

TILLAMOOK COUNTY

**AMENDMENT #1 TO #6028
GRANT AGREEMENT #2019-P-5
TRANSIENT LODGING TAX FOR DESTINATION MANAGEMENT**

This Grant Agreement is made and entered into by and between Tillamook County (“County”), and Tillamook Off Road Trail Alliance (Recipient”).

RECITALS

Whereas, in November 2013 Tillamook County voters approved a county-wide transient lodging tax (TLT), which requires that seventy percent (70%) of this tax be used for tourism promotion and tourism-related facilities;

Whereas, the funds provided under this Grant Agreement were derived from TLT funds and designated for use on tourism-related facilities projects;

Whereas, the County, with input from the Tillamook County Tourism Advisory Committee, has reviewed Recipient’s application, submitted for the 2019-2020 TLT grant cycle (the “Application”) and determined the TORTA-Sector 1004 (“Project”), as hereafter defined, is feasible and merits funding.

NOW THEREFORE, the parties agree as follows:

1. Agreement. This Grant Agreement shall include the following, which in the event of any inconsistency are to be interpreted in the following order of precedence:
 - A. This Grant Agreement without any Exhibits;
 - B. Exhibit A: Special Conditions of Award;
 - C. Exhibit B: *Amended Project Approach and Project Budget*, which supersedes the budget submitted in Recipient’s Application;
 - D. Exhibit C: Land Use Compatibility Form;
 - E. Exhibit D: Progress/Project Completion Report;
 - F. Exhibit E: TLT Tourism-Related Facilities Grant Success Series Presentation Outline; and
 - G. Exhibit F: Recipient’s Application.

2. Grant. In reliance upon Recipient’s Application and covenant to comply with all local, state and federal laws, rules and regulations as set forth herein, County agrees to provide the Recipient funds in the amount of **\$75,000.00**, the use of which shall be expressly limited to the Project and the activities described in the Application.
 - A. The use of these funds shall also be subject to the approved Project budget in Exhibit B, and the Special Conditions in Exhibit A, if any.

- B. Subject to the terms and conditions of this Grant Agreement, County shall disburse the grant funds to Recipient on an expense reimbursement basis after County's receipt and approval of cash request forms from Recipient.
 - C. Any unused grant funds may not be applied to any expenses outside of the Project budget.
3. Project Completion Date. The approved grant activities must be completed by June 30, 2023 ("Project Completion Date"). By the Project Completion Date, all Project activities must be completed, including submission of the Project Completion Report that is the attached Exhibit D and all cash requests.
4. Recipient's Covenants – Compliance with Laws.
- A. The Recipient agrees to comply, and cause its agents, contractors and subgrantees to comply, with all applicable local, state and federal laws, regulations, policies, guidelines, and requirements with respect to the use of and the administration, distribution, and expenditure of the funds provided under this Grant Agreement, including but not limited to the following:
 - (1) The Davis-Bacon Act, as amended, 40 USC 276a to 276a-5; if applicable.
 - (2) When procuring goods or services to be paid for in whole or in part with County funds, the Recipient shall comply with ORS Chapters 279, 279A, 279B and 279C. County's performance under this Grant Agreement is conditioned upon the Recipient's compliance with these provisions. The Attorney General Model Public Contract Rules shall govern procurements under this Grant Agreement unless the Recipient or its public contract review board has adopted its own rules, then those rules shall apply.
 - B. The Recipient shall maintain all fiscal records relating to this Grant Agreement in accordance with generally accepted accounting principles for state and municipal corporations established by the National Committee on Governmental Accounting in a publication entitled "Governmental Accounting, Auditing and Financial Reporting ("GAAFR"). In addition, the Recipient shall maintain all other records pertinent to this Grant Agreement in such a manner as to clearly document the Recipient's performance. The Recipient shall retain and keep accessible all such books, accounts, records, reports, files and other papers or property for a minimum of three (3) years from closeout of this grant, or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Grant Agreement, whichever date is later.
 - C. The Recipient will assume all of the responsibilities for environmental review, decision-making and action pursuant to the National Environmental Policy Act of 1969, 42 USC 4321-4370, if applicable.
 - D. The Recipient shall be responsible for the operation and maintenance of the Project.
 - E. The Recipient shall hold legal title to the completed Project for at least ten (10) years following Project completion, or put in place some other arrangement, satisfactory to the County, which will protect the investment of public funds in this Project for a ten (10) year period. Violation of this provision may result in

the Grantee returning all or part of the awarded funds that were distributed to the Grantee.

