties shall notify the Legacy Project Manager of all draft contracts that such party is considering entering into with third parties and that are related to the Legacy Project. If requested by the Legacy Project Manager, a party shall provide copies of the

draft contract and scope of work to the Legacy Project Manager, with reasonable opportunity for comment and review. If requested by the Legacy Project Manager, prior to executing a contract related to the Legacy Project, a party shall have obtained approval from the TAC of the contract's scope, schedule, budget, workplan, and deliverables.

8.3 **Participation.** The parties shall participate meaningfully in all Legacy Project groups, and respect the roles and responsibilities assigned to each Partner in such participation.

8.4 **Staff Contributions; Tracking of Staff Expenditures.** The parties shall provide key contributions of staff to lead and/or participate in the work of the TAC, as set forth in the attached Exhibit D. Each party shall track staff expenditures for match, and report staff expenditures on the Legacy Project to the Legacy Project Manager, as requested by the Legacy Project Manager; provided, however, that it is understood and agreed that, unless otherwise specifically agreed to by the Partners Group, that staff resources, time and contributions shall be deemed "in-kind" contributions to the Project, and no party shall charge time or seek to recover expenses from the Project.

8.5 **Communication Protocols.** All publicity and strategic communications for the Legacy Project will be coordinated through the TAC, so that the parties can deliver unified direction and messages to outside parties. Each party commits to working within Legacy Project channels and the structure set forth in this Agreement, especially with respect to any potential conflicts, disagreements, external events, or pressures. The parties shall consult with each other first, prior to outreach to third parties, at emergency TAC or Partners Group meetings, as necessary. The parties commit to attendance at emergency meetings.

9. **Future Riverwalk Owner.** The parties understand and agree that it is highly unusual to advance a project through construction without identifying the entity or entities that will own or operate the Riverwalk. The parties commit to developing and participating in a process to identify a future owner and shall strive to identify the owner(s) and operator(s) of the Riverwalk prior to submittal of application(s) for demolition or building permits, whichever is sooner. If the entity or entities that will own or operate the Riverwalk are not a party to this Agreement or if the future owner(s) desire additional decisionmaking rights regarding the Phase 1 Project, the parties will amend this Agreement appropriately and enter into a separate agreement with the owner or operator, as necessary. The prospective owner(s) will be considered "identified" when they have committed to the Partners Group to take responsibility for future operations, maintenance and security of the Riverwalk. An entity's commitment to ownership and/or operation to the Partners Group should be in the form of a resolution adopted by the entity's governing body.

10. **The Phase 1 Project.** The parties acknowledge that Metro has voluntarily assumed the risk associated with constructing the Phase 1 Project. In acknowledgment of the financial, staffing, and scheduling complexity and risk that Metro is assuming, the parties agree that following the Partners Group's approval of the Riverwalk design and the Phase 1 Project, Metro shall have sole authority and is granted discretion to implement the design and construct the Phase 1 Project, including project permitting, planning, construction contracting, and construction. In implementing the design, Metro is authorized to make all project related

decisions, including those associated with value engineering, contracting, scheduling, budgeting, project feasibility, staffing, collaboration with third parties (including the Owner and PGE), permitting, conditions of approval, and other decisions that may affect the design or construction of the Phase 1 Project. Metro's decisions regarding implementation of the design and construction of the Phase 1 Project are not subject to review under the terms of this Agreement, expressly reserving each parties' regulatory authority as set forth in Section 3.1, above. Metro agrees to use reasonable efforts to construct the Phase 1 Project, but Metro shall not be required to defend nor prosecute any appeals and shall use its sole discretion to determine whether construction of the Phase 1 Project is worth pursuing in the event of any appeals, permit denials, or the discovery of currently unknown conditions. Metro shall use its best efforts to inform the other parties of significant construction decisions, to obtain input from the TAC, the Partners Group, and any potential future owner on such matters, and to keep the parties updated and engaged on the Phase 1 Project. Future phases of the Riverwalk shall be subject to the terms and conditions of this Agreement and not this Section 10.

