

**2014-2016 Interlocal Agreement  
Between City of Bainbridge Island  
and  
the Kitsap Conservation District  
Regarding Agricultural Assistance, Support and Conservation**

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**, there are currently 1400 acres of agriculture on Bainbridge Island; and

**WHEREAS**, the City Council is committed to preventing stormwater runoff pollution; and

**WHEREAS**, the District's contribution of services assists the City in compliance with their NPDES Municipal Stormwater Permit, assisting with the Illicit Discharge Detection Elimination Program and education/outreach; and

**WHEREAS**, the District has the expertise and experience to provide Farm Plans to meet the requirements of Bainbridge Island Municipal Code 18.09.030 and 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 have a common goal to promote Best Management Practices to protect water quality, provide education to land owners on agricultural impacts and support the use of Low Impact Development practices; and

**WHEREAS**, the City and the District desire to enter into an agreement and continue to work collaboratively in providing 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. 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) per year (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. Status of annual work plan.
- b. 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.
- c. Description of any adverse conditions that have affected the program objectives and/or time scheduled, and actions taken to resolve these issues.
- d. Progress reports shall be submitted as follows: For each year, *Quarterly reports* are due the closest workday to April 15, July 15, and October 15; *Year-end Report* is due January 15.

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 five (5) 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, 2016, 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:

- Commercial General Liability as described in Attachment B.
- Professional Liability as described in Attachment B.
- 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 27 DAY OF JANUARY, 2014.

KITSAP CONSERVATION DISTRICT

CITY OF BAINBRIDGE ISLAND

    *Jacqueline Louf*    2-12-14  
Chair, Board of Supervisors

    *Douglas Schulze*      
Douglas Schulze, City Manager

Date: Feb. 12, 2014

Date: 1/27/14

## ATTACHMENT A

### Annual Scope of Work for Agricultural Technical Assistance Between the City of Bainbridge Island and Kitsap Conservation District

#### PURPOSE

The City of Bainbridge Island (the City) currently has over 1400 acres of agricultural lands. Many of these farms are required to establish and implement farms plans in accordance with provisions in the City's Municipal Code. The City and the Kitsap Conservation District (the District) share a common goal to promote Best Management Practices (BMPs) to protect water quality, provide education to landowners on agricultural impacts and support the use of Low Impact Development practices. Well-designed conservation practices increase farm productivity while protecting water quality and reducing soil erosion. The District has the expertise and experience to provide Farm Plans to meet the requirements of Bainbridge Island Municipal Code Section 18.09.030 and provide assistance on land management activities and their impacts on natural resources. In providing these services, the District assists with compliance of the City's Municipal Permit, including assistance with the Illicit Discharge Detection Elimination Program and education/outreach.

The City and the District desire to enter into this agreement and continue to work collaboratively in providing information and services to property owners.

#### SCOPE OF WORK

The District will partner with the City to develop and accomplish the following tasks:

- Task 1—Respond to referrals
- Task 2—Education and outreach
- Task 3—Develop resource management plans (farm plan)
- Task 4—BMP Design
- Task 5—BMP installation
- Task 6—BMP inspection and maintenance
- Task 7—Inventory
- Task 8—Administration and reporting

#### TASK 1— RESPOND TO REFERRALS

Objective: Respond to and address water quality and fish and wildlife related referrals from the City and Kitsap Public Health District (KPHD).

Scope:

- 1.1 Respond to referrals from the City. Requests may be generated from 1) conditional use permits, 2) building permit processes that require farm plans and/or livestock waste management plans, 3) sites which may impact sensitive land areas, 4) grading permits associated with farming activity, and 5) storm water issues for fish passage and barrier problems on private land.
- 1.2 Respond to referrals from the City's Planning Division to assist in the review 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 assurances for surface water protection are necessary for year-round agricultural activities.
- 1.3 Respond to water quality and solid waste complaints referred by the KPHD. The referrals may be water quality complaints or a solid waste enforcement action associated with agricultural activity.
- 1.4 Respond to water quality and solid waste complaints referred by the City's Water Resources Program. These may be water quality complaints, solid waste enforcement actions associated with agricultural activity, or findings of an Illicit Discharge Detection and Elimination (IDDE) investigations.

## TASK 2— EDUCATION AND OUTREACH

Objective: Promote public knowledge of local natural resources and fish habitat issues. Maintain a Conservation District agricultural and natural resource educational program.

### Scope:

- 2.1 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.
- 2.2 Maintain a mailing list of Bainbridge landowners interested in agriculture, natural resource conservation practices and fish and wildlife habitat. Publish and distribute the District's newsletters to Island residents that are on the District's mailing list.
- 2.3 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, District engineering and design staff, and through online sources. District will provide additional outreach opportunities through the District's Annual Tree Sale and District newsletters.
- 2.4 The 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, KPHD, WSU Extension and other existing educational programs.
- 2.5 Identify/recommend resources (websites, local and national agencies, non-profit groups, etc) that publish materials or documents the City could potentially utilize for education and IDDE associated with agriculture.

### TASK 3— DEVELOP RESOURCE MANAGEMENT PLANS (FARM PLANS)

Objective: Protect surface water bodies from potential sources of contamination caused by agricultural-related land use. Provide technical services to landowners. Promote cooperative solutions. Facilitate federal, state and local incentive programs.