5. Default and Remedies.

A. Default. Recipient shall be in default under this Grant Agreement upon occurrence of any of the following events:

(1) Recipient actions are not completed in accordance with the Project Schedule or County's approval of a Progress Report provided for in this Grant Agreement.

(2) Any representation, warranty, or statement made by Recipient herein or in any documents or reports relied upon by County is untrue in any material respect when made.

(3) Any other significant breach of the terms and conditions of this Grant Agreement.

B. Remedies upon Default. If Recipient's default is not cured within a reasonable term, as defined by County, or such longer period as County may authorize at its sole discretion, County may pursue any remedies available under this Grant Agreement either at law or in equity. Such remedies include, but are not limited to, termination of this Grant Agreement.

6. Termination.

A. County reserves the right to terminate this Grant Agreement immediately upon notice to the Recipient:

(1) if Recipient fails to perform or breaches any of the terms of this Grant Agreement; or

(2) if the Recipient is unable to commence the Project within six (6) months from the date of this Grant Agreement; or

(3) if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the grant made pursuant to the terms of this Grant Agreement or payments to be made hereunder are prohibited.

B. County and Recipient may mutually agree in writing to terminate this Grant Agreement.

C. In the event of termination prior to Project completion, County will have no further obligations or liabilities under this Grant Agreement, including that it will not reimburse any Project costs incurred by Recipient.

7. Indemnification. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Recipient shall indemnify, defend, and hold harmless the County and its officers, employees, and agents from all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from, arising out of or relating to the activities of the Recipient or Recipient's officers, employees, sub-contractors, or agents under this Grant Agreement. Recipient's indemnifications shall extend to any and all claims arising out of or relating to Grantee's agreements with a non-government organization sponsored by Recipient and associated with this Grant Agreement, if any.

Recipient shall provide a certificate of coverage at the time of execution of this agreement, indicating proof of insurance coverage with limits not less than the following:

Property Damage:	\$1,000,000 500,000 (one claimant) \$12,000,000 (all claimants)
Personal Injury or Death:	\$2,000,000 (one claimant) \$2,000,000 (all claimants)

Such insurance shall be on an occurrence basis only and be evidenced by a Certificate of Insurance provided to the county, indicating coverages, limits and effective dates, by an insurance company licensed to do business in the State of Oregon. An endorsement shall be issued by the company showing the county as an additional insured on all coverages. The endorsement shall also contain a notice of cancellation provision.

8. Miscellaneous.

- A. This Grant Agreement shall be null and void if this Grant Agreement is not signed, dated, and returned to County by the Recipient by July 31, 2020.
- B. County and the Recipient are the only parties to this Grant Agreement and are the only parties entitled to enforce its terms. Nothing in this Grant Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individuals identified by name herein and expressly described as intended beneficiaries of the terms of this Grant Agreement.
- C. Recipient shall provide to County, for review and approval of compliance with provision 4.A of this Grant Agreement, all contracts to be entered into between Recipient and contractors pursuant to completion of the Project activities described in the Application.
- D. Except as otherwise expressly provided in this Grant Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to County or the Recipient at the address or number set forth on the signature page of this Grant Agreement, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine.
- E. This Grant Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between County and Recipient that arises from or relates to this Grant Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Tillamook County for the State of Oregon; provided however, if a Claim must be brought

in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

- F. This Grant Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Grant Agreement. No waiver, consent, modification or change of terms of this Grant Agreement shall bind either party unless in writing and signed by both parties and all necessary County approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of County to enforce any provision of this Grant Agreement shall not constitute a waiver by County of that provision or any other provision.

