



INTERAGENCY AGREEMENT
DEPARTMENT OF NATURAL RESOURCES (DNR)
NO. 93-102444

PI: 39C-GOH
Funding Source: State
Grant Funded: Yes No

This Agreement is made and entered into between the Washington State Department of Natural Resources, hereinafter referred to as DNR, and the below named firm, hereinafter referred to as Whatcom County.

DNR and Whatcom County enter into this agreement under Chapter 39.34, Interlocal Cooperation Act.

Whatcom County
322 N Commercial Street, Suite 210
Bellingham, WA 98225
Phone: (360) 778-6200
Email: PublicWorks@co.whatcom.wa.us

IT IS MUTUALLY AGREED THAT:

1.0 Purpose. The purpose of this Agreement is to provide funding support for control or eradication of certain noxious weeds in Whatcom County on, near, or potentially impacting state-owned aquatic lands (SOAL).

2.0 Scope of Work. Whatcom County 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 – Scope of Work and fulfilling reporting requirements referenced therein and described in Attachment C.

2.0 Period of Performance. The period of performance of this Agreement shall begin on July 1, 2021, and end on June 30, 2023, unless terminated sooner as provided herein.

4.0 Payment. The parties estimate that the cost of accomplishing the work will not exceed Nine Thousand Nine Hundred Dollars (\$9,900). DNR funding support is subject to appropriation, allotment approvals, and availability of funds. Pay for services shall be based on the rates and terms described in Attachment B – Budget.

5.0 Billing Procedures. Whatcom County shall submit invoices quarterly. Payment for approved goods and/or services will be made by check, warrant or account transfer within 30 days of receipt of the invoice. Upon expiration of the Agreement, invoices shall be paid, if received within 30 days after the expiration date. However, invoices for all work done within a fiscal year must be submitted within 30 days after the end of the fiscal year.

Each invoice submitted to DNR shall include information needed by DNR to determine the exact nature of all expenditures and completed work. At a minimum, each invoice shall specify the following:

- A. Agreement number 93-102444
- B. Treatment firm (subcontractor), if not county employees
- C. Number of hours worked if work is performed by county employees
- D. Species treated
- E. Area treated (acres, rivermiles, etc.)
- F. Any other relevant information
- G. The total invoice charge

6.0 Records Maintenance. Whatcom County shall maintain books, records, documents and other evidence, to sufficiently document all direct and indirect costs incurred by Whatcom County 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, and federal officials as authorized by law. Whatcom County 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, federal auditors, 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.

7.0 Rights to Data. Unless otherwise agreed, data originating from this Agreement shall be ‘works for hire’ as defined by Title 17 U.S.C., Section 101, and shall be owned equally by the

DNR and Whatcom County. 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.

8.0 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.

9.0 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.

10.0 Termination for Convenience. Either party may terminate this Agreement upon 30 calendar days' prior written notice to the other party. If this Agreement is terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

11.0 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.

12.0 Disputes. If a dispute arises, each party will make a good faith effort to resolve issues at the lowest possible level in their respective agencies. If they cannot resolve an issue, they will elevate the issue within their respective chains of command to resolve it.

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall evaluate the facts, Agreement terms, applicable statutes and rules, and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on both parties. The cost of resolution will be borne as allocated by the Dispute Board. Alternatively, the parties may pursue a third party dispute resolution as the parties mutually agree to in writing.

13.0 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 federal statutes and rules;
- (2) State of Washington statutes and regulations

- (3) Scope of Work; and
- (4) Any other provisions of the agreement, including materials incorporated by reference.

14.0 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.

15.0 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 this agreement.

16.0 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.

17.0 Responsibilities of the Parties/Indemnification. To the fullest extent permitted by law, Whatcom County shall indemnify, defend (with counsel acceptable to DNR), 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. Whatcom County's obligation to indemnify, defend, and hold harmless includes any claim by Whatcom County's employees, representatives, any subcontractor or its employees, or any third party.

However, Whatcom County shall not indemnify, defend, or hold harmless DNR, its officials, agents, and employees for claims caused by or resulting from the sole negligence of DNR, its officials, agents, and employees and in the event of concurrent negligence by (1) Whatcom County, its agents, employees, representatives, any subcontractor or its employees, or any third party and (2) DNR, its officials, agents, and employees, then Whatcom County's obligation to indemnify, defend, and hold harmless DNR, its officials, agents, and employees shall be valid and enforceable only to the extent of Whatcom County, its agents, employees, representatives, any subcontractor or its employees, or any third party's share of any concurrent negligence.

Whatcom County waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless DNR and its officials, agents or employees.

