

RIPARIAN ACCESS AGREEMENT

THIS RIPARIAN ACCESS AGREEMENT (“Agreement”) is made and entered into as of the date last signed below, by and between Dunn Ranch, LLC, an Oregon limited liability company (“Landowner”), and The Freshwater Trust, an Oregon nonprofit organization (“TFT”) (collectively, the “Parties”).

RECITALS

- A. Landowner is the new owner of property located along Neil Creek at Township 39 Range 2 East Section 19 and Tax Lot 300 (the “Property”), as more particularly depicted in Exhibit A (“Map of Property”);
- B. TFT is a 501(c)(3) Oregon nonprofit organization with a mission to preserve and restore freshwater ecosystems;
- C. TFT and the previous Property owner were parties to a riparian access agreement dated September 21, 2014 as amended on December 8, 2015, and March 20, 2019 (collectively, the “Original Agreement”, attached hereto as Exhibit B), that provided TFT with access to the Property to perform native revegetation and large wood habitat restoration work on behalf of the Bureau of Reclamation (“Reclamation”) at no cost to the previous owner; and
- D. TFT and Landowner wish to enter into this Agreement to provide for continued TFT access to steward and maintain the restoration project areas on the Property.

NOW THEREFORE, in consideration of the foregoing recitals, and the consideration, obligations, covenants, and agreements set forth herein, the legal sufficiency of which the Parties hereby acknowledge, Landowner and TFT agree as follows:

1. Term.

- 1.1. This Agreement is effective as of the date above, and unless earlier lawfully terminated or mutually extended by the Parties in writing, expires on February 28, 2027.
- 1.2. Either party may terminate this Agreement without cause by providing thirty (30) days prior written notice to the other party.

2. Statement of Work.

- 2.1. TFT and its contractors will perform ongoing maintenance and stewardship (the “Work”) of the previous riparian revegetation and large woody structure construction outlined in Exhibit A. TFT and its contractors will comply with all applicable laws and regulations in the course of performance of the Work.
- 2.2. Landowner acknowledges that TFT’s performance of the Work is subject to contractor availability, funding, weather, and other factors that may be beyond TFT’s reasonable control. In the event of a delay that may affect implementation, TFT will promptly provide written notice of the delay to Landowner and a modified schedule accounting for any such delay.

- 2.3. The Parties agree that after completion of the Work, ownership of all plants and materials affixed to the Property will pass to Landowners, provided that the terms of this Agreement are met. Improvements that are not affixed to the Property shall remain the property of TFT and shall be removed prior to the termination of the Agreement.
- 2.4. After the term of this Agreement expires, the Bureau of Reclamation (“Reclamation”) will be the point of contact for the Landowner regarding the Work. Reclamation will rely on the Landowner to contact Reclamation directly with any concerns or additional stewardship or maintenance needs.

3. Obligations – The Freshwater Trust.

- 3.1. TFT shall conduct the Work in accordance with all applicable federal, state, and local laws, ordinances, codes, rules and regulations. TFT and its contractors are and will be properly licensed to perform all Work described in this Agreement and will procure all necessary permits for such Work.
- 3.2. TFT will maintain open and clear communication with Landowner from the beginning of the Work through the Agreement termination date. TFT will respond to questions, concerns, requests for information, and any other inquiries from Landowner in a timely and efficient fashion.
- 3.3. TFT will maintain comprehensive general liability insurance in an amount not less than \$1,000,000.00 combined single limit for each occurrence and \$2,000,000.00 in the aggregate, naming Landowner as an additional insured and providing that Landowner will be notified in the event the policy is canceled, for the term of this Agreement. TFT will provide Landowner with a certificate of insurance showing that it has complied with this provision. TFT will also carry worker’s compensation coverage on its employees as required by Oregon law throughout the term of this Agreement and provide evidence of this coverage to Landowner.

4. Obligations – Landowner.

- 4.1. Landowner will exercise due diligence and good faith to cooperate with and facilitate the implementation of the Work and this Agreement.
- 4.2. Landowner will permit TFT and its contractors, subcontractors, agents, and invitees to enter onto the Property for the purposes of performing the Work, inspecting the condition of the Work, and monitoring the effectiveness of the Work.
- 4.3. Landowner will notify TFT if Landowner will be unavailable during the periods in which TFT and its contractors are onsite, and will designate someone to act on its behalf during its absence.
- 4.4. Landowner will notify TFT of any pending property sale, changes in ownership or any other property issues that may have an effect on the Work or the Agreement, and notify any prospective property purchasers of the existence of this Agreement.

4.5. Landowner represents and warrants to TFT that it has the authority to enter into and satisfy the terms of this Agreement.

5. Post-Agreement Monitoring of the Work.

5.1. Upon Landowner's request, Reclamation may perform as-needed continued monitoring and maintenance of the Work after the termination of this Agreement.

6. Indemnification.

6.1. Each party shall indemnify and hold harmless the other party, its officers, directors, employees, representatives, agents, successors and assigns, for, from, and against all claims, damages, losses, expenses, and attorneys' fees (collectively, "Claims"), for bodily injury, death, or damage to property, to the extent that such Claims arise out of or result from the fault of the indemnifying party, its agents, employees, subcontractors, or anyone for whose acts they may be liable under this Agreement. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist.

7. Miscellaneous.

7.1. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior written or oral communications.

7.2. Controlling Law and Operation. This Agreement shall be governed under, and construed pursuant to, the laws of the State of Oregon or, as applicable, under the laws of the United States.

7.3. Headings. The paragraph headings are for ease of reference only and shall not be used in construing or interpreting this Agreement.

7.4. Severability. If any of the provisions contained in the Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired.

7.5. Amendment. This Agreement may be modified only by a written document signed by both TFT and Landowner.

7.6. Assignment. With the exception of successors in interest, this Agreement may not be assigned by either party without the prior consent of the other party. Consent shall not be unreasonably withheld. The Parties each bind partners, successors, and assigns to this Agreement.

7.7. Counterparts. This Agreement may be executed by facsimile and in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one Agreement.

Exhibit A – Map of Property

Neil Creek RM 2 Phase I Vegetation Monitoring and Camera Point Locations



- Veg Transect Origin
- Camera Point
- Neil Creek
- ▨ Phase I As Built Planting Area (5.6 acres)