## **11. Miscellaneous**

11.1 ***Waiver of Liability.*** Each party assumes all risks arising out of such party's participation in the Legacy Project, including with respect to the condition of the Property, and no party shall be liable to another for such risks, except to the extent caused by a party's gross negligence or willful misconduct.

11.2 ***Indemnity.*** Each party shall hold harmless and indemnify the other parties, and their agents and employees, against any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim arising out of the indemnifying party's work and actions under this Agreement within the maximum liability limits set forth under the Oregon Tort Claims Act and Oregon Constitution.

11.3 ***Termination.*** A party may terminate this Agreement at any time as to such party with thirty (30) days prior written notice to the other parties, if the terminating party believes, or has reason to believe, that funding sufficient to comply with this Agreement will not be made available to the terminating party by the terminating party's governing body. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

11.4 ***Laws of Oregon; Compliance with Laws.*** The laws of the State of Oregon shall govern this Agreement, and the parties agree to submit to the jurisdiction of the courts of the State of Oregon. All activities of a party under this Agreement shall be in compliance with all applicable laws, statutes, ordinances, rules, regulations, and requirements of any governmental authority, including all applicable provisions of ORS chapters 279A, 279B, and 279C.

11.5 ***Maintenance of Records.*** The parties shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, the parties shall maintain any other records pertinent to this Agreement in such a manner as to clearly document their performance. Each party acknowledges and agrees that it shall retain such documents for a period of three (3) years after termination of this Agreement, or

such longer period as may be required by applicable law. In the event of any audit, controversy, or litigation arising out of or related to this Agreement, the parties shall retain such documents until the conclusion thereof.

11.6 ***Relationship of Parties.*** Each of the parties hereto is deemed an independent contractor for purposes of this Agreement. No representative, agent, employee, or contractor of one party shall be deemed to be an employee, agent or contractor of any other party for any purpose. Nothing herein is intended, nor may it be construed, to create among the parties any relationship of principal and agent, partnership, joint venture, or any similar relationship, and each party hereby disclaims any such relationship.

11.7 ***Preservation of Privileges; Public Records.*** The parties acknowledge and agree that a primary purpose of this Agreement is to encourage frank communication and close collaboration among the parties for the maximum benefit of the Legacy Project, preliminary to any final action by the parties' governing bodies. The parties will disclose and transmit information to one another regarding possible direction for the Legacy Project and possible real estate transaction(s) with the Owner or third parties. The parties intend to preserve all rights under Oregon Public Records law, including, without limitation, exemptions related to internal advisory communications under ORS 192.502(1) and related to sharing of information regarding a potential real property negotiation under ORS 192.502(9)(a), the disclosure of which is restricted under ORS 192.660(2)(e). The parties intend by this section to protect from disclosure all Legacy Project information exchanged between any parties, or between any party and a consultant hired by a party for the Legacy Project, to the greatest extent permitted by law, regarding less whether the exchange occurred before execution of this Agreement and regardless of whether the writing or the document is marked "Confidential."

11.8 ***No Third-Party Beneficiary.*** This Agreement is between the parties and creates no third-party beneficiaries. 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.

11.9 ***Assignment.*** No party may assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the other parties.

11.10 ***Entire Agreement; Prior Agreements.*** This Agreement constitutes the entire agreement among the parties on the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations, or communications of every kind. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. To the extent this Agreement contradicts the MOU, this Agreement governs.

11.11 ***Modification; Waiver.*** No course of dealing between the parties and no usage of trade will be relevant to supplement any term used in this Agreement. No waiver, consent, modification, or change of terms of this Agreement will bind any party unless in writing and signed by the parties. The failure of a party to enforce any provision of this Agreement will not constitute a waiver by a party of that or any other provision.

11.12 **Authority.** The representatives signing on behalf of the parties certify they are duly authorized by the party for whom they sign to make this Agreement.

11.13 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which will constitute one and the same instrument.

