



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

September 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement between Metro and Clackamas County for
work on the Richey Road/North Fork Deep Creek Culvert**

Purpose/Outcomes	The purpose of the agreement is to allow Metro to make a modification to a County culvert that carries the N. Fork of Deep Creek under Richey Road with the intent of improving fish-passage.
Dollar Amount and Fiscal Impact	Metro is funding this work and no expense will be incurred by Clackamas County
Funding Source	Metro
Duration	Work to be completed by December of 2021. Metro will retain responsibility for any maintenance caused by or related to the modification.
Previous Board Action	None
Strategic Plan Alignment	This work aligns with Performance Clackamas Strategic Plan Priority "Honor, utilize, promote and invest in our natural resources".
Counsel Review	The agreement was reviewed by County Counsel on 09/06/20, NB
Procurement Review	1. Was the item processed through Procurement? No 2. This is an IGA and has no Clackamas County Funding.
Contact Person	Devin Patterson, Project Manager 503-919-0091

BACKGROUND:

In October of 2019, Metro provided Clackamas County's Department of Transportation and Development (DTD) with preliminary plans for habitat improvements on the North Fork of Deep Creek near Boring, OR. Plans included the installation of a small "berm" in one of the two County-maintained box culverts under Richey Road. Appropriate DTD staff met with Metro staff to discuss the project and to voice any concerns and needs related to the project. Metro addressed DTD concerns in the revised the plans. DTD concurs with Metro that the project will be an improvement to fish-passage at this location. The IGA allows the County to remove the berm at any time should it create any issues related to flooding or if it creates any issues related to integrity and stability of County infrastructure.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Intergovernmental Agreement between Metro and Clackamas County that covers Metro's fish-passage improvements on the Richey Road/North Fork Deep Creek Culvert.

Respectfully submitted,

Devin Patterson

Devin Patterson,
Project Manager

**INTERGOVERNMENTAL AGREEMENT
BETWEEN METRO and
CLACKAMAS COUNTY For
RICHEY ROAD CULVERT**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into and between Clackamas County, a political subdivision of the state of Oregon (“County”), and Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter (“Metro”) collectively referred to as the “Parties” and each a “Party.”

RECITALS

WHEREAS, authority is conferred upon local governments under ORS 190.010 to enter into agreements to perform any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform;

WHEREAS, Metro is planning to construct the Cazadero Stream Stabilization and Enhancement Project (“Project”) on North Fork Deep Creek; and

WHEREAS, County owns and operates a culvert on SE Richey Rd. (“Richey Road Culvert”) that is immediately upstream of the Project on North Fork Deep Creek; and

WHEREAS, Metro desires to construct a portion of the Project inside of and through the Richey Road Culvert; and

WHEREAS, the County is interested in allowing this Project in order to improve fish passage through the Richey Road Culvert; and

WHEREAS, the coordination of this Project will be mutually beneficial, resulting in cost savings, while promoting efficiency and effectiveness in local government administration.

NOW, THEREFORE, IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. **Purpose and Project Description** County and Metro enter into this Agreement for the construction of the North Fork Deep Creek Stream Stabilization Project at the Cazadero North Natural Area and Richey Road Culvert (“Project”). The location of the Project is more specifically depicted in Exhibit A, attached and incorporated herein (“Project Site”).
2. **Term.** This Agreement is effective upon execution, and expires two (2) years from the effective date.
3. **Obligations of Clackamas County**
 - A. County agrees to provide access to Metro and its contractors to the Richey Road Culvert to construct a concrete berm in the northern most bay of the culvert to facilitate fish passage. The location of the concrete berm is more specifically depicted in Exhibit B, attached and incorporated herein (“Project Design”).
 - B. In addition to access to the culvert, County agrees to provide access to Metro and its contractors to County Tax Lots 23E01AA03200 and 23E01AD00500 for use as a temporary construction staging area throughout the duration of the Project. Access for County, Oregon State Parks and members of the public to the Cazadero State Trail cannot be restricted by Metro’s construction activities.
 - C. Following the term of the agreement, County agrees to own, operate and maintain the concrete berm in the Richey Road Culvert. If the County determines that the concrete berm is causing an increase in the 100 year flood elevation or if it is otherwise causing damage to

or flooding of County-maintained infrastructure and/or upstream or downstream private property, the County may at any time and in its sole discretion remove the concrete berm, or may, pursuant to Section 4(C) below, require Metro to resolve the issue at Metro's cost.

