

GROUND LEASE

The Gerry Frank | Salem Rotary Amphitheater

PARTIES: CITY OF SALEM,
an Oregon municipal corporation

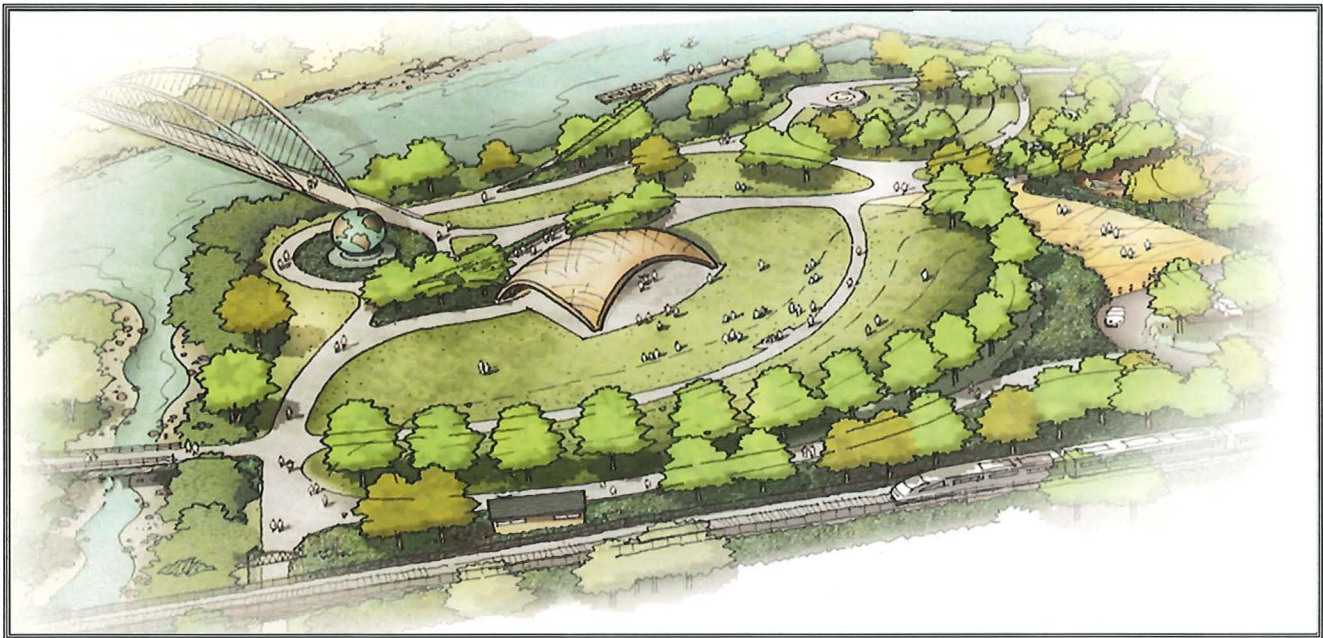
(herein "City" or "Landlord"), and

The ROTARY CLUB OF SALEM,
an Oregon non-profit corporation with members

(herein "Rotary" and "Tenant").

The CITY OF SALEM and The ROTARY CLUB OF SALEM collectively are referred to herein as the "Parties."

RECITALS:



- a) The City is a public body that owns property located at 200 Water Street NE, Salem, Oregon, 97301, known as Riverfront Park ("Park"); and
- b) Rotary is an Oregon nonprofit corporation that in 2020 will celebrate the 100th anniversary of being chartered by Rotary International; and
- c) In celebration of its 100th anniversary, Rotary intends to donate to the City a new performance facility; and
- d) The City has identified an area of approximately 2.2 acres, located generally at the southeast corner of the Park as identified in Exhibit A, to be sufficient to contain a new performance facility, seating area, level space, and associated walkways and appurtenance; and
- e) Rotary has completed a competitive selection process to identify the preferred design for a new amphitheater (consisting of a cover and stage) and related appurtenances (see Exhibit B, 1.a) (collectively referred to herein as the "Project," and as depicted in Figure 1); and
- f) The City Council, after receiving a recommendation from the Salem Parks and Recreation Advisory Board, approved the preferred design for the new amphitheater facility; and

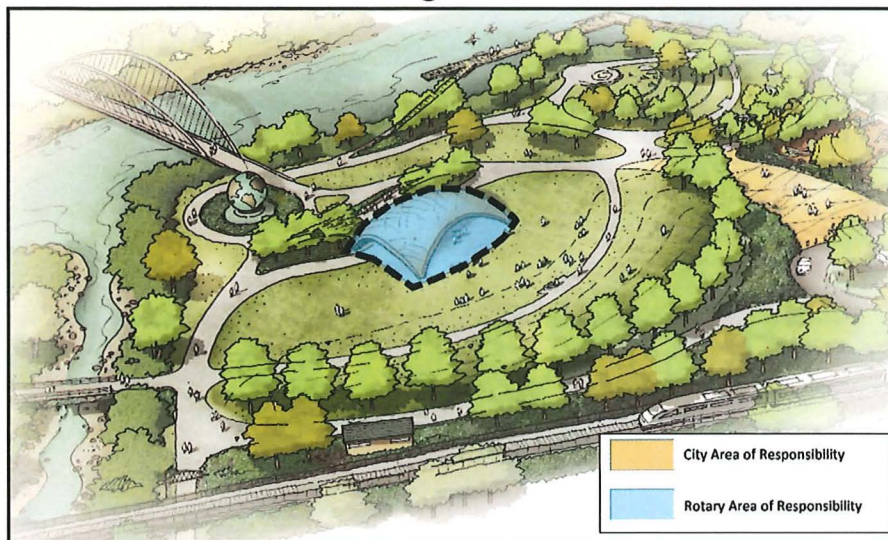
- g) The new amphitheater shall be referred to and officially named the “Gerry Frank | Salem Rotary Amphitheater” (also referred to herein as the “Project”), which is further described in section 1 of Exhibit B – “General Outline of the Project and the Surrounding Park Design” and Exhibit D – “Plans and Specifications” hereto; and
- h) The City has formally incorporated the Gerry Frank | Salem Rotary Amphitheater into the Riverfront Park Master Plan; and
- i) The Parties find that the grant of this Ground Lease will benefit Rotary’s charitable purposes and the public and is in the best interest of the City and Rotary.

The parties therefore agree as follows:

SECTION 1. AGREEMENT OF LEASE

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises on the terms and conditions set forth below. This agreement shall be referred to herein as the “Lease” or the “Ground Lease.” The Premises consists of the area within Riverfront Park, intended to serve as the site for the amphitheater, which is represented pictorially in the outlined area depicting the amphitheater in the center of Figure 1:

Figure 1



The area surrounding the Premises within the 2.2 acres (“Surrounding Property”) is intended to serve as the site for the related appurtenances and is not subject to this Ground Lease, except that the Parties shall agree to include certain areas within the Premises, or designate them as temporary construction easements, for Tenant’s use as a staging area for construction.

Within 30 days of receiving a preliminary plan from Tenant, the Landlord will survey, or cause to be surveyed, the Premises and shall provide a legal description for review and approval by Rotary’s Architect and Engineer. It is the intention that the Ground Lease Area will be sufficient to allow Rotary to complete construction of the Gerry Frank | Salem Rotary Amphitheater. Upon mutual review and approval of the legal description of the Premises, it shall be attached as Exhibit “A,” hereto.