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

CITY OF OREGON CITY

METRO

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

CLACKAMAS COUNTY

STATE OF OREGON, through its Parks and Recreation Department

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF OREGON, through its Portland Metro Regional Solutions Office

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

- Exhibit A: Legacy Project Budget
- Exhibit B: Partners Group
- Exhibit C: TAC Work
- Exhibit D: Staffing Commitments



WILLAMETTE FALLS RIVERWALK UPDATED PROJECT FUNDING  
CONCEPT DESIGN & PHASE I PROJECT

Project Sources	Metro NA Bond	Metro Gen. Fnd.	State Bond	State Bond	Falls Legacy	Tourism Grant	Oregon City	Fundraising	Total
Total Funds	\$ 5,000,000	\$ 100,000	\$ 5,000,000	\$ 7,500,000	\$ 400,000	\$ 53,622	\$ 1,245,581	\$ 5,912,939	\$ 25,212,142
Spent to Date	\$ 1,173,148	\$ 50,000	\$ 0	\$ 0	\$ 200,000	\$ 53,622	\$ 643,081	\$ 0	\$ 2,119,851
Available	\$ 3,826,852	\$ 50,000	\$ 5,000,000	\$ 7,500,000	\$ 200,000	\$ 0	\$ 602,500	\$ 5,912,939	\$ 23,092,291
<b>Unallocated</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>

Project Budget	Metro NA Bond	Metro Gen. Fnd.	State Bond	State Bond	Falls Legacy	Tourism Grant	Oregon City	Fundraising	Total
Pre-Concept	\$ 126,754	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 75,000	\$ 0	\$ 201,754
Concept Design	\$ 1,655,447	\$ 50,000	\$ 0	\$ 0	\$ 200,000	\$ 53,622	\$ 568,081	\$ 0	\$ 2,527,150
Construction Documents*	\$ 1,869,065	\$ 0	\$ 250,000	\$ 0	\$ 200,000	\$ 0	\$ 452,500	\$ 709,553	\$ 3,481,118
Permitting and Construction	\$ 0	\$ 0	\$ 4,750,000	\$ 6,578,574	\$ 0	\$ 0	\$ 150,000	\$ 4,316,445	\$ 15,795,019
Owner Contingency	\$ 1,348,734	\$ 50,000	\$ 0	\$ 921,426	\$ 0	\$ 0	\$ 0	\$ 886,941	\$ 3,207,101
<b>Total</b>	<b>\$ 5,000,000</b>	<b>\$ 100,000</b>	<b>\$ 5,000,000</b>	<b>\$ 7,500,000</b>	<b>\$ 400,000</b>	<b>\$ 53,622</b>	<b>\$ 1,245,581</b>	<b>\$ 5,912,939</b>	<b>\$ 25,212,142</b>

\*Construction Documentation includes additional technical investigation to support Phase I



Exhibit B

**Partners Group**

State

State Senator  
State Representative  
Regional Solutions  
Oregon State Parks

Metro

Metro Council President  
Metro Councilor  
Metro Chief Operating Officer

Clackamas County

County Commissioner  
County Commissioner  
County Administrator

Oregon City

Mayor  
City Commissioner  
City Manager

## Exhibit C

### **Work of the TAC**

1. **General.** The following subsections set forth roles and responsibilities regarding the work of the TAC, as of the Effective Date of this Agreement and may change from time to time upon approval of the TAC.

1.1 **Project Administration.** Metro will lead and manage the overall administration of the TAC. It will create TAC agendas and meeting notes, and coordinate the Partners Group meetings. Metro's work will also include tracking the Legacy Project scope, schedule, Legacy Project Budget, and expenditures.

1.2 **Strategic Communications.** Except as related to tribal involvement in Section 1.6, below, Metro will lead the social media strategy, manage newsletters, provide coordination of public engagement, and create materials needed for funding requests, among other things. Metro will closely coordinate this work with the TAC and with communications staff of each party.

1.3 **Public Engagement.** Metro will lead the public engagement efforts in close coordination with the City. Metro will update the Legacy Project website.

1.4 **Funding Strategy.** The parties, through the TAC, will collaborate on fundraising and financing of the Legacy Project and future phases of the Riverwalk. This work will coordinate opportunities with Rediscover the Falls and is supported by funding from Oregon City, Clackamas County, and Metro.

