

INTERLOCAL AGREEMENT FOR AQUATIC PLANT AND ALGAE MAINTENANCE SERVICES

BETWEEN

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

AND

CITY OF TACOMA

THIS INTERLOCAL AGREEMENT FOR SERVICES (Agreement) is entered into this ____ day of _____, 2020, by and between **WASHINGTON DEPARTMENT OF FISH AND WILDLIFE**, a political subdivision of the State of Washington (herein referred to as "WDFW") and the undersigned, **CITY OF TACOMA** (herein referred to as "CITY").

WHEREAS, the City of Tacoma is a municipal corporation operating under the laws of the state of Washington as a First Class City and has authority pursuant to the Interlocal Cooperation Act (RCW Ch. 39.34) to enter into contracts with other public agencies to perform any government service authorized by law, and

WHEREAS, the CITY has a need for specific aquatic plant and algae maintenance services, and has requested said services as described below to be performed by the Washington Department of Fish and Wildlife, Noxious Weed Program, and

WHEREAS, the Washington Department of Fish and Wildlife is a political subdivision of the state of Washington and public agency for purposes of the Interlocal Cooperation Act and is authorized to provide the services described herein,

WHEREAS, WDFW has experience providing aquatic plant and algae maintenance services and agrees to provide the services described in Exhibit "A" to the City at the convenience of the Washington Department of Fish and Wildlife;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, it is mutually agreed by and between WDFW and the CITY as follows:

SECTION 1. PURPOSE. The purpose of this Agreement is to establish the rights, duties and responsibilities of the parties with regards to aquatic plant and algae maintenance services requested by the City and any costs associated with this work.

SECTION 2. SCOPE OF WORK/SERVICES. WDFW agrees to provide aquatic plant and algae maintenance service more specifically described in **Exhibit A**, attached hereto and incorporated herein (Scope of Services) at such locations as may be identified by the City, including but not limited to, the Flett Stormwater Retention Ponds. The CITY shall specify the location and scope of the work to be provided by WDFW and shall annually provide WDFW with a list of the locations for the work to be performed for each year of this Agreement. Any work requested from the CITY shall be initiated through written "Work Authorizations" in the form of **Exhibit B**, which shall identify the specific activities to be

performed and estimated budget. The CITY shall be responsible for acquiring all permits required for the Scope of Services, and for providing such permits to WDFW.

SECTION 3. COMPENSATION AND PAYMENT. The total price to be paid by the CITY for the CONTRACTOR'S full and complete performance of the Scope of Work hereunder shall not exceed **\$60,000** without the written consent of the CITY.

SECTION 4. COMPENSATION AND BILLING PROCEDURE. The CITY has agreed to compensate WDFW for the actual work completed in the maximum amount of **\$60,000.00** for the initial term of this Agreement and an additional maximum amount of **\$60,000.00** for each term of renewal, for a total maximum amount of amount of **\$300,000** to complete the described work or services. Compensation for the services provided on an annual basis shall not exceed the maximum amount without the authorization of the City.

The CITY shall compensate WDFW for the services and deliverables performed under this Contract on the basis of Time and Materials according to the rates as set forth below.

A. The CITY will reimburse WDFW for the actual costs of providing services, including salaries and benefits of WDFW employees directly providing the services estimated to be approximately 36.90_per hour; vehicle mileage at the current State of Washington approved rate (currently at \$.56 per mile); materials and supplies necessary to provide the services, and indirect costs at WDFW's current federally approved indirect cost rate (currently 31.82% applied against all direct costs). The maximum consideration payable to WDFW under this Contract shall not exceed \$60,000 per calendar year.

B. The labor, equipment use and materials and supplies costs as set forth above will be billed no later than the sixtieth (60th) day of the month following the month in which the services were performed. Payments by the CITY will be due within thirty days of receipt of the billing. Monthly payments that are not paid within the allotted time period shall be considered delinquent. Delinquent charges shall accrue interest on the unpaid balance, from the date of delinquency until paid, at an interest rate of one half of one percent (0.5%) per month.

C. WDFW acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Agreement. If the CITY is assessed, made liable, or responsible in any manner for such charges or taxes, WDFW agrees to hold the CITY harmless from such costs, including attorney's fees. WDFW at its expense, shall obtain and keep in force any and all necessary licenses and permits.