4. Obligation of Metro.

- A. Metro agrees to fully fund and manage the planning, design, permitting and construction of the Project.
 - B. Metro agrees to secure regulatory permits from Oregon Department of State lands (DSL) and U.S. Army Corps of Engineers (Corps) and ensure compliance with permits for the duration of the Project. Metro agrees to provide copies of regulatory permits to County upon request.
 - C. It is understood between the Parties that the Project is within the 100 year flood plain, and upstream properties routinely experience flooding. Metro agrees to design the modifications to the Richey Road Culvert in a manner that do not increase the 100 year flood elevation to private properties in the area. If during the term the County determines that the Project is the cause of an increase in the 100 year flood elevation, Metro must take immediate action to remedy the increase, which may require removing the concrete berm in the Richey Road Culvert.
 - D. Metro agrees to defend and hold the County harmless if the design modifications to the Richey Road Culvert are the cause of an increase in the 100 year flood elevation resulting in damage to infrastructure or private property.
 - E. Metro will coordinate a final inspection of the Richey Road Culvert portion of the Project with the County and shall be responsible to repair any damage to the Richey Road Culvert caused by the construction of the Project prior to the County accepting the completed Richey Road Culvert portion of the Project and work done on County property.
- 5. Work Plan and Scheduling of Work.** Metro will manage the Project and intends to complete construction of the Project between August 1, 2020 and December 31, 2020. County acknowledges that said schedule is dependent on many conditions and may be subject to change. Metro will provide prompt notice to County of any anticipated delays in the schedule.

6. Early Termination of Agreement

- i. Metro and County, by mutual written agreement, may terminate this Agreement at any time.
- ii. Either the Metro or County may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.

- 6. Indemnification.** Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, each of the Parties agrees to hold harmless and indemnify the others, and their elected and

appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees.

7. **Oregon Law and Forum.** This Agreement is construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
8. **Applicable Law.** The Parties agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
9. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement are not exclusive, and are in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies does not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
10. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement must be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings must be retained for a longer time until such audit findings are resolved.
11. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection must be borne by the inspecting Party.
12. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
13. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless remains in full force and effect and the offending provision must be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
14. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement binds either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, are effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any

provision of this Agreement does not constitute a waiver by such Party of that or any other provision.

15. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and are disregarded in construing or interpreting any of its provisions.
16. **Independent Contractor.** Each of the Parties are independent contractors for purposes of this Agreement. No representative, agent, employee or contractor of one Party is a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor can it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
17. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or Metro.
18. **No Assignment.** No Party has the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, inure to the benefit of and bind the successors of the Parties.
19. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed constitute an original. The Agreement may be executed electronically.
20. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
21. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

Chair

Date

Recording Secretary

Metro

DocuSigned by:
Andrew Scott

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Deputy Chief Operating Officer

August 26, 2020

Date

Exhibit A







- | | | | |
|---|-------------------------|---|--|
|  | Project Boundary |  | Cazadero North Natural Area (Metro) |
|  | Existing Taxlots |  | Clackamas county lots |

Exhibit B

NORTH FORK DEEP CREEK AT RICHEY ROAD STREAM STABILIZATION PROJECT

100% DESIGN SUBMITTAL



VICINITY MAP
N.T.S. (GOOGLE)



REGIONAL MAP
N.T.S. (GOOGLE)

