

# Council Business Meeting

January 21, 2020

<b>Agenda Item</b>	Approval of Riparian Land Lease Agreement – Water Quality Temperature Trading Program Partnership (2018-21); Phase 2	
<b>From</b>	Paula C. Brown, PE Kaylea Kathol	Public Works Director Public Works Project Manager
<b>Contact</b>	<a href="mailto:paula.brown@ashland.or.us">paula.brown@ashland.or.us</a> ; (541) 552-2411 <a href="mailto:kaylea.kathol@ashland.or.us">kaylea.kathol@ashland.or.us</a> ; (541) 552-2419	

## **SUMMARY**

Before the Council is a Riparian Land Lease Agreement granting The Freshwater Trust (TFT) a 21-year leasehold on certain City properties for the purpose of implementing riparian restoration work in support of the City’s multi-year Water Quality Temperature Trading Program Partnership (Program). Approval of this lease agreement is requested to advance ecological enhancements along Bear Creek on two parcels known locally as the “Hardesty Property” and on lower Ashland Creek along two parcels managed by Ashland Parks and Recreation known locally as “Ashland Ponds”. A legal description and map of the properties is included in the attached agreement. Riparian restoration within the proposed leasehold will result in the transformation of degraded streamside areas to native, high-functioning, shade-providing riparian forests. This Program has been accepted by the Oregon Department of Environmental Quality (DEQ) as a means of complying with water quality temperature obligations associated with operating the Wastewater Treatment Plant.

## **POLICIES, PLANS & GOALS SUPPORTED**

City Council Goals (supported by this project):

- Goal 1: Develop current and long-term budgetary resilience -- evaluate revenue streams
- Goal 3: Enhance and improve transparency and communication
  - Develop a robust program to engage with Ashland citizens about City priorities and our progress on those priorities...
- Maintain *Essential* Services - wastewater
- Continue to leverage resources to develop and/or enhance *Value Services*

Department Goals:

- Maintain existing infrastructure to meet regulatory requirements and minimize life-cycle costs
- Deliver timely life cycle capital improvement projects
- Maintain and improve infrastructure that enhances the economic vitality of the community
- Evaluate all city infrastructure regarding planning management and financial resources

## **PREVIOUS COUNCIL ACTION**

[April 17, 2012](#): Council approved the 2012 Comprehensive Sewer Master Plan (Plan). The Plan explored multiple alternatives for mitigating the thermal impact of discharging effluent from the Wastewater Treatment Plant into Ashland Creek. Ultimately, the Plan recommended temperature trading/riparian shading as the most cost-effective and environmentally beneficial alternative to meet anticipated temperature compliance needs. This project is included in the 20-year Capital Improvements Program (CIP) adopted by Council on [April 2, 2019](#).

[September 4, 2018](#): City Council approved a personal services contract with TFT for professional services to develop and begin implementation of a water quality trading program for temperature compliance for the Wastewater Treatment Plant. This contract was only for Phase 1, which included the initial program design architecture of the overall riparian restoration and shading program. Phase 1 was approved for a not to exceed amount of \$130,988.

[February 6, 2018](#): City Council approved revisions to the City's Clean Water State Revolving Fund (CWSRF) Loan. The new loan is for \$4,829,000, which will fund a significant portion of the Program (\$2,000,000).

[July 16, 2019](#): City Council approved a goods and services contract with TFT for Phase 2 of the Program. Phase 2 encompasses the first six years of the Program and consists largely of recruiting landowners to enter into riparian lease agreements, performing riparian restoration, and ensuring plant establishment. Phase 2 was approved for a not to exceed amount of \$2,605,342.

[August 26, 2019](#): Ashland Parks and Recreation Commission (Commission) approved a request from Public Works for an exemption to the Commission's pesticide restriction within the riparian areas of certain properties managed by the Parks Division. Pesticides must be applied to control invasive weeds during the initial stages of restoration and are necessary to ensure compliance-grade restoration success. The Commission's approval included several stipulations, including a requirement that Public Works submit an annual report on the restoration work.

[September 3, 2019](#): Council approved TFT recommended revisions to the Phase 2, approved previously on July 16, 2019. The changes included minor clarifying language to the City's standard contract and resulted in a more detailed assessment.

## **BACKGROUND AND ADDITIONAL INFORMATION**

Staff advertised the request for qualifications-based proposals on September 11, 2017. One proposal was received on May 15, 2018 from TFT and after staff review and recommendations, Council awarded the initial phase on September 4, 2018.

The Water Quality Trading Program is one of several capital projects included in the 2012 Comprehensive Sanitary Sewer Master Plan (Keller Associates) that will be needed in order to meet anticipated regulatory temperature limits stemming from the Clean Water Act.

A Water Quality Trading Plan was developed for the City under a Phase 1 contract with TFT. Ashland's Trading Plan was accepted by the DEQ on March 9, 2018, as being consistent with Oregon's Water Quality Trading Rule. As part of renewal of its National Pollution Discharge Elimination System (NPDES) permit (anticipated in 2020), the already approved Trading Plan will be incorporated into the City's NPDES permit. Ashland's trading program—which will be implemented according to the DEQ approved Trading Plan—will focus on implementing riparian re-vegetation projects to generate shade “credits” (specifically, kilocalories of blocked solar load, measured in the same units as the City's temperature permit limits). Once implemented, the City will be able to count these credits against its anticipated upcoming temperature obligation, and thus achieve compliance with the Clean Water Act. The Trading Plan will be a reference document in the contract with TFT.

The City and TFT are currently in the process of implementing Phase 2 of the Trading Plan. During this phase, TFT will perform substantial outreach to recruit stream-side landowners for participation in the Program. Various privately-owned lands and City-owned lands have been identified as potential candidates for generating shade credits. When landowners agree to participate in the Program, they grant TFT a long-term land lease which provides the grantee access for conducting restoration work, monitoring, and

maintenance of the plantings within the riparian area. The lease also protects the restored riparian area from incompatible land uses.

**FISCAL IMPACTS**

There is no additional cost associated with granting a land lease to TFT. Administrative costs are already incorporated in the Phase 2 partnership contract with TFT for water quality improvements.

