

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN NOXIOUS WEED CONTROL BOARD AND BENTON COUNTY
FOR GENERAL EQUIPMENT AND/OR SERVICES**

This agreement is made and entered into by and between the **Benton County Noxious Weed Control Board** (hereinafter "Noxious Weed") and **Benton County** pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

**ARTICLE I
PURPOSE**

1.01 **PURPOSE.** The purpose of this Agreement is to set forth the terms and conditions under which Benton County and Noxious Weed will temporarily provide equipment and/or services to the other party. Neither Benton County nor Noxious Weed are required under this Agreement to provide equipment or services to the other party in the event that the party from whom the equipment or services are sought does not have the equipment or services available, or determines, in its sole discretion, that providing the requested equipment or services would not be in its best interest. No new or separate legal or administrative entity is created by this Agreement.

**ARTICLE II
ADMINISTRATION**

2.01 **ADMINISTRATOR.** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

2.02 Noxious Weed's representative shall be the Weed Control Coordinator.

2.03 Benton County's representative shall be the County Engineer.

2.04 Requests for rental of equipment or performance of work shall be submitted by the requesting agency to the agency providing the equipment or service in writing. Written requests shall be submitted prior to rental of equipment or performance of services. In the event that circumstances do not permit a written request to be submitted, the representative for the agency providing equipment or service may waive this requirement, providing that a written request, along with an explanation of the circumstances for the waiver, be provided as soon as is practical.

**ARTICLE III
DURATION AND RENEWAL OF AGREEMENT**

3.01 **DURATION AND RENEWAL.** This Agreement shall be effective on January 1, 2021 and shall continue through December 31, 2025. The obligation to provide compensation for the use of equipment or service provided during the term of this Agreement shall survive this Agreement's termination or expiration.

**ARTICLE IV
COMPENSATION**

- 4.01 **COMPENSATION.** Both parties hereby agree to reimburse the other for the costs of the service performed or equipment rented, as requested by one agency herein to the other agency herein and shall be based on the actual cost of labor, equipment, plus all costs for fringe benefits to labor, including but not limited to, Social Security, retirement, industrial and medical aid costs, prorated sick leave, holidays and vacation time, and group medical insurance. Also, an additional five percent (5%) of the total costs shall be added for overhead expenses for accounting, billing, and administrative services, after a statement of the costs is provided within thirty (30) days of the service or equipment rental. The amount shall be paid within thirty (30) days after billing.

**ARTICLE V
PERFORMANCE OF AGREEMENT**

- 5.01 **COMPLIANCE WITH ALL LAWS.** Each party shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the performance of this Agreement, including without limitation, all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.
- 5.02 **MAINTENANCE AND AUDIT OF RECORDS.** Each party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records documents, and other material for the applicable retention period under federal and Washington law.
- 5.03 **ON-SITE INSPECTIONS.** Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement and in compliance with federal, state, and local laws, rules, regulations, and ordinances.
- 5.04 **TREATMENT OF ASSETS AND PROPERTY.** No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.
- 5.05 **IMPROPER INFLUENCE.** Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.
- 5.06 **CONFLICT OF INTEREST.** The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.
- 5.07 **ASSIGNMENT AND SUBCONTRACTING.** No portion of this Agreement may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of both parties authorized representatives.

5.08 **NOTICE.** Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to Benton County shall be to the County Engineer, P.O. Box 1001, Prosser, Washington 99350; and to the Benton County Commissioners, P.O. Box 190, Prosser, Washington 99350. Notice to Noxious Weed for all purposes under this Agreement shall be to the Weed Control Coordinator, 1908 Butler Loop, Richland, Washington 99354, and the Benton County Noxious Weed Control Board, 1908 Butler Loop, Richland, WA 99354.

ARTICLE VI INDEMNIFICATION

6.01 **MUTUAL INDEMNITY.** To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

A Party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other Party.