SECTION 5. TERM. This Agreement shall remain in full force and effect from the Effective Date until midnight December 31, 2020 and will automatically be renewed for four (4) consecutive one (1) year terms unless, no less than 14 days prior to the end of the initial term or any one-year renewal term, either party gives written notice to the other party of intent not to renew the Agreement. This Agreement shall be effective upon execution by all of the parties and filing of a fully executed copy hereof with the Office of the Pierce County Auditor, or in the alternative, listed by subject on the City's or the WDFW's web site or other electronically retrievable public source.

SECTION 6. INDEMNIFICATION AND HOLD HARMLESS. To the fullest extent permitted by law, WDFW shall defend, indemnify, and save harmless the CITY, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, to the extent resulting from or arising

out of, the acts or omissions of WDFW, its officers, employees, or agents associated with this Agreement; provided that, this provision shall not apply to the extent that damage or injury results from the fault of the CITY, or its officers, agents, or employees. The term “fault” as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended. The WDFW specifically assumes potential liability for actions brought by the WDFW’S own employees against the CITY and, solely for the purpose of this indemnification and defense, the WDFW specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE WDFW RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

The CITY shall defend, indemnify and save harmless WDFW, its officers, employees and agents from any and all costs, claims, judgments, or awards of damages, to the extent resulting from or arising out of, the acts or omissions of the CITY, its officers, employees or agents associated with this Agreement; this provision shall not apply to the extent that damage or injury results from the fault of the WDFW, or its officers, agents, or employees. The term “fault” as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended. The City specifically assumes potential liability for actions brought by the City’s own employees against the WDFW and, solely for the purpose of this indemnification and defense, the City specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CITY RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

SECTION 7. NO THIRD-PARTY BENEFICIARY. WDFW does not intend by this Agreement to assume any contractual obligations to anyone other than the CITY, and the CITY does not intend by this Agreement to assume any contractual obligations to anyone other than the WDFW. WDFW and the CITY do not intend that there be any third-party beneficiary to this Agreement.

SECTION 8. NON-DISCRIMINATION. WDFW and the CITY certify that they are Equal Opportunity Employers.

SECTION 9. ASSIGNMENT. Neither WDFW nor the CITY shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

SECTION 10. NOTICE. Any formal notice or communication to be given by WDFW to the CITY under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

City of Tacoma
Center for Urban Waters
326 E D St.
Tacoma, WA 98421
Attention: John Burk/Chris Burke

Any formal notice or communication to be given by the CITY to the WDFW under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

Washington Department of Fish and Wildlife
PO Box 43135
Olympia, WA 98504-3135
Attention: Jeff Hugdahl, Contracts Manager

The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either the CITY or the WDFW giving notice thereof to the other as herein provided.

SECTION 11. CONTRACT ADMINISTRATION AND RIGHT TO AUDIT. Environmental Services Division Manager, **John Burk** or designee, shall have primary responsibility for contract administration and approval of services to be performed by WDFW, and shall coordinate all communications between WDFW and the CITY. WDFW shall, at such times and in such form as the CITY may reasonably require, furnish the CITY with periodic status reports pertaining to the services undertaken pursuant to this Agreement. Upon the CITY's request, WDFW shall make available to the City all accounts, records, and documents related to the Scope of Work for the CITY's inspection, auditing, or evaluation during normal business hours as reasonably needed by the City to assess performance, compliance, and/or quality assurance under this Agreement.

SECTION 12. WAIVER. No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement.

SECTION 13. ENTIRE AGREEMENT. This Agreement contains all of the Agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

SECTION 14. AMENDMENT. Provisions within this Agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved, and executed by duly authorized agents of both parties.

SECTION 15. SEVERABILITY. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

SECTION 16. COUNTERPARTS. This Agreement may be signed in two or more counterparts, which taken together shall constitute the complete agreement between the parties. Signatures to this Agreement by the parties transmitted via electronic mail shall be acceptable and binding.

