

**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: May 15, 2023

SUBJECT: Noxious Weeds Crew Contract: Clallam County Noxious Weed Control Board

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 control noxious weeds. JCNWCB currently has 5 MOU's with public agencies to control weeds on their properties over the course of the year.

You are seeing this contract again because the Clallam County legal department needed a change in the language regarding insurance in the contract. It has been fixed and approved by the Jefferson County Legal Department.

ANALYSIS: With over \$55,000 in funds from these MOUs dedicated to controlling noxious weeds, there are over 15 weeks of work to be done on these projects. The Washington Conservation Corps, who we have exclusively contracted with in the past, is only available to provide 3 crew weeks. The Weed Board is in need of additional contractors to help with the work. Partnering with Clallam County to manage weeds is a great use of

FISCAL IMPACT: This contract is prepared for up to \$15,000. This covers the work that will be done for the Jefferson County Public Works Roads Division. All money paid to CCNWCB would be directly funded through the existing MOU support.

Limiting the spread of noxious weeds, especially along road corridors will drastically limit the fiscal impacts of noxious weed removal in the future. Roads are one of the most common vectors for noxious weeds into other communities, as well as into our County's vibrant farm and pasture land.

RECOMMENDATION:

I recommend approval of this contract.

REVIEWED BY:


Mark McCauley, County Administrator

5/14/23
Date

**PROFESSIONAL SERVICES AGREEMENT FOR
JEFFERSON COUNTY NOXIOUS WEED CONTROL BOARD (COUNTY)
AND
CLALLAM COUNTY NOXIOUS WEED CONTROL BOARD (CONTRACTOR)**

THIS PROFESSIONAL SERVICES AGREEMENT ("this Agreement") is entered into between the County of Jefferson, a municipal corporation ("County"), and the Clallam County Noxious Weed Control Board ("Contractor"), in consideration of the mutual benefits, terms, and conditions specified below.

1. Project Designation. Contractor is retained by County to perform the following Project:

Jefferson County Public Works Roads Department Noxious Weed Control Project:

The Jefferson County Noxious Weed Control Board (JCNWCB) has partnered with the Jefferson County Public Works (Roads Division) to provide services for weed control along right of ways on county roads.

2. Scope of Services. Contractor agrees to perform the services identified on Exhibit "A" attached hereto including the provision of all labor.
3. Time for Performance. This Agreement shall commence on May 15, 2023 and continue through August 31, 2023. Work performed consistent with this Agreement during its term, put prior to the adoption of this Agreement, is hereby ratified. Contractor shall perform all services pursuant to this Agreement as outlined on Exhibit "A". Time is of the essence in the performance of this Agreement.
4. Payment. Contractor shall be paid by County for completed work and for services rendered under this Agreement as follows:
 - a. Payment for the work provided by Contractor shall be made as provided on Exhibit "B" attached hereto, provided that the total amount of payment to Contractor shall not exceed \$15,000 without express written modification of this Agreement signed by County.
 - b. Invoices must be submitted by the 15th of the month for the previous month's expenses. Such invoices will be checked by County, and upon approval thereof, payment will be made to Contractor in the amount approved. Failure to submit timely invoices and reports pursuant to Exhibit B of this Agreement may result in a denial of reimbursement. Invoices not submitted within 60 days may be denied.
 - c. Final payment of any balance due Contractor of the total contract price earned will be made promptly upon its ascertainment and verification by County after the completion of the work and submittal of reports under this Agreement and its acceptance by County.

- d. Contractor's records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of County and state for a period of six (6) years after final payments. Copies shall be made available upon request.
5. Ownership and Use of Documents. All non-confidential or de-identified documents, drawings, specifications, and other materials produced by Contractor in connection with the services rendered under this Agreement shall be the property of County whether the project for which they are made is executed or not. Contractor shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with Contractor's endeavors. Contractor shall not be held liable for reuse of documents or modifications thereof, including electronic data, by County or its representatives for any purpose other than the intent of this Agreement.
6. Compliance with laws. Contractor shall, in performing the services contemplated by this Agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this Agreement.
7. Maintenance of Records. Each party shall maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either to perform 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 agreement. The Office of the State Auditor, federal auditors, the Jefferson County Auditor, and any persons duly authorized by the parties shall have full access and the right to examine 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.
8. Audit. An audit will be submitted to County upon request. Upon request, Contractor will submit the most recent financial audit within 30 days.
 - a. Upon request County shall have the option of performing an onsite review of all records, statements, and documentation.
 - b. If County finds indications of potential non-compliance during the monitoring process, County shall notify Contractor within ten (10) days. County and Contractor shall meet to discuss areas of contention in an attempt to resolve issues.
 - c. Audit will provide statements consistent with the guidelines of Reporting for Other Non-Profit Organizations AICPA SOP 78-10, and is performed in accordance with generally accepted auditing standards and with Federal Standards for Audit of Governmental Organizations, Programs, Activities and Functions, and meeting all requirements of 2 C.F.R. Part 200, as applicable.