9. Project Contact.
Megan Stech, Board President
PO Box 1029
Pacific City, Oregon 97135
269-107-6195
tortamtb@gmail.com

This Grant Agreement is hereby executed by Parties on the dates set forth below.

Dated this 22 day of March, 2022.

RECIPIENT: TILLAMOOK OFF ROAD TRAIL ALLIANCE

Megan Stech

Megan Stech, Board President
PO Box 1029
Pacific City, Oregon 97135
269-207-6195
tortamtb@gmail.com

Dated this 22 day of March, 2022.

THE BOARD OF COMMISSIONERS
FOR TILLAMOOK COUNTY, OREGON

Aye Nay Abstain/Absent

David Yamamoto, Chair

_____ / _____

Erin D. Skaar, Vice-Chair

_____ / _____

Mary Faith Bell, Commissioner

_____ / _____

ATTEST: Tassi O'Neil,
 County Clerk

APPROVED AS TO FORM:

By: _____
 Special Deputy

Joel W. Stevens,
County Counsel

EXHIBIT B

AMENDED PROJECT APPROACH AND PROJECT BUDGET TORTA SECTOR 1004

The entire Sand Lake Planning Area Trail system project cost over six years is approximately \$1,300,000. Project design and construction will be divided into four phases. Each phase will take 18-24 months to complete. The four phases include:

Phase 1: Buzzard Butte/Flow

The Buzzard Butte Trail Network (BBTN) is the heart of the system that will take visitors from the top to the bottom of the trail system. The other trails listed within Phase 1 are alternatives off of the main flagship trail and provide varying levels of technical riding and experiences that will add variety for more experienced riders and help to spread out visitor use.

Phase 2: Whalen Knob/Middle Crest

Whalen Knob is a mountain bike skills park that will have a number of different mountain bike features that will prepare riders for the surrounding trail network. The skills park will have a variety of features with different levels of technical challenges to help users improve their mountain biking skills in a sustainable manner. TORTA envisions this area as the main meeting area within the trail network and gives the community a place to hone their bike skills while fostering a user group community.

The Middle Crest trail network will provide more advanced trails within the BBTN. This area has steeper topography than other parts of the trail network which allows TORTA a perfect opportunity to create more technically challenging trails for advanced users. This sector also included a climb trail that will have some of the most iconic views of the Pacific Ocean and Cape Lookout.

Phase 3: Ellis Mountain

Ellis Mountain will have several styles of trails that will be unique to the system. The topography in this area creates a “fun factor” that will keep visitors coming back year-to-year. The views of the coast and surrounding forest from this part of the mountain are also unlike anywhere else within the BBTN.

Phase 4: Gateway to Pacific City

The gateway to Pacific city will include an improvement to the existing Miles Mountain road and eventually lead to a double track trail that will take visitors down to the east side of Nantucket Shores. This sector will be a hiker/biker friendly trail system and potentially serve as a tsunami evacuation route for Nantucket Shores, Thousand Trails, and the nearby Sandlake community. The Pacific City Tie will be a trail that will connect to the existing Pacific City Pathways (PCP) trail, behind the Pacific City Community Park. This trailhead will be located within the park and extend off of the PCP trail.

This amendment supports costs for Phase 1 only.

Total Project Cost	\$ 219,500
Tillamook County TLT Grant Award	\$ 75,000
Total Revenues from Applicant	\$ 20,500
Total Revenues from Other Non-Applicant Sources	\$ 124,000

Phase 1 Project Expenses	Budget
Three Blind Mice Summit Climb	\$ 8,500
Mach Chicken	\$ 10,500
Upper Flow	\$ 112,500
Lower Flow	\$ 60,000
Flow Connector	\$ 28,000
Total Project Expenses	\$ 219,500
Phase 1 Project Revenues	Budget
Tillamook County TLT Grant	\$ 75,000
OPRD Recreation Trails Program Grant	\$ 124,000
TORTA Fundraiser	\$ 18,500
TORTA In-kind Volunteer Labor	\$ 2,000
Total Project Revenues	\$ 219,500

** Recipient may apply the Project Budget to any of the expenses items listed in the above table.*