

**AMENDED  
CHEHALEM CULTURAL CENTER  
MANAGEMENT AGREEMENT**

**WHEREAS**, the Chehalem Park and Recreation District (the “District”) is a political subdivision of the State of Oregon with its principal administrative offices located at 125 South Elliott Road, Newberg, Oregon; and

**WHEREAS**, the District is the owner of certain real property located on Sheridan Street between Blaine and School Streets formerly known as Central School, but which recently has been remodeled into what is now known as the Chehalem Cultural Center (the “Center”); and

**WHEREAS**, the Center is located within the Newberg Cultural District, which was formed pursuant to an agreement dated \_\_\_\_\_ (the “Newberg Cultural District Agreement”)

**WHEREAS**, the Chehalem Center Association (the “Association”) is a 501(c)(3) non-profit charitable corporation organized and existing under the laws of the State of Oregon whose mission is to (a) promote cultural and educational activities within the greater Newberg, Oregon community, (b) assist in the restoration and remodel of the Center, and (c) support the District in achieving the District’s statutory obligation of providing diverse recreational and educational activities to its constituents; and

**WHEREAS**, it is the desire of the District to contract with the Association to manage the Center on the terms and conditions stated herein; and

**WHEREAS**, it is the desire of the Association to manage the Center for the District on the terms and conditions stated herein; and

**WHEREAS**, for the purpose of this Amended Agreement, the “Center” to be managed by the Association is defined as:

- a. The building structure itself.
- b. The landscaped entrance and plaza running parallel with Sheridan Street, but excluding the Rotary children’s park.
- c. The formal garden area presently under design, situated adjacent to and west of the building; and.

**WHEREAS**, it is the expectation of both the parties that the Association will raise and provide sufficient funds for its staffing and programs as identified in this Amended Agreement;

**WHEREAS**, this Amended Agreement replaces and updates the Chehalem Cultural Center Management Agreement dated October 14, 1010;

**THEREFORE**, in consideration of the mutual promises contained herein, and in consideration of the benefits the Center provides to the District, the parties agree as follows:

## **SECTION 1. EMPLOYMENT OF MANAGER AND OPERATIONAL AUTHORITY**

The District hereby agrees to employ the Association as the exclusive manager of the Center to provide the Newberg Community with comprehensive programs in the arts, crafts, dance, drama, music and culture. Subject to the restrictions and reservations set forth in Section 3 of this Amended Agreement, the Association shall have the authority to:

- a. Set operational policy for the Center and maintain security and control of the premises. The District shall provide the Association with three sets of keys to the Center.
- b. Establish programs, classes and other activities at the Center.
- c. Hire and fire employees sufficient to maintain its programming and operations at the Center.
- d. Perform all ordinary and routine tasks and functions reasonably necessary to maintain the Center and its operations.
- e. Make minor repairs and improvements to the physical structure of the Center costing less than \$1,000.00 per repair.
- f. Charge admission fees, program enrollment fees and other charges reasonably necessary to cover the Association's costs of managing and operating the Center, and to make disbursements from such charges and funds for the ordinary and usual expense of operating the Center; provided, however, the District shall be responsible for those expenses as identified in Section 6 hereof.
- g. Contract for exhibits in the Association's name, and to book other cultural attractions to take place at the Center.
- h. Employ an executive director and any and all other employees deemed necessary by the Association to oversee the day-to-day operations of the Center.
- i. Solicit grants, gifts and charitable funds of every kind and nature for the purpose of funding the operations of the Center and for upgrading, remodeling and improving the Center's physical structure.
- j. Establish the interior design of the Center and its signage in conjunction and cooperation with the District. All interior design and signage decisions shall require the consent of the District and the Association. Said consents shall not be unreasonably withheld.
- k. Purchase such supplies and services necessary to maintain its programs and activities.

## **SECTION 2. DURATION OF CONTRACT**

This Agreement shall commence on the date this Amended Agreement is executed and shall continue for a term of fifty (50) years. Provided the Association has complied with all the terms and conditions of this Agreement, and is not in default thereof, the Association shall have an option to renew this Agreement for an additional twenty (20) year term. Any renewal of this Agreement shall be on the same terms and conditions stated herein except that the District's financial obligations to support the Center shall be reviewed to determine if the Association can assume some, if not all, of those obligations. Notwithstanding said term, the intent of the District is for a long-term relationship with the Association, with the intent to negotiate successor agreements for continuing management and operation of the Center.

