

**MEMORANDUM OF AGREEMENT  
BETWEEN  
TILLAMOOK COUNTY AND TROUT UNLIMITED**

This Memorandum of Agreement, hereinafter, AGREEMENT, is made and entered into by and between Tillamook County, by and through its Board of Commissioners, hereinafter **COUNTY**, and Trout Unlimited, hereinafter **TU**. COUNTY AND TU are collectively hereinafter referred to as **PARTIES**.

**RECITALS**

**PURPOSE**

- A. The purpose of this AGREEMENT is to define PARTIES' responsibilities for the construction of the Green, Samson, and Illingsworth Creek culvert to bridge projects, Tillamook, Oregon.

**BACKGROUND**

- B. The Green, Samson, and Illingsworth Creek culverts projects ("Project"), consists of replacing three old, failing culverts threatening fish passage on Green and Samson Creeks where they cross Trask River Road and Illingsworth Creek where it crosses Ekroth Road. The existing corrugated steel culverts are to be replaced with three single span concrete bridges.
- C. The Project will occur on lands owned by the COUNTY located in Township 1S, Range 9W, Section 35 (Green Creek), Township 1S, Range 8W, Section 27 (Samson Creek), and Township 1N, Range 10W, Section 23 (Illingsworth Creek) in Tillamook County. A map showing the location of the work is attached to and incorporated into this AGREEMENT.

**AGREEMENT**

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants, promises, and undertakings hereinafter set forth, PARTIES agree as follows:

1. Rights, Duties, and Obligations of **COUNTY**. COUNTY shall:
  - 1.1 Assist TU with the Project including, but not limited to, assistance in selecting a contractor to award the Project, provide engineering oversight throughout the duration of the Project, assist with adjacent landowner coordination, approve invoices from contractor, provide \$90,000 in cash to TU for design, and \$90,000 for implementation.
  - 1.2 Repair or replace work that is damaged by normal use or natural events. Repair or replacement due to catastrophic natural events is not the responsibility of the TU under this AGREEMENT.
  - 1.3 Acknowledge that information relating to the work, including effectiveness monitoring data, is public record.

- 1.4 Provide TU with observations of the effectiveness of the Project and identify maintenance performed with associated costs upon require for a minimum of three (3) years.
  - 1.5 Perform maintenance of the infrastructure improvement consistent with COUNTY operations.
2. Rights, Duties and Obligations of **TU**. TU shall:
- 2.1 Work with engineering firm and COUNTY to develop 100% bid ready engineering designs for the Project.
  - 2.2 Prepare a call for construction bids and seek a competitive bid for implementation.
  - 2.3 Select a contractor and establish a signed contract including bid and performance bonds.
  - 2.4 Act as the Contracting Agency for the duration of the Project.
  - 2.5 Manage construction activities, secure permits, and funding.
  - 2.6 Pay the contractor bid amount and any approved change orders.
  - 2.7 Assist Project Sponsor in the culvert replacement Project, including but not limited to, assisting in environmental permit coordination.
  - 2.8 Assist in construction management activities where needed and required by funding entities.
- Following the construction of the Project:**
- 2.9 Conduct effectiveness monitoring of the work at agreed upon frequencies and prepare an annual report on the results and condition of the work which will be delivered to Project funding entities and shall be a public record.
  - 2.10 For a minimum of three (3) years, complete a final report on the results and condition of the work, including observations on the design of the work, maintenance performed and its cost, and whether the work has achieved its intended purposes, to be reviewed by COUNTY prior to submittal to Project funding entities.
3. TERMINATION, This AGREEMENT will terminate:
- 3.1 Upon the request of either party, after giving the other party ninety (90) days' advance notice.
4. INDEMNITY:
- 4.1 COUNTY will defend, indemnity, and save TU, its officers, agents, and employees harmless from all claims, actions, costs, or damages caused by the acts or omissions of COUNTY in connection with its responsibilities under this AGREEMENT.
  - 4.2 TU will defend, indemnity, and save COUNTY, its officers, agents, and employees harmless from all claims, actions, costs, or damages caused by the acts of omissions of TU in connection with its responsibilities under this AGREEMENT.

4.3 Each party will include appropriate indemnity clauses in any contracts issued pursuant to this AGREEMENT. Such indemnity clauses shall require consultants, subconsultants, contractors, subcontractors, and suppliers to defend, indemnify and hold the PARTIES harmless from all claims, costs, damages, or expenses or any kind, including attorneys' fees and other costs and expenses of litigation, for personal injury or property damage to the extent such claims, costs, damages, or expenses arise out of such consultant's, subconsultant's, contractor's, subcontractor's or supplier's acts or omissions.