**STAFF RECOMMENDATION**

Staff recommends Council move approval of a Riparian Land Lease Agreement with TFT on the four parcels described therein. Approval of the lease will advance the implementation of the Water Quality Temperature Trading Program Partnership, Phase 2

**ACTIONS, OPTIONS & POTENTIAL MOTIONS**

Council has the option to approve this lease agreement or refer staff back for renegotiation of new lease agreement terms with TFT. Potential motions include:

1. I move to approve the execution of a 21-year Riparian Land Lease with The Freshwater Trust for the purpose of implementing the Water Quality Temperature Trading Program on tax lots 381E33-400, 381E33-402, 381E33-1900, and 381E33-1500.
2. I move to direct staff to renegotiate terms with The Freshwater Trust for a riparian land lease agreement on tax lots 381E33-400, 381E33-402, 381E33-1900, and 381E33-1500.

**REFERENCES & ATTACHMENTS:**

Attachment 1: Riparian Land Lease Agreement between the City and The Freshwater Trust with all supporting documents.

## RIPARIAN LAND LEASE AGREEMENT

THIS RIPARIAN LAND LEASE AGREEMENT (“Lease”) is made and entered into by and between the City of Ashland, an Oregon municipal corporation (“City”), and The Freshwater Trust, an Oregon nonprofit corporation (“TFT”), collectively referred to herein as the “Parties.”

### RECITALS

- A. City is the owner of that certain real property described in Exhibit A, “Legal Description of Property,” which is attached hereto and incorporated herein by this reference (the “Property”).
- B. TFT wishes to lease portions of the Property along Ashland Creek and Bear Creek (the “Riparian Land”) as set forth in Exhibit B, “Identification of Riparian Land,” which is attached hereto and incorporated herein by this reference, in order to perform certain stream bank and riparian habitat restoration projects (“Riparian Restoration Activities”) more particularly described in Exhibit C, “Riparian Restoration Activities,” which is attached hereto and incorporated herein by this reference.
- C. City wishes to lease the Riparian Land to TFT in exchange for the consideration and obligations contained in this Lease.
- D. City and TFT wish to enter into this Lease to establish the terms and conditions of TFT’s leasehold interest and the scope of permitted Riparian Restoration Activities on the Riparian Land.

### AGREEMENT

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

#### 1. TERM.

- 1.1. Consideration. For and in consideration of the sum of one United States Dollar (\$1.00) and other good and valuable consideration, including the terms and conditions more particularly set forth in this Lease, City grants to TFT access to the Riparian Land for the purposes of restoration of riparian habitat for the benefit of land and aquatic species and the environment, in accordance with the terms and conditions of this Lease.
- 1.2. Initial Term. The term of the Lease shall be for a period of twenty-one (21) years (the “Initial Term”), commencing on **January 1, 2020** (the “Lease Commencement Date”), and, unless sooner terminated as provided herein, terminating on **December 31, 2040** (the “Lease Termination Date”).
- 1.3. Renewal Option. Provided neither party is in default under this Lease as of the Lease Termination Date, this Lease may be renewed by TFT and City for a successive term of twenty (20) years (the “Renewal Term”). TFT shall provide City with prior written notice of its intent to exercise the Renewal Term option, and, if applicable, the new compensation amount for the Riparian Land for the Renewal Term a minimum of

ninety (90) calendar days prior to the Lease Termination Date (“Renewal Notice”). City shall have thirty (30) calendar days from the date of the Renewal Notice to provide written notice of its acceptance of the Renewal Term.

- 1.4. Recording Costs. TFT shall pay all fees and costs directly related to the filing and recordation of this Lease in the records of deeds of real property in the county where the Riparian Land is located.
- 1.5. Permits and Licenses. TFT shall pay all fees and costs for any permits and licenses required by federal, state, or county laws and regulations in order to conduct the Riparian Restoration Activities on the Riparian Land. City shall pay all fees and permit costs and licenses solely required by the City of Ashland.
- 1.6. Taxes. City shall be solely responsible for the payment of all property and income taxes, assessments, and other fees associated with ownership and leasing of the Riparian Land.

## **2. USE AND ACCESS.**

- 2.1. Permitted Uses. TFT shall have the right to exclusively use the Riparian Land to conduct, inspect, and maintain the Riparian Restoration Activities for the duration of the Initial Term and any subsequent Renewal Term. The Parties agree that TFT shall be the sole beneficiary of all environmental credits (“Credits”) produced through Riparian Restoration Activities. TFT shall provide City with twenty-four (24) hours prior notice by telephone or email before it or any of its contractors or employees access the Riparian Land.
- 2.2. Access. City shall provide TFT, in writing, with a designated route across City’s property to enable TFT to access the Riparian Land for the duration of the Initial Term and any subsequent Renewal Term (“Access Route”). The Access Route must be sufficiently wide and navigable to provide TFT, its contractors, subcontractors, and equipment with reasonably unimpeded access to the Riparian Land.
- 2.3. City Use Restrictions. City acknowledges that the value, security, and success of Riparian Restoration Activities on the Riparian Land are of the essence to TFT under this Lease. City agrees it shall not:
  - 2.3.1. Prevent, hinder, delay, diminish, or damage Riparian Restoration Activities;
  - 2.3.2. Remove vegetation from the Riparian Land or otherwise take action that could reduce plant viability on the Riparian Land;
  - 2.3.3. Permit trespass by livestock or herbicides upon the Riparian Land;
  - 2.3.4. Construct any buildings, roads, pathways, or other improvements, or dispose of any trash or refuse, within the Riparian Land boundaries;
  - 2.3.5. Damage, destroy or remove any fencing, plant stakes, plant protection devices, flags, markers, irrigation components or systems, or other devices or property placed or installed by TFT, its contractors, or subcontractors on or within the Riparian Land; or
  - 2.3.6. Engage in any use of its land adjacent to the Riparian Land that would negatively impact the Riparian Restoration Activities. Furthermore, if

necessary to protect the viability of Riparian Restoration Activities, City agrees to permit TFT to install temporary protective fencing around Riparian Land.

- 2.4. TFT Use Restrictions. TFT and its contractors shall not use or occupy the Riparian Land: (i) for any purpose that would violate applicable state or federal law; (ii) to construct or make structural improvements on the Riparian Land for dwelling or occupancy purposes; or (iii) to enable public access to the Riparian Land. Aside from the Access Route(s), TFT will not use or occupy City's property outside of the Riparian Land without City's prior written consent.

