

1. Document Title: Cost Sharing Agreement
2. Reference Numbers of Documents Assigned or Released: n/a
3. Grantors: ConAgra Foods Lamb Weston, Inc.
4. Grantees: City of Prosser, Washington
5. Legal Description: Blocks 45, 46 and 47, Town of Prosser Exhibit "A" of the document.
6. Parcel Numbers: 1-0284-402-0045-024; 1-0284-402-0047-021, 1-0284-402-0047-003, 1-0284-402-0047-002, 1-0284-402-0047-001, and 1-0284-402-0047-019.

COST SHARING AGREEMENT

This Cost Sharing Agreement ("Agreement") is dated as of the 2nd day of July, 2009 (the "Effective Date"), by and among the CITY OF PROSSER, a municipal corporation of the State of Washington (hereinafter "City"), and CONAGRA FOODS LAMB WESTON, INC., a Delaware Corporation (hereinafter "ConAgra"). The City and ConAgra are each hereinafter referred to as a "Party" and collectively as the "Parties."

I. RECITALS

WHEREAS, ConAgra operates a food processing facility in Prosser upon real property legally described on Exhibit "A"; and

WHEREAS, ConAgra's improvements have significant impervious roof area which generates runoff during storm events and snowmelt; and

WHEREAS, roof drains for the north side of the most easterly building, located in the southwest corner of the intersection of Sheridan Avenue and 6th Street, are plumbed directly into the ConAgra storm drain system, so runoff from the building does not enter the street; and

WHEREAS, roof drains for the next building to the west, which is older, discharge storm runoff to Sheridan Avenue via down spouts connected to the side of the building; and

WHEREAS, this roof runoff commingles with street runoff, is collected in an existing drain inlet, and is piped to a bubbler-type drain outlet, where it continues westerly overland in the street gutter; and

WHEREAS, Prosser is making improvements to Sheridan Avenue from 3rd Street east to 6th Street, and storm drainage improvements are proposed as part of the project; and

WHEREAS, Street runoff for the City's project is being controlled separately from roof runoff, and will receive treatment and disposal using approved subsurface infiltration systems; and

WHEREAS, in 1987, the U.S. Congress amended the federal Clean Water Act requiring a two-phase implementation of a comprehensive national program to address the water quality of stormwater discharges; and

WHEREAS, though stormwater was known to be a contributor of pollutants, prior to the 1987 amendments, few regulations were in place to govern stormwater discharges and typically, regulations were promulgated to control the amount of runoff to prevent localized flooding; and

WHEREAS, it was common practice to discharge roof runoff onto the adjacent street, particularly when the street could carry the flow and this appears to be the case in Prosser, where the ConAgra building was allowed direct roof runoff onto Sheridan Avenue; and

WHEREAS, this former approach to controlling stormwater also applied to streets and as long as the street could carry the flow, the easiest method of disposal was selected; and

WHEREAS, in the case of Sheridan Avenue, stormwater was allowed to flow westerly down the street and into the Yakima River; and

WHEREAS, stormwater improvements included in the Sheridan Avenue project are being constructed in accordance with the Washington Department of Ecology's *Stormwater Management Manual for Eastern Washington*; and

WHEREAS, this approach is consistent with the provisions of the Washington State Department of Transportation's environmental review process; and

WHEREAS, discharges of stormwater to the Yakima River without treatment are prohibited, and the current method of handling street runoff from Sheridan Avenue is unacceptable; and

WHEREAS, subsurface infiltration was selected as the preferred method of stormwater treatment and disposal for the new roadway improvements; and

WHEREAS, including the roof runoff in the infiltration systems will substantially increase the size and cost; and

WHEREAS, routing the roof runoff to ConAgra's stormwater system is more cost effective; and

WHEREAS, removing ConAgra's roof runoff from the street will result in improved service life of the new street improvements; and

WHEREAS, containing all the roof runoff from ConAgra in a closed-pipe system will greatly reduce these waters from infiltrating the street pavement and base materials, leading to premature failure; and

WHEREAS, City proposes to reroute roof runoff from ConAgra to ConAgra's existing storm drain system, so that they will mix with runoff from other portions of the ConAgra facility, and be monitored in accordance with ConAgra's industrial stormwater facilities and improvements; and

WHEREAS, as a result, stormwater from ConAgra will be separate from street runoff; and

WHEREAS, City cannot require ConAgra to construct the proposed stormwater facilities until and unless it submits an application for a development permit which would result in an increase in the amount of stormwater generated by ConAgra's facility; and

WHEREAS, ConAgra has determined that it would be more economical to join with City in the current project than continue to discharge its roof stormwater to the street; and

WHEREAS, City could not require ConAgra to participate in this cost sharing agreement, but could refuse to construct the stormwater facility rerouting ConAgra's roof stormwater; and

WHEREAS, both parties agree that this agreement is the best way to protect both parties regarding the alteration of stormwater runoff from ConAgra's facility; and

WHEREAS, a map of the City-constructed proposed stormwater improvements are depicted on Exhibit "B";

II. AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other valuable consideration, the Parties hereto agree as follows:

1. The City agrees to pay for and construct improvements as shown on the attached figure (Exhibit "B") as follows:

- Installation of approximately 150 LF of 8-inch storm drain pipe from the existing drain inlet east to the location of the existing roof drain.
- Relocation of the existing drain inlet to avoid a conflict with the new curb and gutter.
- Installation of approximately 350 LF of 8-inch storm drain pipe west from the existing drain outlet to 3rd Street.