GENERAL NOTES

- PRIMARY TOPOGRAPHIC MAPPING WAS PERFORMED BY: KPF CONSULTING ENGINEERS, INC. 111 SW 5TH AVENUE, SUITE 2400 PORTLAND, OR 97204 SURVEY DATE: MAY 9, 2017
- LIAR DATA PROVIDED BY METRO. LIAR MAPPING BY: QUANTUM SPATIAL COMPANY 421 SW 6TH AVE, SUITE 800 PORTLAND OR 97204 SURVEY DATES: JULY 9 - SEPTEMBER 7, 2014
- ELEVATION DATUM: GPS TIES TO NAVD88 USING THE OREGON REAL-TIME OPS (ORGN) NETWORK ON CONTROL POINT 1.
- BASIS OF BEARINGS: BASIS OF BEARINGS BETWEEN POINTS #1 AND #2 IS N26°56'57"E, AS SHOWN ON SHEET. C5.
- AERIAL PHOTO SOURCE: AUTOCAD AUTODESK CIVIL 3D 2019.
- CONTOUR INTERVAL IS ONE FOOT. ELEVATIONS AND DISTANCES SHOWN ARE IN DECIMAL FEET.
- THIS IS NOT A BOUNDARY SURVEY. PROPERTY LINES SHOWN HEREON ARE APPROXIMATE.
- ALL CONSTRUCTION AND MATERIALS SHALL CONFORM TO THE 2018 EDITION OF THE STATE OF OREGON STANDARD SPECIFICATIONS, ISSUED BY THE DEPARTMENT OF TRANSPORTATION (HEREAFTER REFERRED TO AS "STANDARD SPECIFICATIONS").
- THESE DESIGNS ARE INCOMPLETE WITHOUT THE FINAL STAMPED TECHNICAL SPECIFICATIONS PREPARED BY WATERWAYS CONSULTING, INC. REFER TO TECHNICAL SPECIFICATIONS FOR DETAILS NOT SHOWN HEREON.

SUPPLEMENTARY TOPOGRAPHIC MAPPING WAS PERFORMED BY: WATERWAYS CONSULTING, INC. 1020 SW TAYLOR STREET, SUITE 380 PORTLAND, OR 97205 SURVEY DATE: APRIL 5, 2019

ABBREVIATIONS

AVG. AVERAGE	O.C. ON CENTER
CC CONCRETE	RC RELATIVE COMPACTION
CY CUBIC YARDS	RSP ROCK SLOPE PROTECTION
DIA. DIAMETER	SPK SPIKE
E. EXISTING	SQ. FT. SQUARE FOOT
EG EXISTING GROUND	T. TREE
ELEV. ELEVATION	T.B.D. TO BE DETERMINED
ESCP EROSION AND SEDIMENT CONTROL PLAN	TYP. TYPICAL
ESM ENGINEERED STREAMBED MATERIAL	UNK. UNKNOWN
DI DRAINAGE INLET	WSE WATER SURFACE ELEVATION
FG FINISHED GRADE	YR. YEAR
FT. FEET	TREE SPECIES
INV. INVERT	A. ALDER
MIN. MINIMUM	C. CONIFER (SPECIES UNK)
N. NEW	D. DECIDUOUS (SPECIES UNK)
NC. NOT IN CONTRACT	RLG. RIB LEAF MAPLE
N.T.S. NOT TO SCALE	W. WILLOW

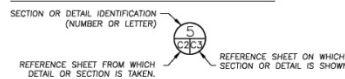
PROJECT DESCRIPTION

- THESE DRAWINGS PROVIDE 100% DESIGN LEVEL PLANS FOR STREAM STABILIZATION AND HABITAT ENHANCEMENT OF NORTH FORK DEEP CREEK IN BORING OREGON. WORK WILL CONSIST OF THE FOLLOWING:
- CONSTRUCTION OF A CHANNEL SPANNING ROCK RIFFLE TO BACKWATER THE CULVERT UNDER RICHEY ROAD;
 - CONSTRUCTION OF LARGE WOOD FLOW FORCING STRUCTURES TO MAINTAIN POOLS;
 - PLACEMENT OF LOGS IN THE UPLAND PORTION OF THE SITE TO PROVIDE HABITAT AND COVER FOR REPTILES, AMPHIBIANS, AND BIRDS;
 - STABILIZATION OF A GULLY FORMED BY CONCENTRATED FLOW COMING FROM AN UN-NAMED TRIBUTARY;
 - CONSTRUCTION OF A CONCRETE BERM IN THE CULVERT UNDER RICHEY ROAD TO IMPROVE LOW FLOW SWIMMING DEPTHS; AND
 - REMOVAL AND DISPOSAL OF CONCRETE, ASPHALT, AND METAL DEBRIS FROM THROUGHOUT THE SITE.

