

RESOLUTION NO. 5304-16

RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF TUALATIN AND THE TUALATIN RIVERKEEPERS FOR MANAGEMENT AND OPERATIONS OF THE LOUIS WALNUT HOUSE

WHEREAS, the City has leased the Louis Walnut House to the Tualatin Riverkeepers since 2011 and now both parties wish to build on their successful relationship to provide additional public benefits to the Tualatin community; and

WHEREAS, the City owns the historic building and does not have current financial resources at this time to use it for parks and recreation programming, nor for other City purposes; and

WHEREAS, the City has the ability to discourage vandalism to the building by having it regularly occupied and the City can reduce operating costs by limiting vandalism and shifting some of the routine costs of operating the building to the Tualatin Riverkeepers; and

WHEREAS, the Tualatin Riverkeepers has the organizational capacity to provide certain public benefits to the Tualatin Community in exchange for the right to use the facility for administrative purposes, which in part, support the provision of public benefits to the Tualatin community; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City Manager is authorized to execute the attached Management and Operations Agreement for Louis Walnut House located in the Tualatin River Greenway at 11675 SW Hazelbook Road.


Section 3. This resolution is effective upon adoption.

INTRODUCED AND ADOPTED this 12nd day of December, 2016.

CITY OF TUALATIN, OREGON

BY  _____
Mayor

ATTEST:
BY  _____
City Recorder

APPROVED AS TO FORM
BY  _____
City Attorney

MANAGEMENT AND OPERATIONS AGREEMENT FOR LOUIS WALNUT HOUSE

This Management and Operations Agreement ("Agreement") is between the City of Tualatin ("City") and the Tualatin Riverkeepers, a non-profit corporation ("Riverkeepers") for the facility of "The Louis Walnut House, and designated area within the storage shed, located at 11605 and 11675 SW Hazelbrook Road, Tualatin, Oregon 97062" ("House").

Section 1. Purpose. The purpose of this Agreement is to maximize the useful value of the House consistent with City of Tualatin Charter, Ordinances, and parks and recreation policies.

Section 2. Use of House; Agreement Term. In consideration of the promises and covenants herein, City allows Riverkeepers to use the House for the purposes outlined in this Agreement from the date beginning July 1, 2016 and ending June 30, 2021.

Section 3. Recreation and Environmental Programs.

- A. Develop Programs.** Riverkeepers must operate and use the House and ancillary grounds for the purpose of developing the City recreation, education, and preservation programs and activities for the public as a focal point for environmental education and enrichment to serve Tualatin residents and businesses. Riverkeepers and City enter this agreement with the expectation that development of programs will be an evolutionary process, and, over time, growing to the full scope and potential. Appendix A lists the minimum public benefit programs required.
- B. Performance Standards.** The specific performance standards, such as defining the operating days of the week, hours per day, number and variety of programs, attendees and participants, or revenue production, will be developed between City and Riverkeepers. The intent of both parties is that House will have regular hours of operation on most days of the week, effective marketing, publicity and community outreach. Riverkeepers will provide City with copies of fee schedules and promotional materials. City and Riverkeepers may meet from time to time to discuss the terms of this Agreement and may modify performance expectations to meet programmatic goals.
- C. Affordable Programs.** Riverkeepers agrees to offer programs and activities that are affordable to the community, including those from low incomes.
- D. Discount to Tualatin Residents.** Riverkeepers agrees that Tualatin residents will receive a discount, to be determined by City and Riverkeepers, on all programs offered by the Riverkeepers.

Section 4. Management of House.

- A. Riverkeepers to Manage.** Riverkeepers will manage the House, consistent with the policies and procedures of the City of Tualatin Community Services Department. Riverkeepers bears all costs and expenses related thereto. The House may not be used for residential purposes. Riverkeepers shall not use nor allow the House to be used in any manner inconsistent with City of Tualatin Park Rules or permit anything to be done upon or about the House that creates a nuisance.
- B. Coordination with City.** The parties may coordinate building management to maximize the value to the community.
- C. Compliance with Laws.** Riverkeepers must comply with and faithfully observe in the use and occupation of the House all rules, laws, regulations, and requirements of the city, county, state, federal, and other applicable governmental authorities. Alcohol may be permitted at the House provided an Alcohol Use Permit is obtained from the City's Community Services Department. The House must be a "Smoke and Tobacco-Free" environment and use of tobacco products or inhalant delivery systems of any kind are not allowed inside the building or on the grounds and property.

