

RESOLUTION NO. R- 22 -10

A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF PULLMAN AND PALOUSE CONSERVATION DISTRICT FOR THE PURPOSE OF COMPLETING A RIPARIAN RESTORATION PROJECT ON THE SOUTH FORK OF THE PALOUSE RIVER.

WHEREAS, the City Council for the City of Pullman has before it an Interlocal Agreement entitled "Agreement" which is attached hereto and marked as Exhibit "A"; and,

WHEREAS, this Council believes it to be in the best interests of the City of Pullman to authorize the execution of said Interlocal Agreement; now, therefore,

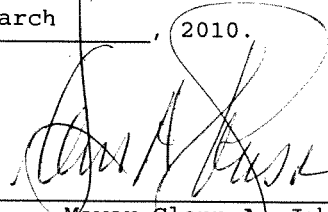
IT IS HEREBY RESOLVED that the Mayor and the Finance Director be and they are hereby authorized and directed to execute the agreement for said services and to deliver an executed copy thereof to Palouse Conservation District.

IT IS FURTHER RESOLVED that the Mayor and Finance Director are each hereby authorized and directed to take such further action as may be appropriate in order to effect the purpose of this Resolution and the Interlocal Agreement authorized thereby.

BE IT FURTHER RESOLVED that an executed copy of said Agreement shall be posted on the official website of the City of Pullman and shall be effective upon posting.


ADOPTED by the City Council of the city of Pullman at a regular meeting held on the 23rd day of March, 2010.

DATED this 24th day of March, 2010.



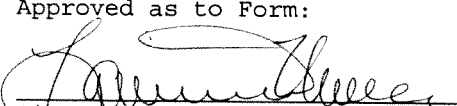
Mayor Glenn A. Johnson

ATTEST:



Finance Director
William F. Mulholland

Approved as to Form:



City Attorney Laura D. McAloon

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CITY CLERK'S OFFICE
PULLMAN WASHINGTON

INTERLOCAL AGREEMENT FOR SERVICES
CITY OF PULLMAN
AND
PALOUSE CONSERVATION DISTRICT

THIS AGREEMENT is made and entered into 24th this day of March, 2010, between the City of Pullman, a municipality in the State of Washington, (hereinafter, "the City") and the Palouse Conservation District (hereinafter, "the Conservation District"), a governmental subdivision of the State of Washington.

RECITALS

WHEREAS, Chapter 39.34 RCW, Interlocal Cooperation Act, permits governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on the basis of mutual advantage to perform functions, and provide services and facilities to each other and the public; and

WHEREAS, the City has received a grant from the Washington State Department of Ecology for a Wastewater Reuse project; and

WHEREAS, a condition of said grant is to complete a riparian restoration project along the South Fork of the Palouse River, preferably below the outfall of the City's wastewater treatment plant;

NOW, THEREFORE, it is hereby agreed as follows:

Section 1: Purpose and Duration

1.1 Purpose of Agreement

The purposes of this agreement are:

- (a) To construct a riparian restoration project along the South Fork of the Palouse River below the city's wastewater treatment plant outfall on land owned by: Mary Lou Berry Cadle, Debra Kaye Yates and Jodi L. Warnecke.
- (b) To monitor said riparian restoration project for a three (3) year period after construction is complete including: assisting property owners in maintenance of the project site; setting up a system for watering riparian plantings for the initial establishment; and performing weed eradication as set forth in the to be developed project planting plan.
- (c) To assist the City in securing a perpetual conservation easement for the project site from the property owners.

1.2 Duration of Agreement

The duration of this Agreement shall be from the date of execution until completion of all project work. The duration of this Agreement shall not be exceeded without the written agreement of both parties.