9. Indemnification. Contractor shall indemnify and hold harmless County, its past or present employees, officers, agents, elected or appointed officials or volunteers (and their marital communities), from and against all claims, losses or liability, or any portion thereof, including reasonable attorney's fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to Contractor's own employees, or damage to property occasioned by a negligent act, omission or failure of Contractor. Contractor shall be liable only to the extent of Contractor's proportional negligence. Contractor specifically assumes potential liability for actions brought against County by Contractor's employees, including all other persons engaged in the performance of any work or service required of Contractor under this Agreement and, solely for the purpose of this indemnification and defense, Contractor specifically waives any immunity under the state industrial insurance law, Title 51 R.C.W. Contractor recognizes that this waiver was specifically entered into pursuant to provisions of R.C.W. 4.24.115 and was subject of mutual negotiation. This section shall survive the expiration or termination of this Agreement.
10. Insurance. Parties understand and agree Contractor is self-insured and a member of a liability pool which includes coverage for professional liability, among other categories of coverage, in adequate quantity to protect against legal liability arising out of contract activities. Contractor shall provide evidence of its status as a self-insured entity meeting these requirements within fifteen (15) calendar days of the execution of this Agreement. Upon request by County, Contractor must describe its financial condition and the self-insured / liability pool funding mechanism. County, or any other third party, need not be named as additional insureds under the self-insurance / liability pool coverage policies as said policies prohibit the Contractor from naming third parties as additional insureds. Contractor shall give County thirty (30) calendar days' advance notice of any self-insurance or liability pool cancellation or non-renewal.
11. Worker's Compensation (Industrial Insurance).
- a. If and only if Contractor employs any person(s) in the status of employee or employees separate from or in addition to any equity owners, sole proprietor, partners, owners or shareholders of Contractor, Contractor shall maintain workers' compensation insurance at its own expense, as required by Title 51 RCW, for the term of this Agreement and shall provide evidence of coverage to County, upon request.
 - b. Worker's compensation insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability with limits meeting all applicable state and federal laws.
 - c. This coverage shall extend to any subcontractor that does not have their own worker's compensation and employer's liability insurance.
 - d. Contractor expressly waives by mutual negotiation all immunity and limitations on liability, with respect to County, under any industrial insurance act, disability

benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

- e. If County incurs any costs to enforce the provisions of this subsection, all cost and fees shall be recoverable from Contractor.

12. Independent Contractor. Contractor and County agree that Contractor is an independent contractor with respect to the services provided pursuant to this Agreement. Contractor specifically has the right to direct and control Contractor's own activities, and the activities of its subcontractors, employees, agents, and representatives, in providing the agreed services in accordance with the specifications set out in this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties. Neither Contractor nor any employee of Contractor shall be entitled to any benefits accorded County employees by virtue of the services provided under this Agreement, 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 Jefferson County employees. County shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to Contractor, or any employee of Contractor.

13. Subcontracting Requirements.

- a. Contractor is responsible for meeting all terms and conditions of this Agreement including standards of service, quality of materials and workmanship, costs, and schedules. Failure of a subcontractor to perform is no defense to a breach of this Agreement. Contractor assumes responsibility for and all liability for the actions and quality of services performed by any subcontractor.
- b. Every subcontractor must agree in writing to follow every term of this Agreement. Contractor must provide every subcontractor's written agreement to follow every term of this Agreement before the subcontractor can perform any services under this Agreement. The Public Health Director or their designee must approve any proposed subcontractors in writing.
- c. Any dispute arising between Contractor and any subcontractors or between subcontractors must be resolved without involvement of any kind on the part of County and without detrimental impact on Contractor's performance required by this Agreement.

