

**PEND OREILLE COUNTY  
NEWPORT, WASHINGTON**

**RESOLUTION NO. 2020- 47**

IN THE MATTER OF EXECUTING A PROFESSIONAL SERVICE AGREEMENT WITH  
LAKELAND RESTORATION SERVICES FOR EURASIAN WATERMILFOIL SURVEY  
AND HERBICIDE TREATMENT IN DAVIS LAKE

**WHEREAS**, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners of Pend Oreille County, Washington (“the Board”) has the care of county property and the management of county funds and business; and

**WHEREAS**, Lakeland Restoration Services has the expertise in and equipment for aquatic weed survey and herbicide treatment implementation; and

**WHEREAS**, The Pend Oreille County Weed Board holds the NPDES permit to allow aquatic weed herbicide treatment in Davis Lake; and

**WHEREAS**, the Board feels that the best interest of the public will be served by entering into said professional service agreement with Lakeland Restoration Services.

**NOW, THEREFORE, BE IT HEREBY RESOLVED**, by the Pend Oreille County Board of Commissioners that the Professional Service Agreement between Lakeland Restoration Services and the Pend Oreille County Noxious Weed Control Board for Eurasian Watermilfoil Survey and Herbicide Treatment, which is attached hereto and incorporated herein, is approved.

**BE IT FURTHER RESOLVED**, by the Board that the Professional Service Agreement between Lakeland Restoration Services and the County may be executed by the Chair, or a majority of the Board.

[executed page with signatures is attached]

ADOPTED this 22 day of JUNE, 2020.

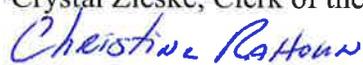
**BOARD OF COUNTY COMMISSIONERS  
PEND OREILLE COUNTY, WASHINGTON**

  
\_\_\_\_\_  
Mike Manus, Chairman

  
\_\_\_\_\_  
Stephen Kiss, Vice-Chairman

  
\_\_\_\_\_  
Karen Skoog, Member

ATTEST:

  
\_\_\_\_\_  
Crystal Zieske, Clerk of the Board  


**LAKELAND RESTORATION  
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT, is made and entered into by and between PEND OREILLE COUNTY, a political subdivision of the State of Washington, having offices for the transaction of business at 625 W. 4<sup>th</sup> Street Newport, Washington 99156, hereinafter referred to as the "County", PEND OREILLE COUNTY NOXIOUS WEED CONTROL BOARD, having offices for the transaction of business at 227-B South Garden Avenue, Newport, Washington, 99156, hereinafter referred to as "Weed Board," and LAKELAND RESTORATION, having offices for the transaction of business at 6736 Highway 2, Priest River Idaho, 83856 hereinafter referred to as the "Contractor", jointly referred to, along with the County and Weed Board, as the "Parties."

**WITNESSETH:**

WHEREAS, pursuant to the provisions of the Revised Code of Washington, Section 36.32.120(6), the Board of County Commissioners has the care of County property and the management of County funds and business; and

WHEREAS, The Pend Oreille County Noxious Weed Control Board in partnership with the Davis Lake Landowners Association (DLLA), through a separate agreement have partnered to eradicate invasive weeds in and around Davis Lake.

WHEREAS, The Pend Oreille County Noxious Weed Control Board desires to contract for a milfoil survey and herbicide treatment services to combat noxious weeds in and around Davis Lake as authorized by chapter 17.10 RCW; and

WHEREAS, Contractor is in the business of providing the needed services and holds itself out as an independent contractor having the skill and expertise to provide the needed services specifically set forth in Attachment A, Scope of Work, attached hereto and incorporated herein by reference.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties do mutually agree as follows:

**ARTICLE 1: SERVICES TO BE PROVIDED**

A description of the services to be performed by the Contractor is set forth in Attachment A-Scope of Work, which is attached to the Agreement and incorporated by reference. The Contractor will perform the work specified in the Agreement according to standard industry practice.

The Contractor agrees to provide its own labor and materials. Unless otherwise provided for in the Agreement, no material, labor or facilities will be furnished by the County. It shall be the responsibility of the Contractor to ensure that his/her employees

complete the services in a manner consistent with the best management practices of the industry, and that they are properly trained in the safe use and application of all materials and equipment used.

CONTRACTOR will be in compliance with all equipment and safety requirements of the US Coast Guard and Washington State Boating Laws. Contractor will have appropriate spill response kits on board.

The Contractor will complete its work in a timely manner and in accordance with the schedule agreed to by the parties.

The Contractor will confer with the County from time to time during the progress of the work. The Contractor will prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the County.

The County reserves the right to authorize in writing, changes in the work to be performed or extra service requests. Costs associated with any change will be indicated in writing with a detailed estimate of the costs to be added or deducted from the agreement sum.

## **ARTICLE 2: COMPENSATION**

The total, not to be exceeded over the life of this contract, is \$5,700 unless additional funding becomes available and is incorporated into this contract by written amendment.

Invoices for work completed will be provided to the County and shall be itemized by the service rendered, (and each product and the volume used for herbicide treatment services). Invoices may be submitted no more often than once monthly. Activity service fees shall not exceed the bid amounts of \$50 per acre for rake toss survey, \$750 for treatment plan development, and \$120 per acre application fee. It's understood the herbicide costs are dependent on the product and volume used. All services are subject to Washington State Sales Tax at 7.6% that must be present on the invoice or a statement included on the invoice that taxes are inclusive within the invoice total.

Total billing, including sales tax, will not exceed \$5,700. County will only be billed for hours of survey and in-water service actually provided.

## **ARTICLE 3: EFFECTIVE DATE OF AGREEMENT AND TERM**

The Agreement will become effective on the date of signing. In no event will the Agreement become effective unless and until it is approved and executed by the duly authorized representative of Pend Oreille County.

This Agreement shall terminate at midnight on June 30, 2020 or until the until the maximum payout of \$ 5,700 is reached or amended as set forth in the attached terms and

conditions. This Agreement is nonexclusive and if it be in the County's best interest it may award work to other firms.

#### **ARTICLE 4: TERMINATION**

Cancellation for non-appropriation of funds. All funds for payment by the Weed Board under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of non-appropriation of funds for the services provided under this Agreement, Weed Board will terminate the Agreement, without termination charge or other liability, on the last day of the then-current fiscal year by providing thirty (30) days' prior written notice to the Contractor.

Cancellation for convenience. The County may cancel this Agreement upon thirty (30) days' prior written notice. Work in progress will be paid, on a prorated basis, to the date and time ordered to stop. The Contractor may cancel this Agreement upon thirty (30) days' prior written notice. Work in progress will be paid, on a prorated basis, through the effective date of termination. All work in progress must be of acceptable quality as determined by the County.

Cancellation with cause. The County reserves the right to cancel this Agreement, with cause, effective at a time of its choosing. Work in progress would be completed at the Weed Board's option.

#### **ARTICLE 5: INDEPENDENT CONTRACTOR**

The Parties intend that an independent contractor relationship will be created by this Agreement. The County is interested only in the results that could be achieved and has no right to control or direct the Contractor, either as to the results or the details and means for rendering services required herein. The conduct and control of all services will be solely with the Contractor. Neither the Contractor, nor any agent, employee, servant or otherwise of the Contractor shall be deemed to be an employee, agent, servant or otherwise of the County for any purpose. Neither the Contractor nor any employee of the Contractor is entitled to any of the benefits that the County provides for County employees, including but not limited to, health insurance, sick leave, pension, vacation, longevity, or disability leave, etc. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, subcontractors, or otherwise, during the performance of this Agreement.

This Agreement is for the employment of the Contractor as an independent contractor. The Contractor holds itself out as an independent contractor doing business as listed above and is solely responsible for paying any and all taxes associated with the work of this Agreement including but not necessarily limited to income and social security taxes. Contractor and subcontractors must pay prevailing wage if applicable.

## **ARTICLE 6: OTHER EMPLOYMENT**

This Agreement is not an exclusive services Agreement. The Contractor may take on other professional assignments while completing the work set forth herein.

