



WASHINGTON STATE DEPARTMENT OF  
**Natural Resources**  
PETER GOLDMARK - Commissioner of Public Lands

**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES  
INTERLOCAL AGREEMENT WITH  
PACIFIC COUNTY DEPARTMENT OF VEGETATION MANAGEMENT**

**Agreement No. 16-390**

This Agreement is between Pacific County Department of Vegetation Management, referred to as PCDVM and the Washington State Department of Natural Resources, Aquatic Resources Division - Rivers District, referred to as DNR.

DNR falls under authority of RCW Chapter 43.30 of Washington State, Department of Natural Resources. DNR and PCDVM enter into this agreement under Chapter 39.34, Inter local Cooperation Act.

The purpose of this Agreement is to survey and control noxious weeds along the shoreline of Baker Bay in the Columbia River from the Port of Ilwaco to the Port of Chinook.

**IT IS MUTUALLY AGREED THAT:**

**1.01 Statement of Work.** The PCDVM shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to performing work set forth in the Attachment "A".

**2.01 Period of Performance.** The period of performance of this Agreement shall begin on May 1, 2016 and end on June 30, 2017 unless terminated sooner as provided herein.

This Agreement is also intended to memorialize the oral agreement consistent with the terms and conditions of this Agreement, from May 1, 2016, to the date this Agreement becomes effective upon the signatures of all parties.

**3.01 Payment.** Pay for the work provided is established under RCW 39.34.130. The parties estimate that the cost of accomplishing the work will not exceed Seventeen thousand Seventy Dollars (\$17,070.00). Payment for satisfactory performance of work shall not exceed this amount unless the parties mutually agree to a higher amount before the beginning of any work that could cause the maximum payment to be exceeded. Payment for services shall be based on the rates and terms described in Attachment "B" of the agreement.

**4.01 Billing Procedures.** PCDVM shall submit an invoice at the completion of the work.

Payment to the PCDVM for approved and completed work will be made by warrant or account transfer within 30 days of receiving the invoice. When the contract expires, 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.

**5.01 Records Maintenance.** PCDVM shall maintain books, records, documents and other evidence, to sufficiently document all direct and indirect costs incurred by PCDVM in providing the services. These records shall be available for inspection, review, or audit by personnel of the DNR, other personnel authorized by the DNR, the Office of the State Auditor, as authorized by law. PCDVM shall keep all books, records, documents, and other material relevant to this Agreement for six years after agreement expiration. The Office of the State Auditor, and any persons authorized by the parties shall have full access to 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 this material to any third parties without first notifying the furnishing party and giving it a reasonable opportunity to respond. Each party will use reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

**6.01 Rights to Data.** Unless otherwise agreed, data originating from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned equally. 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 use, copyright, patent, register and the ability to transfer these rights.

**7.01 Independent Capacity.** The employees or agents of each party who are engaged in performing 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.

**8.01 Amendments.** This Agreement may be amended by mutual agreement of the parties. Amendments shall be in writing and signed by personnel authorized to bind each of the parties.

**9.01 Termination.** Either party may terminate this Agreement by giving the other party 30 days prior written notice. If this Agreement is terminated, the terminating party shall be liable to pay only for those services provided or costs incurred prior to the termination date according to the terms of this Agreement.

**10.01 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 the terms and conditions, the aggrieved party will give the other party written notice of the failure or violation. The aggrieved party will give the other party 15 working days to correct the violation or failure. If the failure or violation is not corrected within 15 days, the aggrieved party may immediately terminate this Agreement by notifying the other party in

writing.

**11.01 Disputes.** If a dispute arises, a dispute board shall resolve the dispute like this: Each party to this agreement shall appoint a member to the dispute board. These board members shall jointly appoint an additional member to the dispute board. The dispute board shall evaluate the facts, contract terms, applicable statutes and rules, then determine a resolution. The dispute board's determination shall be final and binding on the parties. As an alternative to the dispute board, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330. In this case, the Governor's process will control the dispute resolution.