In the event of any concurrent act or omission of the parties, negligent or otherwise, each party shall pay its proportionate share of any damages awarded based upon comparative liability. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

In any and all claims against Noxious Weed or its officers, officials, employees, or agents by any employee of Benton County, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Benton County or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that Benton County expressly waives any immunity Benton County might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

In any and all claims against Benton County or its officers, officials, employees, or agents by any employee of Noxious Weed, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or

type of damages, compensation, or benefits payable by or for Noxious Weed or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that Noxious Weed expressly waives any immunity Noxious Weed might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

- 6.02 **SURVIVAL OF INDEMNITY OBLIGATIONS.** The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

ARTICLE VII DISPUTES

- 7.01 **DISPUTE RESOLUTION; GOVERNING LAW; VENUE.** In the event of a dispute regarding the enforcement, breach or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. Any judicial proceeding arising out of this contract shall be governed by the laws of the State of Washington, and suit may be instituted and maintained only in the courts of competent jurisdiction in Benton County, Washington.

ARTICLE VIII TERMINATION

- 8.01 **TERMINATION.** Any party hereto may terminate this Agreement upon thirty (30) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so 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.

ARTICLE IX GENERAL PROVISIONS

- 9.01 **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** The Agreement may be changed, modified, amended or waived only by written agreement signed by the parties' authorized representatives and adopted by resolution of each party's legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.
- 9.02 **ASSIGNMENT.** Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, further subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.
- 9.03 **SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or application of this Agreement which can be given effect without the invalid term, condition or application. To this end the terms and conditions of this Agreement are declared severable.

9.04 **ENTIRE AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. 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.

9.05 **INTERLOCAL COOPERATION ACT PROVISIONS.** All vehicles, equipment, inventory and any improvement thereon or fixtures purchased by Noxious Weed, shall remain the sole property of Noxious Weed. All vehicles, equipment, inventory and any improvements thereon or fixtures purchased by Benton County, shall remain the sole property of Benton County.

No independent special budget or funds are anticipated, nor shall be created without the prior written agreement of the parties. It is not intended that a separate legal entity be established to conduct this cooperative undertaking, nor is the acquiring, holding, or disposing of real or personal property other than as specifically provided within the terms of this Agreement.

A copy of this Agreement shall be filed with the Benton County Auditor's office or posted on Noxious Weed's or Benton County's website as required by RCW 39.34.040.


9.06 **EVIDENCE OF AUTHORITY.** Upon execution of this Agreement, Noxious Weed shall provide Benton County and Benton County shall provide Noxious Weed with a copy of the resolution, ordinance, or other authority to execute this Agreement pursuant to RCW 39.34.030(2), and said documents shall be attached hereto and incorporated herein as Exhibit A (Noxious Weed) and Exhibit B (Benton County).

IN WITNESS WHEREOF said parties have caused this Agreement to be signed by the duly authorized officials on the day and year first written above.

BENTON COUNTY NOXIOUS WEED CONTROL BOARD

By: 
Chair
Noxious Weed Control Board

Attest:


Office Manager

Date: 12-14-2020

Approved as to form:

Attorney

Date: _____

BENTON COUNTY, WASHINGTON


By: 
Chairman
Board of County Commissioners

Attest:


Clerk of the Board

Date: 2/23/2021

Approved as to form:


Benton County Deputy Prosecuting Attorney

Date: 12-7-20

Exhibit A

Benton County Noxious Weed Control Board

1841 Terminal Dr. Richland WA 99354 509-943-6005 Email bcnwcb@frontier.com

Regular Monthly Meeting Minutes

Tuesday December 15, 2020

7:00 PM

Location: Weed Board Office 1841 Terminal Dr. Richland, WA

Chairman Danny Downs called the December regular monthly meeting to order at 7:00 pm.

Board members present-Darrell Miles, Tony Smith and Earl Morgan.

Staff present- Konrad Kauer, Holly Kress and Luis Villalobos.

