

AGREEMENT BETWEEN SNOHOMISH COUNTY
AND KETCHUM SHORES IMPROVEMENT CLUB TO COST SHARE
FOR LAKE MANAGEMENT SERVICES

This AGREEMENT BETWEEN SNOHOMISH COUNTY AND KETCHUM SHORES IMPROVEMENT CLUB TO COST SHARE FOR LAKE MANAGEMENT SERVICES (the “Agreement”) is made and entered into by and between Snohomish County, a political subdivision of the State of Washington (the “County”), and Ketchum Shores Improvement Club, a Washington nonprofit corporation (the “Club”).

I. PURPOSE OF AGREEMENT AND FUNDING SOURCES

The County and the Club are collaborating to conduct lake restoration activities in Lake Ketchum to manage and control blue-green and toxic algae blooms and phosphorus pollution. The Club is a non-profit with members who are lake area residents with the mission of working together for the health and protection of Lake Ketchum. The County will perform restoration activities consistent with those described in the 2012 Lake Ketchum Algae Control Plan (preferred alternative 4) as set forth in Section II of the Agreement (“Project Services”).

The County and the Club will share in the annual cost of the Project Services. Funding for Project Services will come from a combination of the following funding sources: 1) surface water management utility fees collected by the County under Snohomish County Code (SCC) 25.20.020 (“County Revenue”); 2) service charges collected by the County for Lake Ketchum restoration under SCC 25.20.055 (“Lake Ketchum Service Charges”); 3) funds collected by the Club; and 4) grant funding where available and applicable to this Project (“Grant Funds”). This Agreement sets out the relative contribution of the County and the Club from each funding source and the terms and conditions by which the Club is to compensate the County for the Project Services.

II. DESCRIPTION OF PROJECT SERVICES

The 2012 Lake Ketchum Algae Control Plan (the “Plan”) identifies five lake restoration elements recommended to achieve the Project goal of managing and controlling blue-green and toxic algae blooms and phosphorus pollution in Lake Ketchum:

- Element 1 - Large-Scale phosphorus inactivation treatments for lake sediments (completed in 2015)
- Element 2 - Annual maintenance phosphorus inactivation treatments
- Element 3 - Protection of wetlands around lake inlet
- Element 4 - Encouraging changes in residential practices to reduce phosphorus pollution
- Element 5 - Monitoring of lake water quality and adaptive management

Project Services covered by this Agreement will consist of the following:

1. Implementation of Element 2, Annual Maintenance Phosphorus Inactivation Treatments:
 - Hire and manage qualified contractors to supply and apply phosphorus inactivation products.
 - Obtain the Aquatic Plant and Algae Management permit from the Washington State Department of Ecology.
 - Obtain permission from the Washington State Department of Fish and Wildlife for boat launch access during treatments.
 - Conduct permit-required notifications and outreach.
 - Coordinate with Club on annual planning.
 - Conduct outreach to community regarding treatment activities.
 - Research emerging phosphorus inactivation options and best available science.

2. Implementation of Element 5, Monitoring Lake Water Quality and Adaptive Management:
 - Implement water quality monitoring, including taking samples and measurements of water quality indicators.
 - Contract with laboratory services for water quality sample analysis.
 - Manage water quality data, including analysis and reporting.
 - Report on water quality results to the Club during an annual meeting and publish results on the Snohomish County website.

3. Other Project Management:
 - Report to the Club on Project Services and annual revenues and expenditures of service charges collected by the County for Lake Ketchum restoration under SCC 25.20.055.
 - Apply for grant funding applicable to the Project and administer the implementation of any grants received.

4. Additional Services:

The County and the Club anticipate that, during the Term of this Agreement, the Club may desire for the County to provide additional services to implement the Plan (“Additional Services”), and the County may be willing to provide some or all of such Additional Services. By way of example, and not by way of limitation, the parties anticipate Additional Services could involve one or more of the following:

- Efforts to improve wetland protection around the Lake inlet (Element 3)
- Efforts to address phosphorus pollution entering into the lake inlet;
- Additional studies of Lake Ketchum and its pollution sources to support actions to adaptively manage the restoration activities described in the Plan;

- Other activities as requested by the Club or as mutually agreed that fulfill the goals of the Plan.

