

**CONTRACT FOR
NOXIOUS WEED CONTROL
ON LANDS MANAGED
BY
WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES
IN
KITITAS COUNTY**

**Washington State Department of Natural Resources
Southeast Region 713 Bowers Road Ellensburg, WA 98926
State Lands Programs**

INTERAGENCY AGREEMENT

BETWEEN

WASHINGTON STATE DEPARTMENT NATURAL RESOURCES

AND

KITTITAS COUNTY NOXIOUS WEED CONTROL BOARD

THIS AGREEMENT is made and entered into by and between the Kittitas County through the Kittitas County Noxious Weed Control Board, hereinafter referred to as "Weed Control Board," and the Washington State Department of Natural Resources hereinafter referred to as the "State."

IT IS THE PURPOSE OF THIS AGREEMENT to provide noxious weed control on State managed lands within Kittitas County.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK

The 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 weed control work on State lands and rights of ways within Kittitas County as described in the Plan of Operations. Work will consist primarily of weed control activities within 25 feet of State rights of ways, landings, dispersed campsites, but may also include other areas of operation as agreed upon by both parties in the Plan of Operations.

PRE-WORK CONFERENCE

State and Weed Control Board agree to meet prior to each spring and fall application period and agree upon the area to perform noxious weed control activities. A "Plan of Operations" shall be developed during these pre-work conferences and agreed upon by both parties before any control actions are taken.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on July 1, 2011, and be completed on June 30, 2013, unless terminated sooner 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 \$12,000 per fiscal year (July 1 – June 30) for time and materials. Payment for satisfactory performance of the work shall be based upon time and materials and shall not exceed this amount unless the parties mutually agree to a higher amount.

BILLING PROCEDURE

The Weed Control Board shall submit invoices for services as soon as possible after individual work performances. Invoices are to be sent to: Washington State Washington State Department of Natural Resources, Southeast Region Headquarters, 713 Bowers Road, Ellensburg, WA 98926, Attention: Ken McNamee. Payment to the Weed Control Board for approved and completed work will be made by warrant or account transfer by the State within 30 days of receipt of the invoice. 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.

RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to inspection, review or audit by personnel of 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 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.

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. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the State. 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.

TERMINATION

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 this 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. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

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 binding on the parties hereto. All decisions by the Dispute Board may be appealable by either party to the Superior Court of Kittitas County

GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the State of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

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. Statement of work; and

- c. Any other provisions of the agreement, including materials incorporated by reference.

ASSIGNMENT

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

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 a writing signed by an authorized representative of the party and attached to the original Agreement.

INDEMNIFICATION

State and Weed Control Board each agree to be responsible and assume liability for their own wrongful and/or negligent acts or omissions, or those of their officers, agents or employees to the fullest extent required by law, and further agree to save, indemnify, defend and hold the other party harmless from any such liability. In the case of negligence of more than one party, any damages allowed shall be levied in proportion to the percentage of the negligence attributable to each party.

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.