- Installation of solid lids on the existing drain inlet and outlet, and installation of a new catch basin at 3rd Street.
- Installation of 32 LF of new 8-inch storm drain pipe south from the new catch basin at 3rd Street so the new pipe extends from beneath the new street construction.
- Installation of tees and stub outs in the new 8-inch storm drain pipe at the roof drain locations to extend the pipe from beneath the new street construction.

2. ConAgra shall pay for and construct the following improvements:

- Connection of roof drains to the new 8-inch storm drain installed by the City using the tees and stub outs installed by the City.
- Connection of roof drains to the existing storm drain pipe using the existing laterals that are connected to existing inlets at the truck loading bays.
- Installation of a new 8-inch storm drain in 3rd Street from the 8-inch pipe provided by the City south to ConAgra's existing storm drain.
- Ongoing operation and maintenance of the roof drainage collection system and monitoring of discharges in accordance with the terms of ConAgra's industrial stormwater permit.

3. This Agreement shall be governed by and be construed in accordance with the laws of the State of Washington. Venue for any dispute shall be in the Benton County Superior Court.

4. A breach of a material provision of this Agreement, whether by action or inaction of a Party which continues and is not remedied within thirty (30) days after the other Party has given notice specifying the breach shall constitute a default by a Party. The exercise by either Party of any one or more of such remedies available to it shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.

5. All of the provisions, agreements, rights, powers, standards, terms, covenants, and obligation contained in this Agreement shall be binding upon the parties and their respective successors and assigns.

6. ConAgra is an independent party and is not an agent of the City. Nothing contained herein, or in any document executed in connection herewith, shall be construed as making the City and ConAgra joint venturers or partners.

7. If any term, provision, covenant, or condition of this Agreement shall be determined invalid, void, or unenforceable by a court of competent jurisdiction the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purpose of this Agreement or the rights and obligations of the parties having been materially altered or abridged.

8. None of the parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

9. The parties acknowledge that they have been afforded an opportunity to consider this Agreement and the terms and conditions set forth herein, and that they have read and understood the terms of the Agreement and have been given an opportunity to consult with their respective counsel prior to executing this Agreement.

10. The undersigned covenant and represent that they are fully authorized to enter into and execute this Agreement.

11. ConAgra agrees to indemnify, defend and hold harmless City, and its agents, officers and employees from and against any and all liability, expense, including but not limited to defense costs and attorneys' fees, and claims for damages of any nature whatsoever, including but not limited to professional negligence, bodily injury, death, personal injury or property damage arising from or connected with its discharge of stormwater from its facilities.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

City of Prosser:

By: Paul Warden

Name: Paul Warden

Title: Mayor

Attest:

Shirley Biggs

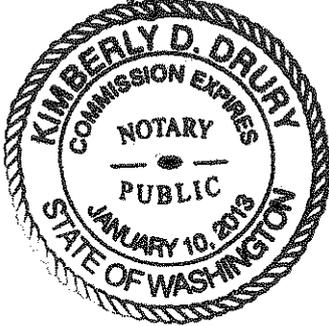
Approved as to Form:

[Signature]

STATE OF WASHINGTON)
) ss.
County of Benton)

I certify that I know or have satisfactory evidence that Dale A. McCurdy is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Sec. Dir. Mfg. of Coastal Food Farms to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: August 17, 2009



[Signature]
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON RESIDING AT Hennelick
MY COMMISSION EXPIRES: 01-10-2013

NOTARY'S PRINTED NAME:
Kimberly D. Drury

STATE OF WASHINGTON)
) ss.
County of Benton)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON RESIDING AT _____

MY COMMISSION EXPIRES: _____

NOTARY'S PRINTED NAME:

EXHIBIT "A"
LEGAL DESCRIPTION OF
CONAGRA'S REAL PROPERTY

PARCEL 1-0284-402-0047-021:

Lots 1 through 24, together with vacated alleys and vacated 5th Street, Block 45, Town of Prosser, together with Lots 1 through 24, together with a portion of vacated 5th Street, Block 46, Town of Prosser, according to the plat thereof, records of Benton County, State of Washington.

