

**POULSBO AGREEMENT DISTRIBUTION SCHEDULE**

**SUBJECT:** 2018-06 Kitsap Conservation District - LID and Water Quality Improvement

**CONFORM AS TO DATES & SIGNATURES**

- Approved by the Mayor: \_\_\_\_\_
- Approved by the City Council: 11/15/17
- Completion: 12/31/17
- Recorded: \_\_\_\_\_
- Certificate of Liability: \_\_\_\_\_

**DISTRIBUTE CONFORMED COPIES AS FOLLOWS:**

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

Rhiannon Fernandez  
City Clerk

1/19/18  
Date

CN2018-06

**INTERLOCAL AGREEMENT**

**2018-2023**

**Between the City of Poulsbo and the Kitsap Conservation District  
Regarding Low Impact Development (LID) and Water Quality Improvement**

**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, education/outreach, and stewardship, and with the Liberty Bay Watershed Fecal Coliform Bacteria TMDL (Total Maximum Daily Load) objectives; and

*WHEREAS*, the Agreement allows the District to provide services within the City; and

*WHEREAS*, a partnership between the City and the District supports resource pooling to provide more benefits at a lower cost; 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*, 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 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**

- A. The type of work to be performed by the District on behalf of the City may include, but is not limited to, one or more of the following: technical assistance to land owners regarding land best management practices that protect water quality; services to property owners related to the feasibility, design and/or construction of low impact development practices; and provision of design, materials, and/or installation services for low impact development practices for City capital projects.
- B. Whenever the City desires to obtain work from the District, the City shall provide a detailed Scope of Work and make a request for said work to the District in writing. The District shall provide a detailed budget and schedule to the City in writing. The City shall notify the District, in writing, of its approval of the budget and schedule and indicate that the District shall proceed with the work.
- C. All services funded under this ILA 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 or in a Scope of Work.

### **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. 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**

- A. 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.
- B. 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**

- A. When applicable, and as defined in any Scope of Work, 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. The report frequency and content shall be described in the Scope of Work.
- B. In general, reports may be required quarterly, annually, at project end, or at other specified intervals or milestones and may require, but not be 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 any program elements set forth in the Scope of Work.
  - c. Description of any adverse conditions that have affected the program objectives and/or time scheduled, and actions taken to resolve these issues.
  - d. Supporting documentation, which may include, but not be limited to, graphics or other information which enhances the usefulness 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, 2023, 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**

- A. The District shall maintain insurance as follows:

Commercial General Liability as described in Exhibit A.

Automobile Liability as described in Exhibit A.

- 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.
- C. 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**

All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by regular postal mail to the representatives and addresses set forth below. Notices may also be given by facsimile or email with the original to follow by regular mail. Notice will be deemed to be given three days following the date of mailing, or immediately if personally served. For service by facsimile or email, service will be effective at the beginning of the next working day. Either party may change its representative and/or address upon providing written notice to the other party.



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

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

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

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

## 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 13<sup>th</sup> DAY OF DECEMBER, 2017.

KITSAP CONSERVATION DISTRICT

CITY OF POULSBO

A. Allpress  
Albert Allpress, Chair, Board of Supervisors

Rebecca Erickson  
Rebecca Erickson, Mayor

12/13/17  
Date

12/14/17  
Date