

3-17-98

LAM:lmM24

clerk 4/3/98

Introduced By:

MAGGI FIMIA

Proposed No.:

98-261

1 MOTION NO. **10482**

2 A MOTION authorizing an interlocal agreement with the  
3 cities of Edmonds, Lake Forest Park and Mountlake Terrace  
4 to fund construction of a project to improve fish habitat and  
5 water quality in McAleer Creek.

6 WHEREAS, the dissolved oxygen level of upper McAleer Creek is frequently  
7 below state water quality standards in the summer and is sometimes low enough to  
8 endanger fish residing in the creek and to cause odor problems related to anoxic water,  
9 and

10 WHEREAS, the low oxygen levels of the creek are caused by the hypolimnetic  
11 withdrawal system of the lake, which was constructed to release anoxic water from near  
12 the lake bottom in order to reduce phosphorus loading in the lake, and

13 WHEREAS, the proposed project is intended to correct the anoxic water problem  
14 by installing an aerator in the outlet of the hypolimnetic withdrawal system, and

15 WHEREAS, King County and the cities participating in this agreement share an  
16 interest in correcting the anoxic water problem because Mountlake Terrace and Edmonds  
17 share jurisdiction of Lake Ballinger, and McAleer Creek passes through Mountlake  
18 Terrace, unincorporated King County, and Lake Forest Park before entering Lake  
19 Washington.

1 WHEREAS, King County and these cities desire to share in the costs and  
2 responsibilities of the project, which will provide collective benefits, and

3 WHEREAS, pursuant to chapter 39.34 RCW, the Interlocal Cooperation Act,  
4 King County and these cities are each authorized to enter into an agreement for  
5 cooperative action;

6 NOW, THEREFORE BE IT MOVED by the Council of King County:

7 The executive is authorized to enter into an interlocal agreement, in substantially  
8 the same form as attached, to construct the McAleer Creek/Lake Ballinger Aeration  
9 Project in cooperation with the cities of Edmonds, Lake Forest Park and Mountlake  
10 Terrace.

11 PASSED by a vote of 12 to 0 this 22nd day of June,  
12 1976.

13 KING COUNTY COUNCIL  
14 KING COUNTY, WASHINGTON

15 *Louise Miller*  
16 Chair

17 ATTEST:

18 *Edvat Francis*  
19 Deputy Clerk of the Council

20 Attachments: Interlocal agreement between King County, Mountlake Terrace, Edmond  
21 and Lake Forest park for the McAleer Creek/Lake Ballinger Aeration  
22 Project.

**AN INTERLOCAL AGREEMENT BETWEEN KING COUNTY,  
MOUNTLAKE TERRACE, EDMONDS, AND LAKE FOREST PARK  
FOR THE MCALEER CREEK/LAKE BALLINGER AERATION PROJECT**

This Agreement is made and entered into by King County, Washington, hereinafter referred to as "King County", the City of Mountlake Terrace, hereinafter referred to as "Mountlake Terrace", the City of Edmonds, hereinafter referred to as "Edmonds", and the City of Lake Forest Park, hereinafter referred to as "Lake Forest Park", collectively known as the "Parties", for the purpose of designing and constructing the Lake Ballinger/McAleer Creek Aeration Project ("Project") to improve the water quality of upper McAleer Creek, downstream of Lake Ballinger.

WHEREAS, the dissolved oxygen level of upper McAleer Creek is frequently below state water quality standards in the summer and is sometimes low enough to endanger fish residing in the creek and to cause odor problems related to anoxic water, and

WHEREAS, the low oxygen levels of the creek are caused by the hypolimnetic withdrawal system of the lake, which was designed to release anoxic water from near the lake bottom to reduce phosphorus loading in the lake, and

WHEREAS, the Project is intended to correct this problem by installing an aerator in the outlet of the hypolimnetic withdrawal system, and

WHEREAS, the Parties share an interest in correcting this problem because, while Mountlake Terrace and Edmonds share jurisdiction around Lake Ballinger, McAleer Creek passes through Mountlake Terrace, unincorporated King County and Lake Forest Park before entering Lake Washington, and

WHEREAS, the Parties desire to share in the costs and responsibilities of the Project, as further described in this Agreement, and

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, the Parties are each authorized to enter into an agreement for cooperative action;

1 NOW THEREFORE, the Parties agree to the following:

2 **I. Purpose of Agreement**

3 The purpose of this Agreement is to allow the Parties to share in the cost and  
4 responsibilities of the project to address low levels of dissolved oxygen in upper  
5 McAleer Creek.