## **ARTICLE 7: ASSURANCES**

Certification Regarding Debarment, Suspension, Ineligibility or Voluntary Exclusion. As a recipient of federal and state funds, the County and the Weed Board is prohibited to contract or make payments for goods or services that directly or indirectly benefit any individual or entity, debarred or sanctioned, from federal or state funded programs.

Contractor by signature to this Agreement certifies it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal or state administrations.

Business License. Contractor shall have a valid and current business license. Said license shall be obtained prior to the signing of the agreement. Contractors are required to be registered by the State of Washington per Chapter 18.27 of the Revised Code of Washington.

## **ARTICLE 8: NONDISCRIMINATION**

The Contractor, its assignees, delegates, or subcontractors shall comply with all federal and state nondiscrimination laws, regulations and policies, to include but limited to the Civil Rights Act Title VI and VII (1964 & 1991); Section 504 of the Rehabilitation Act of 1973; Age Discrimination in Employment Act (1975); Vietnam Era Veterans Readjustment Act of 1974; American with Disabilities Act (1990) as amended, including CFR 29 part 1630. In the event of noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be terminated in whole or in part. Contractor shall however, be given a reasonable time, agreed upon by both parties, in which to resolve this noncompliance.

## **ARTICLE 9: OWNERSHIP OF DOCUMENTS**

Unless otherwise provided, data which originates from this Agreement shall be "work for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the County. Data shall include, but not limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, GIS shape files, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

## **ARTICLE 10: MAINTENANCE OF RECORDS**

The Contractor shall make available to the County or the Washington State Auditor, or their duly authorized representatives, at any time during their normal operating hours, all records, books, diaries or pertinent information which the Contractor shall have kept in conjunction with this Agreement, and which the County may be required by law to make part of its auditing procedures, an audit trail, or which may be required for the purpose of funding the services contracted for herein.

## **ARTICLE 11: PUBLIC RECORDS ACT**

This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

## **ARTICLE 12: CONFIDENTIALITY**

The Contractor, its employees, subcontractors and their employees will maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of the Agreement, except upon the prior express written consent of the County or an order entered by a court of competent jurisdiction. The Contractor will promptly give the County written notice of any judicial proceedings seeking disclosure of such information.

### ARTICLE 13: INSURANCE

The Contractor shall furnish and maintain all insurance as required and comply with all limits and conditions stipulated therein, at their expense, for the duration of the agreement. Following is a list of requirements for this agreement. Any exclusion that may restrict required coverage must be pre-approved by the Pend Oreille County Risk Manager. The Contractor's insurer shall have a minimum A.M. Best's rating of A-VII and shall be authorized to do business in the State of Washington. Evidence of such insurance shall consist of completed copies of the certificate of insurance, signed by the insurance agent for the Contractor and additional insured endorsement. The insurance policy or policies will not be canceled, materially changed or altered without forty-five (45) days prior notice submitted to the Weed Board. The policy shall be endorsed and the certificate shall reflect that the County is an additional named insured on the Contractor's general liability policy with respect to activities under the contract. The policy shall provide and the certificate shall reflect that the insurance afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

The policy shall be endorsed and the certificate shall reflect that the insurance afforded therein shall be primary insurance and any insurance or self-insurance carried by the County shall be excess and not contributory insurance to that provided by the Contractor.

The Contractor has provided a Certificate of Insurance with additional insured endorsement, meeting the requirements set forth herein, to the Weed Board. The Certificate of Insurance was provided to the Pend Oreille County Risk Manager, which has approved the Contractor's insurance meeting the requirements set forth herein. During the term of the Agreement the Contractor shall provide current Certificates of Insurance meeting the requirements set forth herein to Weed Board to forward to the Pend Oreille County Risk Manager.

Failure of the Contractor to fully comply with the insurance requirements set forth herein, during the term of the Agreement, shall be considered a material breach of contract and cause for immediate termination of the Agreement at the County's discretion.

Providing coverage in the amounts listed shall not be construed to relieve the Contractor from liability in excess of such amounts.