## **SECTION 3. LIMITATIONS ON AUTHORITY OF MANAGER**

The authority of the Association and its capacity to manage the Center shall be subject to the following:

- a. The authority and activities of the Association shall never exceed the Oregon statutory constraints which would be imposed upon the District contained in ORS 266.410, et seq. and any other related statutes as may be interpreted by case law, all to be construed as if the District were managing the Center on its own behalf. Any Association policy, decision or activity exceeding this authority shall be deemed ultra vires, non-binding and of no legal effect.
- b. The regulation and control of the public's use of the Center shall be consistent with all of the District's current practices, policies and procedures as may be set from time to time by the District's Board of Directors. The Association shall enforce all District rules and regulations that may apply to the operations and programs within the Center. Any dispute regarding the Association's activities and use of the Center shall be resolved through the dispute resolution process set forth in Section 22.
- c. The Association's ability to finance its own activities.
- d. All remodeling, capital improvements, renovations and repairs of any kind to the Center in excess of \$1,000 per repair (considered in the aggregate), shall be either (a) performed by District personnel, or (b) contracted out by the District in compliance with all applicable public contracting laws. This requirement shall apply even if the Association is the source of funds for the improvement, renovation or repair. All requested alterations, renovations and repairs shall first be submitted to the District in writing for its approval. The District's approval of the requested changes shall not be unreasonably withheld, excepting that the decision to spend the District's sole, exclusive and nonreviewable discretion.
- e. The use of alcohol in or around the Center shall be in compliance with City of Newberg applicable ordinances, and the laws and regulations of the State of Oregon, including, but not limited to, those of the Oregon Liquor Control Commission.

- f. The remaining portion of the city block upon which the Center is located, but excluding the areas being managed by the Association pursuant to this Agreement (hereinafter referred to as the “Park Property”), shall remain under the exclusive control of the District, which the Association may use through the District’s park facility reservation system. The parties agree they will both make a good faith effort to cooperate with one another so that the reservation process for the Park Property is consistent with the Association’s ability to plan and schedule Association activities and events which will use both the Center and the Park Property, or portions thereof, and to generate revenues from such use; and the District’s objective of providing public recreational space. Any disagreement or disputes arising out of use of the Park Property or reserving such use shall be resolved through the dispute resolution process set forth in Section 22.
- g. No locks to the Center property shall be changed without the District’s consent.
- h. In all of its activities and functions, the Association shall not discriminate based on race, religion, gender or sexual orientation.
- i. No part of the Center shall be sublet without the District’s permission. Said permission shall not be unreasonably withheld. Nothing in this paragraph shall be construed to limit or prevent the Association from renting portions of the Center for private party use for events or classes, or any other purpose consistent with this Amended Agreement.

#### **SECTION 4. DISTRICT USE OF THE CENTER**

The District shall have the right to use rooms and the facilities at the Center rent free provided the District reserves the room(s) or facility through the Association’s established reservation system, and provided further the room(s) or facilities are not otherwise reserved. Where it can be demonstrated at the time of the reservation that the Association would lose revenue by allowing the District to use a room or facility, the District shall pay to the Association rent for the room or facility based upon the Association’s regular published rent schedule. The District’s use of the rooms and facilities shall not be in competition with or contrary to the Association’s existing or planned programs. Any disagreement or disputes arising out of use of the Center or reserving such use shall be resolved through the dispute resolution process set forth in Section 22.

#### **SECTION 5. LIABILITY FOR EXPENSES**

Except as provided for in this Agreement all expenses in any way pertaining to the Association’s management and operation of the Center, including all those activities set forth in Section 1 of this Agreement, shall be the sole and separate liability of the Association. The Association agrees to indemnify and save and hold harmless the District from such expenses, provided, however, if said expenses arise from the intentional or negligent actions of the District or any of its personnel, then this indemnification and hold harmless section shall not be invoked.

## **SECTION 6. DISTRICT'S EXPENSES AND SERVICE**

The District shall be responsible for the following expenses associated with the Center:

- a. All outside landscaping and grounds maintenance.
- b. Utilities, consisting of electrical power, natural gas, city water and sewage charges and trash collection. Any other utilities shall be the Association's expense. However, the Association shall use its best efforts to conserve and minimize its use of the utilities.
- c. Custodial service at the Center as needed, but not to exceed, one full time custodian. The Association may hire such additional custodial staff as it deems necessary for its special needs.
- d. The District will provide employee background checks for the Association.