### **3. IRRIGATION.**

- 3.1. Irrigation Water. Should City make water available for irrigation of the Riparian Restoration Activities on the Riparian Land, the water will be provided according to the terms contained in Exhibit D, "Irrigation Terms," which is attached hereto and incorporated herein by this reference.
- 3.2. No Transfer. The Parties acknowledge that the use of water pursuant to Exhibit D shall not be considered a transfer of water rights from City to TFT.

### **4. ASSIGNMENT OR TRANSFER.**

- 4.1. Assignment or Transfer by TFT. City consents to a mutually agreed upon written assignment or transfer by TFT of its interest in this Lease to a successor in interest or a wholly owned or controlled subsidiary organization. TFT shall provide City with prior written notice of any such assignment or transfer.
- 4.2. Assignment or Transfer by City. Should City sell, convey, assign, or transfer (collectively, "transfer") City's interest in its real property and Riparian Land during the Initial Term and any subsequent Renewal Term, City's obligations under this Lease shall inure to and be binding upon all such successors in interest. City shall provide TFT with prior written notice of any such transfer of interest to a successor in interest.

### **5. SUBORDINATION AND NON-DISTURBANCE IN THE EVENT OF FORECLOSURE.**

- 5.1. TFT agrees that this Lease is subject and subordinate to all existing mortgages, if any, of City on the Riparian Land.
- 5.2. City agrees to use its best efforts to deliver an agreement or letter to TFT from any existing or future mortgage holders acknowledging TFT's use and leasehold interest in the Riparian Land, and providing that so long as TFT is not in default of this Lease, TFT's interest will not be extinguished upon such holder's foreclosure, power of sale, or deed in lieu of foreclosure ("Non-Disturbance Agreement"). Upon notice to TFT of foreclosure, power of sale, or deed in lieu of foreclosure, TFT agrees to attorn and pay rent to any such purchaser or mortgage holder. City shall provide written notice to TFT of any mortgage for which it is unable to obtain a Non-Disturbance Agreement.
- 5.3. Should City be unable to obtain a Non-Disturbance Agreement, TFT agrees that City will not be in default under this Lease and all obligations under this Lease will nevertheless remain in full force and effect.

## **6. WARRANTIES.**

- 6.1. City hereby represents and warrants to TFT, and such warranties shall be applicable and in full force and effect throughout the entire Initial Term and any subsequent Renewal Term, that:
  - 6.1.1. No known actions, proceedings or investigations are pending or threatened against City which would interfere with City's ability to enter into this Lease or consummate the same;
  - 6.1.2. No casualty nor condemnation with respect to the Riparian Land or any part thereof has occurred and no such known condemnation is pending or threatened;
  - 6.1.3. No uncured violations of any law, ordinance, order, or regulation of any governmental authority having jurisdiction of Riparian Land exist requiring any work, repair, construction, alteration or installation on, or in connection with the Riparian Land that would impede the Riparian Restoration Activities;
  - 6.1.4. City has the authority to enter into this Lease, and to consummate the transaction contemplated herein;
  - 6.1.5. No portion of the Riparian Land is currently the subject of any other type of legal proceeding except as described in this Lease; and
  - 6.1.6. City has not entered into any agreement regarding the Riparian Land other than this Lease including, but not limited to, any federal or state Conservation Reserve Program or Conservation Reserve Enhancement Program agreement(s), and that title to the Riparian Land is free and clear of any claims or encumbrances arising by, through, or under City.

## **7. HAZARDOUS MATERIALS.**

- 7.1. Definition. The term "Hazardous Materials" for purposes of this Section 7 means any chemical, substance, materials, waste, or component which is now or hereafter listed, defined, or regulated as a hazardous or toxic chemical, substance, materials, waste, or component by any federal, state, or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of a materials safety data sheet.
- 7.2. Site Preparation Records. At City's request, TFT shall provide City with a written list identifying any Hazardous Materials then used, stored, or maintained upon the Riparian Land in connection with the Riparian Restoration Activities, and such other information as City may reasonably require or as may be required by applicable law.
- 7.3. TFT Releases. If any Hazardous Materials are used, stored, maintained, released, discharged, or disposed of on or about the Riparian Land by TFT or its employees, contractors, or agents, TFT shall immediately notify City and shall, at TFT's sole cost and expense, clean up, remediate, and remove the Hazardous Materials from the Riparian Land and any other affected property in order to comply with any applicable laws. TFT shall indemnify and hold City harmless from and against any and all

claims, demands, liabilities, losses, damages, penalties and judgments directly arising out a violation of this Section by TFT, its employees, contractors or agents.

- 7.4. City Releases. City shall not knowingly release, discharge, or dispose of any Hazardous Materials on the Riparian Land in violation of any applicable laws. If the presence of any Hazardous Materials exists in excess of the amount permitted by applicable laws, and to the extent that such presence is caused by City or a third party (other than TFT, its employees, contractors, or agents), or is a pre-existing condition, TFT may (i) elect to immediately terminate this Lease, or (ii) obligate City to promptly take all actions necessary, or take action necessary to cause responsible third parties, to comply with such applicable laws at City's sole cost and expense. City represents and warrants to TFT that, as of the Lease Commencement Date, to the best of City's knowledge, there are no Hazardous Materials situated in or on the Riparian Land in violation of applicable laws.

## **8. DAMAGE OR DESTRUCTION OF RIPARIAN LAND.**

- 8.1. Mitigation of Damages. Should either Party become aware of any damage or risk of damage to the Riparian Land or Riparian Restoration Activities performed on the Riparian Land, including any release, discharge, or disposal of any Hazardous Materials on the Riparian Land, that Party agrees to immediately notify the other Party within one (1) calendar day to mitigate or prevent such damage. City agrees to take all measures reasonably necessary to promptly mitigate any risk of damage.
- 8.2. Nuisance or Trespass. In the event that the Riparian Land or Riparian Restoration Activities are subject to damages or destruction resulting from nuisance or trespass, specifically including herbicide drift, City will immediately notify TFT and take all reasonable measures necessary to promptly mitigate damages, abate the nuisance or trespass, and prevent reoccurrence of the same.
- 8.3. City Damages. Should damage to the Riparian Land or Riparian Restoration Activities be caused by the intentional, reckless, or negligent acts or omissions of the City, its agents, or employees, City agrees to: (i) assist TFT in mitigating damages as requested by TFT, and (ii) to compensate TFT for the reasonable cost incurred by TFT in restoring the project to pre-loss condition.
- 8.4. Force Majeure. "Force Majeure" is an unforeseeable and unavoidable event or circumstance not within the reasonable control of TFT or City which could not have been brought within control through commercially reasonable efforts, which causes a delay or non-performance of a duty or obligation under this Lease. Neither of the Parties shall be liable for Riparian Land lost, damaged, or otherwise diminished by a Force Majeure event.