18.0 Insurance. Before using any of said rights granted herein and at its own expense, Whatcom County shall purchase and maintain, or require its agent(s)/subcontractor to purchase and maintain, the insurance described below for the entire duration of this Agreement. Failure to purchase and maintain the required insurance may result in the termination of the Agreement at DNR's option.

All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to, or maintained by, the State of Washington, Department of Natural Resources.

Whatcom County shall provide DNR with certificates of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Agreement before using any of said rights granted herein. The description section of the certificate shall contain the Contract Number and the name of the DNR Project Manager. Whatcom County shall also provide renewal certificates as appropriate during the term of this Agreement.

Failure of Whatcom County to have its subcontractors and agents comply with the insurance requirements contained herein does not limit Whatcom County's liability or responsibility.

INSURANCE TYPES & LIMITS: The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

Commercial General Liability (CGL) Insurance: Whatcom County shall purchase and maintain commercial general liability insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the general aggregate limits shall be at least twice the "each occurrence" limit, and the products-completed operations aggregate limit shall be at least twice the "each occurrence" limit. All insurance must 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 party assumed in a business contract) and contain separation of insured (cross-liability) condition.

Employer's liability ("Stop Gap") Insurance: Whatcom County shall purchase and maintain employer's liability insurance and if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for bodily injury by disease.

Business Auto Policy (BAP) Insurance: Whatcom County shall purchase and maintain business auto insurance and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 per accident, with such insurance covering liability arising out of "Any Auto". The policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense." Whatcom County waives all rights of subrogation against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Industrial Insurance (Workers Compensation): Whatcom County shall comply with Title 51 RCW by maintaining workers compensation insurance for its employees. Whatcom County waives all rights of subrogation against State for recovery of damages to the extent they are covered by Industrial Insurance, employer's liability, general liability, excess, or umbrella insurance. Whatcom County waives its Title 51 RCW immunity to the extent it is required by its indemnity obligation under this Agreement.

ADDITIONAL PROVISIONS:

Additional Insured: The State of Washington, Department of Natural Resources, its officials, agents, and employees shall be named as additional insured by endorsement on all general liability, excess, and umbrella insurance policies.

Cancellation: 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 the State 45 days advance notice of cancellation or nonrenewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.
2. Insurers subject to Chapter 48.15 RCW (Surplus Lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.

Insurance Carrier Rating: 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. Any exception must be reviewed and approved by the DNR Risk Manager or the DNR Contracts Manager, in the Risk Manager's absence. If an insurer is not admitted to do business in the State of Washington, all insurance policies and procedures for issuing the insurance policies must comply with Chapters 48.15 RCW and 284-15 WAC.

Self-Insurance: If Whatcom County is self-insured, evidence of its status as a self-insured entity shall be provided to State. The evidence should demonstrate that Whatcom County's self-insurance meets all of the required insurance coverage of this Agreement to the satisfaction of State including the description of the funding mechanism and its financial condition. If the funding mechanism or financial condition of the self-insurance program of Whatcom County is inadequate, then State may require the purchase of additional commercial insurance to comply with this Agreement.

Waiver: Whatcom County waives all rights of subrogation against State for recovery of damages to the extent these damages are covered by general liability, excess, or umbrella insurance maintained pursuant to this Agreement.

19.0 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.

20.0 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.

CONTRACTOR Contract Manager Information	DNR Contract Manager Information
Laurel Baldwin Whatcom County Public Works 322 N Commercial Street, Suite 210 Bellingham, WA 98225 <i>Phone:</i> (360) 778-6234 <i>Email address:</i> LBaldwin@co.whatcom.wa.us	Todd Palzer Department of Natural Resources 1111 Washington St. SE, MS 47027 Olympia, WA 98504-7027 <i>Phone:</i> (360) 280-9153 <i>Email address:</i> todd.palzer@dnr.wa.gov
CONTRACTOR Project Manager Information	DNR Project Manager Information
Laurel Baldwin Whatcom County Public Works 322 N Commercial Street, Suite 210 Bellingham, WA 98225 <i>Phone:</i> (360) 778-6234 <i>Email address:</i> LBaldwin@co.whatcom.wa.us	Micki McNaughton Department of Natural Resources 1111 Washington St. SE, MS 47027 Olympia, WA 98504-7027 <i>Phone:</i> (360) 890-6975 <i>Email address:</i> micki.mcnaughton@dnr.wa.gov

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

IN WITNESS WHEREOF, the Parties have executed this Agreement.

