2013 INTERLOCAL AGREEMENT

Between City of Bainbridge Island and Kitsap Conservation District

AN INTERLOCAL AGREEMENT (THIS "AGREEMENT") BETWEEN THE CITY OF BAINBRIDGE ISLAND (HEREINAFTER REFERRED TO AS THE "CITY") AND THE KITSAP CONSERVATION DISTRICT (HEREINAFTER REFERRED TO AS THE "DISTRICT")

WHEREAS, the City Council budgeted funds in 2013 for services from the District to agricultural and other private landowners; and

WHEREAS, the District has the expertise to provide assistance to agricultural and non-agricultural property owners on land management activities and their impacts on water quality; and

WHEREAS, the City and the District desire to enter into an agreement to provide for information and services to property owners that will protect water quality; and

WHEREAS, the Interlocal Cooperation Act, RCW 39.34, further authorizes the parties hereto to enter into this agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the City and the District agree as follows:

1. SERVICES BY DISTRICT

The District shall perform such duties and services as are listed on the scope of work attached hereto as Attachment A and incorporated herein by this reference as if set forth in full. Said services shall be performed in accordance with the approved scope of work and budget specified in Attachment A. All services funded under this Agreement shall be provided exclusively within the boundaries of incorporated City of Bainbridge Island. The District shall furnish all services, labor and related equipment to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. PAYMENT

The City shall reimburse the District only for actual incurred costs upon presentation of a properly executed invoice in a form approved by the City. Costs shall be charged and funds reimbursed based upon appropriate program elements and cost categories as set forth in Attachment A. The sum of the District's reimbursement requests during the duration of this Agreement shall not exceed Forty Thousand Eight Hundred Dollars ($40,800) (the budget for all program elements combined, as identified in Attachment A). The District may exceed line item amounts, as established in Attachment A, within individual program elements in order to respond to the nature and number of requests received within a quarter. The anticipated (budgeted) and actual distribution of funds will be reported by the District quarterly and monitored by the City. Reimbursement requests shall be submitted once a quarter. The City reserves the right to

withhold payments pending timely delivery of progress reports or documents as may be required under this Agreement. The City shall reimburse the District within sixty (60) days of receipt of a properly executed District invoice.

3. GENERAL ADMINISTRATION AND MANAGEMENT

The City Manager of the City, or designee, shall be the City's representative and shall oversee and approve all services to be performed, coordinate all communications, and review and approve all invoices under this Agreement.

The Chair of the Board of Supervisors for the Kitsap Conservation District, or his/her designee, shall represent the District in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of the City pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the District's representative.

4. PERMIT REPORTING

The District shall produce quarterly and year-end reports summarizing the work performed and evaluating the performance and results of the work performed pertaining to this Agreement.

Progress reports shall include, but are not limited to, the following information:

a. A description of work performed during the period and progress made to date, including monitoring data or performance indicators that reflect effectiveness of the program elements as set forth in Attachment A.
b. Status of annual work plan.
c. Description of any adverse conditions that have affected the program objectives and/or time scheduled, and actions taken to resolve these issues. Progress reports shall be submitted as follows: *Quarterly reports* are due the closest workday to April 15, July 15, and October 15; *Year-end Report* is due January 15, 2014.

The Year-end Report shall contain a summary of major accomplishments realized during the year. This report shall include, but not be limited to, photographs, slides, and any other graphics that would enhance the content and/or appearance of the report.

5. INSPECTION AND AUDIT

The District shall maintain all books, records, documents and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the District shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts and records where necessary to conduct or document an audit. The District shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the District shall provide the City with

appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

6. INDEPENDENT CONTRACTOR

A. The District and the City understand and expressly agree that the District is an independent contractor in the performance of each and every part of this Agreement. The District expressly represents, warrants and agrees that its status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195. The District, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The District shall make no claim of City employment nor shall claim any related employment benefits, social security, and/or retirement benefits.

B. The District shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the District shall pay the same before it becomes due.

C. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the District performs hereunder.

7. DISCRIMINATION AND COMPLIANCE WITH LAWS

A. The District agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, sexual orientation, age, disability, or other circumstance prohibited by federal, state or local law or ordinance, except for a bona fide occupational qualification.

B. The District shall comply with all federal, state and local laws and ordinances applicable to the work to be done under this Agreement.