1.3 Sharing Information

The parties agree, to the extent allowable by City, County, and State policy, to share all pertinent information related to this project, including but not limited to:

- (a) Engineering Plans, calculations and exhibits prepared by a consultant under contract to the City of Pullman for design of the project;
- (b) All permitting related documents and supporting information;
- (c) All invoices for materials and services contracted by the Palouse Conservation District for the project;
- (d) Agreements and easements obtained from private property owners.

1.4 Uniform Record Keeping and Constructed Drawings

The parties agree to the goal that databases, information, records and construction drawings will be in an electronic form mutually agreed upon and usable by the other party.

1.5 Sharing Materials and Equipment

The parties agree to share materials and equipment to the extent possible in order to provide as efficient and cost-effective a project as possible.

1.6 Standards, Procedures and Guidelines

The parties agree that guidelines and requirements of the Washington Department of Ecology and Washington Department of Fish and Wildlife will apply as they pertain to riparian restoration projects.

1.7 Changes in Scope of Work, Cost and/or Conditions

The parties agree that change orders or amendments for scope of work, construction costs and/or for changes in conditions will be handled by obtaining written approval from the City's representative prior to authorizing and proceeding with said amendments or change orders.

1.8 Ownership of Improvements

The private property owners shall own the improvements at the completion of the project.

Section 2: Conservation District Responsibilities

2.1 Funding and Responsibility

The Conservation District shall pay the prevailing wage to all contractors that fall under Title 39 RCW.

2.2 Scope of Work

The Conservation District will act as Lead Agency, and manage and administer the project. The project scope of work is attached hereto as Exhibit A. The details of the construction scope will be determined with the final design prepared by the City's engineering consultant. The final design will be based upon a construction budget of \$162,870 which includes applicable state sales tax and project management by the

Conservation District, therefore the final scope may be revised either by adjusting project length or overall improvements to fit within said budget. If additional information is necessary to allow the project to function effectively, specific requests will be made in writing to the City.

2.3 Contracts and Insurance

During the term of the agreement, each Party shall maintain in force at its sole expense, all insurance as noted below:

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000;
- B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$2,000,000 each occurrence for bodily injury and property damage; and
- C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired, and non-owned vehicles; and

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written Notice from each Party or its insurer(s) to the other Party.

2.4 Environmental Review Process

The City agrees to be SEPA lead and conduct SEPA environmental review of the proposed project and issue appropriate SEPA threshold determinations. The Conservation District agrees to review the draft SEPA documents prior to issuance.

2.5 Securing Applicable Permits

The Conservation District shall secure all required permits for the project.

2.6 Financial Provision

The Conservation District shall be paid by the City for completed work or services rendered under this Agreement as provided for hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work.

- (a) Payment for all completed work and services for this project shall be on a cost-reimbursable basis with a not-to-exceed amount of \$162,870, which includes applicable state sales tax. The maximum amount payable by the City to the Conservation District under this Agreement, shall not exceed said not-to-exceed amount unless a supplemental agreement has been negotiated and executed in writing by the City prior to incurring any costs in excess of the not-to-exceed amount.

- (b) Partial payments may be made upon request of the Conservation District to cover the percentage of work completed, but are not to be more frequent than one (1) per month. Each payment request shall be accompanied by a spreadsheet showing a list of all tasks, their original budget amount, cost incurred through the invoice date, estimated remaining costs, and estimated total costs through completion. A short narrative or remark column shall be included. Payments to the Conservation District will be made within 30 days of receipt of the payment request.
- (c) Final payment of any balance due the Conservation District of the ultimate gross amount earned will be made promptly upon ascertainment and verification by the City of the satisfactory completion of the work under this Agreement and its acceptance by the City.
- (d) Each payment by the City shall constitute full payment for labor, materials, supplies, equipment and incidentals to the date of the Conservation District's partial payment request. Conservation District's acceptance of payment constitutes a waiver of any claims for payment not included in the partial payment request.
- (e) Payment for extra work performed under this Agreement shall be paid as agreed to by the parties hereto in writing at the time extra work is authorized.