#### Scope:

- 3.1 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.
- 3.2 Encourage and offer assistance with the preservation and enhancement of fish and wildlife habitat as part of the District's technical services. The District will stay apprised of Clean Water Act and Endangered Species Act regulations, threats and associated action recommendations that may affect City residents.
- 3.3 Provide nutrient management plans for crop farms when 1) livestock waste is utilized for nutrient application purposes, 2) livestock waste is generated or transported to a crop farm and will be stored and/or composted on site for later land application, and 3) an opportunity exists to demonstrate or model to the public for education purposes the storage and utilization of livestock waste as a component of sustainable agricultural land use.
- 3.4 As directed by the Clean Water Act, Endangered Species Act and Farm Bill, the District will facilitate all programs and coordinate efforts with the Farm Services Agency (FSA), the Natural Resources Conservation Service (NRCS) and the U.S. Fish & Wildlife Service; and state agencies including the Conservation Commission, Department of Ecology, Washington Department of Fish & Wildlife (WDFW) and the Puget Sound Action Team for the benefit of agriculture.
- 3.5 The District will assist landowners with the application process for eligible incentive and cost-share programs. These programs may include land that is in agricultural use or land that emphasizes fish and wildlife habitat issues.

### TASK 4—BMP DESIGN

Objective: Provide agronomic and engineering design services that support natural resource protection in City watersheds. Provide designs for BMPs that meet USDA Natural Resources Conservation Service standards and specifications. Develop alternative cost-effective BMPs that are suitable for a specific site's needs and landowner's financial needs. Provide landowners with rain garden designs.

#### Scope:

- 4.1 Deliver a completed design package to landowners with appropriate construction and material specifications included. Staff will maintain a direct presence with construction, project coordination and implementation.
- 4.2 When existing NRCS standards and specifications are beyond the scope of a particular project site, staff will seek and/or develop alternative designs. On a site-specific basis, the District will utilize alternative design providers and coordinate design efforts with

City and local consulting engineers.

#### TASK 5— BMP IMPLEMENTATION AND INSTALLATION

Objective: Improve water quality and fish and wildlife habitat in Bainbridge Island watersheds by facilitating and assisting with the implementation of BMPs. Provide technical services to cooperators for implementation of farm management practices and habitat enhancement efforts. Offer contracted and/or volunteer labor forces for installation of BMPs. Coordinate joint installation. Provide technical support for rain garden installation.

Scope:

- 5.1 Assist cooperating landowners with supplies and materials lists for implementation of practices and provide on-site project management to oversee installation.
- 5.2 Process cost-share reimbursement or other incentive program components.
- 5.3 Whenever funding is available, contract annually for work crews with the Department of Ecology's Washington Conservation Corp (WCC) for the City. Offer WCC crews to District and partner agency project sites on Bainbridge Island.
- 5.4 Coordinate volunteer labor for the implementation of planting projects with the City's Watershed Council, local schools, and community groups.
- 5.5 Seek partnerships with WDFW, Regional Fisheries Enhancement groups, local tribes, and other local agencies and community groups to combine efforts for project implementation.
- 5.6 Assist cooperating landowners with supplies and materials lists for implementation of rain gardens and if necessary, provide on-site project management to oversee installation.

#### TASK 6— BMP INSPECTION AND MAINTENANCE

Objective: Determine the operational effectiveness of BMPs on water quality and habitat within the City. Monitor the operation and maintenance of installed BMPs. Demonstrate BMPs.

Scope:

- 6.1 Evaluate individual farm and habitat BMPs for operation efficiency and ease of maintenance. Provide follow-up assistance to landowners. Encourage landowners to maintain and monitor farm and habitat BMPs for maximum efficiency and meet landowner needs for solutions to maintenance problems.
- 6.2 Use projects as demonstration sites for other potential cooperators or agencies.

#### TASK 7—INVENTORY

Objective: Address non-point pollution caused by inadequate agricultural management practices. Identify, prioritize and map agriculturally related property within the City.

Scope:

- 7.1 Update the existing inventory of agricultural properties annually.

- 7.2 As part of the inventory process, 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 District will follow up with technical assistance services based on the prioritization. The District's priority list will be re-evaluated annually.
- 7.3 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.
- 7.4 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.

**TASK 8—ADMINISTRATION AND REPORTING**

Objective: To provide project management, including communication, submitting billing invoices, and submitting annual and progress reports.

Scope :

- 8.1 Project management efforts shall include conducting, coordinating, and scheduling project activities, including quality control.
- 8.2 Communication with the City shall be through email, consultation meetings and phone discussions.
- 8.3 Billing invoices, progress reports, and supportive documentation shall be submitted to the City's Project Manager on a quarterly basis.
- 8.4 Maintain all records throughout the duration of the agreement and archive for an additional five years for audit purposes.

<b>Program Breakout</b>	<b>Proposed Budget</b>
Planner Budget	\$29,820.00
Fiscal Administration	\$500.00
WA Conservation Crew	\$4700.00
Travel	\$200.00
Overhead	\$5,580.00
<b>Total</b>	<b>\$40,800.00</b>

## 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.