

# CLARK COUNTY STAFF REPORT

**DEPARTMENT:** Public Works / Parks & Lands / Land & Vegetation Management

**DATE:** August 15, 2017

**REQUESTED ACTION:** Accept \$30,000 grant from the Washington State Department of Agriculture for Japanese knotweed control and authorize the Interim County Manager to execute the agreement and any future amendments.

X  Consent      \_\_\_ Hearing      \_\_\_ County Manager

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### **PUBLIC WORKS GOALS:**

- Provide a safe, efficient transportation system
- Support a vibrant system of parks and natural areas while preserving the environment
- Continue responsible stewardship of public funds
- Increase partnerships and foster an engaged, informed community
- Empower a skilled, responsive workforce
- Make Public Works a great place to work

### **BACKGROUND**

The Washington State Department of Agriculture (WSDA), through the State Noxious Weed Control Board, distributes funding annually to counties with active noxious weed control programs. Applications for the funds are solicited, and awards are made based on equal distribution of available monies to all counties that apply. WSDA recently issued a solicitation for the control of Japanese knotweed.

Public Works was awarded \$30,000 for the control of Japanese knotweed in Clark County. Public Works has used state funds to control Japanese knotweed in the Lewis and Washougal River watersheds since the early 2000s.

### **COUNCIL POLICY IMPLICATIONS**

This action does not propose a new policy, change in policy or refinement of an existing policy. The county routinely seeks alternate funding sources to help offset general fund expenses and enters into grant agreements with funding agencies.

### **ADMINISTRATIVE POLICY IMPLICATIONS**

See Council Policy Implications above. This action does not propose a new policy, change in policy, or refinement of an existing policy, but does confirm an existing policy.

### **COMMUNITY OUTREACH**

Community outreach was not a requirement of the state's Japanese knotweed request for proposals process because funding is available only for noxious weed control boards. Upon execution of the grant agreement, Clark County will contact landowners in the Lewis River watershed regarding knotweed control.

PW17-092

**BUDGET IMPLICATIONS**

YES	NO	
x		Action falls within existing budget capacity.
	x	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	x	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

**BUDGET DETAILS**

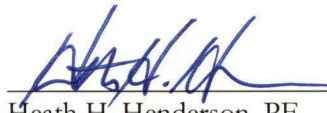
Local Fund Dollar Amount	\$0
Grant Fund Dollar Amount	\$30,000
Account	General Fund
Company Name	Washington Department of Agriculture

**DISTRIBUTION:**

Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>

**Attachments:** 2017-2019 Japanese Knotweed Agreement K2557

  
 Kevin Tyler  
 Lands Manager, Ext. 4258

  
 Heath H. Henderson, PE  
 Public Works Director/County Engineer

Primary Staff Contact: Kevin Tyler Ext. 4258

APPROVED:   
 CLARK COUNTY, WASHINGTON  
 BOARD OF COUNTY COUNCILORS

DATE: 8-15-17

SR# 17317



APPROVED: \_\_\_\_\_  
 Jim Rumpeltes, Interim County Manager

DATE: \_\_\_\_\_

**INTERAGENCY AGREEMENT  
BETWEEN  
WASHINGTON STATE DEPARTMENT OF AGRICULTURE  
AND  
CLARK COUNTY  
AND ITS AGENT  
CLARK COUNTY NOXIOUS WEED CONTROL BOARD**

**THIS AGREEMENT** is made and entered into by and between the Washington State Department of Agriculture (WSDA) and Clark County and its agent, Clark County Noxious Weed Control Board.

**IT IS THE PURPOSE OF THIS AGREEMENT** to provide Clark County and its agent, Clark County Noxious Weed Control Board, funding for a project to control invasive knotweed species on the Lewis River and all associated tributaries within Clark County.

**THEREFORE, IT IS MUTUALLY AGREED THAT:**

**STATEMENT OF WORK**

Clark County through its agent, Clark County Noxious Weed Control Board, shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Attachment "A" which is attached hereto and incorporated herein.

