

**Agreement No. KCCD 09-09-2010-003**  
**September 09, 2010**

This agreement is entered into between the Kittitas County Conservation District and Sweet Grass Investments LLC. (Cooperator and Landowner). The purpose of this agreement is to modify the diversion at Cherry Creek to allow for fish habitat improvements (passage and screening).

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**Kittitas County Conservation District**  
**APPLICATION AND AGREEMENT**  
**For**  
**FINANCIAL ASSISTANCE from the DEPARTMENT OF ECOLOGY**

**Section 1. Cooperator**

Cooperator Name: Sweet Grass Investments LLC, 1841 Thrall Road, Ellensburg WA 98926

**Section 2. Background**

- A. Has your local conservation district/NRCS prepared a conservation plan for your operation? ☐ Yes ☒ No
- B. If so, does your plan represent your present operation? ☐ Yes ☒ No
- C. Has your plan been approved by the district? ☐ Yes ☒ No
- D. Will the BMP's described in Sections 3 & 4 allow you to completely implement your conservation plan? ☐ Yes ☐ No
- E. If financial assistance is approved for your operation, will you contribute labor, equipment, or materials during installation of the practice(s)? ☐ Yes ☒ No

**Section 3. Environmental quality problems; proposed Best Management Practices (BMP); and environmental benefits expected (attach additional sheets if needed)**

**A. DESCRIPTION AND LOCATION OF ENVIRONMENTAL QUALITY PROBLEM(S).** Please include a legal description of where environmental quality problem(s) are and where needed practice(s) will be located. Please include photo of site(s) if available.

The property is located in Section 29, T17N R19E (tax parcels: 750333, 810333 and 820333). Currently Sweet Grass Investments LLC utilizes a gravity diversion to withdraw irrigation water directly from Cherry Creek. The diversion structure in Cherry Creek is a barrier to fish passage and the diversion is not screened to protect fish from entrainment per National Marine Fisheries Service requirements. The structure is shared with the neighboring landowner. The maximum Cherry Creek instantaneous diversion rate is 5.76 cubic feet per second including the water right and return flows diverted at this site.

**B. BEST MANAGEMENT PRACTICES (BMP) OR CONSERVATION PRACTICES NEEDED TO CORRECT THE IDENTIFIED ENVIRONMENTAL QUALITY PROBLEM(S) AND FOR WHICH FINANCIAL ASSISTANCE IS REQUESTED.** Practices should be in order of logical implementation.

The BMPs needed to correct the identified problems include 1) instream rock weirs, 2) headgate, 3) fish screen, 4) pump sump w/ pumps to serve the Sweet Grass property.  
The BMPs will be installed per the project design package. (Attachment C).

**C. DESCRIPTION OF ENVIRONMENTAL QUALITY BENEFITS THAT ARE EXPECTED TO BE PRODUCED BY THE PRACTICES INSTALLED.**

The BMPs installed will provide safe upstream and downstream passage for fish (anadromous and resident) and will improve the ability of the landowner to control the water pumped for irrigation.

**D. DESCRIPTION OF THE ANNUAL PROOF OF PERFORMANCE DOCUMENTATION METHOD AGREED TO BY THE CONSERVATION DISTRICT AND THE COOPERATOR.**

The KCCD will visit the project site annually for \_\_\_\_5\_\_\_\_ years to verify proper functioning or maintenance of the installed BMPs.

#### Section 4. Planned BMP and Calculation of Financial Assistance

Section 3 - Planned BMP and Calculation of Financial Assistance						
Description of Planned BMP or Conservation Practice	NRCS Practice Code	Practice Design Life	Column 4 Estimated Total Value of Practice	Column 5 Landowner's Contribution	Column 6 Financial-Sharing From Other Sources	Column 7 Total Financial Assistance
Fish Passage	396	15 yrs	\$107,858.52			\$107,858.52
Water Control Structures (head gates, fish screen, pump sump)	587	25 yrs	\$35,634.60			\$35,634.60
Irrigation Water Conveyance – Pipeline	430EE	25 yrs	\$6,781.32			\$6,781.32
Pumping Plant	533	15 yrs	\$18,090.00			\$18,090.00
Total cost of Construction			\$168,364.44			\$168,364.44
Total Cost	This is one part of a three part project with two additional water users. The total project cost is estimated to be \$532,191.28				Estimated Project Cost \$168,364.44 (Final Project Cost will be determined after project completion).	
Financial Assistance Provided by Grant No. Department of Ecology Water Infrastructure Grant (G0500126), Salmon Recovery Funding Board (06-2156R), US Fish & Wildlife Service FRIMA Grant and BPA Yakima Tributary Access & Habitat Program (2007-398-00).						

