

POULSBO AGREEMENT DISTRIBUTION SCHEDULE

SUBJECT: ILA City of Poulsbo & KC Conservation District for Raingarden and LID Assitance and Education

CONFORM AS TO DATES & SIGNATURES

- Approved by the Mayor: 3/9/2016
- Approved by the City Council: 3/9/16
- Completion: 12/31/2017
- Recorded: _____
- Certificate of Liability: Required

DISTRIBUTE CONFORMED COPIES AS FOLLOWS:

- City Attorney
- Clerk's Department: Original
- Posted to Library Drive
- Posted to Web Site
- Department: _____
- Mayor
- Other: Contractor

Rhiannon Fernandez
City Clerk

3/22/16
Date

**INTERLOCAL AGREEMENT
2016-2017**

**Between the City of Poulsbo and the Kitsap Conservation District
Regarding Rain Garden & Low Impact Development (LID) Technical Assistance
and Installation, LID Education & Outreach, and Cost-sharing**

PREAMBLE

This Interlocal Agreement (hereinafter "agreement") is by and between the City of Poulsbo (hereinafter "City") and the Kitsap Conservation District (hereinafter "District".)

RECITALS

WHEREAS, the City is committed to preventing stormwater runoff pollution; 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 land use impacts, and support the use of Low Impact Development practices; and

WHEREAS, the services proposed under this agreement will promote improved water quality for local waterways and the mitigation of pollution impacts on fish and wildlife, including shellfish; and

WHEREAS, the District's contribution of services can assist the City in compliance with its NPDES (National Pollutant Discharge Elimination System) Municipal Stormwater Permit in the areas of Runoff Control and Education/Outreach and with the Liberty Bay Watershed Fecal Coliform Bacteria TMDL (Total Maximum Daily Load) objectives; and

WHEREAS, the District has obtained a grant from the Washington State Conservation Commission in the amount of \$50,000 for the purpose of improving water quality for shellfish in a high priority closure area; and

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

WHEREAS, grant funds from the District provide an opportunity for private property owners within the City to obtain financial assistance for LID projects they might not otherwise construct; and

WHEREAS, leveraging City funds allowable for technical assistance with District grant funds for design and installation supports an increase in the number of projects; 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 City and the District desire to enter into an agreement that allows opportunities for collaboration on City capital projects, which may include design, materials, and/or installation services; 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:

AGREEMENT

1. SERVICES BY DISTRICT

The District shall perform such duties and services as are listed on the scope of work attached hereto as Exhibit A. Said services shall be performed in accordance with the approved scope of work and budget specified in Exhibit A. All services funded under this Agreement shall be provided exclusively within the boundaries of incorporated City of Poulsbo. 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. The sum of the District's reimbursement requests during the duration of this Agreement shall not exceed Twenty Five Thousand Dollars (\$25,000) for technical assistance for small-scale LID projects and as contracted for capital projects. 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 Engineer, 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. 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 the work plan.
- b. A description of work performed during the period and progress made to date, including performance indicators that reflect effectiveness of the program elements as set forth in Exhibit 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, 2017, 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 Exhibit B.
- Automobile Liability as described in Exhibit B.

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.

The City shall be named as an additional insured under the District's Commercial General Liability insurance policy with respect to the work performed under this Agreement using ISO Additional Insured endorsement CG 20 10 01 and Additional Insured-Completed Operations endorsement CG 20 37-10 901 or substitute endorsements providing equivalent coverage.

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 Exhibits 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:

City of Poulsbo
200 NE Moe St
Poulsbo, WA 98370
Attention: Diane Lenius, City Engineer

Phone: (360) 779-4078
Fax: (360) 697-8269

Kitsap Conservation District
10332 Central Valley Road
Poulsbo, WA 98370
Attention: Chair of the Board of Supervisors

Phone: (360) 204-5529
Fax: (360) 204-5519

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 9th DAY OF MARCH, 2016.

KITSAP CONSERVATION DISTRICT

CITY OF POULSBO

J. Allpin
Jacqueline Lovely
Chair, Board of Supervisors

Rebecca Erickson
Rebecca Erickson
Mayor

3/9/16
Date

3/14/16
Date

EXHIBIT A
SCOPE OF WORK & BUDGET

2016-2017

Interlocal Agreement

Between the City of Poulsbo and the Kitsap Conservation District

**Regarding Rain Garden & Low Impact Development (LID) Technical Assistance and Installation,
LID Education & Outreach, and Cost-Sharing**

PURPOSE

- Support NPDES permit compliance, environmental stewardship, and TMDL objectives through:
 - ✓ Public education on LID principals and applications
 - ✓ Increased use of LID to mitigate the effects of existing development
 - ✓ Water quality improvements achieved from the LID retrofit projects
- Provide an opportunity for private property owners within the City to obtain financial assistance for small-scale LID projects they might not otherwise construct
- Provide cost reimbursement to private property owners that cannot be provided by the City
- Provide funds for technical assistance for small-scale LID projects
- Provide technical and installation assistance for capital projects
- Leveraged funding provides opportunities for more small-scale LID projects to be constructed

The City of Poulsbo (“City”) has numerous private properties which have no provisions for stormwater quality treatment before discharging the stormwater to the City’s stormwater system or surface waters. The City and the Kitsap Conservation District (“District”) share a common goal to promote Best Management Practices (BMPs) to protect water quality, provide education to landowners on land use impacts, and support the use of Low Impact Development (“LID”) practices.