## **9. END OF TERM.**

- 9.1. Surrender of Riparian Land by TFT. TFT shall remove all artificial, non-vegetative markers, equipment, devices, or items placed or installed on the Riparian Land by TFT, its contractors, or subcontractors on or prior to the Lease Termination Date.
- 9.1.1. City understands that the Riparian Restoration Activities will result in alterations to the vegetative cover, landscape, and plant composition of the

Riparian Land, and except as provided in Section 9.1 above, agrees to accept the Riparian Land in “AS-IS” condition upon termination of the Lease.

- 9.2. No Holdover. Subject to the Parties’ agreement on a Renewal Term, TFT shall not holdover in its possession of the Riparian Land past the Lease Termination Date.

## **10. TERMINATION.**

- 10.1. This Lease may be terminated at any time prior to the Lease Termination Date by mutual agreement of the Parties in writing.
- 10.2. TFT may unilaterally terminate this Lease at any time without cause upon not less than thirty (30) days’ prior written notice to City.
- 10.3. City may unilaterally terminate this Lease at any time without cause upon not less than ninety (90) days’ prior written notice to TFT.

## **11. INSURANCE.**

- 11.1. City Insurance. City shall insure and maintain all insurance coverage for its property containing the Riparian Land as is customarily maintained by owners of land of similar size, location, and as appropriate for City’s use of the property, and comprehensive general liability insurance on an occurrence basis with limits of liability in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit for each occurrence and Five Hundred Thousand Dollars (\$500,000.00) in the aggregate. On or before the Lease Commencement Date, City shall furnish to TFT certificates of insurance evidencing such insurance coverage. Renewal certificates will be furnished to TFT at least thirty (30) days prior to the expiration date of such insurance policies showing the above coverage to be in full force and effect.
- 11.2. TFT Insurance. TFT shall insure and maintain comprehensive general liability insurance for its Riparian Restoration Activities on the Riparian Land in an amount of not less than Two Million Dollars (\$2,000,000.00) combined single limit for each occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. On or before the Lease Commencement Date, TFT shall furnish to City certificates of insurance evidencing such insurance coverage. Renewal certificates will be furnished to City within thirty (30) days of the expiration date of such insurance policies showing the above coverage to be in full force and effect.

## **12. INDEMNIFICATION.**

- 12.1. Indemnification of TFT by City. To the extent permitted under the Oregon Tort Claims Act, City agrees to indemnify and hold harmless TFT, its directors, officers, employees, agents, successors, and assigns from and against any and all claims, demands, penalties, losses, liabilities, expenses, damages, lawsuits or actions arising out of or in any way related to City’s breach of this Lease, which breach shall include without limitation, any failure of City’s representations and warranties identified under Section 6 (“Warranties”) herein to be true or any negligence or misconduct by City
- 12.2. Indemnification of City by TFT. TFT agrees to indemnify and hold harmless City, and City’s agents, employees, successors, and assigns, from and against any and all claims,

demands, penalties, losses, liabilities, expenses, damages, lawsuits, or actions arising out of or resulting from the misconduct or the willful or negligent acts or omissions of TFT, its employees, subcontractors, or for anyone for whose acts it may be liable, for bodily injury, death, or damage to property related to TFT's Riparian Restoration Activities under this Lease.

### **13. DISPUTE RESOLUTION.**

- 13.1. Mediation. In the event that TFT and City are unable to reconcile a dispute arising under this Lease, the parties agree to first submit the claim to mediation. The mediation process is subject to ORS 36.100 to 36.238 and will be held in Portland, Oregon.
- 13.2. Costs. The Parties are responsible for their own attorney fees related to mediation, and will equally share the common costs and fees associated with the alternative dispute resolution process.
- 13.3. Venue. All disputes arising out of the Lease not otherwise settled through mediation will be decided by the Circuit Court of Jackson County, Oregon.
- 13.4. Attorney Fees. The prevailing party in any dispute outside the alternative dispute resolution process, including any issues related to bankruptcy and the U.S. Bankruptcy Code, will be entitled to recover all attorney fees, paralegal fees, costs, disbursements and other expenses from the non-prevailing party.

### **14. MISCELLANEOUS.**

- 14.1. Controlling Law and Operation. This Lease 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. Each of the Parties acknowledges that they have been given the opportunity to obtain counsel, or that they have been represented by counsel of their own choice and that they have read this Lease and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Lease and of its legal effect.
- 14.2. Severability/Survival. If any of the provisions contained in the Lease are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability and all provisions concerning indemnification shall survive the termination of the Lease.
- 14.3. Integration. This Lease constitutes the entire agreement between the Parties and supersedes all prior written or oral communications.
- 14.4. Headings. The paragraph headings are for ease of reference only and shall not be used in construing or interpreting this Lease.
- 14.5. Modification. This Lease may be modified only by a written document signed by both TFT and City.
- 14.6. Waiver. No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Lease will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.