WHATCOM COUNTY

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES (DNR)**

Signature	Date
Satpal Sidhu	
Name	
Executive	
Title	
311 Grand Ave	
Bellingham, WA 98225	
Address	
Telephone	

Signature	Date
Thomas Gorman	
Name	
Acting Aquatic Resources Division Manager	
Title	
1111 Washington St. SE	
MS 47027	
Olympia, WA 98504-7027	
Address	
(360) 902-1584	
Telephone	

SCOPE OF WORK

1. Whatcom County Public Works will ensure adequate control measures are taken to abate listed noxious weeds on, near, or impacting DNR-managed SOAL in Whatcom County. Control efforts must include, but are not limited to:
 - a. Treating flowering rush (*Butomus umbellatus*) in Silver Lake.
 - A. Additional noxious weed control efforts, if any, must be performed within the existing budget, agreed to by both Project Managers, and documented in writing prior to any work occurring.
 - B. Whatcom County will survey sites to plan for and prescribe correct control measures.
 - C. Whatcom County will obtain adjacent landowner permission when necessary to maintain control efforts for listed target plant species, identified herein.
 - D. Upon receiving landowners' permission, operators licensed and endorsed by Washington State Department of Agriculture (WSDA) will treat the targeted noxious weed species. Whatcom County is solely responsible for contracting with and verifying operator credentials necessary for safe and legal herbicide use to control targeted plant species.
 - E. Surveys and control measures will take place primarily during the 2021-2023 growing seasons. Control measures will be based on an integrated pest management (IPM) approach and follow appropriate best management practices, e.g., operator will be licensed and endorsed for aquatic work; products will be used in accordance with labeled uses and dosages; aquatic formulations will be used near all waterways. Whatcom County is responsible for any required permits such as Hydraulic Project Approval (HPA) or National Pollution Discharge Elimination System (NPDES) coverage.
 - F. Whatcom County Noxious Weed Inspectors will monitor treated sites for 5 years and document treatment results annually.
2. Whatcom County will submit an Annual Report on or before December 1 for each year that project work described in this contract is performed, using the DNR AIS Cooperator Annual Report Form (Attachment C). The Annual Report will include, at a minimum, the following information:
 - A. Details of control methods. When herbicides are used, include formulation, application methods, application rates, area treated and equipment used.
 - B. Copies of spray records, if requested by DNR.
 - C. Digital maps and photos of the infestation before, during, and after treatment.
 - D. Summary of communication with, and outreach to, landowners and project participants.
 - E. Monitoring plans and proposed follow-up treatment schedules.
 - F. Value of the completed work to county agency and Whatcom County Comprehensive Plan goals.

BUDGET

Invoice Identification and Information

Each invoice voucher submitted to DNR by Whatcom County will clearly reference "Interagency Agreement Number 93-102444" and be sent to the DNR Project Manager identified above.

Proposed Budget for 2021-2023 DNR Funding

<u>Project</u>	<u>Requested Support</u>
Silver Lake flowering rush	\$9,900
Total Proposed Budget	\$9,900

DNR funding support is subject to appropriation, allotment approvals, and availability of funds.



ATTACHMENT C

Washington State Dept. of Natural Resources Aquatics Invasive Species Program Cooperator Annual Report

EXAMPLE

An Annual Report fulfills Washington State Dept. of Natural Resources Aquatics Invasive Species (DNR AIS) Program's requirements for funding agreements and/or DNR AIS-sponsored crew assistance. Information from the reports contributes to an annual report for decision-makers that demonstrates the effectiveness of DNR AIS assistance to local cooperators and helps develop a needs package for future budget consideration.

Annual Reports for DNR AIS-assisted weed control work are due no later than 4:00pm December 1 for each year that project work described in the referenced contract is performed.

Interagency Agreement number:

Report Year:

Organization name:

Organization address:

Contact Person & Title:

Phone number:

email:

County:

Project description:

Site(s) and location(s):

Weed species of concern:

Work accomplished

- A. Summary of communication with, and outreach to, landowners and project participants.
- B. Details of control methods. Where herbicides are used, please include formulation, application methods, application rates, area treated, and equipment used. Copies of herbicide application records must be retained per WSDA requirements, and may be requested by DNR.
- C. Digital maps and photos of the project area before, during, and after treatment.
- D. Monitoring plans and proposed follow-up treatment schedules.

Describe the role that DNR assistance plays in supporting existing strategic or habitat management plans for the site(s). Please include the value of the completed work to County agency and County Comprehensive Plan goals.

Indicate total value of this project, including partner organizations and funding levels.

Final reports must be received by DNR AIS **no later than 4:00pm December 1 each year DNR AIS assistance is used.**

Please submit completed report to DNR AIS at dnrreais@dnr.wa.gov.

**WHATCOM COUNTY:
Recommended for Approval:**

Department Director Date

Approved as to form:

Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive