

2021-2023

Contract Number: K3549

**INTERAGENCY AGREEMENT  
BETWEEN  
WASHINGTON STATE DEPARTMENT OF AGRICULTURE  
AND  
PACIFIC COUNTY  
AND ITS AGENT  
PACIFIC COUNTY NOXIOUS WEED CONTROL BOARD**

**THIS AGREEMENT** is made and entered into by and between the Washington State Department of Agriculture (WSDA) and Pacific County and its agent, Pacific County Noxious Weed Control Board.

**IT IS THE PURPOSE OF THIS AGREEMENT** to provide Pacific County and its agent, Pacific County Noxious Weed Control Board, funding for a project to control invasive knotweed species within the riparian corridors of Pacific County.

**THEREFORE, IT IS MUTUALLY AGREED THAT:**

**STATEMENT OF WORK**

Pacific County through its agent, Pacific County Noxious Weed Control Board, shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Attachment "A" which is attached hereto and incorporated herein.

**PERIOD OF PERFORMANCE**

Regardless of the date of signature and subject to its other provisions, this Agreement shall begin on July 1, 2021 and end on June 30, 2023, unless terminated sooner or extended by WSDA as provided herein.

**PAYMENT**

Compensation for the work provided in accordance with this Agreement has been established under the terms of RCW 39.34.130. The parties have determined that the cost of accomplishing the work herein will not exceed \$20,000.00. Only reasonable costs identified in Attachment "A", incurred directly related to the Pacific County Knotweed Control and Eradication Program, will be reimbursed to Pacific County under this Agreement.

Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree in writing to a higher amount prior to the commencement of any work that will cause the maximum payment to be exceeded. Compensation for service(s) shall be as set forth in accordance with the budget in Attachment "B" which is attached hereto and incorporated herein.

Projects in riparian habitats will begin at the farthest upstream infestation and continue downstream. **This funding may not be used downstream of a landowner that has not given written permission for entry and treatment (Attachment C).** Any deviation requires prior written permission from WSDA.

**BILLING PROCEDURE**

Pacific County shall submit properly completed invoices quarterly to the WSDA Agreement administrator. Reference WSDA Contract Number K3549 on all invoices. Payment to Pacific

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County for approved and completed work will be made by warrant or account transfer by WSDA within 30 days of receipt of the properly completed invoice. If Pacific County does not have an invoice template to request payment, Pacific County can request a copy of a Certified State Invoice Voucher (Form A-19) from WSDA. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier. **In no case can this be more than 10 days past the end of the biennium.**

**DUPLICATION OF BILLED COSTS**

Pacific County shall not bill WSDA for services performed under this contract, and WSDA shall not pay Pacific County, if Pacific County has been or will be paid by any other source, including grants, for that service.

**FUNDING CONTINGENCY**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to completion of the work in this Agreement, WSDA may:

- a. Terminate this Agreement with 10 days advance notice. If this Agreement is terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.
- b. Renegotiate the terms of the Agreement under those new funding limitations and conditions.
- c. After a review of project expenditures and deliverable status, extend the end date of this Agreement and postpone deliverables or portions of deliverables.
- d. Pursue such other alternative as the parties mutually agree to writing.

**RECORDS MAINTENANCE**

The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. Documents must also support performance and costs of any nature expended in the performance of this Agreement. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents and other material relevant to this Agreement will be retained for six years after expiration of the Agreement and the Office of the State Auditor, federal auditors and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond, consistent with applicable laws. Each party will utilize reasonable security procedures and protections to

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assure that records and documents provided by the other party are not erroneously disclosed to third parties.

**RIGHTS IN DATA**

Unless otherwise provided, data that originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by WSDA. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

**INDEPENDENT CAPACITY**

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

**AGREEMENT ALTERATIONS AND AMENDMENTS**

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

**SUBCONTRACTING**

"Subcontractor" means one not in the employment of a party to this Agreement, who is performing all or part of those services under this Agreement under a separate contract with a party to this Agreement. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

Except as otherwise provided in the Agreement, Pacific County shall not subcontract any of the contracted services without the prior approval of WSDA. Pacific County is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Agreement are included in any and all Subcontracts. Any failure of Pacific County or its Subcontractors to perform the obligations of this Agreement shall not discharge Pacific County from its obligations under this Agreement.