SHEET INDEX

- C1 COVER
- C2 NOTES (1 OF 2)
- C3 NOTES (2 OF 2)
- C4 ACCESS AND STAGING PLAN
- C5 EXISTING CONDITIONS AND DEMOLITION PLAN
- C6 DEMOLITION PHOTO POINTS
- C7 GRADING AND LOG STRUCTURE PLAN
- C8 CONSTRUCTED RIFFLE PLAN AND PROFILE
- C9 CONSTRUCTED RIFFLE TYPICAL SECTIONS
- C10 GILLY REPAIR PLAN
- C11 DETAILS - LOG STRUCTURES
- C12 EROSION CONTROL AND DEWATERING PLAN
- C13 DETAILS - CONCRETE BERM, EROSION CONTROL, AND DIVERSION

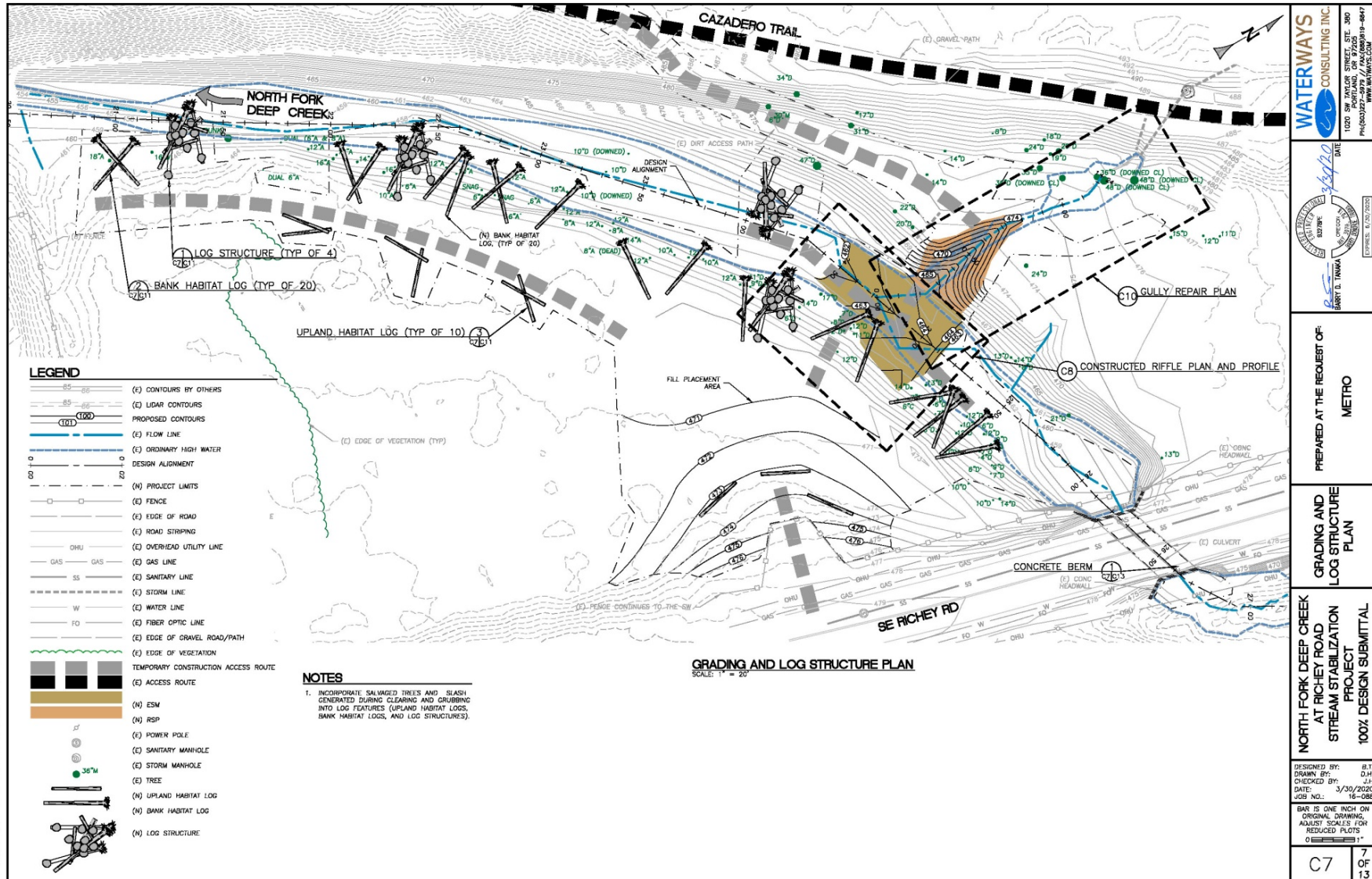
SECTION AND DETAIL CONVENTION



*** CALL BEFORE YOU DIG ***
CONTACT OREGON UTILITY NOTIFICATION CENTER
PRIOR TO ANY CONSTRUCTION WORK 1-800-332-2344

 WATERWAYS CONSULTING INC. 1020 SW TAYLOR STREET, STE. 380 PORTLAND, OR 97205 PH: (503) 322-1944 WWW.WATERWAYS.COM	
DATE: 3/30/2020 DRAWN BY: JH CHECKED BY: JH DATE: 3/30/2020 JOB NO.: 16-088	
PREPARED AT THE REQUEST OF: METRO	
COVER	
NORTH FORK DEEP CREEK AT RICHEY ROAD STREAM STABILIZATION PROJECT 100% DESIGN SUBMITTAL	
DESIGNED BY: B.T. DRAWN BY: D.H. CHECKED BY: J.H. DATE: 3/30/2020 JOB NO.: 16-088	BAR IS ONE INCH ON ORIGINAL DRAWING. ADJUST SCALES FOR REDUCED PLOTS. 0" = 100'
C1	1 OF 13

P:\Engineering\16-088\16-088_NF_Deep_Creek_at_Richey_Road\16-088_Cover_Sheet.dwg - 3/30/2020 12:38:19



