

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of County Commissioners
Mark McCauley, County Administrator

FROM: Su Tipton

DATE: 9/6/22

SUBJECT: Hood Canal Salmon Enhancement Group-Invasive Weed Control 2022-25

STATEMENT OF ISSUE:

Hood Canal Salmon Enhancement Group, HCSEG, is asking Jefferson County for permission to control invasive weeds designated for mandatory control in Jefferson County on Jefferson County properties located on the Dosewallips River, Little Quilcene River and Big Quilcene River.

ANALYSIS:

The HCSEG, will provide services, staff and all things necessary to complete this task.

FISCAL IMPACT:

HCSEG will not require any payment by Jefferson County for the completed work and for services rendered. HCSEG is funded through a grant from the Washington State Recreation and Conservation Office (RCO)- Salmon Recovery Funding Board (SRFB).

RECOMMENDATION:

Recommend approval of tis agreement.

REVIEWED BY:


Mark McCauley, County Administrator

8/26/22
Date

PROFFESIONAL SERVICES AGREEMENT

Between

Hood Canal Salmon Enhancement Group

And

Jefferson County

THIS AGREEMENT is entered into between the Hood Canal Salmon Enhancement Group, 600 NE Roessel Rd, Belfair, Washington 98528, hereinafter referred to as "HCSEG", and the County of Jefferson, hereinafter referred to as "the County." For the purposes of this MOU, it is understood that all references to the County or HCSEG also include an appointed designee(s).

1. Project and Access. The County is granting access to HCSEG to control invasive weeds designated for mandatory control in Jefferson County on Jefferson County properties located on the Dosewallips River, Little Quilcene River, and Big Quilcene River. HCSEG will provide services and staff, and otherwise do all things necessary for or incidental to this Agreement, and the performance of the work set forth in Exhibit A, attached hereto and incorporated herein. The services provided by HCSEG are funded through a grant from the Washington State Recreation and Conservation Office (RCO) - Salmon Recovery Funding Board (SRFB) PRISM #21-1034, acquired by HCSEG.
2. Scope of Services. HCSEG agrees to, through HCSEG employees or subcontractors, perform the services, identified on **Exhibit A**, attached hereto, including the provision of all labor, materials, equipment, and supplies.
3. Time for Performance. This Agreement shall commence on **June 1, 2022** and continues through **December 31, 2025** unless terminated as provided herein. Work performed prior to the execution of this contract is hereby ratified.
4. Payment. HCSEG shall not require any payment by the County for completed work and for services rendered under this Agreement.
5. Compliance with Laws. HCSEG shall, in performing the services contemplated by this Agreement, observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this Agreement.
6. Indemnification. HCSEG shall defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers (and their marital communities) harmless from any claims, injuries, damages, losses or suits, including attorney's fees, arising out of or resulting from the acts, errors or omissions of HCSEG in performance of this Agreement, except for injuries and damages caused by the sole negligence of the County. Should a court of competent jurisdiction determine this Agreement is subject to RCW 4.24.115 if liability for damages occurs arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of HCSEG and the County, its officers, officials, employees, agents and volunteers (and their marital communities) HCSEG's liability, including the duty and cost to defend, shall be only for HCSEG's negligence. It is further specifically understood that the indemnification provided constitutes HCSEG's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. This section shall survive the

expiration or termination of this Agreement.