1.5 **Private Parties.** In coordination with and with input from the TAC, Metro will lead negotiations with the Owner, PGE, and other third parties with respect to issues that have the potential to significantly impact all aspects of the Legacy Project, including real property issues. The parties shall refrain from communicating directly with the Owner, PGE, or other third parties on these issues without Metro's coordination and input in advance.

1.6 **Tribal Involvement.** The State will take the lead in government to government tribal consultation about involvement in the Willamette Falls Legacy Project and interpretation of the Riverwalk. Metro will create a process for additional tribal involvement, as necessary.

1.7 **Coordination with State Agencies.** The State, through the Regional Solutions office, will lead communication, coordination, and involvement of State Parks and all other state agencies in the Legacy Project, especially with regard to required state permits for the Riverwalk and state funding.

1.8 **Site Access and Tours.** Metro will coordinate scheduling of site access and site tours with the Owner and PGE, and will update the TAC regarding tours on a weekly basis. All parties shall help lead and facilitate the tours.

1.9 ***Implementation Strategies.*** Metro will lead efforts to deliver key decisions and workplans associated with the work of the TAC for future phases of the Legacy Project, taking into account such things as governance, Riverwalk ownership, fundraising, and financing. Metro awarded Oregon City a Community Planning and Development Grant (“CPDG”) for the purposes of reducing and removing barriers to private development. The TAC will continue to coordinate the scope of work for the CPDG as it relates to the Legacy Project.

1.10 ***Riverwalk Project Manager.*** Metro will provide a staff person to manage and coordinate all of the scopes of work and consultant contracts related to the Riverwalk. The Riverwalk Project Manager will create a project management plan for all the Riverwalk work.

1.11 ***Economic Development Project Manager.*** The City will take the lead on the creation and implementation of an economic development strategy for the Legacy Project.

**WILLAMETTE FALLS LEGACY PROJECT  
 PROPOSED IN KIND STAFFING COMMITMENTS FOR FY 17-18 & FY 18-19**

**EXHIBIT D**

<b>Oregon City Key Staff</b>	<b>Primary Responsibility</b>
Community Dev. Director	TAC
Community Services Director	TAC
Public Works Director	Infrastructure Planning Lead
Economic Development Mgr.	Economic Redevelopment Lead
Senior Planner	Economic Redevelopment Planning
Assistant Planner	Deputy Project Manager
Capital Projects Engineer	Infrastructure Planning

<b>Clackamas County Key Staff</b>	<b>Primary Responsibility</b>
BCS Director	TAC
Economic Development Coordinator	TAC & Economic Development Support

<b>Metro Key Staff</b>	<b>Primary Responsibility</b>
Parks & Ops. Prgm. Dir.	TAC
Conservation Program Director	TAC
Principal Parks Planner	WFLP Project Coordinator
Principal Parks Planner	Riverwalk Project Manager
Construction Project Manager	Riverwalk Construction Manager
Attorney	Project Attorney
Natural Resource Scientist	Habitat Design Expert
Communications Manager	Communications Lead
Program Assistant	Project Administrator

<b>State of Oregon Key Staff</b>	<b>Primary Responsibility</b>
Parks and Recreation Dep. Dir.	TAC
Metro Region Coordinator	TAC
Salmonberry Project Manager	TAC
Metro-area Regional Rep.	TAC

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 17-4815, FOR THE PURPOSE OF APPROVING THE AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT AMONG THE STATE OF OREGON, METRO, CLACKAMAS COUNTY, AND OREGON CITY FOR THE WILLAMETTE FALLS LEGACY PROJECT

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Date: July 20, 2017

Prepared by: Brian Moore, (x1764)  
Don Robertson (x1111)

## BACKGROUND

In 2011, Oregon City, Clackamas County, Metro, and the State of Oregon (the “Partners”) recognized the importance of the Blue Heron Paper Mill site for the region and acknowledged the public interest in four core values: public access, historic and cultural interpretation, healthy habitat, and economic redevelopment. In March 2016, the Partners entered into an intergovernmental agreement, establishing the Partners Group of representatives from each government entity and a consensus based decision making process, and directing the staff team to develop a design concept for the project.