WATERWAYS CONSULTING INC.
1000 SW MAYOR STREET, STE. 400
PORTLAND, OR 97205
PH: 503.241.1000
WWW.WATERWAYS.COM

DATE: 3/30/2020
DRAWN BY: B.T.
CHECKED BY: J.H.
DATE: 3/30/2020
JOB NO.: 18-088

PREPARED AT THE REQUEST OF:
METRO

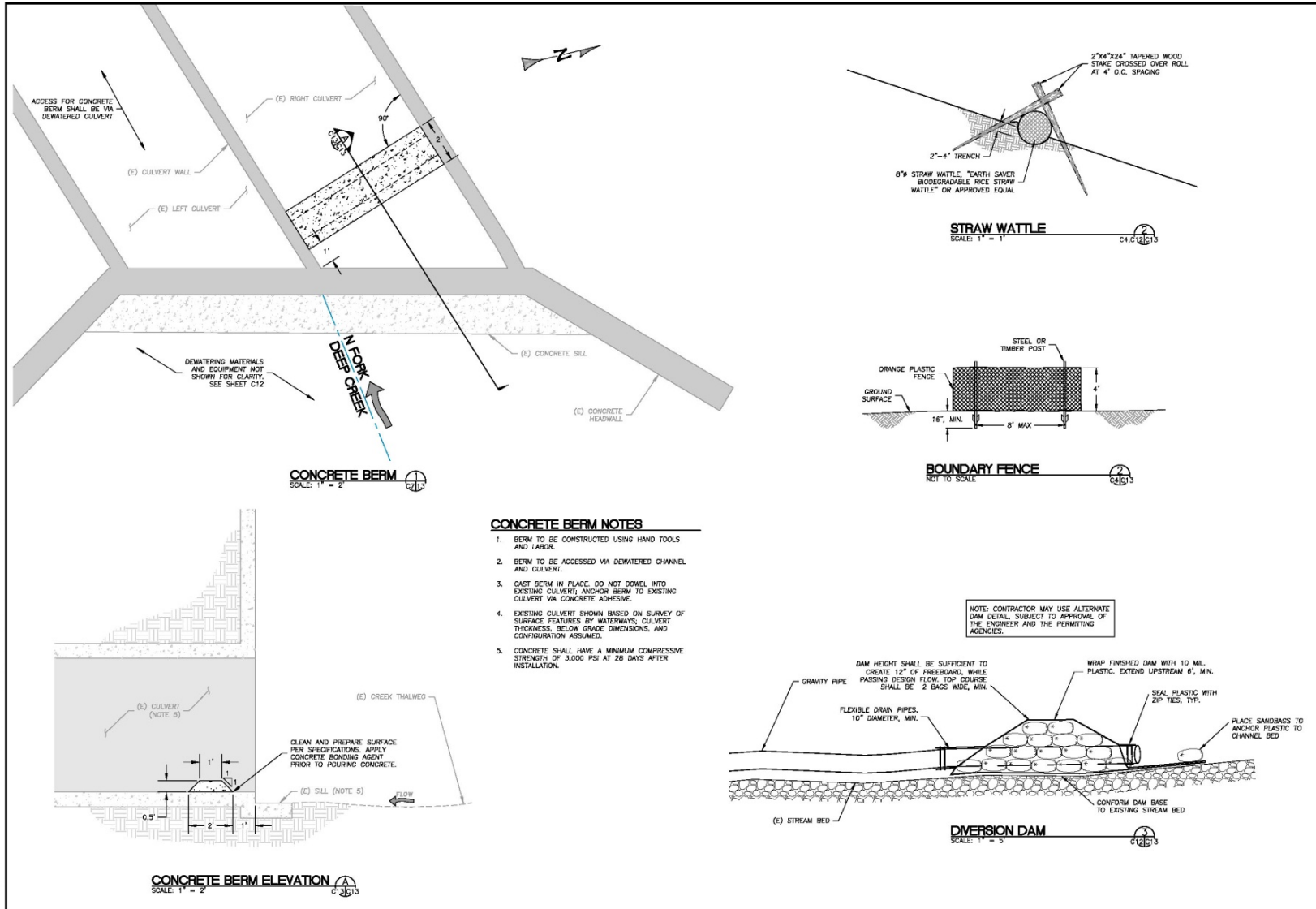
GRADING AND LOG STRUCTURE PLAN

NORTH FORK DEEP CREEK AT RICHEY ROAD STREAM STABILIZATION PROJECT 100% DESIGN SUBMITTAL

DESIGNED BY: B.T.
DRAWN BY: B.T.
CHECKED BY: J.H.
DATE: 3/30/2020
JOB NO.: 18-088

BAR IS ONE INCH ON ORIGINAL DRAWING
ADJUST SCALES FOR REDUCED PLOTS

C7 7 OF 13



CONCRETE BERM NOTES

1. BERM TO BE CONSTRUCTED USING HAND TOOLS AND LABOR.
2. BERM TO BE ACCESSED VIA DEWATERED CHANNEL AND CULVERT.
3. CAST BERM IN PLACE. DO NOT DOWEL INTO EXISTING CULVERT. ANCHOR BERM TO EXISTING CULVERT VIA CONCRETE ADHESIVE.
4. EXISTING CULVERT SHOWN BASED ON SURVEY OF SURFACE FEATURES BY WATERWAYS; CULVERT THICKNESS, BELOW GRADE DIMENSIONS, AND CONFIGURATION ASSUMED.
5. CONCRETE SHALL HAVE A MINIMUM COMPRESSIVE STRENGTH OF 3,000 PSI AT 28 DAYS AFTER INSTALLATION.

