

**INTERLOCAL AGREEMENT BETWEEN  
THE CITY OF MOUNTLAKE TERRACE AND THE CITY OF EDMONDS  
TO CONTROL AQUATIC NOXIOUS WEEDS IN LAKE BALLINGER**

This Agreement is created under the authority of Chapter 39.34 RCW of the Interlocal Cooperation Act (“Agreement”) and is entered by and between the City of Edmonds and the City of Mountlake Terrace, both municipal corporations under the laws of the State of Washington (individually “Party” and collectively “Parties”), hereafter referred to as “Edmonds” and “Mountlake Terrace” respectively.

**WHEREAS**, Mountlake Terrace and Edmonds have in the past cooperatively shared responsibility for water resource issues in Lake Ballinger in joint ownership of the lake; and

**WHEREAS**, Mountlake Terrace and Edmonds currently participate as member jurisdictions of the Lake Ballinger/McAleer Creek Forum along with Lake Forest Park, to collectively solve issues within the greater Lake Ballinger/McAleer Creek watershed; and

**WHEREAS**, in 2017, lake residents and lake users requested that the Lake Ballinger/McAleer Creek Forum take action to address the problem of the excessive growth of invasive aquatic plants in Lake Ballinger; and

**WHEREAS**, a June 2018 aquatic plant survey indicated that mats of invasive weeds including Eurasian watermilfoil (*Myriophyllum spicatum*), Fragrant waterlily (*Nymphaea odorata*), and Curly leaf pondweed (*Potamogeton crispus*) now cover at least 17 acres of Lake Ballinger, with 80-90% nearshore area coverage. Snohomish County has designated these plants as Class B (Eurasian watermilfoil) and Class C noxious weeds (Fragrant waterlily and Curly leaf pondweed) in Washington State; and

**WHEREAS**, these mat-forming aquatic weeds are negatively affecting the water quality of the lake, by decreasing dissolved oxygen and increasing seasonal phosphorous loading. Low oxygen levels and high phosphorous levels are known water quality issues in Lake Ballinger, having caused lake algae blooms in the past; and

**WHEREAS**, Lake Ballinger residents and lake users and have reported experiencing significant impacts to lake recreational uses (boating, swimming, and fishing) from aquatic noxious weeds, including the risk of entanglement; and

**WHEREAS**, the updated and approved Lake Ballinger/McAleer Creek Forum Capital Improvement Plan developed in 2018 calls for an invasive aquatic weed control project to be jointly undertaken by Mountlake Terrace and Edmonds; and

**WHEREAS**, in 2018-2019, a citizen steering committee composed of lake residents, lake users, city staff, the Nile Golf Course, and an experienced limnologist evaluated the extent of the problem, weighed various solutions, and developed an Integrated Aquatic Vegetation Management Plan (“Plan”) for Lake Ballinger which was reviewed and approved by the Washington Department of Ecology; and

**WHEREAS**, Mountlake Terrace has been awarded a two-year grant from the Washington Department of Ecology to fund the use of herbicides and public education to control invasive aquatic weeds in Lake Ballinger as per the approved Plan;

**NOW, THEREFORE, the Parties agree to the following:**

1. **Purpose.** By entering into this Agreement, the Parties intend to set forth roles and responsibilities for the application of aquatic herbicides in jointly owned Lake Ballinger.
2. **Term.** This Agreement shall take effect on the \_\_\_\_\_ day of \_\_\_\_\_, 2019 (“Effective Date”), and unless terminated in accordance with Section 3, below, shall continue in full force and effect until December 31, 2024. This Agreement may be renewed by mutual written agreement for two consecutive five (5) year periods. Ninety (90) days prior to the end of calendar year 2024 and prior to the end of each renewal period thereafter, each Party shall provide written notice of its intent to renew this Agreement.
3. **Termination.** Either Party may terminate this Agreement with or without cause by providing the other Party with thirty (30) days’ written notice of its intent to terminate. Termination or expiration shall not alter the Parties’ payment obligations for services already rendered, or for the normal and reasonable costs incurred in terminating and closing out the work, and shall not alter the Parties’ respective obligations under Section 6 of this Agreement.
4. **Scope.** Edmonds shall consent and permit a licensed and qualified aquatic herbicide applicator contracted by Mountlake Terrace to apply herbicides to control invasive weeds in Lake Ballinger, including portions of the lake within the Edmonds city limits.
  - 4.1 Mountlake Terrace agrees and shall:
    - A. Apply for a permit through the Washington Department of Ecology (“Ecology”) and obtain an approved Aquatic Plant and Algae Management Permit.
    - B. Through the approved notification process for this permit by the Department of Ecology, notify Lake Ballinger lakeshore residents of the

herbicide application through public notifications, including a public meeting, direct mailings to Lake Ballinger shore residents no less than ten (10) days prior to and no more than forty-two (42) days prior to the herbicide applications, and posting on all lakeshore property two (2) days prior to herbicide application. The notifications will be completed by Mountlake Terrace or through its contractors.

- C. Enter into a professional services contract with a qualified firm, individual or entity to apply Ecology- and EPA-approved herbicide(s) to control invasive weeds in Lake Ballinger.
- D. Pay 100% of the cost for a qualified contractor to perform the application of the Ecology- and EPA-approved herbicide(s) (2019 through 2020 only).

4.2 Edmonds agrees and shall:

- A. Consent and permit Mountlake Terrace to apply Ecology- and EPA-approved herbicide(s) through a licensed and qualified aquatic herbicide applicator to the portions of Lake Ballinger located within Edmonds city limits consistent with the Ecology-approved Lake Ballinger Integrated Aquatic Vegetation Management Plan dated May 2019.
- B. Track and report city staff time spent on this project and report hours quarterly to the City of Mountlake Terrace for the purpose of claiming grant in-kind contribution of staff time.
- C. Coordinate and cooperate with the application of the Ecology- and EPA-approved herbicide(s) by Mountlake Terrace or its contractor, including responding to questions from City of Edmonds residents, and other project administration, public education, and outreach tasks as may be necessary.