#### Section 5. Application and Agreement

I request implementation of this project through Kittitas County Conservation District's Yakima Tributary Access & Habitat Program to install the best management/conservation practices described on the attachments, and summarized in Section 4 above. These practices are needed to correct the water quality, water quantity or fish and wildlife habitat issues described in Section 1, and would not be performed to the extent requested and needed by me without assistance. The project funds are made available through a BPA Grant, Yakima Tributary Access & Habitat Program (#2007-398-00), Salmon Recovery Funding Board (06-2156R), US Fish & Wildlife Service FRIMA and the Department of Ecology's Water Infrastructure Grant (G0500126).

I understand the obligation of the conservation district to provide assistance is contingent on the availability of funds from the granting agencies, and that when this contract crosses over state or federal fiscal years, the obligations of the granting agency and the conservation district are contingent upon the appropriation of funds during the next fiscal year. I further understand the failure to appropriate or allot such funds shall be good cause to terminate this agreement.












If sufficient funds are made available to the KCCD by the granting agency, and if this application is approved for the practice(s) noted above:

- I understand, I will be notified by the KCCD of the approval and funding status of this project within 30 days of my application, or by \_\_October 15, 2010\_\_\_\_ (date) as agreed to by myself and the KCCD.

Cooperator  
Initials

  
Initials



- I agree to sign the "Permission for Construction Access Form" (Attachment A) to allow completion of project construction by April 1, 2011 and that failing to meet that deadline may jeopardize funding from the Granting Agency or environmental permit requirements.   
Initials
- I agree to attend a pre-construction meeting with the contractor or vendor, KCCD staff (engineer and/or project manager), and any other relevant parties.   
Initials
- I agree to maintain and operate the practice(s) for its design life as determined by the KCCD and as shown in Section 4.   
Initials
- I agree to permit for the duration of its design life, on reasonable notice and request from the KCCD, the inspection of the location, maintenance, and monitoring of the long-term condition of the practice(s) by both KCCD employees or agents and agents of the Granting Agency.   
Initials
- I understand that the KCCD will advertise the project for bid, select the lowest responsive and responsible bidder, and work to execute a construction contract with that bidder.   
Initials
- I understand that the KCCD will contract with the design engineer, Paul Cross (RH2 Engineering) to assist with construction oversight and monitoring.   
Initials
- I understand that I am not authorized to change the project design, nor provide direction to the contractor that might change the project design. All design changes must be routed through the KCCD and the design engineer. I understand that I will be included in the project progress meetings and will receive copies of the progress reports.   
Initials
- Sweet Grass Investments, LLC ("Sweet Grass") agrees this Agreement runs with the land and is binding on Sweet Grass, as well as its successors and assignees. Sweet Grass agrees any persons or entity to whom the benefited acres are transferred by sale, lease or other means will sign a statement to maintain and continue the construction practice for its remaining design life as a condition of ownership or control.   
Initials
- I agree to refund all or part of the financial assistance paid to me as prorated by the KCCD, in addition to any other remedies available at law or in equity, if, before the expiration of each or any practice design life, the contract is terminated because of any of the following: 1) I fail to allow for complete construction of the project, 2) I destroy the approved practice, sell or lease practice equipment, or 3) I relinquish management or title to the land on which the approved practice has been established and the new owner and/or operator of the land does not agree in writing to properly maintain the practice for the remainder of its design life.   
Initials
- I understand that the KCCD's right to a refund exists for a period not to exceed six years following contract termination, and that my refund is due within 30 days of demand. I also understand that in the event the KCCD is required to institute legal proceedings to recover the financial assistance, the KCCD is entitled to its costs thereof, including attorneys' fees.   
Initials
- I understand that this agreement does not authorize the KCCD or the Granting Agency to assume jurisdiction over, or any ownership interest in my property. I retain sole responsibility for taxes, assessments, claims for damages proximately caused by Sweet Grass Investments, LLC and/or its successors, and controlling trespass. I also retain all benefits and enjoyment of the rights of ownership except as are specifically provided in this agreement.   
Initials

This agreement may be terminated by mutual agreement of the KCCD or me. Such termination will only be effective after an authorized representative of the KCCD and I have agreed in writing to such termination and the Bonneville Power Administration, Salmon Recovery Funding Board, US Fish & Wildlife Service and the Department of Ecology has been provided a thirty (30) day advance written notice of such termination.