## **SECTION 7. DIVERSION OF FUNDS**

No funds received from public or private donations, fundraising events, foundation grants or government grants for the purpose of remodeling or improving the Center or to support the Association's activities shall be diverted into another use by either party. All structural repairs, remodeling and improvements to the Center shall immediately become the property of the District upon installation regardless of the source of the funds and without any right of reimbursement to the Association. All tangible personal property acquired by the Association shall remain the sole and exclusive property of the Association. Nothing in this paragraph shall be construed as a limitation on or an obligation of the Association to commit a certain portion of the Association's fundraising to either capital or operating expenses. Except as otherwise provided in this Agreement, all funds raised on behalf of the Association are at the sole discretion of the Association as to how they will be spent.

## **SECTION 8. LIABILITY FOR INJURY AT THE CENTER**

The Association shall be solely responsible for any and all personal injuries, illness, sickness, public health issues and property damage that may occur to a patron at the Center, and the Association shall indemnify and save and hold harmless the District therefrom, provided, however, if said claims or causes of action arise from the intentional or negligent acts of the District or its employees or agents, then this indemnification and hold harmless section shall not be invoked.

## **SECTION 9. LIABILITY INSURANCE**

The Association shall carry property and general public liability insurance in an amount and with companies acceptable to the District, naming the District as an insured and fully protecting and indemnifying the District from every possible claim for accident, injuries or other liabilities to employees and members of the public that may arise out of the Association's management of, and activities at, the Center. A certificate of insurance in compliance with this provision must be submitted with this Agreement and renewed annually.

## **SECTION 10. BOOKS AND RECORDS**

The Association shall maintain accurate and current books and records of all receipts and disbursements made by the Association in connection with its operation of the Center, which together with any and all contracts and commitments entered into by the Association, shall be open, at all reasonable times upon reasonable notice, to inspection and audit by the District or by any of the District's accountants, attorneys or auditors.

## **SECTION 11. MAINTENANCE**

The Association shall maintain the Center in good repair. The Association shall also maintain all of the District's personal property, equipment, furnishings and furniture located in or about the Center, if any, in good condition and repair. The Association shall be responsible for all costs of maintenance of the building except as provided herein.

The District shall be responsible for all repairs to the structure to the Center in excess of \$1,000.00 per repair, including window and glass replacement; and the District shall maintain the yard and grounds surrounding the Center. The District shall make a good faith effort to make all repairs as quickly as possible, available funds permitting.

## **SECTION 12. COMPLIANCE WITH LAW/CONTRACT AMENDMENTS NECESSARY FOR COMPLIANCE**

The Association shall promptly comply with all statutes, ordinances and regulations of federal, state and city government and of all departments and bureaus applicable to the Center, including those concerned with the correction, prevention and abatement of nuisances in and around the Center.

Notwithstanding anything in this Agreement stated to the contrary, this Agreement is subject to amendment and renegotiation to comply with any federal regulations governing tax exempt, taxable or tax credit financing obligations if the proceeds of such obligations are used to finance all or any portion of the remodeling or upgrading of the Center.

## **SECTION 13. ASSIGNMENT**

This Management Contract is personal to Association and shall not be assigned, or any of the powers and authority granted to Association delegated to a third party without the specific consent of the District being first had and obtained.

## **SECTION 14. INSPECTION**

Association agrees that representatives of the District shall have the right to enter on the premises of the Center at all reasonable hours for the purpose of examining the premises, observing the activities of the Association, and to make such repairs or alterations as may be necessary for the safety and preservation of the premises.

## **SECTION 15. EXCULPATORY CLAUSE**

Except for damages that are the result of the intentional or negligent acts of the District's employees or agents, the District shall not be liable to the Association, or any other person or corporation including the Association's employees, for any damage to their personal property caused by water, rain, snow, frost, fire, storm and accidents, or by breakage, stoppage, or leakage of water, gas, heating and sewer pipes, or plumbing upon, about or adjacent to the premises.