<p>WATERWAYS CONSULTING INC. 1000 SW AVIATOR STREET, STE. 300 PHOENIX, AZ 85001 / TEL: 602.978.8647 WWW.WATERWAYS.COM</p>	
<p>DATE: 3/30/2020 BY: Barry E. Thuma</p>	<p>PREPARED AT THE REQUEST OF: METRO</p>
<p>DETAILS - CONCRETE BERM, EROSION CONTROL, AND DIVERSION</p>	
<p>NORTH FORK DEEP CREEK AT RICHEY ROAD STREAM STABILIZATION PROJECT</p>	
<p>100% DESIGN SUBMITTAL</p>	
<p>DESIGNED BY: B.T. DRAWN BY: D.H. CHECKED BY: J.H. DATE: 3/30/2020 USER NO.: 16-088</p>	<p>BAR IS ONE INCH ON ORIGINAL DRAWING. ADJUST SCALES FOR REDUCED PLOTS.</p>
<p>C13</p>	<p>13 OF 13</p>

RECORDING MEMO

X	New Agreement/Contract
	Amendment/Change/Extension
	Policy Reports
	Other

ORIGINATING COUNTY
DEPARTMENT:

DTD Transportation Construction

PURCHASING FOR:
N/A

OTHER PARTY TO
CONTRACT/AGREEMENT: METRO

BOARD AGENDA DATE: _____

AGENDA ITEM NUMBER: _____

PURPOSE: Approval of an Intergovernmental Agreement between Metro and Clackamas County for work on the Richey Road / North Fork Deep Creek Culvert

Please return to Laura Kitts DTD Engineering after recording.