SECTION 2. TERM

2.1 Initial Term. Unless sooner terminated or extended as provided herein, this Ground Lease shall be effective on the date this Ground Lease is last signed by both Parties (the "Effective Date") and will remain in effect until the Project is completed or this Agreement is otherwise terminated, whichever comes first. This Agreement shall terminate on the seventh anniversary of the Effective Date except as otherwise replaced, renewed, or terminated.

SECTION 3. RENT

3.1 Rent. The consideration for this Lease is other good and valuable consideration, the sufficiency of which is acknowledged by the Parties.

3.2 Holdover Rent. If Tenant fails to surrender the Premises within a reasonable period after termination of this Ground Lease which period shall not exceed 60 days, Tenant's tenancy shall be subject to the terms and conditions hereof; provided, however that such tenancy shall be a tenancy at sufferance only, for the entire Premises and any temporary construction easements, and Tenant shall pay Monthly Rent (on a per-month basis without reduction for any partial month) at a rate of \$1.10 per square foot, per month. Nothing in this section shall limit Landlord's rights or remedies or be deemed a consent to any holdover. Tenant shall be liable to Landlord for any reasonably ascertainable consequential damages incurred by Landlord by reason of Tenant's holdover in addition to holdover rent.

SECTION 4. USE OF PREMISES.

4.1 Permitted Uses. Tenant may use and permit the use of the Premises as the site to construct the Project, and other uses incidental to the Project construction, and for no other purpose.

4.1.1 Occupancy. Tenant shall have no right to occupy or use the Premises until the conditions precedent to construction set forth in Section 4 of Exhibit C – Conditions Precedent to Construction – have been satisfied.

4.2 Use of Hazardous Materials. Tenant shall not release from or discharge onto the Premises any Hazardous Materials. Tenant may only store those Hazardous Materials normally used in the course of Tenant's use of the Premises in commercially reasonable amounts, and only so long as Tenant complies with all laws and regulations regarding storage, use and disposal of Hazardous Materials.

4.3 Definition of Hazardous Materials and Existing Hazardous Materials. As used in this Ground Lease, the term "Hazardous Materials" 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 (49 CFR 172.101) or by the United States Environmental Protection Agency as Hazardous Substances (40 CFR Part 302) and amendments thereto, petroleum products, or other such substances, materials and wastes that are or become regulated under any applicable local, state, or federal law. "Existing Hazardous Materials" are those Hazardous Materials that existed on or under the Premises prior to the Effective Date, as evidenced by the administrative record compiled by the Oregon Department of Environmental Quality Environmental Cleanup Site Information Database (Salem Riverfront Park Project, ECSI Site ID 865).

4.4 Tenant's Hazardous Materials Indemnification of Landlord. Tenant shall indemnify, defend, and hold Landlord harmless from any and all claims, damages, penalties, fines, costs, or liabilities which arise on or after the Effective Date as a result of a release from or discharge onto the Premises of any Hazardous Materials on or under the Premises which occurs on or after the Effective Date and is caused, in whole or in part, by Tenant, its agents or contractors. Provided, however, if Tenant or the General Contractor obtain Pollution Liability Insurance in accordance with Paragraph 10.5 of this Ground Lease, the foregoing indemnification shall be limited to the policy limits specified in Paragraph 10.4. Tenant's indemnification of Landlord includes, without limitation, reasonable and necessary costs incurred in connection with the investigation, cleanup, remediation, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision attributable to Tenant's (or its agent's or contractor's) release or exacerbation of Hazardous Materials. Without limiting the foregoing, in the event of a release from or discharge onto the Premises of Hazardous Materials caused by Tenant (or its agents or contractors), Tenant shall promptly take all actions, at its sole expense, necessary to return the Premises to the condition existing prior to such release; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not have a material adverse effect on the Premises. The foregoing indemnity shall survive the expiration or earlier termination of this Ground Lease.

4.5 Landlord's Hazardous Materials Indemnification of Tenant. As long as Tenant complies with the terms of Paragraph 4.2 of this Ground Lease, Landlord shall indemnify, defend, and hold Tenant harmless from any and all claims, damages, penalties, fines, costs, or liabilities arising from or in connection with Existing Hazardous Materials on or under the Premises. Landlord's indemnification of Tenant includes, without limitation, reasonable and necessary costs incurred in connection with the investigation, cleanup, remediation, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision attributable to Existing Hazardous Materials. The foregoing indemnity shall survive the expiration or earlier termination of this Ground Lease.

4.6 Environmental Matters. The Parties hereby acknowledge that the Premises and the surrounding Park are subject to certain activity and use restrictions arising from Existing Hazardous Materials (as that term is defined in Section 4.3 above). Within 10 days of the Effective Date, Landlord shall provide and fully disclose all data, reports, assessments, government notices and restrictions, and any other information regarding Existing Hazardous Materials. If new information regarding Existing Hazardous Materials is received by or made known to Landlord at any time following the Effective Date, Landlord shall promptly provide this information to Tenant in accordance with Section 4.6 of this Ground Lease. Tenant, its agents and contractors shall abide by any activity or use restrictions concerning Existing Hazardous Substances, including any contaminated media management plan developed for the Project.

SECTION 5. TAXES AND ASSESSMENTS; LIENS; UTILITIES

5.1 Payment by Tenant. If the Premises is not otherwise tax-exempt because of Tenant's and Landlord's purposes, Tenant shall pay before delinquency all real and personal property taxes, general and special assessments, and other charges of every description levied on or assessed against the Premises and Improvements located on the Premises or personal property or fixtures located on the Premises or in the Improvements during the lease term. Tenant shall make all such payments directly to the taxing authority. If any such tax, assessment or charge may be paid in installments, Tenant may elect to do so as long as each installment together with interest is paid before it becomes delinquent.

5.2 Prorations. Taxes, assessments and charges for the tax years in which the lease term commences and expires, or is terminated, shall be prorated between the parties on a daily basis as of the date of commencement or expiration. If any tax, assessment or charge is payable in installments and an election to so pay has been made with respect to the Premises, Tenant shall pay all installments which fall due during the lease term with prorates made accordingly at expiration, if any.

5.3 Right to Contest. Tenant may contest in good faith the validity or amount of any tax, assessment or charge in accordance with the procedures established by statute or administrative rule for such contest so long as the Premises are not subjected to any lien as a result of the contest. Tenant may prosecute such contest in the name of Landlord as Landlord's attorney in fact. All tax contests shall be at the sole expense of Tenant. Any return or rebate from any taxing authority on account of any tax or assessment that was originally paid by Tenant shall be the sole property of Tenant.

5.4 Property Tax Exemption. Tenant shall, if needed or desired, have the sole responsibility of applying for and pursuing a property tax exemption for the Premises. Landlord shall sign such documents or take other steps reasonably necessary for Tenant to obtain the exemption.

5.5 Proof of Compliance. Tenant shall furnish to Landlord proof of payment of any tax, assessment or charge due on the Premises within 10-days of a written request by Landlord.

