COOPERATIVE AGREEMENT
FOR COUGAR CREEK CULVERT
REPLACEMENT

This Cooperative Agreement ("Agreement") is entered into by and between Lincoln County, a political subdivision of the State of Oregon ("County"), and the MidCoast Watershed Council, an Oregon public benefit corporation ("MCWC"), individually and collectively referred to in this Agreement as a "party" or "the parties".

RECITALS

A. County has a long-term interest in the maintenance and improvement of public facilities and drainage function, as well as enhancement and protection of fish habitat, through participation in watershed improvement efforts; and
B. MCWC wishes to cooperate with County in this effort to improve the quality and quantity of fish habitat, and to enhance ecosystem function within the Alsea watershed; and
C. Replacement of the existing culvert for Cougar Creek on Buck Creek Road at Mile Post .25 with fish-friendly culverts will improve fish habitat and the Alsea watershed.

AGREEMENT

Now therefore, the parties agree as follows:

1. The objectives of this Agreement are to maintain and improve drainage function under County roads while removing barriers to fish passage through the installation of "fish-friendly" culverts and fish enhancement projects. The project is intended to restore and enhance aquatic habitat within the Mid-Coast Watershed for the benefit of threatened and endangered fish species and all aquatic species.

2. This Agreement is to facilitate cooperation between the parties in the specific drainage and habitat improvement fish enhancement project for Cougar Creek on Buck Creek Road at Mile Post .25, hereinafter (the "Project"). This Agreement provides for the limited interchange of services, equipment, materials, and funds to meet the objectives of the project.

3. Contract Documents. The Agreement consists of this document and the following listed exhibits, if any, which are incorporated into this Agreement by referenced here. In the event of a conflict between the requirements of this Agreement document and any exhibit, the requirements in this document prevail. There are no other contract documents unless specifically referenced in this Agreement.

4. County will:
   a. Review and approve the Project plans prior to the commencement of construction.

b. Reimburse MCWC no more than $8,000 for design services provided by project engineer contracted by MCWC to complete structure design
c. Ensure that no construction activities begin until COUNTY has received notification from the MCWC that all applicable federal and state permits have been issued. MCWC will provide County copies of all applicable state and federal permits before work begins.
d. Arrange for all necessary relocations of utilities.
e. Manage the Project areas in accordance with the requirements of applicable permits and regulations, including providing for proper drainage function, habitat protection, a safe work zone, and traffic control for the term of the Agreement.
f. Provide the materials, equipment, and labor to construct the Project in accordance with the requirements of this Agreement.
g. Oversee all work and assure that the work of the Project meets the requirements of this Agreement and the approved engineered Project plans and specifications.
h. Invoice MCWC for partial reimbursement of costs for materials, supplies and labor used in fulfilling the work of this Agreement and provide documentation of the expenses along with each invoice.
i. Grant permission for access to those stakeholders identified by MWMC for the express purpose of monitoring habitat conditions, fish populations and land use within the project area. Each such stakeholder must give notice to the County or its designated agent before entering the site.
j. Acknowledge funding sources and the MCWC in all publicity and materials regarding this project.
k. Perform a flood plain analysis and secure a no-rise permit from the Lincoln County Planning Division.
l. Develop a water quality treatment plan and secure a permit from the Oregon Department of Environmental Quality.
m. Follow the stream design standard established by the United States Forest Service stream simulation method.
n. Ensure that iron and steel material used in the Project meets the "Buy America" provisions of section 00160.20(a) of the Oregon Standard Specification for Construction.
o. Negotiate and secure a temporary work area from adjacent property owner.
p. Complete the Project by September 30, 2023.