SECTION 17. CHOICE OF LAW, JURISDICTION AND VENUE. This Agreement shall be governed by, construed, and enforced in accordance with the laws and regulations of the United States, the State of Washington, and the ordinances of Pierce County.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates set forth below to be effective upon the Effective Date

CITY OF TACOMA:

**STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE:**

City Manager

Title: _____

Date: _____

Date: _____

Michael P. Slevin, III, P.E. Date
Environmental Services Director

Deputy City Attorney Date
(as to form only)

Finance Director Date

Attest:

City Clerk Date

EXHIBIT A

Scope of Work

Flett Stormwater Retention Ponds Weed Project

Background

Swamp smartweed (*Polygonum hydropiperoides*) is a perennial wetland plant affecting water retention infrastructure at the Flett Stormwater Retention Ponds in Tacoma, WA. A series of four manmade ponds, where water can be controlled, are connected by Flett Creek (Figure 1). Water is pumped into a marsh southwest of Pond #4, where Flett Creek reforms and eventually runs into Chambers Creek. In the fall, after smartweed has senesced, the long, woody stems dislodge and can plug screens and pumps.



Figure 1. Flett Creek stormwater retention ponds with emergent/surface aquatic vegetation outlined.

Management

Herbicide Option

Since smartweed is a perennial plant, control can start in the summer as soon as the majority of growth has occurred and the plant has emerged enough to allow a foliar application of herbicides. The treatment would use aquatically-approved imazapyr (Table 1) and adjuvants applied under the Aquatic Plant and Algae Management General Permit (NPDES). The herbicides are non-selective and the imazapyr should provide three months of residual control. In addition, other noxious weeds will be treated (e.g yellow flag iris).

Herbicides would be applied using a combination of boom and handgun off of a Marshmaster (low ground pressure amphibious tractor) or watercraft (e.g. airboat, canoe, skiff), depending on site conditions. It is estimated that it would take five days over several months to complete the application of herbicide in four Flett ponds if plant phenology and environmental conditions (i.e. no rain and low water in the ponds) were appropriate. However, the complete treatment of all ponds may need to spread over several years to maintain water quality.

Table 1. Estimated acreage of emergent/surface aquatic vegetation at Flett by pond number and maximum herbicide label rate for imazapyr¹.

Pond Number	Acres	Pints Imazapyr (2 pts/ac)
1	3.00	6.00
2	4.43	8.86
3	2.34	4.68
4	1.97	3.98
Total	11.74	23.48

¹If appropriate, another herbicide approved by the Department of Ecology may be used.

<https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Aquatic-pesticide-permits/Aquatic-plant-algae-management>

Table 2. Budget for herbicide application to smartweed at Flett Ponds 1-4.

Category	Description	Cost
Labor	Salaries & benefits for up to five field staff	\$7,379
Goods & Services	Fuel, herbicide, safety supplies	\$1,436
Equipment	Marshmaster lease/parts/repair, sprayer parts/repair, airboat parts/repair	\$3,690
Travel	Per diem, lodging, mileage	\$3,715
Subtotal		\$16,220
Indirect		31.82% \$5,161
Total		\$21,381

Mowing Options

The Marshmaster has a brushhog-type mower and is capable of moving over very soft substrates. If the smartweed had very little water under it during the driest part of the summer, or early fall, the Marshmaster could be used to mow it. Mowing would produce smaller pieces that could decompose before fall rains, or pieces small enough to pass through the water infrastructure without interfering with its operation. A second alternative would be to attach a flail-type mower to create even smaller pieces of plant material.

Unfortunately, mowing does not affect the seeds that have already been produced and could produce root fragment capable of colonizing new areas. Also, neither mowing method will cut plants and stems below the waterline. For these reasons, mowing may have a limited role.

Table 3. Budget for mowing smartweed at Flett Ponds 1-4.

Category	Description	Cost
Labor	Salary & benefit for up to five field staff	\$7,379
Goods & Services	Fuel, herbicide, safety supplies	\$500
Equipment	Marshmaster lease/parts/repair, sprayer parts/repair, airboat parts/repair	\$2,500
Travel	Per diem, lodging, mileage	\$3,715
Subtotal		\$14,094
Indirect	31.82%	\$4,485
Total		\$18,579

Tacoma Environmental Services, Actions Prior to Project

According to Ecology, Tacoma Environmental Services would need to apply for coverage under Aquatic Plant and Algae Management General Permit for a vendor to treat smartweed with herbicides.

To be exempt from the permit, Flett would need to be:

Constructed **detention or retention ponds** designed specifically for wastewater or stormwater treatment that do not discharge to other water bodies during and for two weeks after treatment, or where Ecology regulates the discharge under another permit that allows chemical treatment.