**12.01 Governance.** This contract is entered into 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. If there is 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:

- (1) Applicable State and federal statutes and rules;
- (2) Statement of Work; and
- (3) Any other provisions of the agreement, including materials incorporated by reference.

**13.01 Assignment.** The work to be provided under this Agreement and any claim arising from this agreement cannot be assigned or delegated in whole or in part by either party, without the express prior written consent of the other party. Neither party shall unreasonably withhold consent.

**14.01 Waiver.** A party that fails to exercise its rights under this agreement is not precluded from subsequently exercising its rights. A party's rights may only be waived through a written amendment to his agreement.

**15.01 Severability.** The provisions of this agreement are severable. If any provision of this Agreement or any provision of any document incorporated by reference should be held invalid, the other provisions of this Agreement without the invalid provision remain valid.

**16.01 Insurances.** The PCDVM and DNR are part of the State of Washington and are protected by the State's self-insurance liability program as provided by Chapter 4.92 RCW. These agencies have entered into this agreement to provide/perform survey work described therein. This agreement will terminate on the date listed in the period of performance. The agencies agree to allocate responsibility proportionately for any losses that may arise out of the course of this agreement.

### **General Insurance Requirements**

At all times during the term of this agreement, the PCDVM shall, at its cost and expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance may result in the termination of the agreement at DNR's

option.

All insurance shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports unless otherwise approved by DNR. Any exception must be reviewed and approved by the DNR Risk Manager or in the absence of, the Contracts Specialist at FMD, before the contract is accepted. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

Before starting work, PCDVM shall furnish DNR, with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in the bid/proposal, if applicable, and Agreement. Said certificate(s) shall contain the Contract number 14-246, name of DNR Project Manager, a description, and include the State of Washington, DNR, its elected and appointed officials, agents, and employees as additional insured on all general liability, excess, umbrella and property insurance policies.

PCDVM shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit PCDVM's liability or responsibility.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by DNR. PCDVM waives all rights against DNR for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this Agreement.

DNR shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications.

- (1) Insurers subject to Chapter 48.18 RCW (Admitted and Regulated by the Insurance Commissioner): The insurer shall give DNR 45 days advance notice of cancellation or non-renewal. If cancellation is due to nonpayment of premium, DNR shall be given 10 days advance notice of cancellation.
- (2) Insurers subject to Chapter 48.15 RCW (Surplus lines): DNR shall be given 20 days advance notice of cancellation. If cancellation is due to nonpayment of premium, DNR shall be given 10 days advance notice of cancellation.

In lieu of the coverages required under this section, DNR at its sole discretion may accept evidence of self-insurance by the PCDVM, provided PCDVM provides the following:

- PCDVM shall provide a statement by a CPA or actuary, satisfactory to DNR that demonstrates PCDVM's financial condition is satisfactory to self-insure any of the required insurance coverages.

- DNR may require PCDVM to provide the above from time to time to ensure PCDVM's continuing ability to self-insure. If at any time the PCDVM does not satisfy the self-insurance requirement, PCDVM shall immediately purchase insurance as set forth under this section.
- By requiring insurance herein, DNR does not represent that coverage and limits will be adequate to protect PCDVM, and such coverage and limits shall not limit PCDVM's liability under the indemnities and reimbursements granted to DNR in this contract.

The limits of insurance, which may be increased by DNR, as deemed necessary, shall not be less than as follows:

- Commercial General Liability (CGL) Insurance: PCDVM shall maintain general liability (CGL) insurance, and, if deemed necessary as determined by DNR, commercial umbrella insurance with a limit of not less than \$1,000,000 per each occurrence and \$2,000,000 for a general aggregate limit. The products-completed operations aggregate limit shall be \$2,000,000.
  - CGL insurance shall be written on ISO occurrence form CG 00 01 (or substitute form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) conditions.
- (3) Employers Liability (Stop Gap) Insurance: If PCDVM shall use employees to perform this contract, PCDVM shall buy employers liability insurance, and, if deemed necessary as determined by DNR, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
- (4) Business Auto Policy (BAP) Insurance: PCDVM shall maintain business auto liability and, if deemed necessary as determined by DNR, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "any Auto." Business auto coverages shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.
- PCDVM waives all rights against DNR for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.
- (5) Workers' Compensation Insurance: PCDVM shall comply with all State of