7. Insurance. HCSEG shall obtain and keep in force during the terms of the Agreement, policies of as follows:
- a. Workers Compensation. If HCSEG 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 HCSEG, Worker's Compensation Insurance in an amount or amounts that are not less than the required statutory minimum(s) as established by the State of Washington or the state or province where HCSEG is located.
 - b. Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the work for a combined single limit of not less than \$500,000 each occurrence with the County named as an additional insured in connection with HCSEG's performance of the contract.
 - c. General Commercial Liability Insurance, in an amount not less than a single limit of one million dollars (\$1,000,000) per occurrence and an aggregate of not less than two (2) times the occurrence amount (\$2,000,000 minimum) for bodily injury, including death, and property damage unless otherwise specified in the contract specifications. This insurance coverage shall contain no limitations on the scope of the protection provided and include the following minimum coverage:
 - i. Broad Form Property Damage with no employee exclusion;
 - ii. Personal Injury Liability, including extended bodily injury;
 - iii. Broad Form Contractual/Commercial Liability including completed operations;
 - iv. Premises – Operations Liability (M&C);
 - v. Independent Contractors and Weed Boards; and
 - vi. Blanket Contractual Liability.
 - d. Insurance Provisions Applicable to All Insurance Required by this Agreement.
 - i. All insurance provisions for the
 - ii. Insurance coverage shall be evidenced by one of these methods:
 - A. Certificate of insurance; or,
 - B. Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.
 - iii. Any deductibles or self-insured retention shall be declared to and approved by the County before the approval of this Agreement by the County. At the option of the County, the insurer shall reduce or eliminate deductibles or self-insured retention, or HCSEG shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- iv. Failure of HCSEG to take out or maintain any required insurance shall not relieve HCSEG from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations about indemnification of the County.
- v. HCSEG's insurers shall have no right of recovery or subrogation against the County, its officers, officials, employees, agents and volunteers (and their marital communities), it being the intention of the parties that the insurance policies so affected shall protect all the parties and shall be primary coverage for all losses covered by the above described insurance.
- vi. Insurance companies issuing HCSEG's insurance policy or policies shall have no recourse against the County, its officers, officials, employees, agents and volunteers (and their marital communities) for payment of any premiums or for assessments under any form of insurance policy.
- vii. All deductibles in HCSEG's insurance policies shall be assumed by and be at the sole risk of HCSEG.
- viii. Any judgments for which the County may be liable, in excess of insured amounts required by this Agreement, or any portion thereof, may be withheld from payment due, or to become due, to HCSEG until HCSEG shall furnish additional security covering such judgment as may be determined by the County.
- ix. Any coverage for third party liability claims provided to the County by a "Risk Pool" created under Ch. 48.62 RCW shall be non-contributory regarding any insurance policy HCSEG shall provide to comply with this Agreement.
- x. The County may, upon HCSEG's failure to comply with all provisions of this Agreement relating to insurance, withhold payment or compensation otherwise due to HCSEG.
- xi. HCSEG shall provide a copy of all insurance policies specified in this Agreement.
- xii. Written notice of cancellation or change in HCSEG's insurance required by this Agreement shall reference the project name and agreement number and shall be mailed to the County at the following address: Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368.
- xiii. HCSEG's liability insurance provisions shall be primary and noncontributory regarding any insurance or self-insurance programs covering the County, its officers, officials, employees, agents and volunteers (and their marital communities).
- xiv. Any failure to comply with reporting provisions of the insurance policies shall not affect coverage provided to the County, its officers, officials, employees, agents and volunteers (and their marital communities).
- xv. HCSEG's insurance shall apply separately to each insured against whom claim is made or suit is brought, except regarding the limits of the insurer's liability.
- xvi. HCSEG shall include all subcontractors as insured under its insurance policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance coverage for subcontractors shall be subject to all the requirements stated in this

Agreement. The insurance limits mandated for any insurance coverage required by this Agreement are not intended to be an indication of exposure nor are they limitations on indemnification.

- xvii. HCSEG shall maintain all required insurance policies in force from the time services commence until services are completed. Certificates, insurance policies, and endorsements expiring before completion of services shall be promptly replaced.
 - xviii. HCSEG shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.
 - xix. Certificates of insurance as required by this Agreement shall be delivered to the County within fifteen (15) days of execution of this Agreement.
 - xx. The County shall be named as an "additional insured" on all insurance policies required by this Agreement.
 - xxi. HCSEG shall furnish the County with properly executed certificates of insurance that, at a minimum, shall include:
 - A. The limits of overage;
 - B. The project name and agreement number to which it applies;
 - C. The certificate holder as Jefferson County, Washington and its elected officials, officers, and employees with the address of Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368, and,
 - D. A statement that the insurance policy shall not be canceled or allowed to expire except on thirty (30) days prior written notice to the County.
 - xxii. To the extent a certificate of insurance lists or refers to any endorsements solely by name, description or number it shall be the responsibility of HCSEG to obtain and provide to the Jefferson County Risk Management full and complete copy of the texts of such endorsements.
 - xxiii. If the proof of insurance or certificate indicating the County is an "additional insured" to an insurance policy obtained by HCSEG refers to an endorsement (by number or name) but does not provide the full text of that endorsement, then it shall be the obligation of HCSEG to obtain the full text of that endorsement and forward that full text to the County.
8. Independent Contractor. HCSEG and the County agree that HCSEG is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither HCSEG nor any employee of HCSEG 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. The 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 HCSEG, or any employee of HCSEG. The Contractor agrees to file all necessary governmental documents, including tax returns, reflecting income status as an independent contractor for services rendered to the County under this Agreement. Should any governmental agency audit the files and request information on either the Contractor or the County, the Contractor and the County agree to furnish immediately the requesting party with any records, including tax returns, relating to the services rendered under this Agreement. No subcontractor, employee, agent or representative of the Contractor will be or be deemed to be, or act or purport to act, as an employee, agent or representative of the County.