2.7 Securing Private Property Right-of-Entry Agreements

The Conservation District shall be responsible for securing all voluntary private property Right-of-Entry (ROE) agreements with property owners. The Conservation District or its contractor shall seek a release from each property owner upon completion of restoration with a warranty of not greater than one year on restoration work.

2.8 Conservation Easement and Maintenance Agreement

The Conservation District shall be responsible for securing a conservation easement and/or maintenance agreement from the private property owners. The conservation easement and/or maintenance agreement shall be in a form that is acceptable to the Washington State Department of Ecology and the City.

2.9 Contract Administration and Inspection

As the Lead Agency, the Conservation District will be responsible for project inspection and will designate a Project Inspector and Project Representative to administer the contract. The City will designate its own oversight inspector for the project if it deems such action necessary. Should the city representative identify a discrepancy or variance from the approved plans and specifications or notice a violation of safety or environmental protection requirements requiring immediate attention, the City representative shall contact the Project Inspector first and if unavailable, then the Project Representative second to implement the necessary corrective action.

Section 3: City Responsibilities

3.1 Design

The City shall procure design engineering services, and pay the cost of same, to produce plans and specifications for the project. The Conservation District will assist the City by reviewing said design at appropriate intervals and providing comments.

3.2 Scope of Work

The City agrees to appoint a project manager or point contact person to administer the City's work on the project and to attend the project team and construction meetings as necessary. The project scope of work and schedule are attached hereto as Exhibit A.

3.3 Financial Provisions

The City agrees to pay for the activities of City staff related to the project. The City further agrees to provide additional funds to pay costs associated with any work that it wishes to include for its own purposes outside the scope of the project that may benefit the City.

3.4 Property and Equipment

Title to all property acquired by any Party in the performance of this agreement shall remain with the acquiring Party upon termination of this agreement. Jointly acquired property shall be divided in proportion to the percentage share of each Party contributing to its acquisition.

Section 4: Indemnification

4.1 Conservation District

To the extent allowed by law, the Conservation District shall defend, indemnify, and hold harmless the City, its elected officials, employees and agents from and against any and all suits, claims, actions, losses, costs, expenses of litigation, attorney's fees, penalties, and damages of whatsoever kind or nature arising out of, in connection with or incident to an act or omission of the Conservation District, its employees, agents, and contractors in the performance of the Conservation District's obligations under this agreement. In the event of litigation between the parties to enforce the rights under this section, reasonable attorney's fees shall be allowed to the prevailing party. This indemnification provision shall include, but is not limited to, all claims against the City by an employee or former employee of the Conservation District or its contractors and, as to such claims, the Conservation district expressly waives all immunity and limitation of liability under Title 51 RCW.

4.2 City

To the extent allowed by law, the City shall defend, indemnify and hold harmless the Conservation District, its elected officials, employees and agents from and against any and all suits, claims, actions, losses, costs, expenses of litigation, attorney's fees, penalties, and damages of whatsoever kind or nature arising out of, in connection with or

incident to an act or omission of the City, its employees, agents, and contractors in the performance of the City's obligations under this agreement. In the event of litigation between the parties to enforce the rights under this section, reasonable attorney's fees shall be allowed to the prevailing party. This indemnification obligations shall include, but is not limited to, all claims against the Conservation District by an employee or former employee of the City or its contractors and, as to such claims, the City expressly waives all immunity and limitation of liability under Title 51 RCW.

Section 5: Not Used

Section 6: Termination

6.1 Termination for Convenience

Either party for its convenience may terminate this agreement, in whole or part, at any time by giving thirty (30) days written notice sent certified mail, return receipt requested, to the other party.

6.2 Termination for Default

In addition to termination for convenience, if either party fails to comply with any material provision of this agreement, the other party may terminate this contract, in whole or in part, for default. Termination shall be effected by serving a Notice of Termination by certified mail, return receipt requested, on the other party setting forth the manner in which the other party is in default and the effective date of termination, provided that the other party shall have ten calendar working days to cure the default.

6.3 Termination for Non-Appropriation

If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this contract or in any amendment hereto, the City may, upon written notice to the Conservation District, terminate this agreement in whole or in part. Such termination shall be in addition to the City's rights to terminate for convenience or default.

Section 7: Notice

7.1 All notices to the Conservation District required under terms of the Agreement and this Amendment shall be given in writing as follows:

Mary Rosen
Palouse Conservation District
1300 NE Henley Ct. #6
Pullman, WA 99163
Phone: (509) 332-4101

7.2 All notices to the City required under terms of the Agreement and this Amendment shall be given in writing as follows:

Kevin Gardes, P.E.
Deputy Public Works Director
City of Pullman
325 SE Paradise St.
Pullman, WA 99163
Phone: (509) 338 -3217

Section 8: Project Dispute Resolution

The parties' Project Managers shall use their best efforts to resolve disputes related to or arising out of the activities conducted under this Agreement. In the event that disputes cannot be resolved by the parties' Project Managers, the Conservation Districts' attorney and the City's attorney will apply their best efforts to resolve disputes on matters between the Conservation District and the City arising out of or related to the Agreement. The Conservation District and the City agree to exhaust these procedural steps before seeking to resolve disputes in a court of law or other tribunal, except to the extent that these procedures conflict with formal administrative appeal procedures.

Section 9: Choice of Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in the Superior Court of Whitman County.

Section 10: Amendment, Waiver

This Agreement shall not be amended except in writing, executed by both the Conservation District and the City.

Section 11: Captions

Section titles and other headings contained in this Agreement are for convenience only and shall not be part of this Agreement, nor considered in its interpretation.

Section 12: Binding upon Successors

This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of both Conservation District and the City.

Section 13: Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall constitute one and the same instrument.

Section 14: Waiver

No waiver by either party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

Section 15: No Third-Party Beneficiaries

This Agreement is entered into solely for the mutual benefits of the Conservation District and the City. This Agreement is not entered into with the intent that it shall benefit any other party and no other such person shall be entitled to be treated as a third-party beneficiary of this Agreement.

Section 16: Nondiscrimination

No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities.

Section 17: Effective Date

This Agreement shall take effect when both parties hereto have executed this document.

Section 18: Entire Agreement

This document constitutes the complete agreement of the parties regarding the matters described herein and there are no other agreements, express or implied, not contained herein. The Agreement may be modified only in writing and when signed by the parties.

Section 19: RCW Chapter 39.34 Required Clauses

A. Purpose

See Section No. 2 above.

B. Duration

This Agreement is perpetual until the joint and comprehensive undertaking is either voluntarily dissolved or discontinued pursuant to RCW 47.80.020.

C. Organization Of Separate Entity And Its Powers

No separate entity is created by this Agreement.

D. Responsibilities Of The Parties

See provisions above.

E. Agreement To Be Filed

This Agreement may be filed with the County Auditor or published on the Parties' websites, as available.

F. Financing

See provisions above.

G. Termination

See Section No. 6 above.

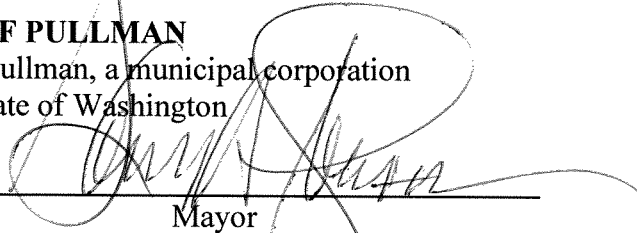
H. Disposition of Property Upon Termination

No real or personal property shall be jointly acquired or owned for purposes of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first written above.

