EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Application and Agreement with the Washington State Department of Agriculture for Limited Agent Status for aquatic noxious weed control

____	Briefing
____	Proposed Action
____	Consent
____	Action
____	First Reading
____	Second Reading
____	Third Reading
____	Public Hearing

COUNCIL BILL #	
Originating Department	Parks
Contact Person	Lori Cummings
Phone Number	425-257-8353
FOR AGENDA OF	June 29, 2016

Initialed by:
Department Head ____
CAA
Council President ____

Location

Preceding Action

Attachments
Agreement

Department(s) Approval
Parks, Administration, Legal

Amount Budgeted	$0	
Expenditure Required	$0	
Budget Remaining		
Additional Required		

DETAILED SUMMARY STATEMENT:
The Washington State Department of Agriculture manages a statewide General National Pollutant Discharge Elimination System (NPDES) permit authorizing the discharge of aquatic pesticides in accordance with the Permit to control noxious, emergent aquatic weeds and quarantine weeds. This Agreement specifies the City's requirements for compliance with the terms and conditions, and identifies the limitations as to which herbicides, adjuvants and marking dyes are used. Direct in-water treatments are not allowed under this permit or through this Agreement.

RECOMMENDATION (Exact action requested of Council):
Authorize the Mayor to sign the Application and Agreement with the Washington State Department of Agriculture for Limited Agent Status for aquatic noxious weed control.

2016
APPLICATION AND AGREEMENT FOR LIMITED AGENT STATUS FOR AQUATIC NOXIOUS WEED CONTROL UNDER WSDA'S NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT

AGREEMENT TO COMPLY WITH THE TERMS, CONDITIONS, AND REQUIREMENTS OF THE "AQUATIC NOXIOUS WEED CONTROL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM WASTE DISCHARGE GENERAL PERMIT" ISSUED TO THE WASHINGTON STATE DEPARTMENT OF AGRICULTURE ON FEBRUARY 17, 2012

Entities acting as limited agents under this agreement will be required to submit a year-end summary of pesticide use under this agreement and may be requested to submit copies of the associated spray records for program review.

I. ENTITY REQUESTING LETTER FOR LIMITED AGENT STATUS

Name of Entity:	City of Everett Parks and Recreation		
Name:	Anna Heckman		
Mailing Address:	802 E. Mukilteo Blvd		
City:	Everett	State:	WA
ZIP + 4:	98203		
E-Mail Address:	aheckman@everettwa.gov		
Daytime Phone:	425-257-8582	Cell Phone:	425-501-1298

II. WATERBODY AND HERBICIDE INFORMATION

Waterbody Name	County	WRIA	Target Weed	Herbicide
Various	Snohomish	7 - Snohomish	Knotweed, loostrife, yellow flag iris, reed canary grass	Adjuvant(s)
Various	Snohomish	8 - Cedar-Sammamish	Knotweed, loostrife, yellow flag iris, reed canary grass	Adjuvant(s)
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III. OBLIGATIONS OF APPLICANT IN CONSIDERATION OF LIMITED AGENT STATUS

On February 17, 2012 the Washington State Department of Ecology issued to the Washington State Department of Agriculture (WSDA) a statewide General National Pollutant Discharge Elimination System (NPDES) permit (referred to herein as the Permit) authorizing the discharge of aquatic pesticides in accordance with the Permit to control noxious, emergent aquatic weeds and quarantine weeds. The Permit, in its entirety, is incorporated by reference into this "Application and Agreement for Limited Agent Status for Aquatic Noxious Weed Control Under WSDA's National Pollutant Discharge Elimination System General Permit" (referred to herein as the "Application for Limited Agent Status"). A copy of the Permit is available from WSDA or at the following website:

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The Applicant identified above has applied for limited agent status under the Permit as set forth above. WSDA extends limited agent status under the Permit by entering into a contract with the Applicant. This Application for Limited Agent Status constitutes an offer to WSDA which must be accepted by WSDA before there is an effective contract under the Permit. This Application for Limited Agent Status, as accepted by WSDA in a contract, and with the Permit incorporated by reference, contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of the resulting contract shall be deemed to exist or to bind any of the parties hereto.

By completing, signing, and submitting this Application for Limited Agent Status to WSDA, the Applicant agrees to comply with the terms, conditions, and requirements of the Permit and to enforce those terms, conditions, and requirements against any person or entity acting on the Applicant's behalf to control noxious, emergent aquatic and quarantine weeds in Washington. Without limitation, the Applicant specifically agrees to comply and enforce the terms, conditions, and requirements set forth in the following paragraphs:

A. DISCHARGE LIMITATIONS (SECTION S1, S2, S3 and S4 OF THE PERMIT). The Applicant specifically agrees to comply with all provisions of the Permit, including all limitations as to which herbicides, adjuvants, and marking dyes may be used, and which aquatic weeds may be targeted. **Direct in-water treatments are not allowed under this permit or through this agreement.**

B. MONITORING REQUIREMENTS (SECTION S6 OF THE PERMIT). The Applicant specifically agrees to comply with the monitoring requirements imposed in the Permit as follows:

- WSDA will conduct or coordinate all monitoring of herbicide treatments consistent with the applicable annual monitoring plan prepared pursuant to the Permit. An Applicant proposing herbicide applications with imazamox, bispyribacsodium, penoxsulam, flumioxazin, or carfentrazone-ethyl specifically

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agrees to cooperate with WSDA in implementing any monitoring required under any applicable monitoring plan.