9. Covenant Against Contingent Fees. The Consultant warrants that they have not employed or retained any company or person, other than a bonafide employee working solely for the Consultant, to solicit or secure this contract, and that they have not paid or agreed to pay any company or person, other than a bonafide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the County shall have the right to annul this contract 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.
10. Discrimination Prohibited. HCSEG, 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, sex, or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.
11. Assignment. The Consultant shall not sublet or assign any of the services covered by this Agreement without the express written consent of the County.
12. Non-Waiver. Waiver by the 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.
13. Termination. All parties reserve the right to terminate this contract at any time by giving thirty (30) days written notice.

In the event of the death of a member, partner or officer of the Consultant, or any of its supervisory personnel assigned to the project, the surviving members of the Consultant hereby agree to complete the work under the terms of this Agreement, if requested to do so by the County. This section shall not be a bar to renegotiations of this Agreement between surviving members of the Consultant and the County, if the County so chooses.

14. 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 under this Agreement shall be submitted in writing within 10 days to the 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 pay for 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 under the laws of the State of Washington. The Contractor consents to the personal jurisdiction of the Superior Court of the State of Washington for Jefferson County.

15. 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 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.
16. 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.
17. 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.
18. 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 to benefit any person or entity who is not a party.
19. Modification of this Agreement. This Agreement may be amended or supplemented only by a writing signed by duly authorized representatives of all the parties.
20. Signature in Counterparts. 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.
21. Facsimile and Electronic Signatures. The parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.
22. 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.
23. Public Records Act. Notwithstanding any provisions of this Agreement to the contrary, to the extent any record, including any electronic, audio, paper or other media, must be kept or

indexed as a public record under the Washington Public Records Act, Chapter 42.56 RCW (as may be amended), the Contractor agrees to maintain all records constituting public records and to produce or assist the County in producing such records, within the time frames and parameters in state law. The Contractor also agrees that upon receipt of any written public record request, the Contractor shall, within two business days, notify the County by providing a copy of the request per the notice provisions of this Agreement. This Agreement, once executed, will be a "public record" subject to production to a third party if it is requested under the Washington Public Records Act, Chapter 42.56 RCW (as may be amended)

24. Notices. Notices to the parties shall be sent to the following address:

Hood Canal Salmon Enhancement Group
c/o Jefferson County Noxious Weed Control Board
121 Oak Bay Rd
Port Hadlock, WA 98339
Ph: (360) 316-9332
Email: noxiousweeds@co.jefferson.wa.us

Jefferson County Risk Management,
P.O. Box 1220, Port Townsend, WA 98368
Ph: 360-385-9100

25. Integrated Agreement. This Agreement together with attachments or addenda, represents the entire and integrated between the County and HCSEG and supersedes all prior negotiations, representations, or agreements written or oral. This agreement may be amended only by written instrument signed by both County and HCSEG.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

JEFFERSON COUNTY WASHINGTON

Board of County Commissioners
Jefferson County, Washington

**HOOD CANAL SALMON
ENHANCEMENT GROUP**

By: _____
Heidi Eisenhour, Chair Date

By: _____
Signature

By: _____
Kate Dean, Commissioner Date

Name: _____

Title: _____

By: _____
Greg Brotherton, Commissioner Date

Date: _____

SEAL:

ATTEST:

Carolyn Galloway Date
Clerk of the Board

Approved as to form only:

Barbara Dyles Ehrlichman August 22, 2022 for
Philip C. Hunsucker, Date
Chief Civil Deputy Prosecuting Attorney

Exhibit A: Scope of Work

The Hood Canal Salmon Enhancement Group (HCSEG) will control the invasive weeds designated for mandatory control by Jefferson County on Jefferson County properties located within or adjacent to the riparian management zones of the Dosewallips River, Little Quilcene River and Big Quilcene River. Treatment of these areas will utilize funding allocated by the state legislature and Salmon Recovery Funding Board (Project #21-1034). Control efforts shall include field surveys directly associated with areas to be treated, followed by the application of aquatic formulation herbicides.