III. PERIOD OF PERFORMANCE

The term of this Agreement (the “Term”) shall commence upon execution (the “Commencement Date”) and shall expire on December 31, 2029 (the “Expiration Date”); provided, however, that both the Club and the County’s obligations after December 31, 2024, are contingent upon local legislative appropriation of the necessary funds for this specific purpose in accordance with applicable law.

IV. COMPENSATION

A. COST OF SERVICES IN 2024

The total cost of Project Services in 2024 is anticipated to be approximately \$88,300. Though the execution of this Agreement, the Club accepts the County’s estimate of the total costs of Project Services (phosphorous inactivation treatments and all other services) anticipated for 2024.

B. COST OF SERVICES IN FOLLOWING YEARS 2025-2029

1. Costs of Services for Phosphorus Inactivation Treatments:

The County shall provide the Club with a written estimate for the total cost of phosphorus inactivation treatment a minimum of 30 days prior to the anticipated treatment date. Phosphorous inactivation treatments typically occur in the spring (March-April). The Club must provide written acceptance of the County’s cost estimate within two weeks of receiving the estimate or the treatment shall not occur.

2. Costs of All Other Services:

No later than October 31st of the preceding calendar year, the County shall provide the Club a written estimate for the total cost of all other Project Services anticipated for the upcoming year broken down by Service category but excluding phosphorus inactivation treatments. The Club may propose amendments to the scope of anticipated Project Services for the year, which the County will consider, if feasible, and incorporate into a final cost estimate. The Club must provide written acceptance of the County’s cost estimate, or if amended, the County’s final cost estimate, within 30 days of receiving the initial cost estimate, or the Project Services described in the cost estimate will not be provided in the following year.

C. CALCULATING COSTS OF PROJECT SERVICES

The County will calculate the total annual costs of Project Services based on the following:

1. County Personnel time calculated using the base hourly rate plus the cost of benefits of each of the individual County personnel performing the Project Services. The time billed shall

consist only of personnel time that is actually spent and is reasonably required to perform the Project Services.

2. All costs actually incurred by the County in connection with performing the Project Services through separate contracts or professional service agreements, including, but not limited to the costs of phosphorus inactivation treatments, laboratory fees, or other limnology consultant fees.

3. All reasonable costs of materials and/or equipment used by the County in connection with performing any one or more of the Project Services.

D. COST SHARE FOR SERVICES

1. The County shall pay sixty percent (60%) and the Club shall pay forty percent (40%) of the annual costs of Project Services up to a combined maximum of One Hundred Thousand Dollars (\$100,000.00) per year. In no event shall the County pay more than \$60,000.00 annually for Project Services.

2. The Club shall pay one hundred percent (100%) of the annual costs of Project Services exceeding \$100,000.00.

3. In the event Grant Funds are available, the Grant Funds shall be applied first as payment for the annual costs of Project Services. Thereafter, the County shall pay 60% and the Club shall pay 40% for any remaining costs up to a combined maximum of \$100,000.00. The Club shall pay 100% of any remaining costs exceeding \$100,000.00.

4. For the Club's share of the annual costs, the Lake Ketchum Service Charges will be applied to the Club's total payment amount first with any remaining costs to be paid using funds collected by the Club.

E. INVOICING AND PAYMENT

The County shall send an annual summary of the actual costs and invoice to the Club no later than 60 days after the end of the calendar year. The summary shall include:

- Total cost of Project Services for the year by Service outlined in Section II and calculated in accordance with Section IV.C.
- Total revenue from Lake Ketchum Service Charges collected for the year and, if applicable, the balance of Lake Ketchum Service Charges collected from previous years;
- Amount of County Revenue applied to the actual costs of Project Services for the year
- Amount of Grant Funds, if applicable, applied to the actual costs of Project Services for the year
- Amount of Lake Ketchum Service Charge revenue applied to the Club's share of actual costs of Project Services for the year;
- If applicable, an invoice for any remaining costs to be paid by the Club not already covered by the Lake Ketchum Service Charges.

The Club shall pay the annual invoice (if applicable) within 30 days of receipt. The parties recognize that for the last calendar year of the Term of this Agreement, the invoicing and payment periods will extend beyond the Expiration Date.

V. AMENDMENTS, EXTENSION OR TERMINATION

This Agreement may not be modified or amended in any manner except by a written document signed by both parties.

