

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of County Commissioners
Mark McCauley, County Administrator

FROM: Sophie DeGroot, Noxious Weed Control Coordinator

DATE: February 20, 2024

SUBJECT: Noxious Weeds Control Contract: City of Port Townsend

STATEMENT OF ISSUE:

Noxious weeds are a threat to humans, animals, the economy, agriculture, recreation, and conservation in Jefferson County. One aspect of the Jefferson County Noxious Weed Control Board's role is to help public agencies control noxious weeds. The City of Port Townsend has over 90 road-miles in its city-limits. These roads can be significant vectors for the spread of noxious weeds, especially with the ferry depositing passengers right into town and the high-rates of year-round tourism. With toxic weeds such as poison hemlock (*Conium maculatum*), the continued management of noxious weeds is vital.

ANALYSIS:

The JCNWCB has worked with the City of Port Townsend through their Parks and Recreation and Public Works Departments to manage and control noxious weeds for over three years. This partnership is crucial for reporting and rapid response during the height of the growing season. It also provides important opportunities to connect with and educate residents of Port Townsend on how and why we control noxious weeds.

FISCAL IMPACT:

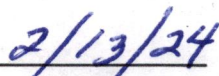
The funding for this contract will be shared by the City of Port Townsend and the Jefferson County Noxious Weed Control board. Both parties will dedicate \$5,000 per year to control of noxious weeds on City owned properties and roadsides.

RECOMMENDATION:

I recommend approval of this contract.

REVIEWED BY:


Mark McCauley, County Administrator


Date

CONTRACT REVIEW FORM
(INSTRUCTIONS ARE ON THE NEXT PAGE)

Clear Form

CONTRACT WITH: City of Port Townsend

Contract No: NW - 2310

Contract For: Noxious Weed Control

Term: Feb 1 2024 - Dec 31, 2026

COUNTY DEPARTMENT: WSU Ext - Noxious Weed Control Board
Contact Person: Sophie DeGroot
Contact Phone: 360-318-9332
Contact email: sdegroot@co.jefferson.wa.us

AMOUNT: \$15,000

Revenue: \$5,000 / year

Expenditure: _____

Matching Funds Required: _____

Sources(s) of Matching Funds: _____

Fund # 109

Munis Org/Obj: _____

PROCESS:

- | | |
|-------------------------------------|-------------------------|
| ☒ | Exempt from Bid Process |
| ☐ | Cooperative Purchase |
| ☐ | Competitive Sealed Bid |
| ☐ | Small Works Roster |
| ☐ | Vendor List Bid |
| ☐ | RFP or RFQ |
| ☐ | Other: _____ |

APPROVAL STEPS:

STEP 1: DEPARTMENT CERTIFIES COMPLIANCE WITH JCC 3.55.080 AND CHAPTER 42.23 RCW.

CERTIFIED: ☒ N/A: ☐

[Signature]
Signature

11/9/2023
Date

STEP 2: DEPARTMENT CERTIFIES THE PERSON PROPOSED FOR CONTRACTING WITH THE COUNTY (CONTRACTOR) HAS NOT BEEN DEBARRED BY ANY FEDERAL, STATE, OR LOCAL AGENCY.

CERTIFIED: ☒ N/A: ☐

[Signature]
Signature

11/9/2023
Date

STEP 3: RISK MANAGEMENT REVIEW (will be added electronically through Laserfiche):

Electronically approved by Risk Management on 2/7/2024.

STEP 4: PROSECUTING ATTORNEY REVIEW (will be added electronically through Laserfiche):

Electronically approved as to form by PAO on 2/7/2024.

**INTERLOCAL COOPERATIVE AGREEMENT BETWEEN
CITY OF PORT TOWNSEND and
JEFFERSON COUNTY on behalf of
JEFFERSON COUNTY NOXIOUS WEED CONTROL BOARD**

This Agreement is made and entered into by and between the City of Port Townsend, 250 Madison Street, Port Townsend, Washington, 98368, hereinafter referred to as "City" and Jefferson County on behalf of the Jefferson County Noxious Weed Control Board, 121 Oak Bay Road, Port Hadlock, Washington, 98339, hereinafter referred to as "County." For the purposes of this Agreement, it is understood that all references to the City or County also include any appointed designee(s).

WHEREAS, the City's Public Works Department operates and maintains the City's infrastructure in order to provide reliable, efficient, and safe transportation of people and goods; and

WHEREAS, the County has a stated mission "To protect lands within Jefferson County from the degrading impacts of noxious weeds by educating residents, property owners, land managers, and public agencies in how to serve as responsible stewards and aid in the protection and preservation of the land, water, and natural resources;" and

WHEREAS, the County has identified certain noxious weeds requiring control on City lands; and

WHEREAS, control of noxious weeds on City lands benefits the City through compliance with the legal responsibilities regarding noxious weed control as described in Chapter 17.10 RCW, as well as reducing the chance of lethal poisoning of people or animals and the buildup of toxic material.