5.6 Liens. Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by Tenant, and Tenant shall indemnify and hold Landlord harmless from all claims, demands, liabilities and expenses, including attorney's fees relating to any liens. If any mechanic's, laborer's, materialmen's or other lien caused or charged to Tenant shall at any time be filed against the Premises, Tenant may contest the lien or charge if Tenant, within thirty (30) days after notice of the lien filing, causes the lien to be discharged of record or deposits with Landlord cash or securities satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney's fees, and other charges that could accrue as a result of foreclosure or sale under the lien.

5.7 Utilities. Landlord shall pay when due all charges for services or utilities used on or in connection with the Premises. Tenant has no obligation to supply any utilities or services for the Premises.

SECTION 6. ALTERATIONS, CONSTRUCTION OF NEW IMPROVEMENTS

6.1 Compliance with Applicable Laws. Tenant may construct the Project on the Premises provided Tenant shall ensure all work is done in a good and workmanlike manner in compliance with all applicable building and zoning laws and all other laws, ordinances, orders and requirements of all authorities having or claiming jurisdiction.

6.2 Alteration, Demolition, or Removal of Existing City Improvements. Tenant may alter, demolish or remove any improvement (e.g., walkway, turf, irrigation, etc.) that is on the Premises as is needed to construct the Project and related improvements (i.e., the Project) upon approval of Plans and Specifications by the City. Unless otherwise agreed, any improvement demolished or removed must be replaced with an in-kind improvement that meets the original improvement's function.

SECTION 7. MAINTENANCE; ALTERATIONS; RECONSTRUCTION

7.1 Maintenance. Tenant shall maintain the Premises and all improvements in first class condition and repair throughout the term of this Lease, ordinary wear and tear excepted, and in accordance with all applicable laws, rules, regulations and ordinances of federal, state, county, municipal or other governmental agencies having or claiming jurisdiction.

7.2 Reconstruction After Damage. If any Improvement on the Premises is damaged or destroyed by fire or any other cause at any time during the lease term, whether or not covered by insurance, Tenant shall promptly repair the damage and restore the Improvement. The completed repair, restoration or replacement shall be equal in value and quality to the condition of the Improvement immediately before the damage.

7.3 No Rent Abatement. Tenant is not entitled to any abatement of rent on account of any damage to or destruction of any buildings or other improvements on the Premises. Damage or destruction to buildings or other improvements also will not alter or terminate any other obligations of Tenant under this Lease, except as specifically provided to the contrary.

SECTION 8. OWNERSHIP OF THE IMPROVEMENTS

Title to the improvements shall be and remain vested in Tenant until the donation of the improvements constructed on the Premises is completed. Title to the land shall be and remain vested in the Landlord at all times.

SECTION 9. FINANCING; ASSIGNMENT; SUBLETTING

9.1 Tenant's Right. Tenant may at any time and from time to time subject the leasehold estate and any or all Improvements to liens or other obligations of Tenant, provided that:

9.1.1 The lien must be subject to all terms and conditions of this Lease and to the rights and interests of Landlord except as specifically provided to the contrary in this Lease, and

9.1.2 Tenant shall promptly notify Landlord of the creation of each lien and deliver to Landlord a true copy of the lien documents.

9.2 No Subordination. Landlord will not and is not required to subordinate its fee title to any lender.

9.3 Further Encumbrances. Landlord shall not further encumber Landlord's interest in the Premises without Tenant's prior written consent, which consent shall not be unreasonably withheld or delayed.

9.4 Assignment and Subletting by Tenant. Tenant may not assign, sublet or otherwise transfer Tenant's interest in this Lease or the estate created by this Lease without the prior written consent of Landlord and at Landlord's sole discretion. Tenant may change its membership at any time without Landlord's consent.

9.5 Assignment by Landlord. Landlord may not assign its interest under this Lease without Tenant's consent, which consent will not be unreasonably withheld or delayed.

SECTION 10. INSURANCE

10.1 Fire and Hazard Insurance. On or before the commencement of construction, Tenant shall throughout the lease term keep or cause the General Contractor to keep all buildings on the Premises insured against loss by casualties insured by an all risk policy. The amount of the insurance may not be less than one hundred percent (100%) of the replacement cost of the insured Improvements and must be sufficient to prevent Tenant from becoming a coinsurer under the provisions of the policies.

10.2 Proceeds of Fire and Hazard Insurance. The proceeds of the policies described above shall be used to repair, restore and replace any damaged or destroyed Improvements, as required under Subsection 7.2 above. Landlord shall cooperate fully with Tenant to obtain the largest possible recovery, but Landlord shall have no expense or cost in that connection.

10.3 Indemnity. Tenant shall hold Landlord, its officers, employees, agents, and volunteers harmless against any and all claims of every nature arising from any injury or damage, except those based on the Landlord's own act or negligence, suffered during the term of this lease by any person or property in or about the Premises, and, at Tenant's expense, shall defend Landlord against any suit or action arising from any injury or damage and appeals therefrom, and shall satisfy and discharge any judgment or decree that may be awarded against the Landlord in such proceeding.

10.4 Public Liability Insurance. Tenant shall obtain and maintain in effect during the term of this Agreement a policy or policies of liability insurance, including commercial general liability or comprehensive general liability insurance, with combined single limits, or the equivalent of \$2,000,000 (two million dollars) for each occurrence for bodily injury, death, or property damage unless otherwise approved in writing by the City's Risk Manager. Such insurance shall be per occurrence and not on a "claims made" form. Such insurance shall also include contractual liability coverage for the indemnity provision set forth in this Agreement. Such insurance shall cover as additional insureds the City, its officers, employees, agents, and volunteers. As evidence of the insurance coverage required by this Agreement, Tenant shall furnish an endorsement listing the City as an additional insured to the City prior to the Effective Date of this Agreement. Tenant shall be financially responsible for all pertinent deductibles, self-insured retention, and/or self-insurance. Such insurance shall be issued by a carrier that is authorized to conduct business as an insurance company in the State of Oregon and shall not be canceled or altered without a minimum of thirty (30) days' prior written notice to the City.

10.5 Pollution Legal Liability Insurance. Prior to commencing work on the Project, Tenant shall procure, or cause the General Contractor to procure a Pollution Legal Liability Insurance policy per Exhibit E, B.8 both in a form and from an insurer acceptable to Landlord and Tenant. Such policy shall cover as additional insureds Landlord, its officers, employees, agents, and volunteers. Tenant shall furnish an endorsement listing Landlord as an additional insured to the Landlord within ten (10) days following procurement of such policy, and prior to beginning any work on the Project.

10.6 General Insurance Provisions. All policies of insurance that Tenant is required by this Lease to carry shall:

10.6.1 Provide that the insurer waives the right of subrogation against Landlord and that any loss shall be payable notwithstanding any negligence or affirmative act of Landlord.

10.6.2 Be issued by a responsible insurance company which is licensed to conduct business in the state of Oregon.

10.6.3 Be primary policies.

10.6.4 Be evidenced by certificates furnished to Landlord bearing endorsements requiring 30 days' written notice to Landlord prior to any change or cancellation of the policies.