CITY OF PULLMAN

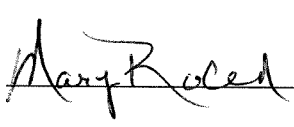
City of Pullman, a municipal corporation
of the State of Washington

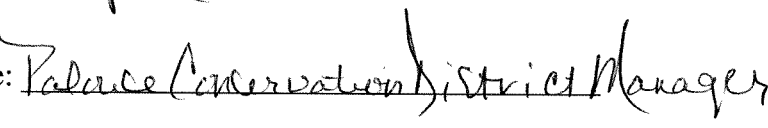
By: 
Mayor

ATTEST:

By: 
Finance Director

PALOUSE CONSERVATION DISTRICT

By: 

Title: 

South Fork of the Palouse River Riparian Restoration Project

Project Overview

This project scope consists of a riparian restoration design and construction project of an approximately 1500 foot reach of the South Fork of the Palouse River along property owned by the Cadle Family. The project will include improvements to reduce local erosion, provide bank stabilization, improve water quality, reduce invasive weeds and increase riparian vegetation and wildlife habitat.

Scope of Work (Palouse Conservation District Responsibility)

- Act as liaison between landowners and others involved in planning, design and construction of project.
- Secure a conservation easement and/or maintenance agreement from the affected landowners in a form acceptable to the Washington Department of Ecology and City of Pullman.
- Work and coordinate with city's consulting engineer to obtain design approval which will include a hydraulic analysis for project.
- Obtain all necessary permits.
- Obtaining bids for excavation.
- Project management and coordination of contractors/excavators during construction.
- Administration as required by the Washington Department of Ecology and City of Pullman for grant vouchering.
- Coordination and oversight of planting crew.
- Regular contact with City of Pullman during all phases of construction.
- Perform regular inspections of stream bank structures and riparian plantings.
- Assist landowners in maintenance of site for a period of 3 years.

Scope of Work (City of Pullman Responsibility)

- City will act as SEPA lead and conduct SEPA environmental review.
- Project management of Washington Department of Ecology Water Reuse grant.
- Procurement of engineering services for the design (Taylor Engineering, Inc.) of the project (see Scope of Work for city's design consultant below).

Taylor Engineering, Inc. – Scope of Work

The deliverables to the City of Pullman and Palouse Conservation District consist of providing support documents and calculations for completion of the regulatory permits and the preparation of approved Plan, Specification and Estimate (P, S & E) documents, suitable for bidding and construction. The following primary tasks will be necessary in order to provide the required deliverables:

General Tasks

- **Topographic Background Map** – Develop a topographic background map of the project limits. This task includes field cross section surveying of the channel on approximately 100 foot stations for use in the analysis and design of the reach. Key locations such as changes in channel characteristics, existing problematic erosion sites, wide channel sections, measurement of the driveway bridge abutments and approximately 500 feet downstream of the bridge will be emphasized. All cross sections will be surveyed perpendicular to the flow line of the channel. The data will be processed into cross sections for use in the HEC-RAS model and a contour background map for use in the development of plans.
- **Gather Available Data** – Gather as much of the readily available information as possible from the City, County, State and Federal Agencies. Data will include:
 - Existing flood insurance studies
 - Flood insurance rate maps
 - Previous flood studies
 - Wetland inventory maps
 - USGS and City topographic maps (digital and hardcopy)
 - Stream Flow Records
 - Aerial photographs / maps
 - Anecdotal flooding evidence (photos, high water marks, videos etc.)
- **Project Kickoff Meeting** – Meet with the City, Palouse Conservation District, Property Owner, Department of Fish and Wildlife and other stakeholders to review the available data, permitting issues and project roles, responsibilities and objectives. Perform a field reconnaissance of the project limits including the taking of site photos to review critical problem areas, priority improvement locations and the overall project limits.
- **Channel Hydraulic Model** - Develop a hydraulic model using HEC-RAS software for the stream section using accepted Flood Insurance Study (FIS) flows. Input cross-section information, flow values, bridge geometry, Manning 'n' values and boundary conditions. Calibrate the model to a known, specific storm event such as the February 1996 event. Refine the model to match calibration data by adding/extending cross sections, revising Manning 'n' values, modifying bridge structure representations, changing the effective flow definitions, and adjusting flow values.