C. Violation of this Section 7 shall be a material breach of this Agreement and grounds for cancellation, termination or suspension by the City, in whole or in part, and may result in ineligibility for further work for the City.

8. TERM AND TERMINATION OF AGREEMENT

A. This Agreement shall become effective upon execution by both parties and shall continue in full force until December 31, 2013, unless sooner terminated by either party as provided below.

B. This Agreement may be terminated by either party without cause upon thirty (30) days' written notice to the other party. In the event of termination, all finished or unfinished documents, reports, or other material or work of the District pursuant to this Agreement shall be

submitted to the City, and the District shall be entitled to just and equitable compensation as set forth in Section 2 for any satisfactory work/services completed prior to the date of termination.

9. HOLD HARMLESS AND INDEMNIFICATION

A. The District agrees to protect, defend, indemnify, and hold harmless the City, its elected officials, officers, employees and agents from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) caused by or occurring by reason of any negligent act, error and/or omission of the District, its officers, employees, and/or agents, arising out of or in connection with the performance or non-performance of the services, duties, and obligations required of the District under this Agreement.

B. In the event that the District and the City are both negligent, then the District's liability for indemnification of the City shall be limited to the contributory negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorneys' fees and disbursements) that can be apportioned to the District, its officers, employees and agents.

C. The foregoing indemnity is specifically and expressly intended to constitute a waiver of the immunity of the District under Washington's Industrial Insurance Act, RCW Title 51, as respects the other parties only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the employees of the District. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

D. The City's inspection or acceptance of any of the District's work when completed shall not be grounds to avoid any of these covenants of indemnification.

E. Nothing contained in this section of this Agreement shall be construed to create a liability or a right of indemnification in any third party.

F. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

10. INSURANCE

The District shall maintain insurance as follows:

[X] Commercial General Liability as described in Attachment B.
[ ] Professional Liability as described in Attachment B.
[X] Automobile Liability as described in Attachment B.
[ ] None.

The District shall comply with the provisions of RCW Title 51, Industrial Insurance. For the duration of this Agreement, the District shall provide or purchase industrial insurance coverage

for its employees, as may be required of an "employer" as defined in RCW Title 51, and shall maintain full compliance with RCW Title 51.

11. SUBLETTING OR ASSIGNING CONTRACT

The District shall not assign or subcontract any portion of the services provided within the terms of this Agreement without obtaining prior written approval from the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of the District as stated herein.

12. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

13. SEVERABILITY

A. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

14. FAIR MEANING

The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

15. NON-WAIVER

A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

16. NOTICES

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

To the City:	City of Bainbridge Island 280 Madison Avenue North Bainbridge Island, WA 98110 Attention: City Manager Phone: (206) 842-2545
To the District:	Kitsap Conservation District P.O. Box 2472 Silverdale, WA 98383 Attention: Chair of the Board of Supervisors Phone: (360) 337-7171 Fax: (360) 337-7172

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

17. SURVIVAL

Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

18. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

19. VENUE

The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Kitsap County, Washington.

20. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

EXECUTED THIS _____ DAY OF FEBRUARY, 2013.

KITSAP CONSERVATION DISTRICT

Jacqueline Lovely

Chair, Board of Supervisors

Date: 3-13-13

CITY OF BAINBRIDGE ISLAND

Douglas Schulze

Douglas Schulze, City Manager

Date: 2/15/13

ATTACHMENT A

KITSAP CONSERVATION DISTRICT
2013 City of Bainbridge Island
SCOPE OF WORK

I. REFERRAL RESPONSE ELEMENT

Goal:

- Respond to and address water quality and fish & wildlife related referrals from the City, state and local agencies.

Objectives and Tasks:

Objective 1: Respond to referrals.

Task 1. Respond to referrals from the City of Bainbridge Island. These requests may be generated from conditional use permits and building permit processes that require farm plans and/or livestock waste management plans because the sites may impact sensitive land areas or from grading permits associated with farming activity or storm water issues for fish passage and barrier problems on private land.

Task 2. Respond to referrals from the Planning Division to assist with reviews of Retail Plans under the category Agricultural Activity when 1) livestock are raised and/or maintained on the property, 2) livestock waste is being utilized on property as a soil amendment, and 3) additional assurance for surface water protection are necessary for year round agricultural activities.