Washington workers' compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of PCDVM and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this contract. Except as prohibited by law, PCDVM waives all rights of subrogation against DNR for recovery of damages to the extent they are covered by workers' compensation, employer's liability, commercial general liability or commercial umbrella liability insurance.

PCDVM shall indemnify DNR for all claims arising out of PCDVM's, its subcontractor's, or sub-subcontractor's failure to comply with any State of Washington workers' compensation laws where DNR incurs fines or is required by law to provide benefits to or obtain coverage for such employees. Indemnity shall include all fines, payment of benefits to PCDVM or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to DNR by PCDVM pursuant to the indemnity may be deducted from any payments owed by DNR to PCDVM for performance of this Contract.

(6) To the fullest extent permitted by law, PCDVM shall indemnify, defend and hold harmless DNR, its officials, agents and employees, from and against all claims arising out of or resulting from the performance of the Agreement. "Claim" as used in this agreement means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting therefrom. PCDVM's obligation to indemnify, defend, and hold harmless includes any claim by PCDVM's agents, employees, representatives, or any subcontractor or its employees. PCDVM expressly agrees to indemnify, defend, and hold harmless DNR for any claim arising out of or incident to PCDVM's or any subcontractor's performances or failure to perform the Agreement. PCDVM's obligation to indemnify, defend, and hold harmless DNR shall not be eliminated or reduced by any actual or alleged concurrent negligence of DNR or its agents, agencies, employees and officials. PCDVM waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless DNR and its agencies, officials, agents or employees.

**17.01 Complete Agreement in Writing.** This Agreement contains all the terms and conditions agreed upon by the parties, No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties.

**18.01 Contract Management.** The Project Coordinator for each of the parties shall be the contact person for this agreement. All communications and billings will be sent to the project coordinator.

**19.01 Project Coordinators.**

(1) The Project Coordinator for the Agency is Jeff Nesbitt, Telephone Number (360) 875-9425, email [jnesbitt@co.pacific.wa.us](mailto:jnesbitt@co.pacific.wa.us).

(2) The Project Manager for DNR is Todd Brownlee, Telephone Number (360) 642-0041, email [todd.brownlee@dnr.wa.gov](mailto:todd.brownlee@dnr.wa.gov)

By signature below, the Agencies certify that the individuals listed in this document, as representatives of the Agencies, are authorized to act in their respective areas for matters related to this instrument.