14.7. Notices. Except where specifically provided otherwise in this Lease whenever any notice, demand or request is required or provided for under this Lease, such notice, demand or request shall be provided in writing to the following addresses or such other addresses as the Parties may indicate in writing, by postage prepaid, certified or registered mail:

To TFT:                   The Freshwater Trust  
                              Attn: General Counsel  
                              700 SW Taylor St., Ste. 200  
                              Portland, OR 97205

To City:                   City of Ashland  
                              Attn: Director of Public Works  
                              20 E Main St.  
                              Ashland, OR 97520

**IN WITNESS WHEREOF** the parties have caused this Lease to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

**CITY OF ASHLAND:**

**THE FRESHWATER TRUST (TFT):**

By: \_\_\_\_\_  
                                  City Administrator

By: \_\_\_\_\_  
                                  Signature

\_\_\_\_\_  
                                  Printed Name

\_\_\_\_\_  
                                  Printed Name

\_\_\_\_\_  
                                  Date

\_\_\_\_\_  
                                  Title

\_\_\_\_\_  
                                  Date



## EXHIBIT A – LEGAL DESCRIPTION OF PROPERTY

For Map No. 381E33 400 and 402:

Real property in the County of Jackson, State of Oregon, described as follows:

### PARCEL I:

COMMENCING AT THE NORTHWEST CORNER OF DONATION LAND CLAIM NO. 53 IN TOWNSHIP 38 SOUTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN IN JACKSON COUNTY, OREGON; THENCE NORTH 89° 26' 55" WEST (RECORD WEST) 356.40 FEET; THENCE SOUTH 00° 19' 02" WEST 589.14 FEET TO THE NORTH LINE OF THAT PARCEL OF LAND DESCRIBED IN INSTRUMENT NO. 82-09128 OF THE OFFICIAL RECORDS OF JACKSON COUNTY, OREGON; THENCE, ALONG SAID NORTH LINE, NORTH 67° 43' 33" WEST 363.60 FEET TO A 5/8 INCH IRON PIN FOR THE POINT OF BEGINNING; THENCE, CONTINUE ALONG SAID NORTH LINE, NORTH 67° 43' 33" WEST 96.47 FEET TO A 5/8 INCH IRON PIN; THENCE SOUTH 78° 48' 24" WEST 235.87 FEET TO A 5/8 INCH IRON PIN; THENCE SOUTH 86° 02' 58" WEST 131.85 FEET TO A 5/8 INCH IRON PIN; THENCE NORTH 89° 23' 02" WEST 92.04 FEET TO A 5/8 INCH IRON PIN; THENCE NORTH 86° 36' 48" WEST 148.95 FEET TO A 5/8 INCH IRON PIN; THENCE NORTH 89° 12' 08" WEST 199.92 FEET, MORE OR LESS TO THE WESTERLY LINE OF THAT TRACT OF LAND DESCRIBED IN VOLUME 113, PAGE 595 OF DEED RECORDS OF JACKSON COUNTY, OREGON; THENCE, ALONG SAID WESTERLY LINE, NORTH 00° 02' 32" EAST (RECORD NORTH 00° 28' EAST) 468.94 FEET TO THE SOUTH LINE OF TRACT #14 OF ASHLAND ACRES, ACCORDING TO THE OFFICIAL PLAT THEREOF, NOW OF RECORD IN JACKSON COUNTY, OREGON; THENCE, ALONG SAID SOUTH LINE, SOUTH 89° 26' 55" EAST (RECORD EAST) 232.30 FEET, MORE OR LESS, TO THE SOUTHWESTCORNER OF THAT TRACT OF LAND DESCRIBED AS TRACT II OF VOLUME 264, PAGE 212, DEED RECORDS, JACKSON COUNTY, OREGON; THENCE, ALONG THE WEST LINE OF SAID TRACT II, NORTH 02° 16' 23" EAST (RECORD NORTH 01° 45' EAST) 280.00 FEET; THENCE NORTH 42° 02' 23" EAST (RECORD NORTH 41° 30' EAST) 136.00 FEET; THENCE NORTH 16° 31' 23" EAST (RECORD NORTH 16° 00' EAST) 161.59 FEET, MORE OR LESS, TO THE SOUTHERLY RIGHT-OF-WAY LINE OF EAGLE MILL ROAD; THENCE, ALONG SAID RIGHT-OF-WAY LINE, SOUTH 76° 37' 28" EAST 176.51 FEET TO CENTERLINE STATION 17+00; THENCE SOUTH 62° 51' 27" EAST 263.65 FEET TO CENTERLINE STATION 29+63.60; THENCE SOUTH 59° 43' 46" EAST 122.93 FEET TO A 5/8 INCH IRON PIN; THENCE, LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE, SOUTH 00° 02' 02" WEST 773.59 FEET TO THE POINT OF BEGINNING.

### PARCEL II:

COMMENCING AT THE NORTHWEST CORNER OF DONATION LAND CLAIM NO. 53 IN TOWNSHIP 38 SOUTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN IN JACKSON COUNTY, OREGON; THENCE NORTH 89° 26' 55" WEST (RECORD WEST) 356.40 FEET; THENCE SOUTH 00° 19' 02" WEST 589.14 FEET (RECORD 589.29 FEET) TO THE NORTH LINE OF THAT PARCEL OF LAND DESCRIBED IN INSTRUMENT NO. 82-09128 OF THE OFFICIAL RECORDS OF JACKSON COUNTY, OREGON FOR THE POINT OF BEGINNING; THENCE, ALONG SAID NORTH LINE, NORTH 67° 43' 33" WEST 363.60 FEET TO A 5/8 INCH IRON PIN; THENCE, LEAVING SAID NORTH LINE, NORTH 00° 02' 02" EAST 773.59 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF EAGLE MILL ROAD; THENCE ALONG SAID RIGHT-OF-WAY LINE, SOUTH 59° 43' 46" EAST 10.71 FEET; THENCE SOUTH 51° 15' 09" EAST 64.88 FEET; THENCE SOUTH 41° 50' 16" EAST 160.92 FEET; THENCE SOUTH 33° 40' 22" EAST 125.69 FEET; THENCE SOUTH 46° 01' 19" EAST 141.94 FEET TO THE EAST LINE OF THAT PARCEL OF LAND DESCRIBED IN TRACT C OF INSTRUMENT NO. 92-13459 OF THE OFFICIAL RECORDS OF JACKSON COUNTY, OREGON; THENCE, ALONG SAID EAST LINE, SOUTH 00° 19' 02" WEST (RECORD SOUTH 00° 17' WEST) 542.36 FEET TO THE POINT OF BEGINNING.

NOTE: This Legal Description was created prior to January 01, 2008.