## **SECTION 16. DEFAULT; REMEDIES; FORCE MAJEURE**

- a. Events of Default. The following events shall constitute events of default by Association:
  - (1) If Association fails to perform any covenant in this Amended Agreement within thirty (30) days after written notice from District specifying the failure, provided that if such failure cannot, with due diligence, be cured within a period of thirty (30) days, Association shall not be deemed to be in default if Association begins to cure the failure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion;
  - (2) The bankruptcy or insolvency of the Association or if a receiver or trustee is appointed to take charge of any of the assets of the Association in or on the Chehalem Cultural Center and such receiver or trustee is not removed within thirty (30) days after the date of appointment, or in the event of judicial sale of the personal property in or on the Premises upon judgment against agreements thereunder; or
  - (3) If Association is dissolved or fails to maintain its status as an Oregon non-profit corporation in good standing or its qualification as a tax-exempt charitable organization pursuant to the Internal Revenue Code.
- b. Remedies for Default. Upon the occurrence of an event of default under this Section 16, District shall have the following right and remedy:
  - (1) If the default is not cured, District shall have the right to terminate this Agreement by written notice to the Association. Such termination shall be effective immediately if public health, safety or welfare is at risk. Otherwise such termination shall be effective thirty (30) days after the written notice.
- c. Exclusion of Certain Damages. Neither party shall be liable to the other party hereunder or in connection with the transactions contemplated hereunder, whether in contract or in tort, for indirect, incidental, exemplary, punitive, consequential or other special damages (including lost profits), whether or not such damages are foreseeable or unforeseeable, except to the extent that such damages are included in third-party claims that are covered by the indemnities under Section 5.
- d. Force Majeure.

- (1) Neither District nor the Association shall be in default hereunder if the performance of any act required of it hereunder is prevented or delayed by reason of events, contingencies or causes beyond its reasonable control and without its fault, including, but not limited to, fire, flood, earthquakes, lightning, unusually severe weather, acts of God, acts of any governmental authority, war, riot, accidents, embargoes, strikes, labor disputes, shortage of labor, fuel, raw materials, or machinery, or technical or yield failure, affecting such party or its suppliers or subcontractors.
- (2) Notwithstanding to the contrary herein, if the Premises or Chehalem Cultural Center are rendered unusable by an event described in this Section and if such condition continues for more than sixty (60) consecutive days, or if District notifies the Association that it is impractical or uneconomic to restore any physical damage that is responsible for the interruption of service, either District or the Association may terminate this Amended Agreement by written notice to the other party.

#### **SECTION 17. VOLUNTARY TERMINATION BY ASSOCIATION**

The Association shall have the right to voluntarily terminate this Agreement without incurring any liability to the District, providing the following conditions exist:

- a. The Association provides the District with 120 days' prior written notice; and
- b. All debts of the Association and operational expenses of the Center have been paid in full or are in current status; and
- c. All admission, program and enrollment fees for cancelled programs, classes or other services offered to the public at the Center, if any, have been refunded; and
- d. All conditions and obligations of the Association to which it is contractually obligated as a result of successful grant request(s) have been satisfied.

#### **SECTION 18. GOVERNING LAW**

The Agreement shall be construed and interpreted in accordance with the laws of the State of Oregon. Yamhill County is the agreed venue for all legal proceedings.

#### **SECTION 19. ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding of the parties and supersedes any prior representations and agreements, except the Newberg Cultural District Agreement.

#### **SECTION 20. DISPUTE RESOLUTION**

All disputes between the parties arising out of this Agreement, including those involving the operations of the Center shall be first submitted to the Association's Executive Director and



the District's Superintendent for discussion and resolution. If the two executives are unable to resolve the matter in dispute, the same shall be submitted to the Boards of Directors of the District and the Association at a joint meeting for discussion and resolution. If the two Boards are unable to resolve the matter in dispute, the matter shall be resolved by arbitration through the Arbitration Service of Portland, Oregon according to its rules and procedures then in place, excepting that all arbitration hearings shall take place in Newberg, Oregon. Provided, however, notwithstanding anything in this provision stated to the contrary, all matters pertaining to District policy, budgeting, and the expenditure of tax payor revenues and other public funds, shall remain in the sole, exclusive and nonreviewable discretion of the District.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by authority of their respective Boards of Directors.

**THE CHEHALEM PARK AND RECREATION DISTRICT**

By: \_\_\_\_\_  
President

**THE CULTURAL CENTER ASSOCIATION**

By: \_\_\_\_\_  
President