SECTION 11. CONDEMNATION

11.1 Total or Substantial Taking. A taking or condemnation shall be considered total or substantial if it includes all of the Premises or so much of the Premises that a reasonable amount of reconstruction would not make the land and improvements a practical development and reasonably suited for the uses and purposes for which the Premises were used just prior to the condemnation.

11.1.1 Effect of Total or Substantial Taking. In the event of a total or substantial taking, the Lease shall terminate as of the date title or possession passes to the condemning authority. All rent, additional rent and other charges payable by Tenant under this lease shall be prorated as of the date of termination under this provision.

11.1.2 Distribution of Total or Substantial Taking Proceeds. Landlord shall receive, regardless of when the taking occurs, that portion of the award which represents the value of the Premises considered as unimproved and unencumbered by this lease, together with interest and costs in proportion to the land value. Tenant shall be entitled to the balance of the award (award balance).

11.2 Partial Taking. This section shall apply to any taking or condemnation that is not subject to Section 11.1.

11.2.1 Landlord shall receive the portion of the award that represents the value of the Premises considered as unimproved and unencumbered by this Lease, including any damages related to the Premises, together with interest and a proportionate share of the costs awarded.

11.2.2 If an award is made on account of consequential damages, severance damages, or similar damages, the parties will attempt to negotiate in good faith to determine the distribution of such sums. If no agreement can be made, the parties shall petition the court in which the condemnation is pending to determine their respective shares, taking into account the impact of the taking on: (a) the remaining balance of the Premises, (b) any adjacent or contiguous parcels whose use is coordinated with the use of the Premises, (c) the condemner's basis for the payment, and (d) such other factors as to the court deems proper.

11.2.3 All sums not paid to Landlord shall be paid to Tenant.

11.2.4 Beginning on the first day that title or repossession passes to the condemning authority, rent shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

11.3 Participation and Proceedings. Either party receiving any notice of intended taking, any service of legal process relating to condemnation or any other notification in connection with any taking, condemnation or purchase, sale or transfer in lieu of condemnation shall promptly give the other party notice of such receipt. Landlord, Tenant and any leasehold mortgagee shall have the right to represent its respective interest in each such proceeding or negotiation and to make full proof of its claims. No sale, transfer, agreement or settlement with the condemning authority shall be made without the consent of Landlord and Tenant. For purposes of this Lease, taking or condemnation includes a

sale to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power.

SECTION 12. DEFAULT

Each of the following events shall be a default by Tenant and a breach of this Lease:

12.1 Failure to Pay Rent. Failure of Tenant to pay any rent payment within 20 business days after written notice to Tenant that it is due.

12.2 Other Performance Failures. Failure of Tenant to perform any other term, condition or covenant of this Lease within thirty (30) days after written notice from Landlord specifying the nature of the failure with reasonable particularity. If the failure is of such a nature that it cannot be completely remedied within the 30-day period, the failure shall not be a default if Tenant begins correction of the failure within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to correct the failure as soon as practicable.

12.3 Attachment. Attachment, execution, levy or other seizure by legal process of any right or interest of Tenant under this Lease if not released within 10-days or such other time as Tenant reasonably needs to eliminate said issue.

12.4 Bankruptcy. An assignment by Tenant of its interest for the benefit of creditors, the filing by Tenant of a voluntary petition in bankruptcy, the filing of an involuntary petition in bankruptcy against any Tenant and failure of Tenant to secure a dismissal of the petition within 30-days after filing, the appointment of a receiver to take possession of the Premises or improvements or the leasehold estate or of Tenant's operations on the Premises for any reason. For purposes of this section the term bankruptcy includes all arrangements and chapters in the Bankruptcy Code.

SECTION 13. REMEDIES ON DEFAULT

13.1 Remedies. Upon the occurrence of default, Landlord and Tenant may exercise the right to cure set forth below or any other remedy available under applicable law.

13.2 Landlord's Right to Cure. After expiration of any applicable period during which Tenant could cure, and before that in the event of an emergency, Landlord may, but is not obligated to, make any payment required of Tenant under this lease or under any note, mortgage, contract or other document pertaining to the financing or improvements or fixtures on the Premises or perform or comply with any other covenant or condition imposed on Tenant under this Lease or under any such note, mortgage, contract, or document. All amounts paid by Landlord plus the cost of any performance or compliance, including attorney fees, plus interest on such sums at the rate of ten percent (10%) per annum from the date of payment, shall be deemed additional rent payable by Tenant with the next due installment of rent. No such payment or performance by Landlord shall constitute a waiver of a default or of any other remedy for default or render Landlord liable for any loss or damage resulting from any such payment or performance.

13.3 Default by Landlord. If Landlord fails to perform any covenant, condition, or agreement on its part to be performed under this Lease within 30-days after receipt of written notice from Tenant specifying such failure (or if such failure cannot reasonably be cured within thirty (30) days, if Landlord does not commence to cure the failure within that 30-day period or does not diligently pursue such cure to completion), then such failure will constitute a default hereunder and Landlord will be

liable to Tenant for damages sustained by Tenant to the extent they are a result of Landlord's default. If, after notice of Landlord (except in an emergency when no notice will be required), Landlord fails to promptly cure its failure to perform and that failure could cause injury to persons, damage to the Premises, or to Tenant's property, or interfere with the conduct of Tenant's business at the Premises, then Tenant will have the right, but not the obligation, to cure Landlord's failure to perform for the account and at the expense of Landlord. Landlord agrees to promptly reimburse Tenant for the reasonable cost of such cure following receipt from Tenant of an itemized statement of such cost. In the event Landlord does not reimburse Tenant, Tenant shall be entitled to bring an action for specific performance, or for damages.

13.4 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not preclude any other remedy available to Landlord and Tenant under Oregon Law.

SECTION 14. TERMINATION

14.1 This Lease may be terminated on the following grounds:

14.1.1 Mutual Agreement. The Parties may terminate the Lease by mutual written instrument, signed by both Parties, at any time.

14.1.2 Voluntary Dissolution or Bankruptcy. Tenant shall notify Landlord prior to Tenant's voluntary dissolution or bankruptcy or otherwise ceasing operation. The Lease will be terminated upon the date Landlord receives this notice from Tenant.

14.1.3 Involuntary Dissolution or Bankruptcy. The filing of an involuntary petition in bankruptcy against any Tenant and failure of Tenant to secure a dismissal of the petition within 30-days after filing, or the appointment of a receiver to take possession of the Premises or improvements or the leasehold estate or of Tenant's operations on the Premises for any reason.

14.1.4 Termination for Cause. If in the Landlord's opinion, Tenant becomes unable to raise funds necessary to complete the Project when such funds are due or Tenant otherwise abandons the Project, then the Landlord shall be obligated to notify Tenant in writing of its intent to declare a default and said notice shall specify the grounds therefor together with a statement that Landlord intends to terminate the Lease at least 60 days thereafter if Tenant doesn't timely cure or commence good faith efforts to cure the issue(s) (the "Notice of Default and Opportunity to Cure"). If Tenant after receipt of the Notice of Default and Opportunity to Cure commences reasonable good faith efforts to cure the issue(s) of concern to Landlord, then Tenant may continue to pursue its efforts to cure the alleged default as long as Tenant continues to pursue its effort to cure in a reasonably diligent manner.