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

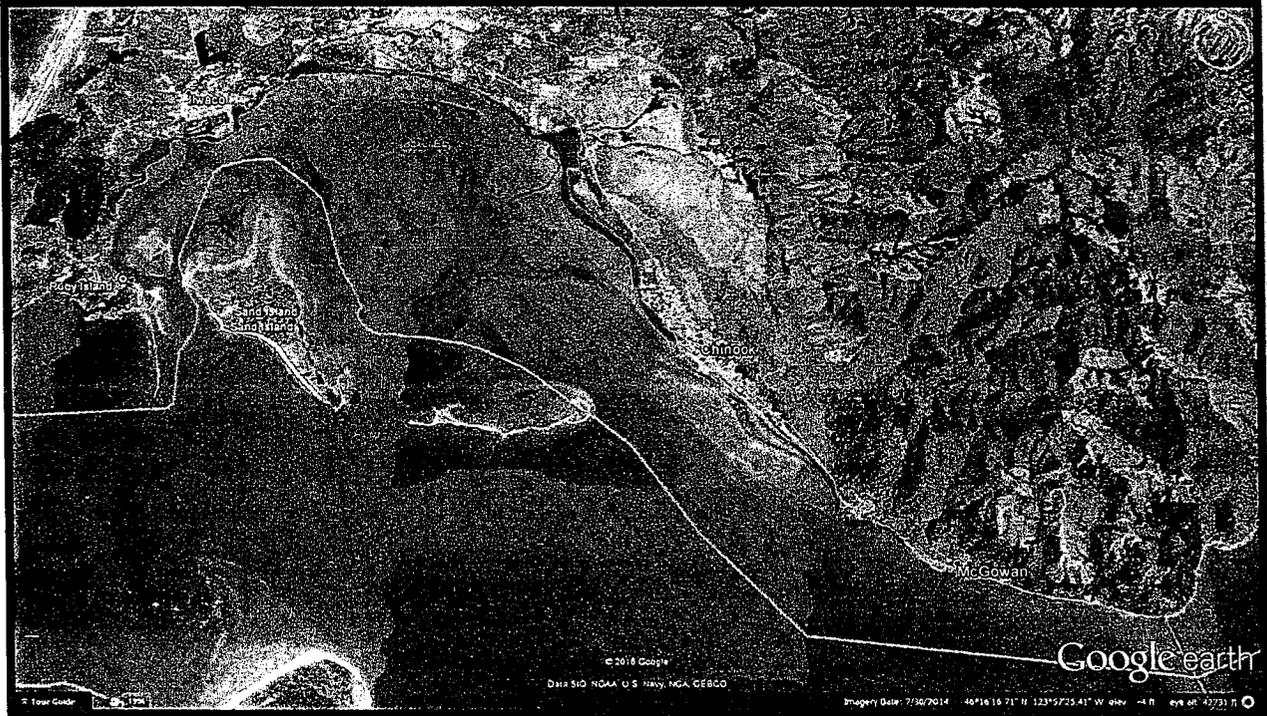
**CONTRACTOR**

**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL  
RESOURCES**

_____ Signature	_____ Date	_____ Signature	_____ Date
_____ Name		_____ Name	
_____ Title		_____ Title	
_____ Address		_____ Address	
_____ Telephone		_____ Telephone	

## Attachment A STATEMENT OF WORK

This project will implement an integrated pest management (IPM) strategy, consisting primarily of chemical control, using mechanical control (cutting) when appropriate, for the purposes of noxious weed removal on State owned aquatic lands in Baker Bay, and privately owned portions of the Baker Bay shoreline. This will require the use of herbicides and possibly some mechanical equipment (chainsaw). The following protocol will be used:



### 1. Preliminary survey

PCDVM will survey location (see map), photograph target weeds, and gather data regarding: OPS location, weed species present, degree of infestation, terrain characteristics, and potential complications (safety hazards, desirable vegetation, tidal limitations, proximity to homes, livestock, etc.)

### 2. Herbicide Treatments

a. The majority of this property is owned by Washington State Department of Natural Resources, with the remainder being owned by private landowners. PCDVM will treat both the state-owned portion, and the privately owned portion. Before PCDVM applies any herbicide to private property, each private land owner will be required to sign a "Permission to Enter Private Land and Waiver of Liability Agreement".

b. To optimize herbicide performance, reduce environmental impact, and allow PCDVM to visually track progress, PCDVM will use a two-phase herbicide application process with intervals of at least two weeks between applications. The weeds are grouped

by (a.) herbicide susceptibility, and (b.) location (e.g. mudflat, tidal marsh, upland). Herbicide treatments will be made using backpack sprayers. In some cases a patch of weeds may exceed the limitations of the backpack sprayer in these instances PCDVM will use a truck-mounted spray system with 200 ft. hose. All herbicide applications will be in compliance with the product(s) labels and NPDES permit requirements.

### 3. Follow-up Survey

PCDVM will return to the treatment site after enough time has passed for the herbicidal effects to be visible on the plants. PCDVM will walk the length of the treatment area and look for missed plants that will be marked or treated.

### Project Timeline for 2016

- May 15 -31
  - Preliminary Survey/Project preparation
    - Walk 5.25 miles of shoreline from the Port of Ilwaco, to the Port of Chinook. Each weed population will be photographed, categorized by species, and recorded by GPS.