For Map No. 381E33 1900:

All that portion of the following described tract, lying North of  
Quite Village Unit No. 3, to the City of Ashland, Jackson County,  
Oregon, to wit:

Beginning at a point 23.945 chains West of the Northwest corner of  
Donation Land Claim No. 53, Township 38 South, Range 1 East, Willamette  
Meridian, Jackson County, Oregon, (said point being the Northwest cor-  
ner of tract described in Volume 109, Page 466, Jackson County, Oregon,  
Deed Records); thence North  $89^{\circ}36'$  West, 18.545 chains, to the East  
line of Donation Land Claim No. 51, said Township and Range; thence  
South  $0^{\circ}30'$  West, along said line, 30.60 chains, to Nevada Street;  
thence East, along said street, 18.565 chains, to the Southwest corner  
of said tract described in Volume 109, Page 466, said Deed Records;  
thence North  $0^{\circ}17'$  East, along the West line thereof, 30.40 chains,  
to the point of beginning.

For Map No. 381E33 1500:

A parcel of land lying in the SW $\frac{1}{4}$  of Section 33, Township 38 South, Range 1 East, Willamette Meridian, and in the NW $\frac{1}{4}$  of Section 4, Township 39 South, Range 1 East, Willamette Meridian, Jackson County, Oregon, and being a portion of that property described in that deed to T. E. and Ruth E. Fowler, recorded in Book 244, page 143 of Jackson County Record of Deeds; the said parcel being described as follows:

Commencing at a concrete post with 3-inch diameter bronze disc monumenting the Northwest corner of Donation Land Claim No. 53, Township 38 South, Range 1 East of the Willamette Base and Meridian, Jackson County, Oregon; thence South 00° 19' 02" West along the West boundary of Donation Land Claim No. 53, said Township and Range and the West boundary of Donation Land Claim No. 41, Township 39 South, Range 1 East (deed record South 0° 17' West) 1216.95 feet; thence leaving said claim line North 89° 49' 10" West and parallel to the North boundary of Donation Land Claim No. 40, Township 39 South, Range 1 East, 881.13 feet to a 5/8 x 30 inch iron pin with a 1 $\frac{1}{2}$  inch diameter aluminum cap monumenting the Southeast corner of that tract of land conveyed by Milton C. Lininger, et ux to the City of Ashland, a municipal corporation and recorded in Volume 208, page 584 of the Deed Records of Jackson County, Oregon, said point being the true point of beginning; thence South 09° 56' 03" East (record, per an unrecorded assignment of contract, South 09° 58' East) 133.16 feet to a 5/8 x 24 inch iron pin situated on the Northerly extension of the Easterly boundary of that parcel surveyed and shown on recorded Survey No. 2509; thence South 03° 09' 25" West (deed record South 03° 09' West) 28.03 feet to a found 5/8 inch iron pin as set on recorded Survey No. 2509; thence North 89° 50' 32" West (recorded Survey No. 2509, North 89° 55' West) 621.44 feet to a 5/8 x 24 inch iron pin situated at the Southeast corner of that tract of land conveyed by T.E. Fowler, et ux to Ron Pitts and R. W. Voris and recorded in Volume 594, page 140 of the Deed Records of Jackson County, Oregon, said pin bears South 89° 50' 12" East (deed record South 89° 55' East 100.00 feet) 100.00 feet and North 00° 32' 07" East (deed record North 0° 28' East 615.84 feet) 615.89 feet from a 2-inch iron pipe with a 3/4-inch pipe inside, monumenting the Southeast corner of QUIET VILLAGE, as now recorded; thence North 00° 32' 07" East along the Easterly boundary of the last recited volume and page (deed record North 0° 28' East 50.00 feet) 50.55 feet to a 5/8 x 24 inch iron pin situated at the point of intersection with the Easterly extension of the South right-of-way line of Oxford Street; thence North 89° 27' 53" West (deed record North 89° 55' West: QUIET VILLAGE UNIT NO. 3 plat record, North 89° 32' West) 100.00 feet to a 5/8 x 24 inch iron pin situated at the Northeast corner of Lot 17, Block 1 of QUIET VILLAGE UNIT NO. 3 to the City of Ashland, as now monumented; thence North 00° 32' 07" East