14.1.5 Final Budget in Excess of Preliminary Budget. As set forth in Section 3(b) of Exhibit C, Tenant may terminate this Ground Lease if the Final Budget exceeds the Preliminary Budget by 5% or more. In such case, Tenant must notify City in writing of its intent to terminate at least 30 days prior to the date of termination.

14.2 Abandonment of the Project. Abandonment of the Project shall be defined as follows:

14.2.1 unscheduled construction inactivity, not caused by force majeure (i.e., Acts of God, labor strikes, unforeseeable conditions or delays, delays in the delivery of supplies, interruptions caused or requested by Landlord, and interruptions outside Tenant's control), which lasts more than 90 days once construction has commenced;

14.2.2 failing to complete the Project within seven years from the Construction Commencement Date;

14.2.3 Tenant's filing of articles of dissolution and/or a voluntary petition bankruptcy, or the filing of an involuntary petition in bankruptcy against any Tenant and failure of Tenant to secure a dismissal of the petition within 30-days after filing, or the appointment of a receiver to take possession of the Premises or improvements or the leasehold estate or of Tenant's operations on the Premises for any reason; or

14.2.4 Tenant's notification in writing to Landlord that Tenant has abandoned the Project. If Tenant notifies Landlord of Tenant's abandonment of the Project, this Ground Lease shall terminate effective upon the date Landlord receives Tenant's notice of abandonment.

14. Obligations After Termination. Upon termination of this Ground Lease, any improvements already installed shall, become the property of the Landlord and Tenant will provide its full cooperation to Landlord in tendering all information and documents reasonably requested by Landlord.

14.4.1 Termination Before Construction. If termination of this Ground Lease occurs before the Construction Commencement Date, Landlord will be under no obligation to complete the Project and the Parties shall be responsible for their own costs.

14.4.2 Termination After Construction. If termination of this Ground Lease occurs after the Construction Commencement Date, then upon termination, because Tenant will have raised at the time of the Construction Commencement Date at least 75% of the budgeted Project funds (i.e., the Initial Funds Raised), the following shall be the obligations of the parties:

14.4.2.1 Tenant Obligations: Tenant shall make the balance of the Initial Funds Raised available to Landlord and Tenant shall continue to cooperate reasonably in collecting all remaining uncollected pledges towards the Project and making those funds available to Landlord. Provided, however, if despite the Landlord's best efforts Landlord is unable to complete the Project, Landlord shall, after deducting reasonable costs incurred in its best efforts to complete the Project (construction costs, but not City operating costs or overhead), return the balance of the Initial Funds Raised and subsequently collected pledges so that Tenant may refund the same to its donors.

14.4.2.2 Landlord Obligations. In Landlord's reasonable discretion, Landlord shall, in good faith, use best efforts, subject to available funds, to complete the Project in a manner substantially consistent with the Plans and Specifications using a combination of funds made available by Tenant and other funds obtained by the Landlord or reasonable cost savings Landlord procures. Landlord shall, in its discretion, manage construction timelines in step with its possession and collection of sufficient funds and budgetary authority for the Project.

14.4.2.3 Deposit of Funds. In the event of termination and Tenant's turnover of Tenant Funds to Landlord, Landlord shall place such funds received in a trust fund dedicated to completion of the Project substantially consistent with the Plans and Specifications consistent with subparagraph 14.4.2.2.

14.4.3 Termination After Construction– Environmental Issue: If Tenant's reason for terminating this Ground Lease or abandoning the Project is because of unforeseen environmental conditions that impede Tenant's ability to complete the Project, then Landlord will have no obligation to attempt to complete the Project per Subsection 14.4.2, and Tenant shall have the right to refund all remaining funds raised to donors.

SECTION 15. MISCELLANEOUS

15.1 Nonwaiver. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision or any other provision.

15.2 Notices. Whenever notice is required or permitted to be given under this Lease, such notice shall be given in writing to the other party by personal delivery; by sending via a reputable commercial overnight courier; or by mailing using registered or certified United States mail, return receipt requested and postage prepaid, at the addresses set forth below:

If to the City:

City of Salem

Attn: Steve Powers, City Manager

555 Liberty Street SE, Room 220

Salem, OR 97301-3503

E-mail: spowers@cityofsalem.net

With copies to:

City of Salem

Attn: Daniel B Atchison, City Attorney

555 Liberty St SE Room 205

Salem OR 97301

E-mail: datchison@cityofsalem.net

City of Salem

Attn: Peter Fernandez, Public Works Director

555 Liberty St SE Room 325

Salem, OR 97301

If to Rotary:

Rotary Club of Salem

Attn: Ken VanOsdol and Barry Nelson

Project Co-Chairs

PO Box 3981

Salem, OR, 97302

E-mail: kenvanosdol@gmail.com; barrigan306@gmail.com

With a copy to:

J. Spencer Taylor, Attorney

PO Box 2647

Salem, OR 97308

E-mail: spencer@123taylorlaw.com

Notice delivered by personal delivery shall be deemed to be given upon actual receipt. Notice sent by overnight courier shall be deemed to be given five (5) days after dispatch. Notice sent by United States mail shall be deemed to be given five (5) days after mailing. Electronic mail (e-mail) shall be deemed received five (5) days after tender thereof provided that the sending party maintains proof of the delivery thereof.

15.3 Attorney Fees. If a lawsuit or arbitration is instituted to enforce this Lease, or in connection with any claim or controversy arising out of this Lease, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court or arbitrator may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action.

15.4 Severability. The invalidity or illegality of any provision of this Lease shall not affect the remainder of the lease.

15.5 Governing Law. This Lease and the party's rights under it shall be construed and regulated by the laws of the state of Oregon. Venue for any action arising under or concerning this lease shall be in Marion County (Oregon) Circuit Court.

15.6 Memorandum of Lease. The parties will execute and acknowledge a memorandum of lease in recordable form which shall include a legal description of the Premises and the term of the lease. Either party may record the memorandum.

15.7 Estoppel Letter. Upon not less than twenty (20) days prior written request from the other party, each party will execute, acknowledge and deliver to the other party a statement in writing, certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), the dates to which the rent, taxes and assessments, if any, have been paid, the amount of any additional rent held by Landlord, and whether the lease is then in default or whether any events have occurred that, with the giving of notice or the passage of time, or both, could constitute a default. The Parties intend that any such statement delivered pursuant to this section may be relied upon by any prospective assignee, mortgagee or purchaser of the fee interest in the Premises or of this Lease. Failure to deliver the certificate within the specified time shall be conclusive upon the party of whom the certificate was requested that the lease is in full force and effect and has not been modified except as may be represented by the party requesting the certificate.

15.8 Prevailing Wage. Tenant shall pay Prevailing Wages on this Project, irrespective of whether it is in fact a public work.

15.9 Naming. Landlord agrees to name the Project the "Gerry Frank | Salem Rotary Amphitheater," and abide by the terms of Exhibit F regarding maintaining the name.

SECTION 16. REPRESENTATIONS AND WARRANTIES.

16.1 Quiet Enjoyment. Landlord warrants that it is the owner of the Premises and has the right to lease the Premises free of all encumbrances except any in the public record or that are disclosed in a preliminary title report obtained in connection with the separate sale of the improvements. Subject to these exceptions, Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

16.3 Liens. Landlord has no knowledge of any current liens on the Premises or notices of liens, except those that may be disclosed in the public records or the preliminary title report obtained in connection with the sale of the improvements on the Premises.