Tacoma Environmental Services, Coverage

Ecology has issued coverage for the aforementioned herbicide treatment on Flett Stormwater Ponds under the Aquatic Plant and Algae Management General Permit (Permit #WAG994399)

issued on 09/17/18 (Exhibit C). This permit allows herbicide application between July 15 and October 31 annually.

EXHIBIT "B"

**City of Tacoma Environmental Services
Work Authorization**

Date:		City Staff Contact:	John Burk
Project Name:	Aquatic Plant and Alga Maintenance Services – Flett Stormwater Ponds	Phone:	253-502-2161
Project No.:		Fax:	253-502-2107
Request Made To:	WDFW		
WDFW Contact Phone:			

Scope of Work Authorization			
<p>Control swamp smartweed growth in Flett stormwater holding ponds 1, 2, 3 and 4 using a foliar herbicide application. The goal is to prevent plugging of screens and pumps that pump water out of downstream pond 4 into the wetland complex, and thus prevent flooding. The treatment would use aquatically-approved imazapyr and adjuvants applied under the Aquatic Plant and Algae Management General Permit (NPDES). The herbicides are non-selective and the imazapyr should provide three months of residual control. Herbicides would be applied using a combination of boom and handgun off of a Marshmaster (low ground pressure amphibious tractor) or watercraft, depending on site conditions. Mowing is an alternative in the event herbicide application is not feasible.</p>			
Budget Estimate: \$21,381			
Task Request Approval:			
	Written Name		Title
	Signature		Date

Exhibit C. Coverage Letter



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

September 17, 2018

Chris Burke
City of Tacoma
326 East D Street
Tacoma, WA 98421

Permit Number: WAG994399
Site Name: Flett Stormwater Ponds

RE: Issuance of Coverage under the Aquatic Plant and Algae Management General Permit

Dear Mr. Burke:

The Washington Department of Ecology (Ecology) received your application for coverage under the Aquatic Plant and Algae Management General Permit (APAM permit). Ecology is issuing you coverage under the APAM permit as of September 17, 2018. **Retain this letter with your permit documents. It is part of the official record of permit coverage.**

A copy of the APAM permit, forms, and supporting documents may be viewed and downloaded at <https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Aquatic-pesticide-permits/Aquatic-plant-algae-management>.

Please take time to read the entire permit. It contains the requirements you must follow to maintain compliance. Contact Jon Jennings (email and phone number listed below) if you have questions about the APAM permit, or would like to receive a hard copy.

Treatment Timing Window

Ecology is conditioning this permit coverage for some active ingredients to set allowed treatment periods for mitigating impacts to salmonids and Washington Department of Fish and Wildlife priority habitats and species using Treatment Timing Windows. For this coverage, the Treatment Timing Windows are:

Waterbody Treatment Timing Window: **July 15 to October 31, dates inclusive.**

To determine which active ingredients are subject to Treatment Timing Windows see permit condition S4.D, Table 3. All current Treatment Timing Windows are available here: <https://ecology.wa.gov/Asset-Collections/Doc-Assets/Water-quality/Freshwater/Water-Quality-Permits/Aquatic-Pesticides-Permits/wdfwtimingtable>.



Chris Burke
September 17, 2018
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Permit Fees

State law (RCW 90.48.465) requires that all Permittees pay an annual permit fee based upon the state fiscal year. The state fiscal year begins each year on July 1, and ends June 30 the following year. Ecology mails permit fee bills to all Permittees annually. Permittees that have permit coverage on July 1 will receive a permit fee bill. If you would like more information on the permit fee process, contact the Water Quality Program Permit Fee Administrator at (360) 407-6425.

Appeal

The issuance of permit coverage may be appealed within 30-days of receiving this letter as detailed in the Appeal of General Permit Coverage focus sheet, which may be viewed and downloaded at <https://fortress.wa.gov/ecy/publications/documents/1710007.pdf>.

Questions and Permit Technical Assistance

If you have questions about this letter, or you have questions or need more information about APAM permit requirements please contact Jon Jennings at (360) 407-6283 or jonathan.jennings@ecy.wa.gov.

Sincerely,



Vincent McGowan, Manager
Program Development Services Section
Water Quality Program