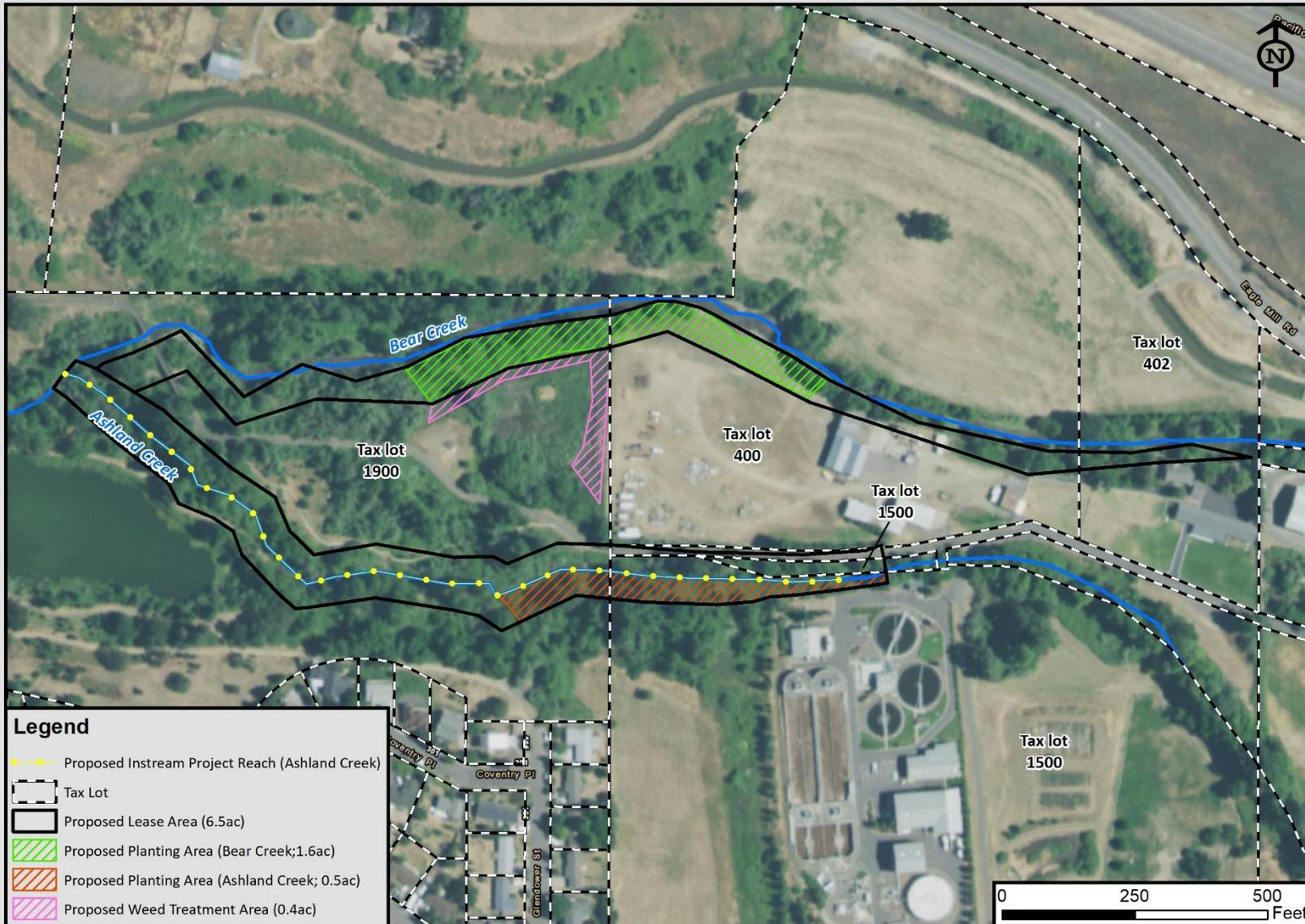
(plat record North 00° 28' East 530.00 feet) 529.85 feet to a found 5/8 inch iron pin situated at the Northeast corner of Quiet Village Unit No. 3, as now monumented; thence continuing on the prolongation of the Easterly boundary of Quiet Village Units 1, 2 and 3 as now monumented North 00° 32' 07" East (plat record North 00° 28' East) 312.81 feet to a 5/8 x 24 inch iron pin situated on the Southerly boundary line of Tract No. 3 as described in that "Contract of Sale" wherein Ruth E. Fowler is designated as seller and Harold C. Hardesty, et ux are designated as buyers, said contract recorded as Instrument No. 69-08305 of the Deed Records of Jackson County, Oregon; thence South 89° 57' 58" East along the Southerly boundary of Tract No. 3 as described in the last recited instrument number (deed record East 160.00 feet) 158.265 feet to a 5/8 x 24 inch iron pin; thence South 73° 41' 58" East (deed record South 73° 44' East 147.67 feet) 147.67 feet to a found 1-3/4 inch iron pipe monumenting the Northwest corner of that tract of land conveyed by T. E. Fowler, et ux to the City of Ashland, a municipal corporation, and recorded in Volume 512, page 58 of the Deed Records of Jackson County, Oregon; thence South 02° 56' 10" East (deed record South 03° 07' East) 710.50 feet to a found 5/8 inch iron pin with a 1½ inch diameter aluminum cap monumenting the Southwest corner of that tract of land conveyed by Milton C. Lininger, et ux to the City of Ashland, a municipal corporation, and recorded in Volume 208, page 584 of the Deed Records of Jackson County, Oregon; thence North 87° 40' 13" East (deed record North 86° 53' East 356½ feet) 355.56 feet to the true point of beginning.

## **EXHIBIT B – IDENTIFICATION OF RIPARIAN LAND**

City is leases to TFT a portion of its properties located on Map Nos. 381E33 400, 381E33 1900, 381E33 1500 and 381E33 402 in Jackson County, Oregon, as described in Exhibit A, as set forth on the following property map boundaries.

*(See map on following page.)*

# Hardesty/Ashland Ponds Proposed Lease and Project Areas



## EXHIBIT C – SCOPE OF RIPARIAN RESTORATION ACTIVITIES

- 1. Introduction.** The following provides a basic outline of the actions and activities that may occur on the Riparian Land. The Riparian Restoration Activities include a broad range of stream bank restoration and mitigation actions similar to many forestry, agricultural, and landscaping practices. This Exhibit does not contain, and is not intended to be, an exclusive and exhaustive list of activities that TFT may conduct on the Riparian Land, but a general description of the outline and timeline of work that City may expect on its Riparian Land. As the Riparian Land is unique, each TFT project will be distinctive and tailored to that site. Variations in climate, plant species and site conditions often require modified designs for each project. Accordingly, TFT reserves the right to respond to conditions on the ground with responsible and professional agricultural practices that may or may not be cited below.
- 2. Site Planning.** As project manager, TFT will develop a planting plan for the Riparian Land, vet and hire contractor(s) to perform the work of installing and maintaining the plantings, monitor and document the progress of the plantings, develop maintenance recommendations and guide the project through the credit verification and registration process. To the extent possible, TFT will engage local contractor(s) to prepare, plant and maintain the riparian restoration project, and welcomes City recommendations for such contractors.
- 3. Scope of Work.** TFT or its contractor(s) may complete all or some of the following work on the Riparian Land:
  - 3.1. Site Preparation and Invasive Plant Removal:** Site preparation will include removal or control of invasive plants within the Riparian Land and preparation of the ground for planting. Such work may involve mowing, scalping, brush hogging, hand digging and herbicide treatments. Invasive plant material will be disposed of in accordance with best management practices for those species.
  - 3.2. Plant Procurement:** Indigenous-derived plant material will be secured whenever available. Local suppliers will be given preferential consideration for supply. TFT will work with contractor(s) to select appropriate species and relative numbers based on conditions observed at nearby reference sites and professional judgment.
  - 3.3. Plant Location:** Planting performed by TFT or its contractor(s) will conform with zone planting guidelines developed by TFT through its planting plan and in accordance with Willamette Partnership planting standards as follows:

Table 1. Performance Criteria for Riparian Plantings

Criteria	Performance criteria			
	Year 5	Year 10	Year 15	Year 20
EITHER: 1) Mean stem density of native shrubs and woody vines <sup>11</sup>	Meets or exceeds 1600 live native woody stems per acre	80% of the native woody stem density identified at the end of the fifth growing season	70% of the native woody stem density identified at the end of the fifth growing season	Same as performance criteria for year 15
OR 2) Site average for combined native shrub and woody vine cover	Site average for combined native shrub and woody vine cover $\geq$ 25%			
% canopy closure or cover	N/A	N/A	$\geq$ 25%	