We will also use this time to ensure that all permits are in place, all equipment is functional, and every involved private landowner has granted us permission to proceed with herbicide application on their property.

- June 1 - 21
  - Herbicide Treatment Phase I
    - Selective application of *imazapyr*, *glyphosate*, and surfactant to Japanese knotweed, purple loosestrife, and common reed.
- July 18-28
  - Herbicide Treatment Phase 2
    - Selective application of *triclopyr*, *metsulfuron methyl*, and surfactant to gorse and scotch broom.
- August 1-15
  - Follow-up survey
    - Spot treatment for missed plants, if needed
- August 18 - 31
  - Compile documentation and assemble final report draft for the Department of Natural Resources
- September 1
  - Submit Final Report (deliverables) to DNR

**Attachment B**  
**BUDGET**

**Invoice Identification and Information**

Each invoice voucher submitted to the PCDVM Agency by the Department will clearly reference "Contract Number 16-390" and be sent to the DNR Project Manager.

Project Total: \$17,070.00.

Cost Breakdown:

**Budget Estimate**

Salaries & benefits		\$10,720.00
Herbicides		\$5,850.00
Fuel		\$500.00
<b>Total Request</b>		<b>\$17,070.00</b>

**CERTIFICATE OF MEMBERSHIP IN THE WASHINGTON COUNTIES RISK POOL**

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND  
CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE

**MEMBER COUNTY:**

**Pacific County, Washington**  
Attn: Kathy Spoor,  
Administrative Officer

**Liability Coverage Afforded by the:**

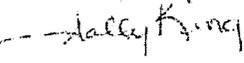
Washington Counties Risk Pool  
2558 R W Johnson Rd SW, Suite 106  
Tumwater, WA 98512-6103

Pacific County (the "County") is a member of the Washington Counties Risk Pool (the "Pool"), as authorized by RCW 48.62.031, and the County is covered by the Pool's Joint Self-Insurance Liability Program. The Pool's Joint Self-Insurance Liability Program was created by interlocal cooperative agreement amongst the Pool's member counties to share risks by "jointly, self-insuring" certain third-party liabilities. The Pool is **NOT** an insurance company. Claims that are covered under a Memorandum of Liability Coverage ("MLC") from the Pool and were submitted under Chapter 4.96 RCW ("*Actions against political subdivisions, municipal and quasi-municipal corporations*") against the County, its employees, officers, volunteers and agents and/or actions in connection with or incidental to the performance of an agreement/contract which the County and/or its officers, employees or volunteers are found to be liable for will be paid by the Pool and/or the County.

<b>MLC NUMBER:</b>	<b>20152016RISKPOOL-PACO</b>
<b>MLC EFFECTIVE DATE:</b>	October 1, 2015
<b>MLC EXPIRATION DATE:</b>	October 1, 2016
<b>LIMITS OF LIABILITY EACH OCCURRENCE</b>	
<b>BI AND PD COMBINED:</b>	\$10,000,000

<b>TYPES OF LIABILITY COVERAGE AFFORDED:</b>	<b>Including:</b>	<u>General Liability</u> Bodily Injury Personal Injury Property Damage Errors and Omissions/Professional Advertising Injury
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<b>DESCRIPTION OF</b>	<b>CANCELLATION</b>
Contract to control noxious weeds in Baker's Bay	SHOULD THE ABOVE DESCRIBED MLC BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUER WILL ENDEAVOR TO PROVIDE THIRTY (30) DAYS WRITTEN NOTICE TO THE CERTIFICATE FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO

During the MLC Period 10/1/15 - 10/1/16	OBLIGATION NOR LIABILITY OF ANY KIND UPON THE ISSUER OR ITS AGENTS OR REPRESENTATIVES.
<b>CERTIFICATE HOLDER:</b>	<b>ISSUE DATE:</b>
Washington State Department of Natural Resources	 Claims Assistant