**PERIOD OF PERFORMANCE**

Regardless of the date of signature and subject to its other provisions, this Agreement shall begin on July 1, 2017 and end on June 30, 2019, unless terminated sooner or extended by WSDA as provided herein.

**PAYMENT**

Compensation for the work provided in accordance with this Agreement has been established under the terms of RCW 39.34.130. The parties have determined that the cost of accomplishing the work herein will not exceed \$30,000.00. Only reasonable costs identified in Attachment "A", incurred directly related to the Clark County Knotweed Control and Eradication Program, will be reimbursed to Clark County under this Agreement.

Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree in writing to a higher amount prior to the commencement of any work that will cause the maximum payment to be exceeded. Compensation for service(s) shall be as set forth in accordance with the budget in Attachment "B" which is attached hereto and incorporated herein.

**BILLING PROCEDURE**

Clark County shall submit properly completed invoices quarterly to the WSDA Agreement administrator. Reference WSDA Contract Number K2257 on all invoices. Payment to Clark County for approved and completed work will be made by warrant or account transfer by WSDA within 30 days of receipt of the properly completed invoice. Upon expiration of the Agreement, 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. **In no case can this be more than 10 days past the end of the biennium.**

**RECORDS MAINTENANCE**

The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. Documents must also support performance and costs of any nature expended in the performance of 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 the Agreement and the Office of the State Auditor, federal auditors and any persons duly authorized by the parties shall have full access 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 or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond, consistent with applicable laws. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

**RIGHTS IN DATA**

Unless otherwise provided, data that originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by WSDA. 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 copyright, patent, register, and the ability to transfer these rights.

**INDEPENDENT CAPACITY**

The employees or agents of each party who are engaged in the performance of 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.

**AGREEMENT ALTERATIONS AND AMENDMENTS**

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

**TERMINATION**

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

**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 these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days of receipt of written notice. If the failure or violation is not corrected, this Agreement may be terminated immediately upon receipt of written notice of the aggrieved party to the other.

**CONFLICT OF INTEREST**

WSDA may, by written notice to Clark County, terminate this Agreement if it is found after due notice and examination by the Director of the Department of Agriculture, and/or the designee authorized in writing to act on the Director's behalf, that there is a violation of the State Ethics Law, chapter 42.52 RCW; chapter 42.23 RCW; or any similar statute involving Clark County in the procurement of or performance under this Agreement. Unless stated otherwise, the signatory of this Agreement is the Director's designee.

In the event this Agreement is terminated as provided above, WSDA shall be entitled to pursue the same remedies against Clark County and its agent, Clark County Noxious Weed Control Board, as it could pursue in the event of a breach of the Agreement by Clark County or its agent, Clark County Noxious Weed Control Board. The rights and remedies of WSDA provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Director of the Department of Agriculture, and/or the designee authorized in writing to act on the Director's behalf, makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Agreement.

**DISPUTES**

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 review the facts, agreement terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto.

**LICENSING, BONDING, INDUSTRIAL INSURANCE AND OTHER INSURANCE COVERAGE**

Clark County and its agent, Clark County Noxious Weed Control Board, shall ensure that all contractors hired to perform services under this Agreement shall comply with all applicable licensing and bonding requirements for the type of service to be performed, and with the provisions of Title 51, Industrial Insurance. Clark County and its agent, Clark County Noxious Weed Control Board, shall also ensure that all contractors provide proof of an adequate amount of commercial general liability insurance coverage for the activities to be performed under any subcontract.

**GOVERNANCE**

This Agreement is entered into pursuant to and under 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. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County, Washington.

In the event of 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:

- a. Applicable state and federal statutes and rules;
- b. Plan of Work (Attachment A);
- c. Budget (Attachment B);
- d. Permission to Enter Private Land and Waiver of Liability (Attachment C); and

- e. Any other provisions of the Agreement, including material incorporated by reference.