Native trees/acre	None	(Dry ecoregions) <sup>12</sup> $\geq$ 50 trees/acre (Wet ecoregions) <sup>13</sup> $\geq$ 100 trees/acre
Number of native woody species	At least 5 native woody species present	
Invasive woody and herbaceous cover	No greater than 20% cover invasive herbaceous species No greater than 10% cover invasive woody species	
Non-native woody and herbaceous cover	Take and document actions reasonably necessary to evaluate the risk posed to project site by non-native species, where they are problematic (e.g., <i>Phalaris arundinacea</i> (Reed canary grass), <i>Hedera helix</i> (English ivy), <i>Ilex aquifolium</i> (English holly)), taking the steps necessary to control those non-native species such that their presence does not prevent the successful establishment and propagation of native ecosystem characteristics and functions. This includes monitoring and reporting % cover of such species. <sup>14</sup>	

- 3.4. Plant Protection: To minimize plant losses due to herbivory or damage from routine maintenance tasks (e.g., mowing), tree cages or protection tubes may be utilized as needed.
- 3.5. Irrigation: Supplementary irrigation may be required for establishment of most plantings. Accordingly, TFT and its contractor(s) may install an irrigation system to meet establishment needs on the Riparian Land for the use of TFT and its contractors. If the City provides irrigation water and a point of diversion for the irrigation system, City’s preferences regarding design and location will be taken into account in the implementation of the system. Irrigation will be provided for the purpose of plant establishment only and once plantings are established (expected within 5 years) the irrigation system will be removed by TFT or its contractor(s).
- 3.6. Plant Protection: To minimize plant losses due to herbivory or damage from routine maintenance tasks (e.g., mowing), tree cages or protection tubes may be utilized as needed.

**4. Project Site Maintenance.** TFT and its contractor(s) will maintain plantings made during the term of this Lease. Maintenance may include irrigation, control of invasive plants, pruning and replacement of failed plantings. Maintenance activities are likely to occur more frequently in the first 2 to 3 years during plant establishment and less frequently in years 5 through 20.

4.1. Maintenance. Maintenance of the Riparian Land and associated plantings will be the sole responsibility of TFT. City will not have any responsibility for maintenance of the plants on the Riparian Land. Maintenance may include running and maintaining irrigation system, applying herbicide to non-native vegetation, manually removing non-native vegetation, mowing, mulching, fertilizing, adding or modifying plant protections, and replacing plants as needed.

4.2. Maintenance Schedule. TFT and its contractor(s) will create a maintenance schedule, to be revised annually and reviewed with City. The maintenance schedule will define the maximum number of visits needed per week and will contain information for City regarding types of maintenance activities to be conducted on the Riparian Land and the frequency of their occurrence. Scheduled maintenance tasks will generally occur on the timeline outlined below. Additional maintenance may take place as needed and dictated by routine monitoring reports.

4.2.1. *Year 1:* Invasive treatment, site clearing and plantings. New plants will be irrigated as needed.

4.2.2. *Years 1 – 5:* Invasive plants will be managed by mowing the project site as required. Subsequent herbicide applications may be required.

4.2.3. *Years 5 – 20:* Maintenance will be reduced after sites have achieved free-to-grow conditions. However, if a site sustains damage, corrective actions will be completed as directed by the terms of the Contract and this Exhibit C.

4.2.4. *In-fill planting:* The planting plan will be used as a guide for in-fill planting to replace failed plants, as well as an assessment on the success/failure of the on-site plants. In-fill planting will target representative stem densities of reference sites.

4.2.5. Any materials used to minimize maintenance or herbivory (e.g. tree tubes or similar technology) may be removed.

4.3. Additional Visits. Additional visits to the project site for any other purpose beyond Riparian Restoration Activities or site verification (e.g., third party visits) will be arranged with City in advance at City's discretion.

**5. Remediation.** If the site is not performing to TFT's standards at years 5, 10, 15, and 20 of the Lease, excluding circumstances in which the loss or damage is due to a Force Majeure event, action will be taken to address causes of sub-standard performance.

## **6. Performance Schedule.**

- 6.1. All site preparation work is targeted for completion by Fall/Winter 2019.
- 6.2. Initial planting to be installed by the target date of Spring 2020, though in-fill plantings may stretch into Fall/Winter 2020.
- 6.3. All plant stakes, cages, mulch, and fertilizer to be installed by Fall/Winter 2020.
- 6.4. First year maintenance will begin once initial planting has been completed (targeted by Fall/Winter 2020) and will generally involve weekly visits to the project site by maintenance contractor through the first growing season (2021). Several visits will be needed by TFT staff as well to verify planting specs, document the work, set up monitoring points and conduct required monitoring. An estimated schedule of maintenance and monitoring visits will be developed annually by TFT and its contractor(s) and provided to the City at the beginning of each growing season (April-May) during the project establishment phase (1-5 years).
- 6.5. In fill and replacement plantings may be installed in year 2 and 3 as needed to meet the planting standards outlined in section 3. In fill and replacement plantings may be installed during plant dormancy period (November through May).

## **EXHIBIT D – IRRIGATION TERMS**

### **1. Source of Water and Power**

1.1. TFT and its contractors will be irrigating the Riparian Land with water obtained through City's surface water right. Per City's direction, water will be pulled from the riser closest to the river and TFT will utilize a water meter to monitor impacts to other irrigation needs. TFT will be responsible for maintaining its irrigation system and filtering water for sediment and moss.

### **2. Application of Water to Riparian Land.**

2.1. TFT will provide City with prior notice in writing of the identity of the individual water applicator(s), if different from the general contractor(s) working on the Riparian Land. TFT or its applicator(s) will also provide City with twenty-four (24) hours' notice by telephone or email prior to entry in order to irrigate the Riparian Land.

2.2. Irrigation water is to be applied in intervals as required to maintain soil moisture levels sufficient to support and maintain plant health. Because the success of Riparian Restoration Activities are highly dependent upon the timely application of water, Riparian Restoration Activities on Riparian Land shall be monitored for irrigation demand during the period of April to September of years 1 through 3 of the Lease and on an as-needed basis outside of that time frame.