14. Covenant Against Contingent Fees. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, County shall have the right to annul this Agreement without

liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

15. Discrimination Prohibited. Contractor, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, color, national origin, religion, creed, age, gender, sexual orientation, marital status, sex, or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.
16. No Assignment. Contractor shall not sublet or assign any of the services covered by this Agreement without the express written consent of County. Assignment does not include printing or other customary reimbursable expenses that may be provided in an agreement.
17. Non-Waiver. Waiver by County of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.
18. Termination.
 - a. County reserves the right to terminate this Agreement at any time by giving ten (10) days written notice to Contractor.
 - b. In the event of the death of a member, partner, or officer of Contractor, or any of its supervisory personnel assigned to the project, the surviving members of Contractor hereby agree to complete the work under the terms of this Agreement, if requested to do so by County. This section shall not be a bar to renegotiations of this Agreement between surviving members of Contractor and County, if County so chooses.
 - c. County reserves the right to terminate this contract in whole or in part, with 10 days' notice, in the event that expected or actual funding from any funding source is withdrawn, reduced, or limited in any way after the effective date of this agreement. In the event of termination under this clause, County shall be liable for only payment for services rendered prior to the effective date of termination.
19. Notices. All notices or other communications which any party desires or is required to give shall be given in writing and shall be deemed to have been given if hand-delivered, sent by facsimile, email, or mailed by depositing in the United States mail, prepaid to the party at the address listed below or such other address as a party may designate in writing from time to time. Notices to County shall be sent to the following address:

Jefferson County Risk Management
P.O. Box 1220
Port Townsend, WA 98368

Notices to Contractor shall be sent to the following address:

Christina St. John

Clallam County Noxious Weed Control Board
223 E 4th St, Ste 15
Port Angeles, WA 98362
360-417-2442
Christina.stjohn@clallamcountywa.gov

20. Integrated Agreement. This Agreement together with attachments or addenda represents the entire and integrated Agreement between County and Contractor and supersedes all prior negotiations, representations, or agreements written or oral. No representation or promise not expressly contained in this Agreement has been made. This Agreement supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral, by County within the scope of this Agreement. Contractor ratifies and adopts all statements, representations, warranties, covenants, and agreements contained in its proposal, and the supporting material submitted by Contractor, accepts this Agreement and agrees to all of the terms and conditions of this Agreement.
21. Modification of this Agreement. This Agreement may be amended only by written instrument signed by both County and Contractor.
22. Disputes. The parties agree to use their best efforts to prevent and resolve disputes before they escalate into claims or legal actions. Any disputed issue not resolved pursuant to the terms of this Agreement shall be submitted in writing within 10 days to County Risk Manager, whose decision in the matter shall be final, but shall be subject to judicial review. If either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this Agreement, each party in such action shall bear the cost of its own attorney's fees and court costs. Any legal action shall be initiated in the Superior Court of the State of Washington for Jefferson County. The parties agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. Contractor hereby consents to the personal jurisdiction of the Superior Court of the State of Washington for Jefferson County.
23. Section Headings. The headings of the sections of this Agreement are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of the sections or this Agreement.
24. Limits of Any Waiver of Default. No consent by either party to, or waiver of, a breach by either party, whether express or implied, shall constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.
25. No Oral Waiver. No term or provision of this Agreement will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. Failure of a party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.
26. Severability. Provided it does not result in a material change in the terms of this Agreement, if any provision of this Agreement or the application of this Agreement to any person or

APPENDIX A - SCOPE AND PAYMENT OF SERVICES

Project

Jefferson County Public Works Roads Department Noxious Weed Control Project:

The Jefferson County Noxious Weed Control Board (JCNWCB) has partnered with the Jefferson County Public Works (Roads Division) to provide services for weed control along right of ways on county roads. Public Works maintains approximately 400 miles of county roads, which have infestations of county listed noxious weeds. County road right of ways are a vector for the spread of noxious weeds. Therefore, it is important to control these weeds early and continue annual maintenance. These noxious weeds pose a threat to the health of our environment and are required for control by state law.

Objectives

Under supervision of SPONSOR, crew(s) will perform tasks that control or limit the spread of noxious weeds. Specific tasks could include control, scientific surveying and monitoring, or reporting.