Next Board Meeting to be held Tuesday January 19, 2021

Budget presentation to commissioner's review

Konrad gave a presentation to the master gardeners

Discuss Holly taking over payroll and printing checks

Renew Benton County Public Works Interlocal for Equipment and Services Sharing

Review the November 17, 2020 minutes

Motion: A motion was made by Earl Morgan to approve the November 17, 2020 minutes with a second from Darrell Miles. Motion carries 3-0.

Review checks to be approved and payroll.

Checks for December 2020 --#1677 thru #1684=\$4,631.27

Payroll for November 2020-- Direct Deposit=\$15,450.64

Total= \$20,081.91

Motion: A motion was made by Darrell Miles to approve the December checks and November payroll with a second from Earl Morgan. Motion carries 3-0.

Financial Report-Profit and Loss/Balance Sheet

Motion: A motion was made by Darrell Miles to receive and file the December financial report with a second from Tony Smith. Motion carries 3-0.

Current Projects Report

County Assessment- The list of parcels we receive our assessment from has been accepted by the county.

BLM Grant-Treating Yellow Starthistle and other noxious weeds on lands near Bombing Range Road.

Winter House Keeping- Shop clean-up and winterizing vehicles.

December Projects – Continue Survey and treatments of BLM grant areas for Yellow Starthistle//Fairgrounds contract renewal // BPA contract renewal//Brainstorming educational program ideas

Upcoming Meetings & Events- Roza Irrigation Presentation Jan. 27th

Executive meeting to discuss 2021 cost of living increase

At 7:50 pm Chairman Danny Downs recessed the December regular monthly board meeting to open the executive session to discuss 2021 cost of living increase. At 7:55 pm Chairman Danny Downs reopened the December regular monthly meeting.

Meeting Adjourned at 8:00 pm

Danny L. Downs 1-19-21
Chairman Date

Sally Kress 1-19-21
Clerk of the Board Date

Exhibit B

RESOLUTION 2021-184

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:

IN THE MATTER OF APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE BENTON COUNTY NOXIOUS WEED CONTROL BOARD AND BENTON COUNTY FOR GENERAL EQUIPMENT AND/OR SERVICES

WHEREAS, Chapters 36.01 and 36.32 RCW allows the Board to enter into agreements on behalf of Benton County; and

WHEREAS, Chapter 39.34 RCW allows public agencies in Washington State to enter into interlocal cooperative agreements for the joint use of services, personnel, materials, and equipment; and

WHEREAS, the Benton County Noxious Weed Control Board and Benton County desire to enter into an agreement for the sharing of services and equipment; and

WHEREAS, a proposed Interlocal, reviewed and approved as to form by the Benton County Prosecuting Attorney's Office, was signed by the Noxious Weed Control Board on December 14, 2020; and

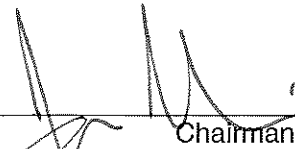
WHEREAS, the County Engineer recommends that the Board approve of and sign the proposed Agreement with the Noxious Weed Control Board, finding such to be beneficial to Benton County; NOW, THEREFORE,

BE IT RESOLVED that the Board of County Commissioners concurs with the recommendation of the County Engineer and hereby approves of the proposed Interlocal Cooperative Agreement Between Noxious Weed Control Board and Benton County for General Equipment and/or Services; and


BE IT FURTHER RESOLVED that the Board of County Commissioners hereby authorizes the Chairman to sign said Agreement with the Noxious Weed Control Board on behalf of Benton County; and

BE IT FURTHER RESOLVED the Interlocal shall be effective on January 1, 2021 and shall continue through December 31, 2025.

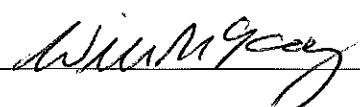
Dated this 23rd day of February 2021.



Chairman of the Board



Chairman ProTem



Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest. 

Clerk of the Board