**ASSIGNMENT**

Clark County and its agent, Clark County Noxious Weed Control Board, are responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Agreement are carried forward to any subcontracts. In no event shall the existence of any subcontract operate to release or reduce the liability of Clark County and its agent, Clark County Noxious Weed Control Board, to WSDA for any breach in the performance of Clark County and its agent Clark County Noxious Weed Control Board's duties.

**WAIVER**

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the party and attached to the original Agreement.

**SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

**ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

**CONTRACT MANAGEMENT**

The Agreement administrator for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Agreement administrator for WSDA is:

James Marra, Ph.D.  
Pest Program Manager  
Washington State Dept. of Agriculture  
Plant Protection Division  
PO Box 42560  
Olympia, Washington 98504-2560  
(360) 902-2071  
jmarra@agr.wa.gov

The Agreement administrator for Clark County is:

Kevin Tyler, Lands Manager  
Clark County Public Works  
PO Box 9810  
Vancouver, WA 98666  
(360) 397-6118 ext. 4258  
Kevin.tyler@clark.wa.gov


All communications between the parties relating to this Agreement and any billings and payments will be directed to those persons. Either party may change administrators by notifying the other in writing.

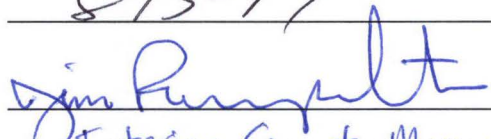
**IN WITNESS WHEREOF**, the parties have executed this Agreement.

STATE OF WASHINGTON  
DEPT. OF AGRICULTURE

CLARK COUNTY

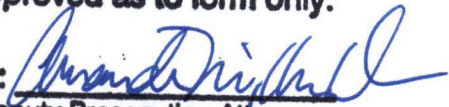
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By:   
Title: Chair  
Date: 8-15-17

By:   
Title: Interim County Manager  
Date: 8-07-07

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Approved as to form only:**

By:   
**Deputy Prosecuting Attorney**

**ATTACHMENT A**  
**Plan of Work**  
**Clark County**  
**and its agent Clark County Noxious Weed Control Board**  
**Project for Knotweed Control**  
**July 1, 2017 to June 30, 2019**

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**County Knotweed Control Criteria:**

Clark County through its agent, Clark County Noxious Weed Control Board, will conduct control work on knotweed infestations located on the Lewis River and all associated tributaries within Clark County. Treatment of these areas will utilize funding allotted by the state legislature for control of knotweed species during the 2018-2019 state fiscal biennium. Control shall include field survey directly associated with areas to be treated.

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

Clark County, or subcontractors to Clark County, must enter into a contract with WSDA under which Clark County, or subcontractors to Clark County, 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.

The crew will work closely with the county noxious weed coordinator and the WSDA Knotweed Control Coordinator, and be active in the field from July 1, 2017 to June 30, 2019, as allowed by the variable growth season of knotweed and any required preparation or conclusion times. Work will only take place on property for which the Clark County Noxious Weed Control Board has obtained prior written permission for entry and treatment, utilizing the permission form provided by WSDA (Attachment C) or any applicable permission form approved by WSDA, from the landowner or tenant. Clark County Noxious Weed Control Board will also provide access to these properties for the WSDA Knotweed Control Coordinator. Changes made to any permission form must be approved by WSDA prior to the performance of any work on that property undertaken under terms of this Agreement.

**Work Crew and Work Hours:**

The knotweed control crew will work or be under contract with the county noxious weed control board during the specified period, dedicating their time to controlling knotweed in the project area.



The control crew will have one crew leader who will be responsible for coordinating the crew's work, and who will maintain ongoing contact with the county noxious weed coordinator and the WSDA Knotweed Control Coordinator.

