



**DAN JOHNSON**  
DIRECTOR

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

January 9, 2025

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
Clackamas County

**Approval of an Amendment to an Agreement with The Freshwater Trust for the Henry Creek Culvert Fish Passage Project. Amendment Value is \$50,000 and 1 year. Total Agreement Value is \$150,000 and 2 years. Funding is through County Road Funds and in-kind services. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	1/07/25: Request for Consent 5/23/24: BCC approval of IGA with The Freshwater Trust. Value not to exceed \$100,000 10/25/22: BCC approval of grant application letter of support and commitment up to \$100,000 in County Road Fund		
<b>Performance Clackamas</b>	The project will build a strong infrastructure		
<b>Counsel Review</b>	08/29/24: HH	<b>Procurement Review</b>	No
<b>Contact Person</b>	Devin Patterson	<b>Contact Phone</b>	503-742-4666

**EXECUTIVE SUMMARY:** An agreement with The Freshwater Trust (TFT) was approved by the Board of County Commissioners that allows Clackamas County and TFT to partner on the replacement of a 12-foot-diameter culvert that carries Henry Creek under Arlie Mitchell Road in Rhododendron. The culvert is being replaced with a precast modular bridge and is largely grant-funded. The County’s obligation under the agreement consists of in-kind services and cash contribution with a total not to exceed \$100,000. The project is nearing completion, but the project is experiencing higher-than-anticipated consultants costs, easement acquisitions and staff costs due to the complexity of construction.

Amendment No. 1 with TFT allows continued collaboration on the project and an additional \$50,000 in cash and/or in-kind services from Clackamas County with a total not to exceed \$150,000. The remaining in-kind tasks primarily include continued construction inspection. The

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remaining project costs, estimated to be \$1,292,310.00 will be funded through TFT-obtained grant funding.

**RECOMMENDATION:** Staff respectfully recommends the Board of County Commissioners approve Amendment No. 1 to Henry Creek Culvert Fish-Passage Project Agreement with The Fresh Water Trust.

Respectfully submitted,

*Dan Johnson*

Dan Johnson, Director  
Transportation & Development

**AMENDMENT No. 1  
TO HENRY CREEK CULVERT  
FISH-PASSAGE PROJECT AGREEMENT**

This Amendment No. 1 is entered into between **The Freshwater Trust** ("Freshwater") and Clackamas County ("County") and shall become part of the Henry Creek Culvert Fish-Passage Project Agreement entered into between both parties on May 18, 2023 ("Agreement").

**RECITAL**

- A. Section 6.g. of the Agreement requires all modifications and changes to the terms of the Agreement to be in writing and signed by both Parties.
- B. The Parties desire to modify project cost estimate and County contribution of the Agreement as set forth below.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, Freshwater and the County hereto agree that:

- 1. Recital 3 is amended to now include the following at the end of the recital:

*"Since the time the attached Exhibit B was prepared, certain cost estimates, such as consultant costs, easements acquisitions, and staff time, have increased in a sum of \$423,850, and resulting in a September 2024 revision of the estimated total of \$1,442,310, as shown on the attached Exhibit B-2. The tasks and scope of work in Exhibit B, however, remain unchanged."*

- 2. Section 1 of the Agreement is hereby deleted and entirely replaced with the following:

*"This Agreement becomes effective as of the last date of signature by a Party indicated below. Unless terminated earlier pursuant to Section 4 of this Agreement, this Agreement will expire upon the completion of the Project by Freshwater and the final payment by the County pursuant to the terms of this Agreement, or by December 31, 2025, whichever is sooner."*

- 3. Section 2.d of the Agreement is hereby deleted and entirely replaced with the following:

*"Upon Project completion, Freshwater will invoice the County for the County's portion of costs incurred in delivering the Project ("Eligible Project Costs"). Any cash contribution by the County will be limited to the remainder of the County's overall cash/in-kind commitment of One-Hundred and Fifty-Thousand Dollars (\$150,000), as provided for in Section 3 of this Agreement."*

- 4. Section 3 of the Agreement is hereby deleted and entirely replaced with the following:

***"3. County Obligations.***

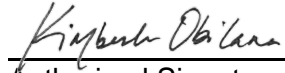
- a. *The County agrees to the scope of work as more particularly described in the Recitals and in the attached Exhibit "B".*