C. REPORTING AND RECORDKEEPING REQUIREMENTS (SECTION S8 OF THE PERMIT). The Applicant specifically agrees to maintain records of all treatments proposed in this Application for Limited Agent Status; to retain those records for at least five years from the date of treatment; and to use the web-based reporting tools on the Secure Access Washington database managed by or the Department of Ecology to record the following information by December 31st of the year in which the treatment occurred:

- The common name of each waterbody (if named) that was treated.
- The WRIA name and number for the waterbody that was treated.
- The species name of the target weed(s).
- The name of the herbicide or herbicides that were to be used and the EPA registration number for each herbicide.
- The actual amount of herbicide (gallons or pounds) used to treat the target weeds at that waterbody.
- The actual number of acres that were treated.

The actual date(s) on which treatments were made are retained on the spray records and need not be reported to the database.

D. POSTING AND NOTIFICATION REQUIREMENTS (SECTION S5 OF THE PERMIT). The Applicant specifically agrees to carry out the notification requirements in the Permit (excluding S5.B.1a and 1b) unless WSDA specifically informs the Applicant that notification will be carried out by WSDA.

E. NONCOMPLIANCE NOTIFICATION (SECTION S8 AND S9 OF THE PERMIT). The Applicant specifically agrees that, if the Applicant, or any person or entity acting on the Applicant's behalf to control aquatic noxious and quarantine weeds in Washington, is unable to comply with any of the terms, conditions, and requirements in this Application for Limited Agent Status or in the Permit, the Applicant will:

- immediately take action stop, contain, and clean up any unauthorized discharge or other noncompliant activity, and
- immediately notify WSDA of the inability to comply.

F. REVOCATION OF LIMITED AGENT STATUS BY WSDA. The Applicant specifically agrees that WSDA may unilaterally revoke its Application of Limited Agent Status to the Applicant if WSDA reasonably finds any of the following:

- That the Applicant, or a person or entity acting on the Applicant's behalf to control aquatic noxious and quarantine weeds in Washington, has violated a term, condition, or requirement of this Application for Limited Agent Status or the Permit.
- That this Application for Limited Agent Status was obtained by misrepresentation or a failure to disclose fully all relevant facts.
- That the Applicant, or a person or entity acting on the Applicant's behalf to control aquatic noxious and quarantine weeds in Washington, has refused or failed to allow WSDA reasonable entry for the purposes specified in this Application for Limited Agent Status.
- That the Applicant, or a person or entity acting on the Applicant's behalf to control aquatic noxious and quarantine weeds in Washington, has violated applicable state or federal law.

- That activities described in this Application for Limited Agent Status are endangering human health or the environment, or significantly contributes to water quality violations.

Revocation is effective as of the date and time the Applicant receives actual or constructive notice of WSDA's revocation. Within five business days of receiving notice of revocation, an Applicant who believes revocation was based on a factual mistake may provide evidence and a written explanation to WSDA. If WSDA agrees revocation was based on a factual mistake, WSDA will notify the Applicant that the Limited Agent Status may be reinstated. That decision of WSDA is final and may not be contested.

WSDA also may unilaterally revoke the Application of Limited Agent Status if the Permit is withdrawn, revoked, or otherwise modified by the Department of Ecology. Such revocation is final and may not be contested.

G. TRANSFER OF LIMITED AGENT STATUS. An Application of Limited Agent Status may be transferred to a different Applicant only with WSDA's written consent.

IV. APPLICANT'S ASSUMPTION OF RISK

By submitting this Application for Limited Agent Status, the Applicant:

- Accepts full and complete responsibility for complying with the applicable terms, conditions, and requirements of this Application for Limited Agent Status, the Permit, and all applicable state and federal laws;
- Acknowledges that it may be liable for any violation of an applicable term, condition, or requirement of this Application for Limited Agent Status, the Permit, or an applicable state or federal law; and
- Agrees that WSDA may enforce the terms, conditions, and requirements of this Application for Limited Agent Status under the contract created by WSDA's acceptance of the Application for Limited Agent Status.

V. APPLICANT AS LIMITED AGENT OF WSDA

By issuing a Letter of Limited Agent Status in response to this Application for Limited Agent Status, WSDA agrees that Applicant will act as WSDA's agent solely and exclusively to conduct activities described in this Application for Limited Agent Status and to conduct those activities in strict compliance with the applicable terms, conditions, and requirements of this Application for Limited Agent Status, the Permit, and all applicable state and federal laws. WSDA grants no agency of any kind whatsoever to the Applicant to conduct any other activity.