**Equipment:**

The knotweed control crew will use all available tools for control, including manual controls and herbicide applications, to control knotweed infestations in Clark County. The control crew may use equipment provided by other agencies, provided the county noxious weed coordinator and the WSDA Knotweed Control Coordinator agree to the usage of the equipment and materials.

**Program Needs Provided by WSDA:**

WSDA may furnish the knotweed control crew with herbicide, public information fliers, public notification signs, and other equipment as the WSDA Knotweed Control Coordinator deems necessary. All unexpended items remain the property of WSDA.

**Expenditures:**

The funds provided for the county knotweed control crew will primarily go towards salaries and benefits, travel, supplies and equipment expenses for the crewmembers. All supplies furnished by WSDA will be used in Washington State and under the supervision of county personnel. An inventory list will be furnished to WSDA upon request. Items such as computer programs, models, food and beverage, or other costs not specified in this document will not be reimbursed unless the expenditure is specifically authorized in advance in writing by WSDA.

**Coordination:**

The Clark County Knotweed Control Program will be coordinated with state, local and private control efforts.

**Deliverables:**

The county noxious weed coordinator will submit a written report to the WSDA Agreement administrator, documenting the work conducted in Clark County, as follows: A season ending report is due December 1, 2017 and December 1, 2018, which will include the following: date(s) of control activities, map of project area(s), the type of control conducted, difficulties encountered, solid acres of knotweed treated, acres of knotweed protected, number of river miles worked, number of landowners assisted, and photo documentation of selected sites, including before and after treatment photos. The county noxious weed coordinator will supply WSDA with all geographic information system data that is generated as a result of this Agreement. Final payment under this Agreement will not be made until the season ending report is accepted by WSDA.

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.

**ATTACHMENT B**  
**Budget**  
**Clark County**  
**and its agent Clark County Noxious Weed Control Board**  
**Knotweed Control Project**  
**July 1, 2017 to June 30, 2019**

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Total payment to Clark County and its agent Clark County Noxious Weed Control Board will not exceed \$30,000.00 in fiscal biennium 2019 (i.e., July 1, 2017 through June 30, 2019).

1. Salaries and benefits.....	\$27,000.00
2. Supplies, equipment, and travel.....	\$3,000.00
<b>TOTAL: .....</b>	<b>\$30,000.00</b>

Reimbursement for travel expenditures shall not exceed allowable costs as set forth in Washington State travel regulations, contained in the Office of Financial Management State Administrative and Accounting Manual, Chapter 10, Section 90.

**ATTACHMENT C**  
**Permission to Enter Private Land and Waiver of Liability**  
**Clark County**  
**and its agent Clark County Noxious Weed Control Board**  
**Project for Knotweed Control**

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**PERMISSION TO ENTER PRIVATE LAND AND WAIVER OF LIABILITY**

THIS AGREEMENT INCLUDES PERMISSION TO ENTER PRIVATE PROPERTY AND A WAIVER OF CERTAIN CLAIMS OF LIABILITY. READ CAREFULLY BEFORE SIGNING.

This Permission to Enter Private Land and Waiver of Liability is made between the Clark County Noxious Weed Control Board, hereafter referred to as "the Board," and \_\_\_\_\_, hereafter referred to individually or collectively as "the property owner(s)."

**INTRODUCTION**

1. The control and eradication of noxious weeds on public and private lands is in the public interest and the presence of invasive knotweeds (*Polygonum spp.*) on private lands threatens wildlife habitat and provides a source for renewed infestation of other private and public lands. Effective eradication of knotweeds requires concerted effort on both public and private lands to protect our natural resources.
2. The Board and its agents desire to perform activities to eradicate and/or control knotweed on public and private lands within Clark County. These activities are authorized and carried out under one or more of the following chapters: 17.04 RCW, 17.06 RCW, 17.10 RCW, and 17.24 RCW.
3. The property owner(s) is/are the sole owner of property located at \_\_\_\_\_ in Clark County, Washington, hereafter referred to as "the property."
4. The property owner(s) is/are interested in and benefited by the eradication and/or control of knotweed on the property.
5. The property owner(s) and the Board desire to memorialize an agreement for the purpose of eradication and/or control of knotweed on the property.