Either party may terminate this Agreement at any time, with or without cause, upon providing no less than thirty (30) days advanced written notice to the other party. The termination notice shall specify the date on which the Agreement shall terminate. If this Agreement is terminated by the Club as provided herein, the County is entitled to compensation for Project Services performed through the date of termination. Within 60 days of the date of termination provided for under this Section, the County will provide the Club with an accounting of the actual costs of all Project Services for the calendar year through the date of termination, the revenue applied to the Services in accordance with Sections IV.D and E of this Agreement, and if necessary, an invoice for the residual costs to be paid by the Club. The Club shall pay the invoice within 30 days of receipt.

VI. AUDIT AND INSPECTION

The County and the Club shall maintain records pursuant to this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The County's records and the Club records shall be available for inspection and audit by one another, the State Auditor, federal auditors and any persons duly authorized by the parties. The Club and the County shall preserve and make such records available to said parties until expiration of six (6) years from the expiration date of this Agreement.

VII. PUBLIC RECORDS ACT

This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW.

VIII. NOTICES

Each notice, demand, request, consent, approval, disapproval, designation or other communication that is permitted or required to be given by one party to the other party under this Agreement shall be in writing and shall be given or made or communicated by United States registered or certified mail, postage prepaid, return receipt requested or by email (with a request for and receipt of proof of successful transmission). All such communications shall be addressed to the appropriate Administrator of this Agreement (or their designee) as follows:

To the Club:
Ketchum Shores Improvement Club
8217 313th PI NW
Stanwood, WA 98292-9712
Attn: Robin Gibson
Telephone: 360-629-6980
Email: robvingison9@gmail.com

To the County:
ATTN: Surface Water Management
Director
Snohomish County
Conservation & Natural Resources
3000 Rockefeller Avenue M/S 303
Everett, Washington 98201

Telephone: (425) 388-6454
Email: gregg.farris@snoco.org

All notices shall be deemed given on the day each such notice is transmitted by email (with evidence of receipt), or on the third business day following the day such notice is mailed if mailed in accordance with this Section.

IX. HOLD HARMLESS AND INDEMNIFICATION

The Club shall indemnify, defend, and hold harmless the County and its officers, officials, employees, agents, and authorized volunteers from all claims, suits, or actions of any nature arising out of or related to the activities of the Club, its officers, subcontractors, agents, or employees under this Agreement.

Administration of this Agreement shall not be construed to create the basis for any liability on the part of the County, its officers, officials, employees, agents, and authorized volunteers for any injury or damage from the failure of the Club to comply with the provisions of this Agreement; or for any action or inaction authorized or done in connection with the County's implementation of this Agreement.

The provisions of this section shall survive the expiration or earlier termination of this Agreement.

X. OWNERSHIP

All reports, plans, specifications, all forms of electronic media, and data and documents produced in the performance of this Agreement shall be the property of the County.

XI. COMPLIANCE WITH LAW

The parties, in the performance of this Agreement, agree to comply with all applicable local, state, and federal laws and ordinances applicable to the activities contemplated herein.

XII. NO WAIVER

Failure of the County to exercise any rights or remedies under this Agreement shall not constitute a waiver of any such right or remedy and shall not prevent the County from pursuing such right or remedy at any future time.

XIII. COUNTY NON-DISCRIMINATION

It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Club shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Club of the Club's compliance with the requirements of Chapter 2.460 SCC. If the Club is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Club's obligations under other federal, state, or local laws against discrimination.

XIV. SEVERABILITY

Should any part, term or provision of this Agreement be determined by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall not be affected, and the same shall be continued in full force and effect.

XV. GOVERNING LAW AND VENUE

This Contract shall be governed by the laws of the State of Washington. The parties stipulate that any lawsuit regarding this Agreement must be brought in Snohomish County, Washington.

XVI. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding of the parties. Any written or verbal agreements not set forth in this Agreement or incorporated by reference are expressly excluded.

XVII. AUTHORITY

Each signatory to this Agreement represents that he or she has full and sufficient authority to execute this Agreement on behalf of the County or the Club, as the case may be, and that upon execution of this Agreement it shall constitute a binding obligation of the County or the Club, as the case may be.

XVIII. EXECUTION IN COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the County and the Club have executed this Agreement as of the date of the last party to sign.

SNOHOMISH COUNTY:

**KETCHUM SHORES
IMPROVEMENT CLUB:**

Title: County Executive

Title:

Approved as to Form:

Approved as to Form:

Deputy Prosecuting Attorney

Club Attorney