REQUIRED COVERAGE: The insurance shall provide the minimum coverage as set forth below:

1. **GENERAL LIABILITY INSURANCE:** The Contractor shall have commercial general liability with limits of \$1,000,000.00 per occurrence, which

includes general aggregate, products, completed operation, personal injury, fire damage and medical expense.

**ADDITIONAL INSURED ENDORSEMENT:** General Liability Insurance must state that Pend Oreille County, its officers, agents and employees, and any other entity specifically required by the provisions of this Agreement will be specifically named additional insured(s) for all coverage provided by this policy of insurance and shall be fully and completely protected by this policy from all claims. Language such as the following should be used "Pend Oreille County, Its Officers, Agents and Employees Are Named Additional Insured."

2. **WORKERS COMPENSATION:** When the Contractor has employees of the company, the Contractor shall carry Worker's Compensation Industrial Injury Insurance coverage and be effective in Washington State. Proof of Insurance shall be reflected on the Contractor's Certificate of Insurance or by providing the Contractor's State Industrial Account Identification Number.

3. **AUTOMOBILE LIABILITY.** The Contractor shall carry, for the duration of this Agreement, comprehensive automobile liability coverage of \$1,000,000.00 for any vehicle used in conjunction with the provision of services under the terms of this Agreement. If the Contractor will use non-owned vehicles in performance of the Agreement, the coverage will include, owned, hired and non-owned automobiles.

#### **ARTICLE 14: HOLD HARMLESS AND INDEMNIFICATION**

The Contractor will hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's acts, errors or omissions in the performance of the Agreement. Provided, however, that the Contractor's obligation under this provision will not extend to injury, sickness, disability, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees or agents.

With regard to any claim against the County, its officers, officials, employees and agents by any employee of the Contractor, 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 this Section will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. It is clearly agreed and understood by the parties to the Agreement that the Contractor expressly waives any immunity the Contractor might have

Professional Services Agreement-Lakeland Restoration Services

had under such laws. By executing the Agreement, the Contractor acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section will be incorporated, as relevant, into any Agreement the Contractor makes with any subcontractor or agent performing work under the Agreement.

The Contractor's obligations under these provisions include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the Contractor, the Contractor's employees, agents or subcontractors.

With respect to the performance of this Agreement and as to claims against Pend Oreille County, its officers, agents, and employees, Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to himself or subcontractors. The parties have mutually negotiated this waiver.

#### **ARTICLE 15: ASSIGNMENT, DELEGATION AND SUBCONTRACTING**

The Contractor will perform under the Agreement using only its bona fide employees or agents, and the obligations and duties of the Contractor under the Agreement will not be assigned, delegated or subcontracted to any other person or firm without the prior express written consent of the County.

The Contractor warrants that it has not been paid, nor has it agreed to pay, any company, person, partnership, or firm, other than a bona fide employee working exclusively for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of the Agreement.

#### **ARTICLE 16: DISPUTES**

Differences, disputes and disagreements between the Contractor and the County arising under or out of this Agreement will be brought to the attention of the County at the earliest possible time so that the matter may be settled, or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance or compensation due the Contractor will be decided by the County's Agreement representative or designee. All rulings, orders, instructions and decisions of the County's Agreement representative will be final and conclusive.

#### **ARTICLE 17: VENUE STIPULATION**

This Agreement has and shall be construed as having been made and delivered in the State of Washington, and the laws of the State of Washington shall be applicable to its construction and enforcement. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision hereto shall be instituted only in courts of competent jurisdiction within Pend Oreille County, Washington.

## **ARTICLE 18: COMPLIANCE WITH LAWS**

The Parties hereto specifically agree to observe all federal, state and local laws, ordinances, regulations and licensing requirements, to the extent that they may have any bearing on the services provided under the terms of this Agreement.

## **ARTICLE 19: NOTICES**

All notices called for or provided for in this Agreement shall be in writing and must be served on any of the Parties either personally or by certified mail, return receipt requested, sent to the Parties at their respective addresses provided below. Notices sent by certified mail shall be deemed when deposited in the United States mail, postage prepaid.