**5. Interlocal Cooperation Act Provisions.**

- 5.1 Purpose. See Section 1 above.
- 5.2 Duration. In accordance with Section 2 above, this Agreement shall continue until December 31, 2024 unless renewed by mutual agreement as provided, or unless terminated pursuant to Section 3.
- 5.3 Organization of Separate Entity and its Powers. No separate legal entity is intended to be created pursuant to this Agreement. Administration of this Agreement shall be as set forth in Section 11 below.
- 5.4 Duty to File Agreement with County Auditor. Each City will, within ten (10) days

after this Agreement is executed by both Parties, file this Agreement with the Snohomish County Auditor, or alternatively, list it by subject on its website or other electronically retrievable public source allowed in RCW 39.34.040.

6. **Indemnification and Hold Harmless.** Each of the Parties shall defend, indemnify, and hold the other Party, their officers, officials, employees and agents harmless from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from that other party's negligent acts or omissions in performing under this Agreement or Contract. No Party will be required to defend, indemnify, or hold the other Party harmless if the claim, suit or action for injuries, death, or damages is caused by the sole negligence of that party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each party's own negligence. Each Party agrees that its obligations under this provision include, but are not limited to, any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this reason, each of the Parties, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.
7. **Required Insurance.** Each Party shall maintain its own insurance and/or self-insurance or equivalent insurance pool coverage for its liabilities from damage to property and/or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance of or lack thereof, of insurance and/or self- insurance or equivalent insurance pool coverage shall not limit the liability of the indemnifying Party to the indemnified Party.
8. **No Assignment without Authorization.** Neither Party shall assign or sublet its rights or responsibilities under this Agreement without the written authorization of the other Party. Written authorization shall not be unreasonably withheld.
9. **Dispute Resolution.** If either Party claims that the other Party has breached any term of this Agreement, the following procedures shall be followed if and when informal communications, such as telephone conversations, emails or face to face meetings fail to satisfy the claiming Party, or one of the Parties elects to trigger the dispute resolution process at any time, in the event of disputes or disagreements concerning the subject of this Agreement.
  - a. The claiming Party's Designated Representative shall provide a written notice to the other Party's representative of the alleged breach. The notice shall identify the act or omission at issue and the specific term(s) of the Agreement that the complaining Party alleges was violated.

- b. The responding Party's Designated Representative shall respond to the notice in writing within fifteen (15) working days. The response shall state the responding Party's position as well as what, if any, corrective action the responding Party agrees to take.
  - c. The complaining Party shall reply in writing, indicating either satisfaction or dissatisfaction with the response. If satisfied, any corrective action shall be taken within fourteen (14) working days of receipt of the responding Party's reply unless otherwise mutually agreed upon. If dissatisfied, the complaining Party shall call an in-person meeting to include the respective department directors. The meeting shall occur within a reasonable period of time and shall be attended by the Designated Representatives of each Party, and such others as they individually invite.
  - d. If the complaining Party remains dissatisfied with the results of the meeting, it shall then refer the matter to Mountlake Terrace's City Manager and Edmonds' Mayor, or to their designees, for resolution. If the issue is not resolved at this level within thirty (30) days, then either Party may require in writing that the matter shall be reviewed in a non-binding, structured mediation process developed on a cooperative basis by the Parties, and the Parties shall consider in good faith any recommendations or settlements arising from such process. All of the steps preceding shall be a prerequisite to either Party suing under this Agreement for breach, specific performance, or any other relief related to this Agreement.
10. **Severability.** If any term of this Agreement is held invalid or unenforceable, the remainder of the Agreement will not be affected but continue in full force.
  11. **Designated Representatives.** Each Party shall designate a person who shall be responsible for handling the administrative needs regarding the use of any facilities subject to this Agreement and the implementation of this Agreement. Mountlake Terrace's Designated Representative shall be the Stormwater Program Manager. City of Edmond's Designated Representative shall be the Stormwater Technician.
  12. **Non-Waiver.** The failure by either Party to insist on strict performance of or compliance with any term or condition of this Agreement by the other Party shall not constitute or be construed as a waiver or relinquishment of the Party's right thereafter to insist on strict performance of or compliance with that term or condition, or any other term or condition, of this Agreement, and the same shall continue in full force and effect.
  13. **Records.** Each Party shall maintain records necessary to carry out the purposes of this Agreement in accordance with generally accepted accounting principles. Such records shall be available during normal working hours for review by the other Party, its accounting representatives, and the State Auditor.

- 14. **No Agency Relationship.** The Parties to this Agreement are independent entities. This Agreement does not and shall not be interpreted or construed to create any agency relationship between the Parties.
- 15. **Interpretation/Venue.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action arising out of or related to this Agreement shall be in the Snohomish County Superior Court.
- 16. **Entire Agreement.** This Agreement is the entire Agreement between the Parties and supersedes and merges with any prior agreements of the Parties, written or oral. This Agreement shall be amended only in writing with the written Agreement signed by both Parties.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed on the later of the dates set forth below.

City of Mountlake Terrace

City of Edmonds

*Stephen [Signature]*  
City Manager Scott Hugill

*David O. Earling [Signature]*  
Mayor David O. Earling

Date: 7-23-2019

Date: 6.25.19

Approved as to Form

Approved as to Form

*Gregory G. Schrag [Signature]*  
City Attorney Gregory G. Schrag

*Sharon [Signature]*  
Office of the City Attorney