Run the model and evaluate potential flood areas, erosion areas and conveyance problem areas based on the existing conditions. Prioritize 4-5 flood damage areas for consideration of erosion control techniques based on the analysis and input from the stakeholders.

- **Erosion Control Recommendations** – Develop erosion control solutions for the identified problem areas. Solutions may include, but not necessarily be limited to,

recommendations for existing channel section modifications, structural modifications or repairs, channel cleanup, bank stabilization techniques / erosion control BMP's, floodplain storage, channel re-routing.

- **Riparian Planting Concepts** – Coordinate with the Palouse Conservation District to add their proposed riparian restoration measures to construction drawings. The Palouse Conservation District will complete the invasive weed control and planting work. We will coordinate with them to incorporate their ideas and ensure that the planting plan is consistent with their efforts and reflects their original concept. Recommendations for native plantings and the restoration of native vegetation will be made and summarized in concept in the Preliminary Design Report.
- **Wetland Delineation** – Perform a wetland delineation to ensure that possible wetland areas are dealt with in an appropriate manner and are presented as part of the Army Corp of Engineers 404 Permit. We do not anticipate that wetland mitigation will be necessary as preliminary investigation does not show identified wetlands within the National Wetland Inventory system provided by the US Fish and Wildlife Service.
- **Preliminary Design Technical Memorandum** –Prepare a Preliminary Design Technical Memorandum for the project. The memorandum will summarize the key elements associated with the Channel Hydraulic Model and proposed design features. The Preliminary Design Technical Memorandum will be circulated to the stakeholders for review and comments. The Technical Memorandum will then be finalized and used as the basis of the permitting process and the development of P, S & E documents.
- **Permitting Assistance** – Provide assistance to the Palouse Conservation District (PCD) in the permitting process. This task includes providing support calculations and exhibits to assist PCD with the application process. We understand that the majority of the permitting coordination will be completed by PCD. The following permits are anticipated for the project:
 - State Environmental Policy Act (SEPA)
 - Department of Fish & Wildlife (DFW) Hydraulic Project Approval (HPA)
 - 404 Army Corp of Engineers Permit
 - 401 Department of Ecology (DOE) Water Quality Certification
 - DOE Storm Water Pollution Prevention Plan (SWPPP)
 - City of Pullman/Whitman County Floodplain Development Permit
 - City of Pullman Plan Approval
- **In-House QA / QC Program** - Provide an in-house, independent Quality Assurance / Quality Control review of the 80 percent level construction plans, engineer's estimate and technical specifications. This review will be accomplished by a qualified Professional Engineer of Taylor Engineering, Inc. Incorporate the QA /QC review comments into the documents as necessary. Focus of the plan review will be the constructability of the design, accuracy of the engineer's estimate and the clarity of the technical specifications.

- **80 Percent Design Development** - This task consists of developing the construction plans, engineer's estimate and technical specifications to the 80% level and it includes a complete review process with the City of Pullman and Palouse Conservation District. It is anticipated that the following construction plan sheets will be required:
 - Cover Sheet, Vicinity Map, Legend and Construction Notes (1 sheet)
 - Overall Channel Improvement Index & Survey Control Plan (1 sheet)
 - Channel Improvement Plan / Elevations including Riparian Planting and Erosion Control Features (4-5 sheets)
 - Civil Details (2 sheets)
- **Final P, S & E Documents** - Provide final approved construction plans, engineer's estimate and technical specifications for the project. Provide the City with electronic copies and reproducible hard copies of the plans, engineer's estimate and technical specifications for use in bidding and construction.

EXHIBIT "A"