6 **II. Project Management**

7 The Project will be managed by a Project Management Committee (PMC) composed  
8 of: one King County staff member, designated by the King County Water and Land  
9 Resources Division Manager; one Mountlake Terrace staff member, designated by the  
10 Mountlake Terrace City Manager; one Edmonds staff member, designated by the  
11 Mayor of Edmonds; and one Lake Forest Park staff member, designated by the Lake  
12 Forest Park City Administrator. In carrying out this responsibility, the PMC shall  
13 determine the most appropriate party to perform each task of the Project, based on  
14 contribution to the overall cost-effectiveness of the work performed. The PMC will use  
15 consensus to reach agreement. In the event that the designated staff members cannot  
16 reach agreement on an issue, the issue will be forwarded for resolution to the persons  
17 who appointed the PMC members. Their collective determination shall be final and  
18 binding to the Parties. In the event that they are unable to resolve any dispute arising  
19 under this agreement, the Parties may pursue other remedies of law.

20 **III. Description of Project Activities:**

21 Through this Agreement, Lake Forest Park agrees to contribute \$3,000 toward the  
22 Project; the other Parties agree to share evenly the remaining costs of the Project,  
23 including design, permitting and construction, up to a maximum Project cost of  
24 \$33,000. The total Project cost is estimated to be \$22,520. The cost share for King  
25 County, Mountlake Terrace and Edmonds shall be based on actual costs. Exhibit A,

1 which is attached hereto and incorporated by reference herein, provides a description of  
2 the Project, including a list of tasks, a breakdown of the estimated cost by task, and a  
3 timeline. Accordingly, the Parties agree to the division of responsibilities for the  
4 Project as set forth below:

5 A. King County shall:

- 6 1. Perform all Project Tasks identified in Exhibit A, unless determined  
7 otherwise by the PMC.
- 8 2. Consult with the PMC on a regular basis, including all critical milestones  
9 identified in Exhibit A, and as requested by any PMC member, in  
10 performing these tasks. The PMC must review and approve King County's  
11 design of the Project before King County may proceed with subsequent  
12 tasks for the Project.
- 13 3. Charge hourly rates approximating those shown in Exhibit A for the tasks  
14 that it performs, subject to relevant economic adjustments, such as cost of  
15 living increases adopted by the King County Council.
- 16 4. Pay one-third of the total cost for construction of the project, less \$1,000,  
17 including design, permitting, materials and labor costs. The amount paid  
18 by King County for these costs shall not exceed \$10,000.

19 B. Mountlake Terrace shall:

- 20 1. Be lead agency for the SEPA process for the Project.
- 21 2. Organize and hold any necessary public meetings and acquire any necessary  
22 easement and/or right of entry for the Project.
- 23 3. Pay one-third of the total cost for construction of the Project, less \$1,000,  
24 including materials and labor costs. The amount paid by Mountlake  
25 Terrace for these costs shall not exceed \$10,000.

1           4. Accept the Project after construction is completed, and own, operate, and  
2           maintain the Project thereafter at its own cost.

3           C. Edmonds shall: Pay one-third of the total cost for construction of the Project, less  
4           \$1,000, including materials and labor costs. The amount paid by Edmonds for  
5           these costs shall not exceed \$10,000.