The District has the expertise and experience to provide education and technical assistance to property owners who are interested in learning about LID or employing stormwater BMPs on their property. In addition, the District can provide technical assistance and installation services for capital projects.

The City and the District desire to enter into this agreement and work collaboratively.

SCOPE OF WORK

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

- Task 1— Education and outreach
- Task 2— Identify opportunities & locations for small-scale LID projects
- Task 3— Implement District rain garden/LID program within City limits
- Task 4— Capital (City) project assistance
- Task 5— Administration, documentation, and reporting

TASK 1— EDUCATION AND OUTREACH

Objective: Promote public knowledge of LID practices and applications.

Scope:

1.1 The District shall present at least one rain garden workshop within the City during early 2016. Additional workshops within the City may be presented. Workshops or classes may be presented in association with the Poulsbo Parks and Recreation Department.

TASK 2— IDENTIFY OPPORTUNITIES & LOCATIONS FOR SMALL-SCALE LID PROJECTS

Objective: Develop a list of potential small-scale rain garden/LID sites based on geographical areas recommended by the TMDL Watershed Assessment, District analysis, and in consultation with City staff.

Scope:

- 2.1 Develop a list of potential sites and facility types
- 2.2 Analyze potential sites for BMP type and estimated costs

TASK 3— IMPLEMENT DISTRICT RAIN GARDEN/LID PROGRAM WITHIN CITY LIMITS

Objective: The District will implement its existing rain garden/LID program for properties within the City limits.

Scope:

- 3.1 Recruit property owners consistent with Task 2 and provide technical support for the design and installation of rain gardens or other small-scale LID projects.
- 3.2 The design of all projects shall be consistent with City codes and standards.
- 3.3 The agreement between the District and property owner shall not be inconsistent with City codes and ordinances.

3.4 The agreement with the property owners shall include a requirement for on-going maintenance which is consistent with City standards. The agreement shall also contain the following provision: “The City of Poulsbo is expressly intended to be a third party beneficiary of this agreement with respect to the property owner’s obligation to perform ongoing maintenance of the rain garden/LID improvement that is the subject of this agreement. The City shall have the right, but not the obligation, to enforce the property owner’s obligation to maintain the rain garden/LID improvement. This provision cannot be deleted or extinguished without the express written consent of the City of Poulsbo.” The property owner’s obligation to maintain the rain garden/LID improvement and the City’s third party beneficiary rights shall be made into a covenant and recorded against the property owner’s land so as to bind the property owners, and their successors and assigns.

TASK 4—CAPITAL (CITY) PROJECT ASSISTANCE

Objective: To provide technical and/or installation assistance for stormwater capital construction projects.

Scope :

4.1 Under a separate contract, provide BMP design, materials, and/or installation labor for LID BMPs associated with City stormwater capital improvement projects.

TASK 5—ADMINISTRATION, DOCUMENTATION, AND REPORTING

Objective: To provide project management, including communication, documentation, and submittal of billing invoices, and reports.

Scope :

- 5.1 Project management efforts shall include conducting, coordinating, and scheduling project activities, including quality control.
- 5.2 Communication with the City shall be through postal mail, email, consultation meetings and phone discussions.
- 5.3 Project documentation shall include a separate file for each project location which contains, at a minimum, a copy of: the signed landowner agreement; the design report; documentation of satisfactory completion; photo(s) of the completed project; and GPS location. Upon site completion, a copy of each file shall be submitted to the City with the subsequent quarterly report.
- 5.4 Billing invoices, progress reports, and supportive documentation shall be submitted to the City’s Project Manager on a quarterly and annual basis.
- 5.5 Maintain all records throughout the duration of the agreement and archive for an additional five years for audit purposes.

BUDGET

PROGRAM BREAKOUT	PROPOSED BUDGET	
	City	District
Rain Garden & LID		
Technical Assistance for small-scale LID projects & outreach/education	Up to \$25,000	---
Cost share for small-scale LID projects	---	Up to \$50,000
TOTAL	\$25,000	\$50,000
Capital Project Assistance		
BMP design, materials, and/or installation labor	Determined at time of contract	---

EXHIBIT B INSURANCE

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 using ISO Additional Insured endorsement CG 20 10 01 and Additional Insured-Completed Operations endorsement CG 20 37-10 901 or substitute endorsements providing equivalent coverage. 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.