The predominant weed that is being targeted on Jefferson County Roads is wild chervil, *Anthriscus sylvestris*. This Class B weed has an aggressive growth habit which thrives on road sides and quickly creates monocultures. It poses a serious threat to native plants and agriculture. It is also on the Washington Department of Agriculture's quarantine list. The partnership between the Jefferson County Noxious Weed Control Board and the Clallam County Noxious Weed Control Board is to limit the spread of noxious weeds from Jefferson County to Clallam County. Clallam County has no reported infestations of wild chervil and the collaboration on this project will keep it that way, as well as limit the transport of other weeds to and from the counties.

Other noxious weeds found along Jefferson County Roadways are poison hemlock, spotted jewelweed, common teasel, knotweed species, tansy ragwort, and Canadian thistle.

Considerations and Conditions

1. CONTRACTOR is not responsible for normal wear and tear when project requires the use of SPONSOR-provided tools, equipment, or safety gear.
2. The assignment of members shall not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of non-overtime work, wages, or other employment benefits.
3. If inclement weather makes a project site inaccessible, then the SPONSOR may reassign the crew, or defer the work to a later date.

CONTRACTOR Deliverables

1. Provide agreed upon number of crew members for scheduled work days.
2. Provide appropriate and necessary herbicide at cost for the project.
3. Provide own equipment for project.
4. Fill out accurate spray records and provide copies to SPONSOR.

Payment of Services

CCNWCB will invoice JCNWCB within 30 days of completion of work.

Item	Details	Standard Rate	Quantity	Subtotal
Coordinator		\$56.13 / hr		
Inspector		\$47.60 / hr		
Seasonal Tech		\$25.94/hr		
Transportation	At cost			
Herbicide	At cost			
Supplies	Misc, as needed			
				TOTAL

Scope of Work

Wild chervil has been found along Jefferson County Roads since 2016. Crews have been performing spot treatments along the roads for wild chervil, poison hemlock, and common teasel. The main target roads are Center Valley Rd, Eaglemount Rd, West Valley Rd, Beaver Valley Rd, and Uncas Rd. See Map A below for 2022 survey. Map B outlines the spray areas in 2022. Jefferson County Noxious Weed Board staff will perform surveys of these areas to determine if there are weeds present for the 2023 work season. There may also be wild chervil on county roads west of Quilcene.

Spotted jewelweed is another target species that will be in the scope of work for the Clallam Crew. It is believed that an infestation in Jefferson County is travelling West onto Forest Service Roads. It may be on Jefferson County Roads or on City of Port Townsend Land (they own the reservoir).

JEFFERSON COUNTY WASHINGTON

Board of County Commissioners
Jefferson County, Washington

By: _____
Greg Brotherton, Chair Date

By: _____
Kate Dean, Commissioner Date

By: _____
Heidi Eisenhour, Commissioner Date

SEAL:

ATTEST:

Carolyn Galloway Date
Clerk of the Board

Approved as to form only:



May 3, 2023

Philip C. Hunsucker Date
Chief Civil Deputy Prosecuting Attorney

CONTRACTOR

Board of County Commissioners
Clallam County, Washington

By: _____
Mike French, Commissioner DATE

By: _____
Randy Johnson, Commissioner DATE

By: _____
Mark Ozias, Chair DATE

SEAL:

ATTEST:

Loni Gores DATE
Clerk of the Board

Approved as to form only:

Bert Dee Boughton DATE
Chief Civil Deputy Prosecuting Attorney

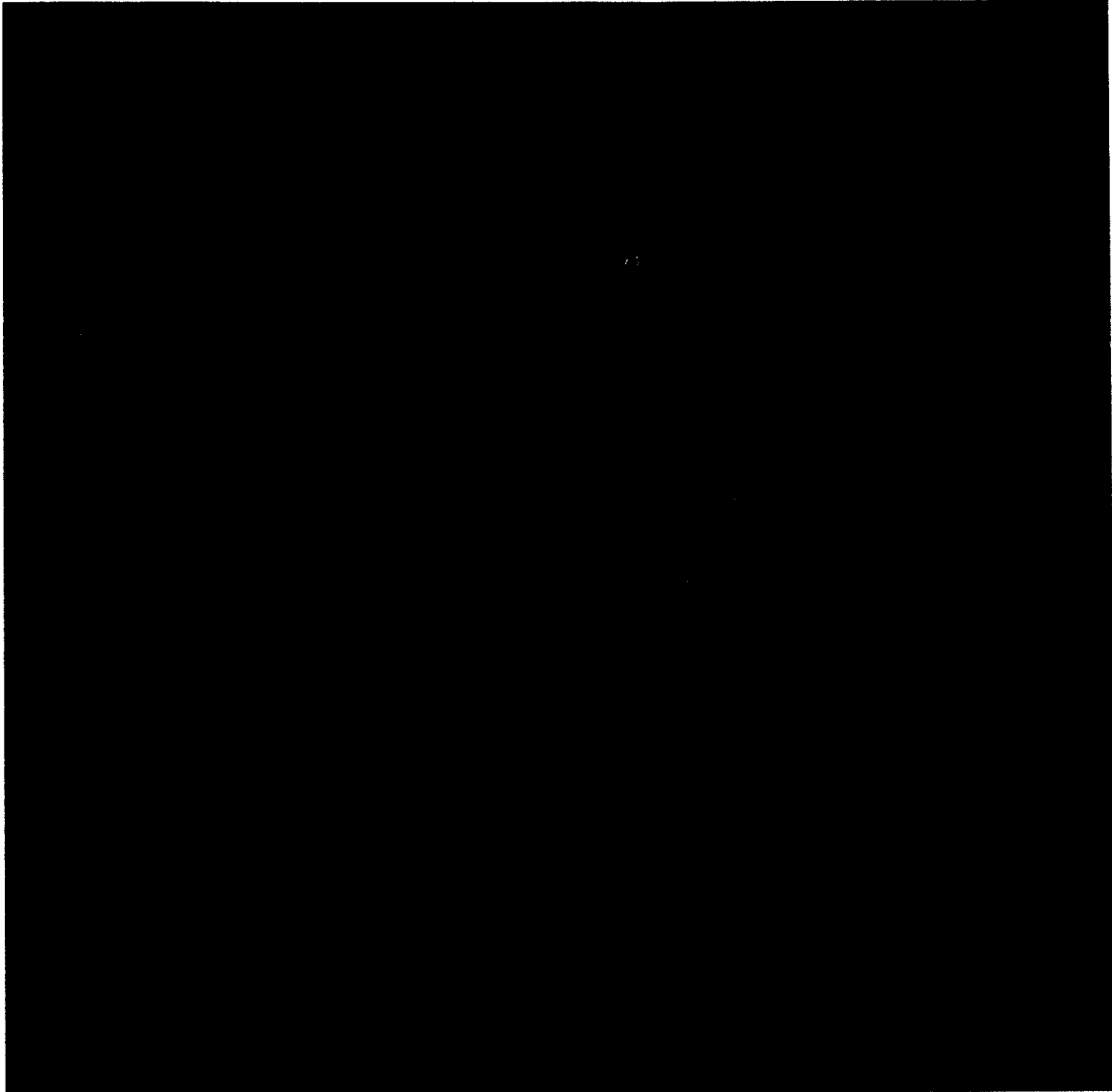
circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application this Agreement shall not be affected and shall be enforceable to the fullest extent permitted by law.

27. 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) insurance; and, (c) indemnification.
28. Binding on Successors, Heirs and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties' successors in interest, heirs, and assigns.
29. No Assignment. Contractor shall not sell, assign, or transfer any of rights obtained by this Agreement without the express written consent of County.
30. No Third-party Beneficiaries. The parties do not intend, and nothing in this Agreement shall be construed to mean, that any provision in this Agreement is for the benefit of any person or entity who is not a party.
31. Signature in Counterparts. The parties agree that separate copies of this Agreement may be signed by each of the parties and this Agreement shall have the same force and effect as if all the parties had signed the original.
32. Attachments. Any document in this Agreement identified as an attachment is part of this Agreement and is incorporated by reference into this Agreement.
33. Facsimile and Electronic Signatures. The parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.
34. Arms-Length Negotiations. The parties agree that this Agreement has been negotiated at arms-length, with the assistance and advice of competent, independent legal counsel.
35. Public Records Act. Notwithstanding the provisions of this Agreement to the contrary, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, Chapter 42.56 RCW, as may hereafter be amended, Contractor agrees to maintain all records constituting public records and to produce or assist County in producing such records, within the time frames and parameters set forth in state law. Contractor further agrees that upon receipt of any written public record request, Contractor shall, within two business days, notify County by providing a copy of the request per the notice provisions of this Agreement.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

As needed, crew will spot treat other noxious weeds as directed by the Coordinator, or that they come across while out in the field.

Map A - 2022 Survey Points



MAP B – 2022 Target Areas of Control – Spot treatment for noxious weeds