- b. *The County agrees to manage and deliver the following tasks associated with the Project:*
  - i. *Preconstruction survey work;*
  - ii. *County review of plans and specifications;*
  - iii. *Right-of-way acquisition;*
  - iv. *Assistance with County permitting;*
  - v. *Review of construction submittals;*
  - vi. *Landowner outreach;*
  - vii. *Utility Coordination; and*
  - viii. *Inspection of Project construction.*
- c. *Costs incurred in delivering the work described above in Section 3(b) shall be the responsibility of the County.*
- d. *In addition to the in-kind contribution described above in Sections 3(b) and 3(c), if funds remain, the County agrees to provide Freshwater a cash contribution to be used on Eligible Project Costs. In no event shall the combined amount of the County's in-kind contribution and cash contribution towards the Project exceed One Hundred and Fifty-Thousand Dollars (\$150,000). All costs of the Project in excess of One Hundred and Fifty-Thousand Dollars (\$150,000) shall be the responsibility of Freshwater; however, Freshwater shall not be responsible for any costs associated with the County's in-kind contribution described in Sections 3(b) and 3(c).*
- e. *The County shall review those final construction plans and specifications provided by Freshwater. The County's approval of the final construction plans and specifications is required, and the County shall either accept or reject the final construction plans and specifications within 30 days of the receipt of the materials. The County's approval of the final construction plans and specifications under this section may not be unreasonably withheld.*
- f. *The County shall pay invoices from Freshwater within 60 days of receipt. The County agrees to notify Freshwater in writing of any objection to costs identified in any invoice within 10 days of receipt*
- g. *The County will retain ownership of, and be responsible for maintaining, the new bridge upon completion of the Project."*

- 5. The Agreement is amended to now include "Exhibit B-2", attached to this Amendment No. 1 as "Attachment 1."

Except as expressly amended above, all other terms and conditions of the Agreement shall remain in full force and effect. By signature below, the parties agree to this Amendment #1, effective upon the date of the last signature below.

**The Freshwater Trust**



Authorized Signature

Kimberlee Obilana

Printed Name

11.22.24

Date

Freshwater Trust Contact:

Mark McCollister  
700 SW Taylor Street, Suite 200  
Portland, OR 97205  
(503) 222-9091  
Mark@thefreshwatertrust.org

**Clackamas County**

Authorized Signature

Print Name

Date

Clackamas County Contact:

Devin Patterson  
150 Beaver Creek Rd.  
Oregon City, OR 97045  
(503) 742-4666  
DevinPat@clackamas.us

**ATTACHMENT 1 TO  
AMENDMENT #1  
TO HENRY CREEK CULVERT  
FISH-PASSAGE PROJECT AGREEMENT**

**(EXHIBIT B-2:  
REVISED BUDGET, DATED SEPT 2024)**

**Exhibit B-2**

**Henry Creek at Arlie Mitchell Road - Revised Budget (September, 2024)**

PERSONNEL	Work By	Rate	Quantity	Units	Amount
Description					
TFT Project Manager	Recipient	\$ 68	400	Hour	\$ 27,040
TFT Monitoring Staff	Recipient	\$ 47	200	Hour	\$ 9,372
USFS GS 11 Fisheries Biologist	Partner	\$ 510	10	Days	\$ 5,100
USFS GS 9 Fisheries Biologist	Partner	\$ 364	2	Days	\$ 728
Clackamas County Engineer	Partner	\$25,000	1	Lump Sum	\$ 25,000
TFT grant admin	Recipient	\$ 219,716	1	Each	\$ 219,716
Sub-Total1:					\$ 286,956
PROJECT SUPPLIES & MATERIALS					
Description					
Sub-Total2:					\$ -
EQUIPMENT					
Description					
Sub-Total3:					\$ -
OTHER					
Description					
Sub-Total4:					\$ -
CONTRACTED SERVICES					
Description					
Bridge		\$233,700	1	Each	\$233,700
Design Engineer-Design		\$81,654	1	Each	\$81,654
Design Engineer- On-site Engineering	Recipient	\$15,000	1	Each	\$ 15,000
Heavy Equipment-Construction	Recipient	\$825,000	1	Each	\$ 825,000
Sub-Total5:					\$ 1,155,354
Total Recipient Outlay (sub-totals 1-5)					\$ 1,442,310