The County and the Contractor will each have an Agreement representative. A party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

### **County**

Pend Oreille County  
Noxious Weed Control Board  
Sharon Sorby, Coordinator  
at 227-B South Garden Avenue,  
Newport, Washington, 99156  
509-447-6478  
ssorby@pendoreille.org

### **Contractor**

Lakeland Restoration  
Luke Huffman, President  
6736 Highway 2, PO Box 1825  
Priest River Idaho, 83856  
877-273-6674  
lukechandlerh@gmail.com

## **ARTICLE 20: HEADINGS**

The ARTICLE headings in this Agreement have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall be deemed to, define, limit or extend the scope or intent of the Articles to which they appertain.

## **ARTICLE 21: MODIFICATION**

No modification or amendment of this Agreement shall be valid until the same is reduced to writing and executed with the same formalities as this present Agreement.

## **ARTICLE 22: WAIVER**

The parties agree that the excuse or forgiveness of performance, or waiver of any provisions of the agreement, does not constitute a waiver of such provision or future performance, or prejudice the right of the waiving party to enforce any of the provisions of the agreement at a later time.

**ARTICLE 23: 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 applications 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.

**ARTICLE 24: SURVIVAL**

Those provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive. Those provisions include, but are not necessarily limited to, the following: Articles: 4 (Termination), 10 (Maintenance of Records), 12 (Confidentiality), 13 (Insurance), 14 (Hold Harmless and Indemnification), 16 (Disputes), 17 (Venue Stipulation), 22 (Waiver), and 23 (Severability).

**ARTICLE 25: ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto. The Contractor has read and understands all of this Agreement, and now states that no representation, promise or agreement not expressed in this Agreement has been made to induce the Contractor to execute the same.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the day and year set forth herein.

DATED this 19 day of June, 2020

DATED this 22 day of JUNE, 2020

**CONTRACTOR:**

LAKELAND RESORATION

Luke Huffman

Printed Name

Luke Huffman

Signature

604 570 949 117434930

UBI Number DUNS Number

**FOR PEND OREILLE COUNTY:**

BOARD OF COUNTY COMMISSIONERS  
PEND OREILLE COUNTY, WASHINGTON

Mike Manus

Mike Manus, Commissioner

Steve Kiss

Steve Kiss, Commissioner

  
\_\_\_\_\_  
Karen Skoog, Commissioner

Attest:  
  
\_\_\_\_\_  
Crystal Zieske, Clerk of the Board  
*CHRISTINE RATTOUN*

## **Attachment A SCOPE OF WORK**

The CONTRACTOR shall work with the designated point of contact of the Davis Lake Landowners Association (DLLA), Bri Schlaich, plz\_sing4me@hotmail.com or 509-953-8065, to coordinate and develop the work schedule to complete the scope of work and deliverables as described below.

### **SCOPE OF WORK:**

#### **Task 2 — Eurasian Watermilfoil Survey and Eradication**

##### **Sub Task 2A: Eurasian Watermilfoil Survey**

2A-1: CONTRACTOR will provide littoral survey of Davis Lake for Eurasian watermilfoil.

2A-2: CONTRACTOR will gather GIS data features to prepare a map or maps and other descriptive information to identify areas infested with milfoil to ensure accurate management can ensue.

##### **Sub Task 2B: Eurasian Watermilfoil Eradication**

2B-1: CONTRACTOR will perform herbicide treatment to eradicate Eurasian watermilfoil in Davis Lake; around the north end residences is the first priority, then along the east shore, then around the south end, finishing along the west shore as funding allows.

### **Task Deliverables and Completion Schedule:**

#### **Sub Task 2A - Eurasian Watermilfoil Survey**

CONTRACTOR will deliver survey results, GIS shape files, maps and descriptions as described above; and, a brief report to the COUNTY by July 15, 2020. GIS data tables will be delivered in a GIS compatible electronic format to COUNTY.

#### **Sub Task 2B - Eurasian Watermilfoil Eradication**

CONTRACTOR will submit documentation of work as described above, of milfoil treatment activities including a copy of the WSDA Pesticide Application Report (PAR) to COUNTY by July 15, 2020.