Task 3. Respond to water quality and solid waste complaints referred to the District by the Kitsap County Health District. These may come to the District as water quality complaints or as a solid waste enforcement action associated with agricultural activity.

Task 4. Respond to water quality and solid waste complaints referred to the District by the City of Bainbridge Island Water Resource Program. These may come to the District as water quality complaints or as a solid waste enforcement action associated with agricultural activity as a result of the Illicit Discharge Detection and Elimination investigations..

II. EDUCATION ELEMENT

Goal:

- Promote public knowledge of local natural resource and fish habitat issues.

Objectives and Task:

Objective 1: Maintain a Conservation District public relations program.

Task 1. Maintain effective working relationships with local media and community groups on Bainbridge Island. Submit articles to Island media involving local conservation issues and actions being taken by the District. Participate in selected Bainbridge Island public events

Task 2. Maintain a mailing list of Bainbridge landowners interested in agriculture, natural resource conservation practices and fish & wildlife habitat. Publish and distribute the District's newsletters to Island residents that are on the mailing list.

Task 3. Inform landowners of rain garden workshops conducted throughout the county. Technical specifications will be made available to the public through WSU rain garden specification manual, KCD engineering and design staff, and through online sources. KCD will provide additional outreach opportunities through the KCD Annual Tree Sale and district newsletters.

Objective 2: Maintain a Conservation District agricultural and natural resource educational program.

Task 1. The Kitsap Conservation District will maintain a program offering District speakers, sponsoring special interest events and accepting invitations to make community presentations. The District will coordinate the development and maintenance of this program with the City of Bainbridge Island, KCHD, WSU Cooperative Extension and other existing educational programs.

III. INVENTORY ELEMENT

Goal:

- Address non-point pollution caused by inadequate agricultural management practices.

Objectives and Tasks:

Objective 1: Identify, prioritize and map agriculturally related property within the City of Bainbridge Island.

Task 1. Update the existing inventory of agricultural properties annually.

Task 2. As part of the inventory process, Conservation District staff prioritizes inventoried sites based on their potential to pollute. Criteria include livestock proximity to surface water, livestock waste management, pasture condition and other visual assessments. The Conservation District will follow up with technical assistance services based on the prioritization. The District's priority list will be re-evaluated annually.

Task 3. Inventoried and prioritized properties will be entered into a GIS database related to the parcel's tax identification number. The data base entries will be updated annually. The District will produce a GIS map, updated as necessary.

Task 4. The District will provide an overlay of agricultural properties as well as fish barrier sites on a habitat refugia map based on the Kitsap County Fish Habitat Refugia Study.

IV. RESOURCE MANAGEMENT PLAN DEVELOPMENT

Goals:

- Protect surface water bodies from potential sources of contamination caused by agricultural-related land use.
- Promote cooperative solutions with landowners.

Objectives and Tasks:

Objective 1: Provide technical services to landowners within the City of Bainbridge Island.

Task 1. Offer farm-planning services that inventory existing conditions, evaluate resource needs and recommend alternative farm management practices that protect the quality of soil, water, animals, plants and air.

ATTACHMENT B

Insurance against claims for injuries to persons or damage to property arising out of or in connection with the performance of this Agreement by the District, its officers, employees and agents:

A. Automobile Liability Insurance with limits no less than $1,000,000.00 combined single limit per accident for bodily injury and property damage.

B. Commercial General Liability Insurance written on an occurrence basis with limits no less than $1,000,000.00 combined single limit per occurrence and $2,000,000.00 aggregate for personal injury, bodily injury and property damage. Coverage shall include, but not be limited to blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.

Before commencing work and services, the District shall provide to the person identified in Section 16 of the Agreement a Certificate of Insurance evidencing the required insurance. City reserves the right to request and receive a certified copy of all required insurance policies.

Any payment of deductible or self-insured retention shall be the sole responsibility of the District. City shall be named as an additional insured on the Commercial General Liability Insurance Policy, with regard to work and services performed by or on behalf of the District, and a copy of the endorsement naming City as an additional insured shall be attached to the Certificate of Insurance.

The insurance policies (1) shall state that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (2) shall be primary insurance with regard to City; and (3) shall state that City will be given at least 30 days' prior written notice of any cancellation, suspension or material change in coverage.