5. INSURANCE, Each party agrees to maintain insurance coverages, at not less than the following:

Property Damage:	\$1,000,000 (one claimant)
	\$2,000,000 (all claimants)
Personal Injury or Death:	\$2,000,000 (one claimant)
	\$2,000,000 (all claimants)

6. GENERAL PROVISIONS:

6.1 MODIFICATION & WAIVER. The rights and duties under this AGREEMENT shall not be modified, delegated, transferred, or assigned, except upon the written-signed consent of the PARTIES. Failure to enforce any provision of this AGREEMENT shall not operate as a waiver of such provision or of any other provision.

6.2 ATTORNEYS' FEES. Attorney fees, costs, and disbursements necessary to enforce this AGREEMENT through mediation, arbitration and/or litigation, including appeals, shall be awarded to the prevailing party, unless otherwise specified herein or agreed.

6.3 LEGAL REPRESENTATION. In entering into this AGREEMENT, each party has relied solely upon the advice of their own attorney. Each party has had the opportunity to consult with counsel.

6.4 NOTICES. Any notice required or permitted under this AGREEMENT shall be in writing and deemed given when:

6.4.1 actually, delivered if not sent by mail as described below, or

6.4.2 three days after deposit in United States certified mail, postage prepaid, addressed to the other party at their last known address.

6.5 LANGUAGE. The headings of the contract paragraph are intended for information only and shall not be used to interpret paragraph contents. All masculine, feminine and neuter genders are interchangeable. All singular and plural nouns are interchangeable unless the context requires otherwise.

6.6 SAVINGS. Should any clause or section of this AGREEMENT be declared by a court to be void or voidable, the remainder of this AGREEMENT shall remain in full force and effect.

6.7 JURISDICTION; LAW. This AGREEMENT is executed in the State of Oregon and is subject to Tillamook County and Oregon law and jurisdiction. Venue shall be in Tillamook County, Oregon, unless otherwise agreed by the PARTIES.

6.8 NO THIRD-PARTY BENEFICIARIES. There are no indented third-party beneficiaries of this AGREEMENT.

6.9 Current contact information for the representatives of PARTIES is:

COUNTY  
Chris Laity  
Tillamook County Public Works  
503 Marolf Loop Road  
Tillamook, OR 97141  
503-842-3419  
[claity@co.tillamook.or.us](mailto:claity@co.tillamook.or.us)

TU  
Chrysten Lambert  
Trout Unlimited  
1777 N. Kent Street, Suite 100  
Arlington, VA 22209  
503-801-1865  
[chrysten.lambert@tu.org](mailto:chrysten.lambert@tu.org)

7. EFFECTIVE DATE. This AGREEMENT shall take effect when executed by both PARTIES.

**ACKNOWLEDGEMENT: EACH PARTY REPRESENTS TO THE OTHER BY THEIR SIGNATURES BELOW THAT EACH HAS READ, UNDERSTANDS, AND AGREES TO ALL COVENANTS, TERMS AND CONDITIONS OF THIS AGREEMENT. EACH PARTY REPRESENTS TO THE OTHER TO HAVE THE ACTUAL AND/OR APARENT AUTHORITY TO BIND THEIR RESPECTIVE LEGAL PERSONS, CORPORATE OR OTHERWISE, IN AGREEMENT.**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2021.

**TROUT UNLIMITED**

\_\_\_\_\_  
Chrysten Lambert

Dated this \_\_\_\_ day of \_\_\_\_\_, 2021.

**THE BOARD OF COMMISSIONERS  
FOR TILLAMOOK COUNTY, OREGON**

	Aye	Nay	Abstain/Absent
_____ Mary Faith Bell, Chair	___	___	___/___
_____ David Yamamoto, Vice-Chair	___	___	___/___
_____ Erin D. Skaar, Commissioner	___	___	___/___

ATTEST: Tassi O'Neil,  
County Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Special Deputy

\_\_\_\_\_  
Joel W. Stevens  
County Counsel



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Tillamook County Public Works  
503 Marolf Loop Road  
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1777 N. Kent Street, Suite 100  
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Dated this 11 day of May, 2021.

**TROUT UNLIMITED**

  
\_\_\_\_\_  
Chrysten Lambert

Dated this 11<sup>th</sup> day of May, 2021.

**THE BOARD OF COMMISSIONERS  
FOR TILLAMOOK COUNTY, OREGON**

	Aye	Nay	Abstain/Absent
_____ Mary Faith Bell, Chair	___	___	___/___
_____ David Yamamoto, Vice-Chair	___	___	___/___
_____ Erin D. Skaar, Commissioner	___	___	___/___

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County Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Special Deputy

\_\_\_\_\_  
Joel W. Stevens  
County Counsel