**TERMINATION FOR CONVENIENCE**

Either party may terminate this Agreement upon 30 days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of the Agreement prior to the effective date of termination.

**TERMINATION FOR CAUSE**

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days of receipt of written notice. If the failure or violation is not corrected, this Agreement may be terminated immediately upon receipt of written notice of the aggrieved party to the other.

**CONFLICT OF INTEREST**

WSDA may, by written notice to Pacific County, terminate this Agreement if it is found after due notice and examination by the Director of the Department of Agriculture, and/or the designee authorized in writing to act on the Director's behalf, that there is a violation of the State Ethics

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Law, chapter 42.52 RCW; chapter 42.23 RCW; or any similar statute involving Pacific County in the procurement of or performance under this Agreement. Unless stated otherwise, the signatory of this Agreement is the Director's designee.

In the event this Agreement is terminated as provided above, WSDA shall be entitled to pursue the same remedies against Pacific County and its agent, Pacific County Noxious Weed Control Board, as it could pursue in the event of a breach of the Agreement by Pacific County or its agent, Pacific County Noxious Weed Control Board. The rights and remedies of WSDA provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Director of the Department of Agriculture, and/or the designee authorized in writing to act on the Director's behalf, makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Agreement.

#### **DISPUTES**

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, agreement terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto.

#### **GOVERNING LAW AND VENUE**

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought under this Agreement shall be in Superior Court for Thurston County.

#### **ASSURANCES**

The parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state and local laws, rules, and regulations as they currently exist or as amended.

#### **LICENSING, BONDING, INDUSTRIAL INSURANCE AND OTHER INSURANCE COVERAGE**

Pacific County and its agent, Pacific County Noxious Weed Control Board, shall ensure that all contractors hired to perform services under this Agreement shall comply with all applicable licensing and bonding requirements for the type of service to be performed, and with the provisions of Title 51, Industrial Insurance. Pacific County and its agent, Pacific County Noxious Weed Control Board, shall also ensure that all contractors provide proof of an adequate amount of commercial general liability insurance coverage for the activities to be performed under any subcontract.

#### **ORDER OF PRECEDENCE**

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. Terms and conditions contained within this Agreement;
- c. Plan of Work (Attachment A);
- d. Budget (Attachment B);
- e. Permission to Enter Private Land and Waiver of Liability (Attachment C); and

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- f. Any other provisions of the Agreement, including material incorporated by reference.

**ASSIGNMENT**

Pacific County and its agent, Pacific County Noxious Weed Control Board, are responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Agreement are carried forward to any subcontracts. In no event shall the existence of any subcontract operate to release or reduce the liability of Pacific County and its agent, Pacific County Noxious Weed Control Board, to WSDA for any breach in the performance of Pacific County and its agent Pacific County Noxious Weed Control Board's duties.

**WAIVER**

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the party and attached to the original Agreement.

**SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

**ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

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**CONTRACT MANAGEMENT**

The Agreement administrator for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Agreement administrator for WSDA is:

Jonathan Still, Knotweed Coordinator  
Washington State Dept. of Agriculture  
Plant Protection Division  
PO Box 42560  
Olympia, Washington 98504-2560  
(360) 280-6363  
jstill@agr.wa.gov

The Agreement administrator for Pacific County is:

Jeff Nesbitt, Director  
Pacific County Vegetation Management  
PO Box 88  
South Bend, Washington 98586  
(360) 875-9425  
jnesbitt@co.pacific.wa.us

All communications between the parties relating to this Agreement and any billings and payments will be directed to those persons. Either party may change administrators by notifying the other in writing.

**IN WITNESS WHEREOF**, the parties have executed this Agreement.

STATE OF WASHINGTON  
DEPT. OF AGRICULTURE

PACIFIC COUNTY

By:	 DocuSigned by: AE047966G505D48E...	By:	 DocuSigned by: 7079544402DB400...
Title:	Assistant Director	Title:	Director
Date:	7/28/2021   2:40 PM PDT	Date:	7/28/2021   2:31 PM PDT