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

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

Section 6. Nondiscrimination. Riverkeepers 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. Riverkeepers acknowledges that all programs and activities are open to the public.

Section 7. Insurance. Riverkeepers must provide at its own cost insurance for all furnishings, appliances, fixtures, improvements, surface covers, decoration, and other contents of the House at its own expense. Such items remain the property of Riverkeepers during the term of this Agreement and upon the expiration or earlier termination of this Agreement, as long as such items are not permanently installed in the House.

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

- A. **Hazardous Materials.** Riverkeepers must not bring, keep or use any Hazardous Materials in or about the House without the prior written consent of City. 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.** Riverkeepers must not create any dangerous conditions at the House, including but not limited to any fire danger, nuisance, or other violation of law.
- C. **Notification of Dangers.** Riverkeepers 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 Riverkeepers. Riverkeepers must inform its employees and agents of any known or discovered dangers, or any dangerous conditions, that are present at the House, until such time as the condition is remedied.

Section 9. Nonassignment. Riverkeepers may not assign this Agreement in whole or in part, without the prior written consent of City in each instance.

Section 10. Signs. Riverkeepers may place a monument sign in front of the House and one sign affixed to the House. City's prior written approval is necessary for all other signs at the House. Riverkeepers acknowledges that it is a contract provider of services promoting recreational and environmental education and enrichment, for the City of Tualatin and will endeavor to ensure that advertising and other materials indicate that the programs and services offered are products of Riverkeepers with support from the City.

Section 11. Maintenance of House and Common Areas. City will repair and maintain the structural portions of the House, including the roof, the lighting, heating, air conditioning, plumbing, water, sewage, gas and electrical systems, fixtures and equipment in good condition and repair. However, if a defect, malfunction, or damage results from Riverkeepers negligent act or omission, City may charge to and collect the cost of such repair from Riverkeepers.

- A. Common Areas.** City will maintain the common areas of the House consisting of sidewalks and pathways; landscaping, enhancement and mitigation plantings; (other than special plantings, such as gardens and the orchard that will be maintained by the Riverkeepers); service areas; the driveway and parking lot.
- B. Utility Costs.** Riverkeepers will obtain and pay cost of gas, electric, sanitary and storm sewer, road maintenance, and water utilities; solid waste removal and recycling service; and provide regular custodial and cleaning consistent with the level of service provided other City-owned buildings. Riverkeepers shall be responsible for any paper products and toilet supplies used. Riverkeepers 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 Riverkeepers gives written notice to City of the repairs to be made or condition to be corrected. City has no liability for failure to make any repair required of it if the repair is completed within a reasonable time following the notice from Riverkeepers. City will maintain the storage shed and be responsible for associated upkeep and utilities.
- D. Access to House.** The parties agree that the City, City's contractors and workers may, upon reasonable notice to Riverkeepers (except no notice shall be required in an emergency), enter any portion of the House at any time and erect all necessary structures to repair, alter or maintain the Agreement. Riverkeepers waives any claim to damages resulting from such activities, except those caused by City negligence.

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

- A. Vacate the House.** Upon termination of this Agreement, Riverkeepers must vacate the House in the same condition as they were 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. Riverkeepers must return all keys for the House to City, inform City of all combinations on locks, if any, and remove any alterations before vacating the House.
- B. Removal of Furnishings.** Upon termination of this Agreement, Riverkeepers 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 Riverkeepers causes any damage to the House, City has the right to recover from Riverkeepers 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. Insurance and Indemnity

- A. Insurance.** During the entire term of the Agreement, Riverkeepers must keep in full force and effect a policy of comprehensive general liability, property damage, and personal injury insurance of which the limits of liability must not be less than one million five hundred thousand dollars (\$1,500,000) per person and per accident and in which the property damage liability must not be less than one million dollars (\$1,000,000). If the limits of liability provided under the Oregon Tort Claims Act, ORS 30.270, or other applicable law should be raised to an amount exceeding those dollar amounts, then Riverkeepers must provide a policy of insurance that covers such increased amount of liability. The insurance shall be in an insurance company approved by City; a copy of the policy or certificate of insurance shall be delivered to City; the policy must name City, as well as City's officers, employees, volunteers, and agents as additional named insured's; and Riverkeepers must not cancel the policy without first giving City at least thirty (30) days prior written notice.
- B. Indemnification by Riverkeepers.** To the extent legally possible, Riverkeepers must indemnify and hold City, its officers, agents, employees, 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 Riverkeepers and its employees, agents, officers, volunteers and contractors in connection with this Agreement.
- C. Indemnification by City.** To the extent legally possible, City must indemnify and hold Riverkeepers, its officers, agents, employees, 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 City and its employees, agents, officers, volunteers and contractors in connection with this Agreement.