**AGREEMENT**

1. **Permission.** In consideration of the benefits described above, the property owner(s) grant permission to the Board and its agents, contractors, cooperators and employees to enter onto the property from July 1, 2017 to December 31, 2021 to perform activities to eradicate and/or control knotweed on the property. The property owner(s) acknowledge and agree that these activities may include the application of herbicide to the property.

The property owner(s) also grant permission to agents, contractors, cooperators and employees of the Washington State University and/or the Washington State Department of Agriculture to enter onto the property from July 1, 2017 to December 31, 2021 for the purpose of monitoring and evaluating the success of knotweed eradication and/or control activities.

2. **Expiration and Revocation.** The Board and its agents, contractors, cooperators and employees are permitted to enter the property on all of the above dates and until December 31, 2021, or until this permission is revoked, whichever occurs first. The property owner(s) may revoke this permission by

presenting a written letter of revocation to the Board. The revocation is effective five (5) business days after receipt by the Board.

- 3. **Liability Waiver.** The purpose of entry onto the property is to perform activities to eradicate and/or control knotweed. The property owner(s) expressly agree to hold harmless the Board, the Washington Department of Agriculture (WSDA), and the agents, contractors, cooperators and employees of the Board, or WSDA, and to waive any claim of liability against the Board, WSDA, and the agents, contractors, cooperators and employees of the Board, or WSDA, for any injury, damage, or harm which is the logical and intended consequence of activities properly performed to eradicate and/or control knotweed.

The Board and its agents, contractors, cooperators and employees agree to waive any claim of liability against the landowner for any injury, damage, or harm which is not the consequence of the landowner's negligence. As to any other act or omission of either party under this agreement, each party shall be responsible for its own acts or omissions and those of its officers, employees and agents under this agreement. No party to this agreement shall be responsible to the other for the acts or omissions of entities or individuals not a party to this agreement.

- 4. **Entire Agreement.** This Permission to Enter Private Land and Waiver of Liability contains the entire agreement between the parties with regard to the matters set forth herein.
- 5. **Applicable Law.** This Permission to Enter Private Land and Waiver of Liability shall be construed and interpreted according to the laws of the State of Washington.

BY THE SIGNATURE BELOW, THE PROPERTY OWNER(S) DECLARE THAT THE TERMS OF THIS PERMISSION TO ENTER PRIVATE LAND AND WAIVER OF LIABILITY HAVE BEEN COMPLETELY READ AND FULLY UNDERSTOOD AND VOLUNTARILY ACCEPTED AND EXPRESSLY WAIVE ANY CLAIM THAT THIS PERMISSION TO ENTER PRIVATE LAND AND WAIVER OF LIABILITY IS NOT FAIRLY AND KNOWINGLY MADE.

Property Owner(s)/Legal Representative: \_\_\_\_\_

Property Owner(s) Mailing Address: \_\_\_\_\_

Street

City

County

Zip

Telephone Number(s): \_\_\_\_\_

\_\_\_\_\_  
(PRINT) Name of property owner

\_\_\_\_\_  
Signature of property owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
(PRINT) Name of property owner

\_\_\_\_\_  
Signature of property owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
(PRINT) Name of property owner

\_\_\_\_\_  
Signature of property owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
(PRINT) Name of authorized representative,  
Clark County Noxious Weed Control Board

\_\_\_\_\_  
Signature of authorized representative,  
Clark County Noxious Weed Control Board

\_\_\_\_\_  
Date

Contact information for the Clark County Noxious Weed Control Board:

Kevin Tyler, (360) 397-6140  
4700 NE 78<sup>th</sup> St, Building G  
Vancouver, WA 98665