NOW, THEREFORE, this Agreement is entered into under the Washington Interlocal Cooperation Act (Chapter 39.34 RCW), which permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governments to provide services and facilities in an efficient manner. The Parties agree as follows:

1. Purpose of Agreement. The purpose of this Agreement is to define the obligations of both Parties related to the control of noxious weeds on City property for the term of the Agreement. The Parties agree that no more than Five Thousand Dollars (\$ 5,000) shall constitute the full financial obligation of the City with respect to this Agreement.

2. Term of Agreement. This Agreement shall have a term commencing on the date of execution of this Agreement until December 31, 2026, a period of approximately three years, unless either Party initiates termination as provided in Paragraph 7 of this Agreement. The Parties may agree to extend the term of this Agreement; provided, that any extension must be executed in writing by the Parties prior to the end of the term of the Agreement.

3. Obligations of the County. The County will, within the limitations of this agreement, perform the following:

- A. The County will provide employees, contractors or other agencies with appropriate personnel and equipment to control noxious weed infestations effectively, as described in WAC 16-750-003, within city limits, to the extent allowed by the budget described in this Agreement.
- B. The County will provide an annual report to the city each year of the Agreement to detail work accomplished, as well as goals and priority sites and species for the following year.
- C. The County will invoice the City for work performed under this Agreement, recognizing the budgetary limits of this Agreement.
- D. The County will contribute up to \$5,000 from the Noxious Weed Special Fund to the control of noxious weeds on City lands.

4. **Obligations of the City.** The City will, within the limitations of this agreement, perform the following:

- A. The City will pay all invoices submitted by the County in performing its obligations under this agreement, up to the amount specified in the Agreement, which is \$5,000. The City shall pay any properly submitted invoice within thirty days after receipt.
- B. The City will permit Weed Control Board volunteer staff, contractors, or other agencies access to and occupation of City property for the purpose of removing noxious weeds.

5. **Contact Persons.** The parties stipulate that the following persons shall be the contact person for their respective jurisdiction.

- A. City:
 Michael Todd
 Facilities and Parks Manager
 250 Madison St
 Port Townsend, WA 98368
 (360) 379-5081
 mtodd@cityofpt.us
- B. County:
 Sophie DeGroot
 County Noxious Weed Board Coordinator
 121 Oak Bay Road
 Port Hadlock, WA 98339
 (360) 316-9332
 sdegroot@co.jefferson.wa.us

6. **Modification.** Either party may request changes to the provisions contained in this Agreement. Such changes shall be mutually agreed upon and incorporated by written amendment to this Agreement. No variation or alteration of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the parties hereto.

7. **Termination of Agreement.** Either party may terminate this Agreement by giving at least thirty (30) days written notice to the other, to the contact person identified in the Agreement. The written notice shall specify the effective date of the termination, which shall be at least thirty (30) days thereafter.

8. **Records Retention and Audit.** During the term of this Agreement and for a period not less than six (6) years from the date of final payment by the City, the records and accounts pertaining to Agreement and accounting therefore are to be kept available for inspection and audit by the County and the state and copies of all records, accounts, documents, or other data pertaining to this Agreement will be furnished upon request. All other records will follow state records retention schedules for election records. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six-year retention period.

9. **Filing of Agreement.** Executed copies of this Agreement shall be filed as required by RCW 39.34.040.

10. **Mutual Indemnity.** For its comparative liability, each Party agrees to indemnify, defend and hold the other Party, its officers, officials, employees, agents and volunteers (and their marital communities), harmless from and against any claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its officers, officials, employees, agents or volunteers (and their marital communities). A Party shall not be required to indemnify, defend, or hold the other Party or its officers, officials, employees, agents and volunteers (and their marital communities) harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other Party or its officers, officials, employees, agents or volunteers. If any concurrent act occurs or omission of the Parties and their officers, officials, employees, agents and volunteers, negligent or otherwise, these indemnity provisions shall be valid and enforceable only for the comparative liability of each Party and its officers, officials, employees, agents or volunteers. The Parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages are adjudicated. If any claim is resolved by voluntary settlement and the Parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration. The indemnification obligations of the Parties shall not be limited by the Washington State Industrial Insurance Act, Title 51 RCW, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act. Each Party expressly waives any immunity afforded by such acts to the extent required by a Party's obligations to indemnify,

defend and hold harmless the other Party, its officers, officials, employees, agents and volunteers (and their marital communities). A Party's waiver of immunity does not extend to claims made by its own employees directly against that Party as employer. The indemnity provisions of this section are a material inducement to enter into this Agreement and have been mutually negotiated. This section shall survive the expiration or termination of this Agreement.