This agreement remains in effect for a minimum of 10 years from the date of signature or for the life of the practices (as listed above).

(MUST BE NOTARIZED)

[Signature] MGR 10/8/10  
Signature of Landowner (Cooperator) Date  
Sweet Grass Investments LLC

STATE OF WASHINGTON )

County of Kittitas )

ss.

On this day personally appeared before me J. Brian Sims, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged that he/she signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 8<sup>th</sup> day of October, 2010.

Patricia A. Kester

NOTARY PUBLIC

My commission expires: 5/15/2012

[Signature] 10/7/10 [Signature] 10/14/10  
Application Prepared By District Staff Date Application Approved By District Chair Date

## Section 6. Agreement Completion Certification

I hereby certify that implementation of the above described BMP's or conservation practices have been completed as of the date shown below, and that they are consistent with the plans and specifications developed for the project, and meet the established NRCS specifications, or are alternative practice designs approved by a professional engineer.

Implementation Checked District Staff <sup>1</sup> Date Final Implementation Check (if needed) District Staff <sup>1</sup> Date

Cooperator Date Approved By District Chair Date

<sup>1</sup> Includes NRCS technical personnel, Washington State licensed professional engineers, and district staff with NRCS job approval authority.

**Attachment A**

**Right of Entry for Construction Agreement**

**Between**

**Kittitas County Conservation District  
607 Mountain View, Ellensburg WA 98926  
Phone (509) 925-8585 Ext. 4  
Fax (509) 925-8591**

**And**

**Sweet Grass Investments LLC**

I, Sweet Grass Investments LLC (Brian Sims), grant access to my property (tax parcels 17395 and 800333) to the Kittitas County Conservation District (KCCD), its employees, representatives, and contractors for the expressed purpose of constructing the Cherry Creek Irrigation Diversion Modifications Project. By signing this form, I certify that I am the legal owner of this property and therefore can grant this permission for access and construction staging to the KCCD. This may include, but is not limited to, topographical surveys, cultural resource surveys, general project site investigation, and all necessary construction activities, including temporary parking of vehicles, delivery of materials, and storage of tools, etc. ("construction staging"). I understand that as the property owner, I have a duty to disclose to the KCCD all defects and safety hazards on the property that are known to or reasonably discoverable by me. The KCCD agrees to leave all disturbed portions of the property free of scraps, leftover materials, and/or waste upon completion of the construction work.

I understand that the KCCD shall indemnify and hold me harmless from and against any loss, damage, or injury caused by, or on behalf of, or through the fault of the KCCD. I shall indemnify and hold KCCD harmless from and against any losses, delays, damages, or injuries caused by, or on behalf of, or through, my own actions. Nothing in this statement shall require either of us to indemnify the other against either of our own willful or negligent misconduct.

I understand that this agreement becomes effective upon receipt of the signed form and shall terminate 24 months from that date, unless otherwise agreed upon in writing.

Sweet Grass Investments LLC

Brian Sims

Printed Name

  
Signature

10/8/10  
Date

1841 Thrall Road

Address

Ellensburg, WA 98926

City, State, Zip

(509) 933-4025

Phone Number

**Attachment B**  
**Long Term Monitoring & Maintenance**

Long term maintenance of all practices is the responsibility of the landowner.

Project monitoring is required for a period of up to five (5) years as an obligation of project permitting documentation and funding.

Washington Department of Fish & Wildlife will provide an O&M manual to follow for proper operation of the fish screen.



**Attachment C**  
**Design Plans and Specifications**

This project was designed by Paul Cross of RH2 Engineering. Plans and design specifications are attached.