5. MCWC will:
   a. Develop engineered Project plans and specifications meeting the requirements of MCWC grants and County's Road standards. MCWC will submit the Project plans to County for approval prior to construction.
   b. Provide 30%, 60% and final plans to County during the design process.
   c. Provide grant funds, in an amount not to exceed $85,278 to reimburse County for its costs of materials, supplies and labor necessary to implement the Project, described in this Agreement. Each payment will be conditioned upon documentation of County's expenses, acceptance of work by MCWC and receipt of funds from funding sources.
   d. Secure applicable federal permits using aquatic restoration biological opinion (ARBO) protocol, and provide a copy of the required permits to the County.

e. Secure all State permits required for the Project, except those specified to be obtained by County, including but not limited to: ODFW Fish Passage, and DSL Removal Fill.

f. Secure release of funds, make timely payments for completed and invoiced work, and maintain all financial records according to funding specifications. Notify County or County's designated agent before entering the project area during construction, or for the monitoring of habitat conditions, fish use, and land use within the project area.

g. Develop and provide re-planting design for each culvert site, provide all plants and planting materials, and coordinate, supervise and monitor all planting and maintenance to ensure plants reach free to grow status.

h. Perform follow-up monitoring of the culvert and appropriate reporting for MCWC records, including notice to be given to County or its designated agent before entering the site.

6. The applicable provisions of the Lincoln County Code setting forth standard provisions for public contracts are hereby incorporated by reference (ORS 279A.065) as if fully set forth herein.

7. Indemnity. Each of the parties agrees to defend, indemnify, and hold the other harmless from and against all claims, suits, actions, losses, damages, liabilities, cost and expenses, resulting from or arising out of any negligent performance or failure to perform on the part of the indemnifying party, its officers, employees or agents. The parties' indemnify and hold harmless obligations are subject to the limitations of the Oregon Tort Claims Acts and any applicable limitations of the Oregon Constitution.

8. Term. The term of this Agreement will commence upon execution of the agreement by both parties and terminate upon completion and acceptance of the work of the Project and receipt of final payment, but in no event longer than two years from the date of execution. In no event shall MCWC's responsibility to reimburse County for work under this Agreement continue beyond the term of funding agreements and modifications. If additional funding becomes available, this agreement may be amended and/or extended by written agreement of the parties.

9. Termination. The parties may agree to terminate this agreement at any time by written agreement. Either party may terminate this Agreement upon not less than 30 days' written notice to the other party. If the Agreement is terminated prior to completion of and payment for the Project, the parties must negotiate an equitable allocation of costs and improvements made under this Agreement.

10. Modifications. No modification to this agreement will be effective unless made in writing and signed by both parties.

11. Miscellaneous Provisions

    a. Equal Employment Opportunity. During the term of this Agreement, MCWC will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual

orientation, gender identity, or national origin. MCWC will comply with all applicable requirements of 29 CFR Part 471, Appendix A to Subpart A (copy available at: http://www.dol.gov/olms/regs/compliance/EO13496.htm), and will include the terms of these requirements in all subcontracts entered into under this Contract.

b. Force Majeure. Neither County nor MCWC will be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party. County may terminate this Agreement upon written notice after determining that delay or default caused by Force Majeure acts, events, or occurrences will reasonably prevent successful performance of the Agreement.

c. Dispute Resolution. The parties are required to exert every effort to cooperatively resolve any disagreements that may arise under this Agreement. This may be done at any management level, including at a level higher than the persons directly responsible for administration of the Agreement. In the event that the parties alone are unable to resolve any conflict under this Contract, they are encouraged to resolve their differences through mediation or arbitration, using such process as they may choose at the time.

d. Merger. This Agreement contains the entire agreement of County and MCWC with respect to the subject matter of this Contract, and supersedes all prior negotiations, agreements and understandings.

e. Severability. If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions are not affected; and the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

f. Time is of the Essence. The parties agree that time is of the essence with respect to all provisions of this Agreement.

g. Binding on Successors and Assigns. The provisions of this Agreement are binding upon and inure to the benefit of the parties to this Agreement, their respective successors, and permitted assigns.

h. No Third-Party Beneficiaries. County and MCWC are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives or may be construed to give or provide any benefit or right to third persons, either directly or indirectly, that is greater than the rights and benefits enjoyed by the general public, unless that party is identified by name in this Agreement.

MIDCOAST WATERSHED COUNCIL

By:

_____

Evan Hayduk

Title: Council Coordinator

914 SW Coast Hwy

Newport, OR 97365

Mail: P.O. Box 2273

Newport, OR 97365

Date: _____

LINCOLN COUNTY

By:

_____

Claire Hall

Title: Lincoln County Board Chair

Lincoln County

Courthouse

225 West Olive St.

Room 110

Newport, OR 97365

Date: _____

Approved as to form by Lincoln County, Legal Counsel
6/1/22 RCL