11. **County as Independent Contractor.** The County is an independent contractor for the purposes of the services provided to the City under this Agreement.

- A. The County is not as an agent, an employee or a servant of the City.
- B. The County specifically has the right to direct and control County's own activities and over all of its subcontractors, employees, agents and representatives in providing the agreed services in accordance with the specifications set out in this Agreement.
- C. The County or its subcontractors shall perform the contracted work.
- D. The County acknowledges that the entire compensation for this Agreement is in the compensation provisions of this Agreement and County employees, subcontractors, or agents are not entitled to any City benefits, including, but not limited to: retirement, vacation pay; holiday pay; sick leave pay; medical, dental or other insurance benefits; fringe benefits; or any other rights or privileges afforded to City of Port Townsend employees.
- E. The County agrees to file all necessary governmental documents, including tax returns, reflecting income status as an independent contractor for services rendered to the City under this Agreement.
- F. Should any governmental agency audit the files and request information on either the County or the City, the County and the City agree to furnish immediately the requesting party with any records, including tax returns, relating to the services rendered under this Agreement.
- G. No subcontractor, employee, agent or representative of the County will be or be deemed to be, or act or purport to act, as an employee, agent or representative of the City.

11. **Compliance with Laws.** Each Party accepts responsibility for compliance with federal, state, or local laws.

12. **Survival.** Those provisions of this Agreement that by their sense and purpose should survive the term of this Agreement shall survive the term of this Agreement. Without limiting the generality of the preceding sentence, and for the avoidance of doubt, the provisions that survive the term of this agreement include: (a) controlling law; (b) records retention; and, (c) indemnification.

13. **Severability.** Any provision of this Agreement held to be prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability, without invalidating the remaining provisions or affecting the validity or enforcement of such provisions.

14. **Right of Entry.** County staff may enter upon City property to conduct weed control activity. County staff shall record when and where work was performed and shall make these records available to the City.

15. **General Provisions.**

- A. No new or separate legal or administrative entity is created to administer the provisions of this Agreement.
- B. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement.
- C. No provision of this Agreement may be amended or modified except by written agreement signed by the Parties.
- D. This Agreement shall be binding upon and inure to the benefit of the Parties' successors in interest, heirs and assigns.
- E. The Parties do not intend, and nothing in this Agreement shall be construed to mean, that any provision in this Agreement is to benefit any person or entity who is not a Party.
- F. This Agreement may be amended or supplemented only by a writing signed by duly authorized representatives of all the Parties.
- G. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the Parties shall not affect the validity of this Agreement, so long as all the Parties execute a counterpart of this Agreement.
- H. The Parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.
- I. Any provision of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses.
- J. It is understood and agreed this Agreement is entered into in the State of Washington. This Agreement shall be governed by and construed under the laws of the United States, the State of Washington and the County of Jefferson, as if applied to transactions entered into and to be performed wholly within Jefferson County,

Washington between Jefferson County residents. No Party shall argue or assert that any state law other than Washington law applies to the governance or construction of this Agreement.

- K. The venue for any legal action shall be solely in the appropriate state court in Jefferson County, Washington, subject to the venue provisions for actions against counties in RCW 36.01.050.
- L. Each Party shall be responsible for its own compliance with the Washington Public Records Act, Chapter 42.56 RCW (as may be amended). This Agreement, once executed, will be a “public record” subject to production to a third Party if it is requested under the Chapter 42.56 RCW.
- M. No Party may sell, transfer or assign any rights or benefits under this Agreement without the written approval of all the Parties.

(Signatures Follow on Next Page)

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be duly executed, such parties acting by their representatives being thereunto duly authorized.

CITY OF PORT TOWNSEND

John Mauro, City Manager

Date

Approved as to form:

Heidi Greenwood, City Attorney

Date

JEFFERSON COUNTY WASHINGTON

Board of County Commissioners
Jefferson County, Washington

BY: _____
Kate Dean, Chair Date

BY: _____
Greg Brotherton, Commissioner Date

BY: _____
Heidi Eisenhour, Commissioner Date

SEAL:

ATTEST: _____
Carolyn Gallaway, CMC Date
Clerk of the Board

Approved as to form only:

 _____
Philip C. Hunsucker, Date
Chief Civil Deputy Prosecuting Attorney

February 7, 2024