6           D. Lake Forest Park shall: Pay \$3,000 toward the total cost for construction of the  
7           Project.

8 **IV. Billing and Payment**

9 Provisions regarding billing and payment are as follows:

10          A. King County shall bill each of Mountlake Terrace, Edmonds and Lake Forest Park  
11          for one-fourth of the total actual construction costs until each billing has reached  
12          \$3,000. Thereafter, King County shall bill Mountlake Terrace and Edmonds for  
13          one-third of the remaining actual construction costs. In-kind credit shall be given to  
14          any Party for its performance of Project Tasks at the approximate hourly rate shown  
15          in Exhibit A, subject to relevant economic adjustments such as cost of living  
16          increases adopted by the King County Council, unless the PMC should agree on a  
17          different hourly rate.

18          B. Mountlake Terrace, Edmonds and Lake Forest Park shall pay King County for the  
19          invoiced amounts within 30 days of receipt.

20          C. The parties recognize that funds for this project have been appropriated and are  
21          available. Nothing herein shall be construed as obligating any of the Parties to  
22          expend money in excess of appropriations authorized by law and administratively  
23          allocated for this work.

24

25

1 **V. Duration, Termination and Amendment**

2 The Parties agree to the following:

3 A. This Agreement is effective upon signature by the Parties and remains in effect until  
4 December 31, 1999, or until 30 days after Mountlake Terrace accepts the project as  
5 complete, whichever is earlier.

6 B. This Agreement may be terminated by any Party upon 30 days written notice. In  
7 the event of termination, payment will be made for work performed to the date of  
8 termination in the proportion agreed to by the Parties.

9 C. This Agreement may be amended, altered, clarified, or extended only by the written  
10 agreement of the Parties hereto. An equitable adjustment in cost or period of  
11 performance or both may be made if required by the change.

12 D. This Agreement is not assignable by any Party, either in whole or in part.

13 This Agreement is the complete expression of the terms hereto and any oral or  
14 written representations or understandings not incorporated herein are excluded. The  
15 Parties recognize that time is of the essence in the performance of the provisions of  
16 this Agreement. Waiver of any default shall not be deemed to be waiver of any  
17 subsequent default. Waiver of breach of any provision to this Agreement shall not  
18 be deemed to be a waiver of any other or subsequent breach and shall not be  
19 construed to be a modification of the terms of the agreement unless stated to be such  
20 through written approval by the Parties which shall be attached to the original  
21 Agreement.

22 **VI. Counterparts**

23 This Agreement may be executed in counterparts.

24 **VII. Indemnification and Hold Harmless**

25 The Parties agree to the following:

1 Each party shall protect, defend, indemnify, and save harmless the other Party, its  
2 officers, officials, employees, and agents, while acting within the scope of its  
3 employment as such, from any and all costs, claims, judgments, and/or awards of  
4 damages, arising out of or in any way resulting from that Party's own negligent acts or  
5 omissions. Each Party agrees that its obligations under this subparagraph extend to any  
6 claim, demand, and/or cause of action brought by, or on behalf of, any of its employees  
7 or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with  
8 respect to the other Party only, any immunity that would otherwise be available against  
9 such claims under the Industrial Insurance provisions of Title 51 RCW.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 If any Party resorts to litigation to enforce this indemnification and agreement to  
2 defend, the prevailing Party in such litigation shall be entitled to recover the costs and  
3 expenses of such litigation, including reasonable attorney's fees.

4 IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the \_\_\_ day of  
5 \_\_\_\_\_, 19\_\_.

7 Approved as to Form

**King County:**

8 By: \_\_\_\_\_

By: \_\_\_\_\_

9 Title: Deputy Prosecuting Attorney

Title: King County Executive

11 Approved as to Form

**City of Mountlake Terrace:**

12 By: \_\_\_\_\_

By: \_\_\_\_\_

13 Title: \_\_\_\_\_

Title: \_\_\_\_\_

15 Approved as to Form

**City of Edmonds:**

16 By: \_\_\_\_\_

By: \_\_\_\_\_

17 Title: \_\_\_\_\_

Title: \_\_\_\_\_

19 Approved as to Form

**City of Lake Forest Park:**

20 By: \_\_\_\_\_

By: \_\_\_\_\_

21 Title: \_\_\_\_\_

Title: \_\_\_\_\_

23 Attachments:

24 Exhibit A: McAleer Creek/Lake Ballinger Aeration Project Description