Section 14. Damage by Casualty or Fire and Duty to Repair. If the House 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. If the City chooses to make repairs, City may take possession of and occupy, to the exclusion of Riverkeepers, all or part of the House to make the necessary repairs. Riverkeepers agrees to temporarily vacate, upon request, all or any part of the House that City may require to make necessary repairs. City will endeavor to minimize disruption associated with repair. Riverkeepers waives all claims for recovery from City for loss or damage to the House 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 Riverkeepers 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 Riverkeepers fails to cure the default, 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 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, including all Agreement, constitute 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 Riverkeepers 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**
Rich Mueller
Parks and Recreation Manager
18880 SW Martinazzi Avenue
Tualatin, OR 97062
503 691-3064
rmueller@ci.tualatin.or.us
- 2. **Provider's Project Manager**
Mike Skuja
Executive Director
11675 SW Hazelbrook Road
Tualatin, OR 97062
503 218-2580
mike@tualatinriverkeepers.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), Riverkeepers 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"). Riverkeepers 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. Riverkeepers shall provide to City proof of filing for property tax exemption with the Washington County Assessors Office. Riverkeepers must apply for this exemption in a timely manner. Application fees will be the expense of Riverkeepers. Any fees associated with a late filing must be paid by Riverkeepers. If Riverkeepers fails to file for such exemption, Riverkeepers will be responsible for all real property taxes assessed to City for 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 and process any necessary Change Order. 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 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 in 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.

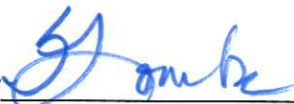
Section 24. Governing Law. This Agreement is governed by and will be construed in accordance with the laws of the State of Oregon without regard to principles of law.

APPROVED AND ENTERED this 12 day of December 2016.

TUALATIN RIVERKEEPERS

CITY OF TUALATIN

By 
Mike Skuja
Executive Director

By 
Sherilyn Lombos,
City Manager

APPROVED AS TO LEGAL FORM


City Attorney

Appendix A

Tualatin Riverkeepers Public Benefits

Management and Operations Agreement for Louis Walnut House Section 3. Recreation and Environmental Programs

1. Riverkeepers will introduce the residents of the City to a variety of natural resources surrounding the river, thereby building public support and appreciation for citizens in the City through the Riverkeepers web and social media sites, presentations, and printed materials.
2. Riverkeepers will serve as a public information location for citizens to access information about the Tualatin River paddling routes, historical, ecological, natural, wildlife, and public engagement opportunities, from Monday through Friday from 9:00 am to 2:00 pm.
3. Riverkeepers will give three historical presentations each year on the Tualatin River at locations such as the Tualatin Heritage Center, Winona Grange, and Tualatin Library.
4. Each year Riverkeepers will execute nine ecological events related to the Tualatin River, including two Tualatin River clean ups, six property clean ups, and a school trip to Tualatin Community Park, with a Tualatin public school.
5. Riverkeepers will participate in collaborative natural resources planning with City staff to provide input on restoration and planning efforts on the property in the future, assuring it retains its natural character but and enhances existing wetlands and riparian forest.
6. Riverkeepers will assist with providing volunteers and funding for enhancement and restoration of the property.
7. Riverkeepers will connect Tualatin students to the river outside of City limits by including approximately 100 Tualatin students (K-12) annually in half day field trips at Dirksen Nature Park in Tigard.
8. Riverkeepers plan to coordinate and collaborate with City park maintenance to provide an urban forestry intern for the purpose of onsite and City-wide tree care.
9. Riverkeepers Discovery Day activities, learning enhancement, environmental experience, and use of kayak equipment will be available to Tualatin residents during this annual event.

10. Trash pickup and removal from the property will occur by the Riverkeepers as needed.

11. Programs and activities will be offered at an affordable cost for people with low incomes and Tualatin residents will receive a discount on all programs and activities offered.