The work included issuing a request for proposals for a design team, soliciting extensive community input on design aspects, and developing the preferred design for the riverwalk. The most significant portion of the effort was the community engagement process.

Four major public events were hosted, each with attendance between 400 and 800 members of the public. Three online surveys were conducted with thousands of responses, numerous small community conversations and stakeholder groups were engaged, and a Tribal Advisory Board was formed to engage with various tribal interests at the site in a more meaningful way than through the permit process alone.

With input from the community, the design team developed a preferred design for the riverwalk and vetted the design with the property owner according to the terms of Metro’s easement on the site. On May 17, 2017 the Partners Group recommended the design for approval by each Partner, a Phase I riverwalk project, and an Amended and Restated Intergovernmental Agreement to be approved by the four Partners. The design was presented to the community on June 3, 2017 at OMSI and was received with high praises from community members and the media.

This Amended and Restated Intergovernmental Agreement continues the partnership established in March 2016 while updating it to provide direction for delivery of the first phase of construction for the riverwalk. The new agreement extends the term until 2023 to allow for the completion of Phase I and to leave space for additional fundraising for the project. A two year budget is established for 2017 through fiscal year 2018/19. Metro will continue to lead the project management and has greater decision making authority for Phase I. The agreement requires that operations and maintenance be addressed prior to the start of construction.

It is expected that the non-profit friends group of the project, Rediscover the Falls (“RTF”), will raise as much as \$15 million to expand the first phase or establish a second phase for the riverwalk. The duration of the new IGA allows RTF time to bring additional funds to the project when they are successful. The

project budget will continue to follow a two year cycle, allowing each agency to appropriate funds according to their process and procedures.

Metro remains on point to deliver on commitments for the State funding and for the Natural Areas Bond funding, and is the holder of the easement. As a result, Metro is given authority around project management and decision making regarding feasibility and constructability of Phase I. The Partners will still be involved in decision making in the event that Phase I becomes substantially different from the concept that was approved by the Partners Group on May 17.

Operations and maintenance of the completed riverwalk will also be addressed under this agreement. An overall plan that identifies the lead agency or agencies for operations and maintenance must be in place prior to beginning construction of the riverwalk. It is anticipated that the agencies will identify a collaborative approach to operations and maintenance that allows each agency to manage those aspects of the riverwalk where their expertise and interest exceeds that of the others.

Under the authority of ORS 190.010 and ORS 190.110, the public partners desire to enter into an intergovernmental agreement to provide the governance structure needed for the Legacy Project during the next phase of work, or over approximately the next six (6) years. The term of this agreement begins on the date that all parties have approved it and will expire on June 30, 2023.

The proposed intergovernmental agreement will formally continue the “Partners Group,” as the advisory body for the Legacy Project and retain the representation from each partner agency. It will focus on delivery the first phase of the riverwalk and set the stage for future phases of continued cooperation.

## **ANALYSIS/INFORMATION**

1. **Known Opposition** None known.

2. **Legal Antecedents**

Metro Council Resolution 14-4556, approved August 14, 2014, for the purpose of approving the Willamette Falls Riverwalk Memorandum of Understanding with City of Oregon City, Clackamas County, and Oregon State Parks

Metro Council Resolution 16-4676, approved March 31, 2016, for the purpose of approving the Willamette Falls Legacy Project governance intergovernmental agreement among the State of Oregon, Clackamas County, Metro and Oregon City.

3. **Anticipated Effects** The IGA establishes a decision-making process, organizational structure for the project, a budget through June 30, 2019, and authorizes Metro to continue work managing the Willamette Falls Legacy Project, the riverwalk design, and Phase I construction of the riverwalk.

4. **Budget Impacts** The IGA includes a budget and staffing commitment for the current and next fiscal years for each of the four project partners. Metro’s total investment is \$3,027,099.

## **RECOMMENDED ACTION**

Staff recommends Council approve Resolution No. 17-4815