16.4 "AS IS." Landlord and Landlord's agents have made no representations, warranties, or other agreements concerning matters relating to the Premises; that Landlord and Landlord's agents have made no agreement or promise to alter, repair, or improve the Premises; and that Tenant takes the Premises in the condition, known or unknown, existing at the time of this Agreement, "AS IS."

SECTION 17. COMMENCEMENT OF CONSTRUCTION; PRIOR CONDITIONS.

The Tenant may not construct improvements on the Premises unless and until the prior conditions set forth in Exhibit C have been satisfied.

SECTION 18. DONATION.

Within 180 days of completion of construction of the Project in substantial conformance with the Plans and Specifications as evidenced by the issuance of an occupancy permit Tenant will notify Landlord of Tenant's intention to terminate this Ground Lease and revert all interest in the Improvements, the Project, to Landlord. Upon receipt of Tenant's notice hereunder, Landlord, prior to accepting the Project as a donation, shall inspect and review all completed construction and associated documentation, including as-built drawings, to ensure an orderly transfer takes place between Tenant and Landlord. The Landlord's final acceptance must be executed in writing and is conditioned upon the following:

- a. Landlord's acknowledgment that the Project has been completed in substantial conformance with the Plans and Specifications;
- b. Delivery of the General Contractor's warranty (see Exhibit E); and
- c. Tenant's repair or replacement, or payment to Landlord for the repair or replacement of, any damage to Landlord's real or personal property, including landscaping resulting from the Project. If Tenant transfers this obligation to its General Contractor contractually, Landlord shall look solely to the General Contractor for fulfillment of this obligation, and shall not make or allege any claim, suit, action, liability, cost, and/or the like related thereto against Tenant or any organization affiliated or alleged to be affiliated with Tenant locally, nationally, or internationally.

SECTION 19. COMPLETE AGREEMENT.

This document and its exhibits constitutes the entire, final, and complete agreement of the parties pertaining to the lease of the Premises, and supersedes and replaces all written and oral agreements by and between the parties or their representatives. No evidence of any oral waiver or modification of this Lease shall be offered or considered in any proceeding to determine or enforce the provisions of this Agreement. This Lease may be amended or modified only by written instrument executed with the same formalities as this Lease and signed by both Parties.

SECTION 20. AUTHORITY TO BIND.

Each individual signing this Lease on behalf of a party represents and warrants that he or she has the authority to bind the party to all terms of this lease without any further signatures or approvals.

SECTION 21. CONTACT.

Tenant shall provide one or more representatives who Landlord may communicate with. The Tenant representative shall serve as the primary point of contact and liaison between Landlord and Tenant. Landlord and Tenant shall meet periodically to provide updates as to the progress on the Project. Landlord may communicate with Tenant's Project Manager (see Exhibit E) and request and monitor progress of the Project.

SECTION 22. EXHIBITS.

This Agreement includes the following exhibits, which are attached hereto and incorporated herein by this reference:


- Exhibit A – Legal Description
- Exhibit B – General Outline of the Project and the Surrounding Park Design
- Exhibit C – Conditions Precedent to Commencement of Construction
- Exhibit D – Plans and Specifications
- Exhibit E – Third Parties
- Exhibit F - Continuation of the Name

DULY EXECUTED IN DUPLICATE.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed in their respective names by their authorized representatives as of the dates set forth below:


**Rotary Club of Salem
(Rotary)**

**City of Salem, Oregon
(City)**



Rus McCracken
President, Rotary Club of Salem

Steven D. Powers
City Manager

Date: May 15, 2019



Tammy Dennee,
President-Elect, Rotary Club of Salem

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:



J. Spencer S. Taylor
Legal Counsel for Rotary Club of Salem

Daniel B. Atchison
City Attorney

Date: 5-15-19

Date: _____

Exhibit "A"
Legal Description

TO BE PROVIDED

Exhibit "B"
General Outline of the Project and the Surrounding Park Design

1. The Gerry Frank | Salem Rotary Amphitheater shall, with prominent signage accordingly included in the designs and construction, generally speaking, consist of the following major components:
 - a. A covered performance facility approximately 40 feet by 60 feet with the long edge facing the seating area, which will include a performance platform, cover, mechanical room, electrical cabinetry and related connections leading from the stubbed electrical service (See 2.e below), associated structural elements, and related appurtenances including but not limited to the following attributes:
 - i. A cover extending past the edge(s) of performance platform that provides shade to the stage area; protects performers and equipment from the elements; and provides a mounting area for lighting, sound systems, and other appurtenances; and
 - ii. Horizontal trusses and other support in front, center, and rear of the performance area to support lighting, sound systems or speaker arrays, curtains, scrims, screens, drops, hanging scenery, cabling, or other overhead stage effects.
2. The Surrounding Area, generally speaking, shall consist of the following major components consistent with the Riverfront Park Master Plan:
 - a. Walkways behind the performance facility linking the lookout point to other walkways at the Park;
 - b. Walkways along the periphery of the seating area and walkways linking the performance facility to other walkways at the Park;
 - c. A permanent pad facing the performance facility capable of supporting temporary sound and lighting controls for performances;
 - d. A lookout point located behind the performance facility and overlooking the Peter Courtney Minto Island Bridge;
 - e. The electrical service, at least 600A service unless otherwise mutually agreed, brought to and connected within 5' of the performance platform, including trenching, conductors and conduit (i.e., stubbed out);
 - f. An irrigation system capable of sustaining the turf and other landscaping; and
 - g. A sloped and/or terraced seating area immediately fronting the performance facility with fixtures to allow mobility-impaired persons to have access and use the facility consistent with ADA requirements.

Exhibit “C”
Conditions Precedent to Construction Commencement

The following are conditions precedent to the commencement of construction:

1. Landlord’s Prior Responsibilities. Landlord shall, prior to Tenant commencing construction of the Project, do the following:
 - a. Complete a geotechnical, historical, and archeological assessment of the Premises and Surrounding Area and, within three business days of the receipt thereof, provide the assessment(s) to Tenant so that Tenant is knowledgeable of materially significant conditions at the site that Landlord is aware of and is informed as to how said conditions will effect design and construction of the Project. Landlord’s obligation hereunder is a continuing obligation and Landlord shall affirmatively provide new information that is hereafter received by Landlord concerning geotechnical, historical, and archeological issues of or concerning the Project.
 - b. Substantially construct, except for areas reserved for construction staging of the Project or for areas where, by mutual agreement of the Parties, construction will be delayed or omitted, the following:
 - i. The walkways behind the performance facility linking the lookout point to other walkways at the Park (Exhibit B, 2.a);
 - ii. The walkways along the periphery of the seating area and walkways linking the performance facility to other walkways at the Park (Exhibit B, 2.b);
 - iii. The permanent pad facing the performance facility capable of supporting temporary sound and lighting controls for performances (Exhibit B, 2.c);
 - iv. The lookout point located behind the performance facility and overlooking the Peter Courtney Minto Island Bridge (Exhibit B, 2.d);
 - v. The electrical service, at least 600A service unless otherwise mutually agreed, brought to and connected within 5’ of the performance platform, including trenching, conductors and conduit (i.e., stubbed out), all in the Ground Lease Area (Exhibit B, 2.e);
 - vi. The irrigation system capable of sustaining the turf, vegetation, and other landscaping in the seating area and vicinity the seating area (Exhibit B, 2.f); and
 - vii. The sloped and/or terraced seating area immediately fronting the performance facility with fixtures to allow mobility-impaired persons to have access and use the facility consistent with ADA requirements (Exhibit B, 2.g).
 - c. Subject to the requirements of Landlord’s public procurement rules and applicable law, the City will hire CB | Two Architects to prepare Plans and Specifications for the Surrounding Area provided the City procurement rules for direct appointment can be satisfied. The Plans and Specifications prepared by CB | Two Architects must be consistent with the Riverfront Park Master Plan and approved by the City.
2. The Plans and Specifications. The Plans and Specifications for the Surrounding Area and for the Project shall, upon completion thereof, become a part of this Ground Lease and be shown as Exhibit “D” (“Plans and Specifications”) hereto. The following apply as concerns the Plans and Specifications:

- a. Architect - Project. CB | Two Architects (the “Architect”) shall prepare the Plans and Specifications for the Project and for the Surrounding Area.
- b. Engineer. The engineering work concerning the Plans and Specifications for the Project shall be prepared in consultation with an engineering firm selected by Tenant (the “Engineer”).
- c. General Contractor. The construction bidding and estimating for the Project shall be coordinated by the General Contractor, as selected by Tenant, and the Project Manager based on the Plans and Specifications for the Project, first in pre-permit form, and then later based upon the approved permit form.
- d. City Review and Approval. Tenant shall have the Plans and Specifications for the Project prepared by the Architect and Engineer. The City will review and permit the Plans and Specifications for the Project within 21 days of Tenant’s delivery of a complete and conforming submittals thereof to the City, with reasonable extensions thereof as requested by the City, provided the following requirements are satisfied:
 - i. The Plans and Specifications for the Project meet or exceed City and State building code requirements;
 - ii. The Plans and Specifications provide for a Project that reasonably and substantially conforms with the preliminary visual renderings and concepts already in the City’s possession as the date of execution of this Ground Lease and as already provided by the Architect.
 - iii. The Architect and Engineer employed by Tenant shall endeavor to provide Plans and Specifications for the Project that will result in an amphitheater performance platform, cover, and associated structural elements which will have a minimum expected useful life of at least 25 years.

3. Budget Approval Process. Tenant shall establish a Preliminary and Final Budget for the Project as follows:

- a. Preliminary Budget. Upon preparation of the Plans and Specifications for the Project submitted to the Landlord (but prior to the Landlord’s approval), Tenant shall procure or cause to be procured a Preliminary Budget. The Preliminary Budget shall include a 10% contingency line item for unanticipated costs and a line item covering the cost of the Project Manager. Provided the Preliminary Budget for Tenant’s Project does not exceed **\$3,962,000** (the “Maximum Preliminary Budget”), then Tenant will continue with the Project. If the Preliminary Budget exceeds the Maximum Preliminary Budget, then Tenant will decide whether and/or how to proceed with the Project. The Tenant shall document in writing any revised Preliminary Budget resulting from this process.
- b. Final Budget. Upon receipt of actual bid(s) based on the approved and permitted Plans and Specifications for the Project, Tenant shall identify the Final Budget. The Final Budget shall include a 10% contingency line item for unanticipated costs and a line item covering the cost of the Project Manager. If the Final Budget for Tenant’s Project is not in excess of 5% higher than the Preliminary Budget, then Tenant will continue with the Project. If the Final Budget exceeds by more than 5% the Preliminary Budget, then Tenant will decide whether

and/or how to proceed with the Project. The Parties shall document in writing any revised Final Budget resulting from this process.

4. Commencement of Construction. Tenant will not commence, nor be obligated to commence construction, unless and until all of the following are achieved:
 - a. The Plans and Specifications have been approved and permitted (see this Exhibit C, Section 2.d);
 - b. The City approves naming the Project the “Gerry Frank | Salem Rotary Amphitheater”;
 - c. The City approves the form of contract with the General Contractor;
 - d. Tenant approves a Final Budget (see this Exhibit C, Section 3);
 - e. Tenant has executed a contract with its Project Manager and its General Contractor (see Exhibit E); and
 - f. Tenant has received in cash, in-kind contributions, and pledges (adjusted with a 10% pledge loss allowance) a sum equal to 75% of the Final Budget (the “Initial Funds Raised”). Tenant shall provide Landlord the written evidence documenting the Initial Funds Raised and Landlord shall, within 30 days receipt thereof, either:
 - i. Provide Tenant with Landlord’s approval to commence construction; or
 - ii. Request additional reasonable evidence of Initial Funds Raised. Provided, however, that Tenant seeks to preserve the anonymity of the donors where applicable and the Landlord will accept alternate proof of the donation such as is evidence of funds held in Tenant bank accounts, confidentially obscured pledge forms shielding the identity of the donor, or the like.
5. The date that construction commences shall be known in this Ground Lease as the Construction Commencement Date.

Exhibit "D"
Plans and Specifications

TO BE PROVIDED

Exhibit "E"
Third Parties

A. PROJECT MANAGER

1. Tenant has signed a Professional Services Contract with the Klosh Group, Inc. for the services of a Project Manager, a copy of which is acknowledged as received hereby by Landlord. Tenant is solely responsible for discharging any obligations under the Project Manager Services Contract (the "Project Manager Services Contract"). The Project Manager Services Contract should specifically state that Tenant is the sole contracting party with the Project Manager and that Landlord does not assume or accept any obligations under the contract.
2. The Project Manager Services Contract must cover the duration of the Project beginning no later than completion of bid-ready documents for the performance facility and ending no earlier than termination of the Project or the Landlord's final acceptance of the Project (See Section 18). Provided, however Tenant may for reasons set forth in the Project Manager Services Contract terminate said contract and employ a new Project Manager for the same Project period and subject to the same obligations in this Ground Lease related thereto.
3. The Project Manager shall manage the Project on behalf of Tenant and shall be responsible for overseeing and directing construction from early design through completion of the Project and Landlord's final acceptance.
4. Generally speaking, the responsibilities of the Project Manager shall include the following:
 - i. Facilitate the planning, budgeting, scheduling, expediting, coordination, and supervision as necessary for the proper execution of the Project with the General Contractor which General Contractor shall perform the same function concerning all workers, suppliers of material, contractors, subcontractors, and others;
 - ii. Take all reasonable steps on behalf of the Tenant to facilitate that the Project is completed on time, on budget, and in a good and workmanlike manner in accordance with the Plans and Specifications, cost estimate, regulatory requirements, and contractual agreements;
 - iii. Monitor all onsite and monitor compliance with building, safety, and environmental requirements in coordination with the Architect, Engineer, and General Contractor;
 - iv. Monitor the General Contractor's efforts to coordinate and direct construction workers and subcontractors;
 - v. Monitor the General Contractor's performance and review the work progress on a daily or regular basis as is appropriate in the circumstances;
 - vi. Prepare and provide internal and external reports pertaining to job status; and
 - vii. Facilitate the analysis, identification, management, and mitigation of risks.
5. The Project Manager should be qualified in reasonable accord with the following guidelines:
 - i. Approximately ten years' (more or less) experience in construction management or equivalent;
 - ii. Relevant good experience delivering major capital projects;
 - iii. Demonstrated ability to work collaboratively;
 - iv. Advanced knowledge of construction management processes, means, and methods, including Construction Manager/General Contractor project delivery;

- v. Expert knowledge of building products, construction details and relevant rules, local and state regulations, and quality assurance/quality control standards;
 - vi. A competent understanding of all facets of the construction process;
 - vii. Familiarity with construction management software packages;
 - viii. Competency in conflict and crisis management;
 - ix. Leadership and human resources management skills;
 - x. Competency in time and project management skills; and/or
 - xi. Bachelor of Science degree in construction management, architecture, engineering or related field.
6. Landlord must be notified if there is a new Project Manager and Tenant shall timely provide Landlord with a copy of any such Project Manager contract.