By issuing an Letter of Limited Agent Status in response to this Application for Limited Agent Status, WSDA specifically denies and does not grant the Applicant any power or authority to hold itself out or claim to be an agent of WSDA or the State of Washington for any other activity or purpose, or an officer or employee of WSDA or the State of Washington.

By submitting this Application for Limited Agent Status, the Applicant agrees to all limits and restrictions imposed in this part V and agrees further that it will not make any claim of right, privilege, or benefit that otherwise might accrue to an agent, officer, or employee of WSDA or the State of Washington.

VI. RELATIONSHIP TO EXISTING CONTRACT OR AGREEMENT WITH WSDA FOR CONTROL OF AQUATIC NOXIOUS WEEDS

If the Applicant is a party to an existing contract with WSDA for the control of noxious, emergent aquatic weeds, the existing contract is hereby amended consistent with the terms, conditions, and requirements of this Application for Limited Agent Status, the Permit, and state and federal law. If any conflict is found between an existing contract and the terms, conditions, and requirements of this Application for Limited Agent Status, the Permit, and state and federal law, this Application for Limited Agent Status, the Permit, and state and federal law shall control.

An Applicant's responsibilities and liabilities under this Application for Limited Agent Status shall not be waived or limited by any Interagency Agreement the Applicant may have with WSDA for aquatic noxious weed control.

VII. INDEMNIFICATION

To the fullest extent permitted by law, the Applicant and its agents, employees, principals, successors, and assigns, shall indemnify, defend, and hold harmless WSDA and the State of Washington, and all officials, agents, and employees of WSDA and the State of Washington, from and against all liability, damages, claims, demands, actions, causes of action, attorney's fees (including on appeal), costs and expenses of whatever nature arising directly or indirectly from or relating to actions taken under this Application for Limited Agent Status, including specifically any failure to perform or violation of the terms, conditions, and requirements of this Application for Limited Agent Status, the Permit, or state or federal laws. The Applicant's obligation to indemnify, defend and hold harmless includes any claim by the Applicant's agents, employees, representatives, or any subcontractor or subcontractor's employees, and that obligation includes any liability, demand, claim, action, or cause of action, whether civil, criminal or administrative, threatened or commenced by any third party under the terms of the Permit, the Clean Water Act or the rules promulgated thereunder, the Federal Insecticide, Fungicide and Rodenticide Act, the Endangered Species Act, the state Pesticide Application Act (RCW 17.21), the state Pesticide Control Act (RCW 15.58), or other state or federal law. The Applicant's obligation to indemnify, defend and hold harmless does not extend to any claims caused by or arising from the sole negligence of WSDA or the State of Washington or any official, agent, or employee of WSDA or the State of Washington.

WSDA and the Applicant each shall give the other prompt notice upon receiving any notice, claim, or enforcement action alleging that actions taken or required to be taken under this Application for Limited Agent Status constitute a violation of the Permit, the Clean Water Act or the rules promulgated thereunder, the Federal Insecticide, Fungicide and Rodenticide Act, the Endangered Species Act, the state Pesticide Application Act (RCW 17.21), the state Pesticide Control Act (RCW 15.58), or other state or federal law. WSDA and the Applicant may separately or cooperatively contest, defend, or appeal any such notice, claim, or enforcement action, but WSDA's right to be indemnified and held harmless under this Section VII shall not be diminished thereby.

VIII. GOVERNANCE

The contract formed by a Letter of Limited Agent Status issued by WSDA in response to this Application for Limited Agent Status shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought under that contract shall be in the Superior Court for Thurston County.

IX. SIGNATURE AUTHORITY AND CERTIFICATION

This application, and all other reports or documentation that must be signed as a requirement of submission under this Application for Limited Agent Status, the Permit, or applicable state or federal law, shall be signed on behalf of the Applicant by an individual with authority to bind the Applicator (the "Applicant's Authorized Representative"). The signature of such individual on this Application for Limited Agent Status constitutes a representation and warranty that the individual has such authority.

By signing this Application for Limited Agent Status, the Applicant's Authorized Representative certifies as follows on behalf of the Applicant:

> "I certify under penalty of law, that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiries of the person or persons who manage the system, or those persons directly responsible for gathering the information, or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment. Additionally, I certify that I will comply with the terms, conditions, and requirements of the Permit and this Application for Limited Agent Status and will enforce those terms, conditions, and requirements against any person or entity acting on the Applicant's behalf to control aquatic noxious and quarantine weeds in Washington."

Printed Name of Applicant: Anna Heckman

Printed Name of Applicant's Authorized Representative: _____

Signature: _____

Date: _____

Title: _____

Approval from Washington State Department of Agriculture

Signature: _____

Date: _____