Minimum work specifications: workers will be hired or contracted to treat invasive weed infestations designated for mandatory control by Jefferson County known or discovered in the area previously identified above. Employees or contractors of HCSEG will use an integrated weed management approach, in conjunction with the best management practice for the control of the noxious weed species. All control methods will be employed consistent with the laws, rules and regulations of Washington State, Jefferson County, the *Noxious Emergent Plant Management Environmental Impact Statement* (EIS) first published in November 1993, and all subsequent amendments to the EIS.

Hood Canal Salmon Enhancement Group, must enter into a contract with WSDA under which Hood Canal Salmon Enhancement Group, act as limited agents to carry out noxious and quarantine weed control for WSDA under the "Aquatic Noxious Weed Control National Pollutant Discharge Elimination System Waste Discharge General Permit" (NPDES permit) prior to the performance of any activity pursuant to this Agreement that discharges herbicides directly into streams or rivers, or indirectly into streams, rivers, estuaries, wetlands, along lake shorelines, or in other wet areas. Herbicide treatments may only occur at times allowed under provisions of the NPDES permit and must comply with conditions specified in such permit.

Weed control crews will work closely with the Hood Canal Salmon Enhancement Group staff and the WSDA Knotweed Control Coordinator, and be active in the field from June 1, 2022 to December 31, 2025, as allowed by the variable growth season of noxious weeds and any required preparation or conclusion times.

Equipment:

The noxious weed control crew will use herbicide applications for control. The control crew may use equipment provided by Hood Canal Salmon Enhancement Group and the WSDA Knotweed Control Coordinator. Herbicides will be procured from the WSDA Knotweed Control

Coordinator as well as purchased by HCSEG.

Herbicide:

The noxious weed control crew will only use aquatic formulation herbicides and surfactants for noxious weed control work. Methods of delivery include the use of a backpack sprayer, hand held injection gun, or spray bottle for cut-stump methods. Which method of herbicide delivery will be determined dependent on plant species, plant size, and abundance.

The following rates of application will be utilized for all control efforts on knotweed and butterfly bush. All noxious weeds other than knotweed and butterfly bush will be controlled using rates of herbicide specified on the label.

The herbicide concentration rates used when utilizing a backpack sprayer are as follows:

- Invasive Knotweed
 - 1% concentration of Polaris EPA#241-426-228 (Imazapyr)
 - 1% concentration of Competitor WA Reg. No. 2935-04001 (Modified Vegetable Oil Surfactant, an agent used to assist mixtures ability to stick onto leaves)
 - 0.1% Blazon Blue (Dye)

The herbicide concentration rates used when utilizing a hand injection gun on invasive knotweed are as follows:

- 100% concentration of AquaNeat EPA#228-365 (Glyphosate)

The herbicide concentration rates when utilizing a backpack sprayer on small to medium size butterfly bush:

- 1.5% - 2% concentration of Renovate EPA#62719-37-67690 (Triclopyr)
- 1% concentration of Competitor WA Reg. No. 2935-04001 (Modified Vegetable Oil Surfactant, an agent used to assist mixtures ability to stick onto leaves)
- 0.1% Blazon Blue (Dye)

The herbicide concentration rates when cut stump application is used on large sized butterfly bush:

- 50% concentration of Renovate EPA#62719-37-67690 (Triclopyr)

Task 1:

Organize and conduct knotweed, butterfly bush, and other noxious weed control efforts on County properties located within or adjacent to the riparian management zone of the Dosewallips, Little Quilcene and Big Quilcene Rivers on June 1, 2022 through December 31, 2025.

Deliverables:

- 1a) Season ending report that will include the following: date(s) of control activities, map of project area(s), acres of knotweed treated, acres protected, herbicide used, copy of application records, and geographic information system data for knotweed infestations treated. The Hood Canal Salmon Enhancement Group will supply WSDA with all geographic information system data that is generated as a result of this Agreement.
- 1b) These deliverables are separate from and in addition to any reporting requirements associated with limited agent status under WSDA's Aquatic Noxious Weed Control NPDES General Permit coverage.