B. GENERAL CONTRACTOR

1. Tenant has signed a fixed-price construction agreement with the Dalke Construction, Inc. (the "General Contractor") to construct the Project, a copy of which is acknowledged as received hereby by Landlord (the "General Contractors Contract" or "GC Contract"). Tenant is solely responsible for discharging any obligations under the General Contractors Contract. The GC Contract should specifically state that Tenant is the sole contracting party with the General Contractor and that Landlord does not assume or accept any obligations under the contract. Tenant shall obtain Landlord's approval prior to executing any amendment to the construction agreement with the General Contractor. Tenant is not subject to the State or City public procurement rules, and may select the General Contractor it wishes to work with, including any substitute General Contractor. Prior to the substitution of a new General Contractor, the City will have the right to review and approve the form of the contract with the General Contractor.
2. The GC Contract must cover the duration of the Project beginning no later than completion of bid-ready documents for the performance facility and ending no earlier than termination of the Project or completion of the Project and Landlord's acceptance of the Project. Provided, however Tenant may for reasons set forth in the GC Contract terminate said contract and employ a new General Contractor for the same Project period and subject to the same obligations in this Ground Lease related thereto.
3. Tenant shall employ an Oregon licensed, bonded General Contractor. Tenant will endeavor to employ a General Contractor who has experience in constructing projects of this type in particular if at all possible.
4. The General Contractor shall provide a transferrable one-year warranty as to the construction of the Project (and which contract names the Landlord as a third-party beneficiary to said contract) Landlord will look solely to the General Contractor for fulfillment of this one-year warranty and shall not make or allege any claim, suit, action, liability, cost, and/or the like related thereto against Tenant or any organization affiliated or alleged to be affiliated with Tenant locally, nationally, or internationally.
5. Tenant will require the General Contractor, Subcontractors, and Suppliers to refrain from filing any and all liens against the Landlord, to provide proof of insurances or exemptions therefrom, and to provide warranties each in a form enforceable by the Landlord.

6. Tenant will require the General Contractor to use written contracts in a form approved by Tenant imposing similar requirements on the suppliers and subcontractors employed by the General Contractor.
7. Tenant will require the General Contractor to obtain a Performance Bond and Payment Bond ensuring completion of Tenant's Project and Landlord shall be named as an additional insured in said bonds.
8. Tenant will require the General Contractor to strictly follow the geotechnical engineer's required Contaminated Media Management Plan. Furthermore, pursuant to Section 10.5 of the Ground Lease, Tenant will procure, or require the General Contractor to procure, a Pollution Legal Liability Insurance policy naming both Tenant and the Landlord as insureds and which policy of insurance shall carry a \$2,000,000 coverage limit.
9. The GC Contract shall, in an event of termination of this Ground Lease after commencement of construction, be assignable, at the election of the City, and in said assignment a novation shall be effected in which the Landlord replaces the Tenant for all purposes in said GC Contract and the General Contractor will waive any and all defenses it may have against an assignment to Landlord.
10. Landlord must be notified if it intends to replace the General Contractor, and shall obtain Landlord's approval which consent shall not be unreasonably delayed, conditioned, or withheld, prior, to executing any contract or agreement with a new General Contractor.

Exhibit "F"
Continuation of the Name

Name

The Landlord's approval of naming the Project the "Gerry Frank | Salem Rotary Amphitheater" is a pre-condition for commencing construction. Pursuant to section 15.9 of this Ground Lease, Landlord agrees to name the Project the "Gerry Frank | Salem Rotary Amphitheater." This obligation of the Landlord's to preserve the name of the Gerry Frank | Salem Rotary Amphitheater shall survive the termination and/or completion of this Ground Lease and shall be binding upon the heirs, successors, transferees, and assigns of the Landlord without limitation. Once the Landlord has approved the name, "Gerry Frank | Salem Rotary Amphitheater", the name may not be changed by Landlord for a period of 100 years after Landlord's acceptance of the Project. This obligation of the City's to preserve the name of the Gerry Frank | Salem Rotary Amphitheater shall survive the termination and/or completion of this Ground Lease and shall be binding upon the heirs, successors, transferees, and assigns of the City without limitation. Provided, however, if Rotary abandons the Project and the City completes the Project, then the name may not be changed for a period of 25 years after Rotary abandons the Project.

Plaques

Subject to approval by the Landlord, and in conformance with all applicable law, Tenant may place informative and commemorative plaques within the Premises and Surrounding Area with the Rotary insignia acknowledging individuals, organizations, and businesses that, at Tenant's discretion, should be so recognized, including, but not limited to, Gerry Frank, Rotary, Rotary's contributors, historically significant cultural connections, and the like. Landlord shall be responsible for maintaining the plaques during the lifetime of the plaques. If normal weathering and other wear on any plaque renders it no longer functional, Landlord shall inform Tenant and provide Tenant the opportunity to replace the plaque. All plaques must remain on the Premises for so long as they remain functional and the facility retains the "Gerry Frank | Salem Rotary Amphitheater" name.

Charges for Use of the Gerry Frank | Salem Rotary Amphitheater or the Park

In consideration of Rotary's donations to the City and the Park, both past and present including the Pavilion and the Playground and this Project, the City will hereafter bind and obligate itself to waive any and all use, reservation, and/or other fees or costs which would otherwise be charged to Rotary related to Rotary's use of the Park. Provided, however, it is understood that Rotary will only periodically use the Park for a period not to exceed five (5) days in any calendar year.

Disposition of Excess Funds Raised

If Rotary receives funds in excess of what is needed to accomplish design and construction of the new performance facility, Rotary may, at its discretion, do one or more of the following:

- a. Use the funds to make further improvements to the Project, provided the improvements are consistent with the Riverfront Park Master Plan and this Ground Lease and are approved in advance by the City;
or
- b. Use the funds to supplement funding for additional improvements on the Surrounding Area, but not in the Project, by transferring said excess funds to the City for use accordingly; or

- c. Use the funds to create a dedicated account managed by the Salem Rotary Foundation to support ongoing maintenance of the new Gerry Frank | Salem Rotary Amphitheater.
- d. Use the excess funds (or other funds from general Rotary operating funds) to pay for a policy of insurance, acceptable to Rotary, insuring the Project for a period of up to 10 years.