PARCEL 1-0284-402-0047-021:

Lots 4, 5, 6, 7 and 8, Block 47, Town of Prosser, according to the plat thereof, records of Benton County, State of Washington.

PARCEL 1-0284-402-0047-003:

Lot 3, Block 47, Town of Prosser, according to the plat thereof, records of Benton County, State of Washington.

PARCEL 1-0284-402-0047-002:

Lot 2, Block 47, Town of Prosser, according to the plat thereof, records of Benton County, State of Washington.

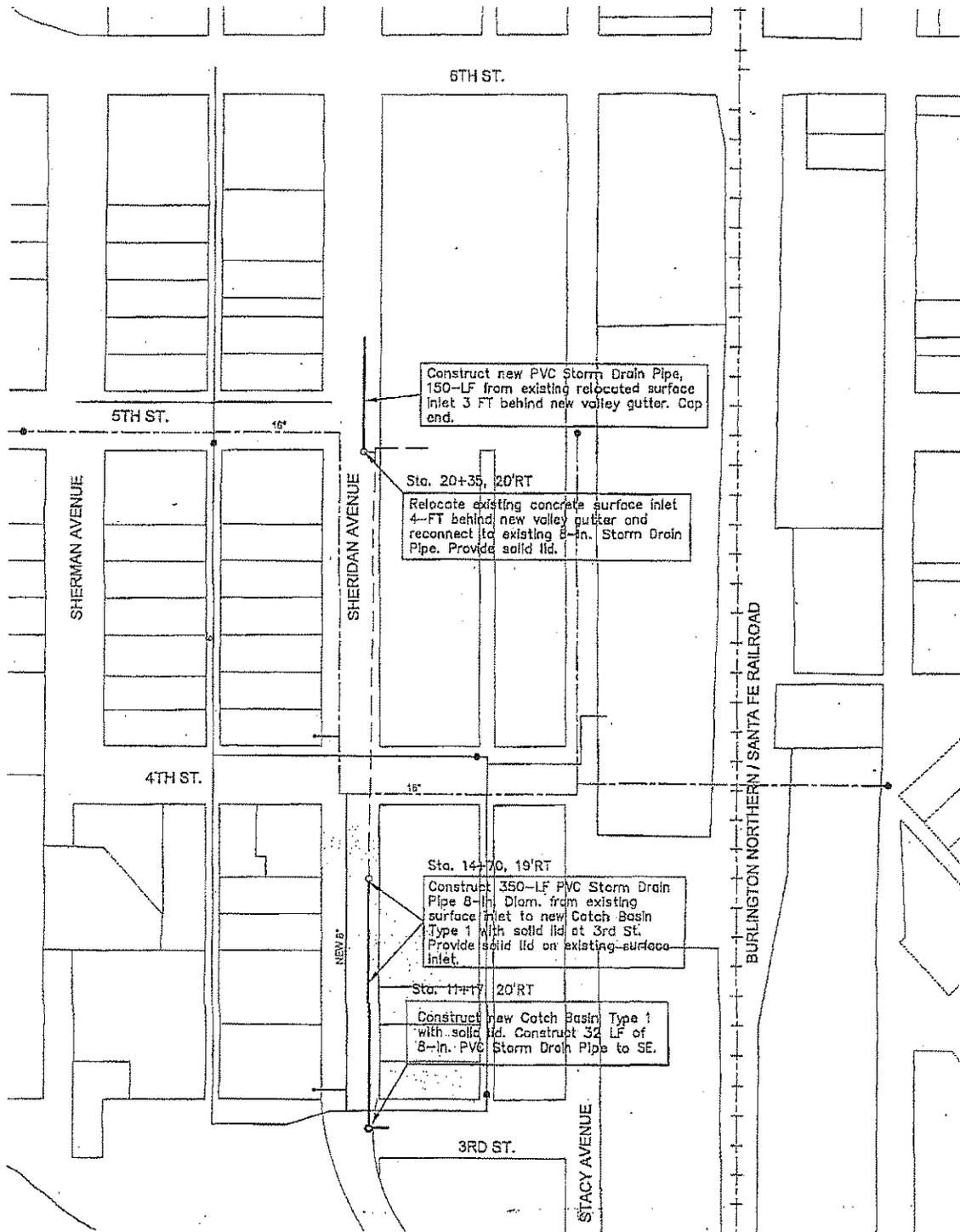
PARCEL 1-0284-402-0047-001:

Lot 1, Block 47, Town of Prosser, according to the plat thereof, records of Benton County, State of Washington.

PARCEL 1-0284-402-0047-019:

Lots 9 through 24, together with vacated alley and vacated 4th Street, Block 47, Town of Prosser, according to the plat thereof, records of Benton County, State of Washington.

EXHIBIT "B"
MAP OF PROJECT



ADDENDUM NO. 3
EXISTING STORM DRAIN MODIFICATIONS