

CONSULTANT: Aquatechnex, LLC
CONTACT PERSON: Terry McNabb
ADDRESS: P.O. Box 30824
Bellingham, WA 98228
FEDERAL TAX ID NUMBER/U.B.I. NUMBER: 75-3027667 / 602190833
TELEPHONE/FAX NUMBER: 360-527-1271
COUNTY DEPT: Conservation & Natural Resources
DEPT. CONTACT PERSON: Marisa Burghdoff
TELEPHONE/FAX NUMBER: (425) 388-3204
PROJECT: Herbicide Treatments, Invasive Aquatic Plant
AMOUNT: \$319,700
FUND SOURCE: 415 30621111770
CONTRACT DURATION: Execution for three (3) years unless extended or renewed pursuant to Section 2 hereof

AGREEMENT SWMCC01-22 FOR PROFESSIONAL SERVICES

THIS AGREEMENT (the "Agreement") is made by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the "County") and AQUATECHNEX, LLC, a WASHINGTON STATE LIMITED LIABILITY COMPANY, (the "Contractor"). In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. Purpose of Agreement; Scope of Services. The purpose of this Agreement is to provide consultant support and services for invasive aquatic plant herbicide treatments for Snohomish County. The scope of services is as defined in Schedule A attached hereto and by this reference made a part hereof. This Agreement is the product of County RFP No. 22-22SB.

The services shall be performed in accordance with the requirements of this Agreement and with generally accepted practices prevailing in the western Washington region in the occupation or industry in which the Contractor practices or operates at the time the services are performed. The Contractor shall perform the work in a timely manner and in accordance with the terms of this Agreement. Any materials or equipment used by the Contractor in connection with performing the services shall be of good quality. The Contractor represents that it is fully qualified to perform the services to be performed under this Agreement in a competent and professional manner.

The Contractor will prepare and present status reports and other information regarding performance of the Agreement as the County may request.

2. Term of Agreement; Time of Performance. This Agreement shall be effective upon execution (the “Effective Date”) for three (3) years and shall terminate three (3) years from the Effective Date, PROVIDED, HOWEVER, that the term of this Agreement may be extended or renewed for up to two (2) additional one (1) year terms, at the sole discretion of the County, by written notice from the County to the Contractor. The Contractor shall commence work upon the Effective Date and shall complete the work required by this Agreement no later than three (3) years from the Effective Date, PROVIDED, HOWEVER, that the County’s obligations after December 31, 2022, are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with the County Charter and applicable law.

3. Compensation.

a. Services. The County will pay the Contractor for services as and when set forth in Schedule B of this Agreement.

b. Overhead and Expenses. The Contractor’s compensation for services set forth in Section 3a above includes overhead and expenses and no separate claims for reimbursement of overhead or expenses will be allowed under this Agreement.

c. Invoices. The Contractor shall submit properly executed invoices to the County no more frequently than monthly. Each invoice shall include an itemization of the dates on which services were provided, including the number of hours and a brief description of the work performed on each such date. Subject to Section 8 of this Agreement, the County will pay such invoices within thirty (30) calendar days of receipt.

All Invoices must be sent for Contract compliance review to:

Connie.Price@snoco.org

OR

**Surface Water Management
Attn: Connie Price
3000 Rockefeller, M/S 303
Everett, WA 98201**

d. Payment. The County’s preferred method of payment under this Agreement is electronic using the County’s “e-Payable” system with Bank of America. The Contractor is highly encouraged to take advantage of the electronic payment method.

In order to utilize the electronic payment method, the Contractor shall email SnocoEpayables@snoco.org and indicate it was awarded a contract with Snohomish County and will be receiving payment through the County’s e-Payable process. The Contractor needs to

provide contact information (name, phone number and email address). The Contractor will be contacted by a person in the Finance Accounts Payable group and assisted with the enrollment process. This should be done as soon as feasible after County award of a contract or purchase order, but not exceeding ten (10) business days.

Department approved invoices received in Finance will be processed for payment within seven calendar days for e-Payable contractors. Invoices are processed for payment by Finance two times a week for contractors who have selected the e-Payable payment option.

In the alternative, if the Contractor does not enroll in the electronic ("e-Payable") payment method described above, contract payments will be processed by Finance with the issuance of paper checks or, if available, an alternative electronic method. Alternative payment methods, other than e-Payables, will be processed not more than 30 days from receipt of department approved invoices to Finance.

THE COUNTY MAY MAKE PAYMENTS FOR PURCHASES UNDER THIS CONTRACT USING THE COUNTY'S VISA PURCHASING CARD (PCARD).

Upon acceptance of payment, the Contractor waives any claims for the goods or services covered by the Invoice. No advance payment shall be made for the goods or services furnished by Contractor pursuant to this Agreement.

e. Payment Method. In addition to Payment section above, the County may make payments for purchases under this Agreement using the County's VISA purchasing card (PCARD).

Are you willing to accept PCARD payments without any fees or surcharges?

Yes ☐ No ☒

f. Contract Maximum. Total charges under this Agreement, all fees and expenses included, shall not exceed \$319,700 for the initial term of this Agreement (excluding extensions or renewals, if any).

4. Independent Contractor. The Contractor agrees that Contractor will perform the services under this Agreement as an independent contractor and not as an agent, employee, or servant of the County. This Agreement neither constitutes nor creates an employer-employee relationship. The parties agree that the Contractor is not entitled to any benefits or rights enjoyed by employees of the County. The Contractor specifically has the right to direct and control Contractor's own activities in providing the agreed services in accordance with the specifications set out in this Agreement. The County shall only have the right to ensure performance. Nothing in this Agreement shall be construed to render the parties partners or joint venturers.

The Contractor shall furnish, employ and have exclusive control of all persons to be engaged in performing the Contractor's obligations under this Agreement (the "Contractor Personnel"), and shall prescribe and control the means and methods of performing such obligations by providing adequate and proper supervision. Such Contractor Personnel shall for all purposes

be solely the employees or agents of the Contractor and shall not be deemed to be employees or agents of the County for any purposes whatsoever. With respect to Contractor Personnel, the Contractor shall be solely responsible for compliance with all rules, laws and regulations relating to employment of labor, hours of labor, working conditions, payment of wages and payment of taxes, including applicable contributions from Contractor Personnel when required by law.

Because it is an independent contractor, the Contractor shall be responsible for all obligations relating to federal income tax, self-employment or FICA taxes and contributions, and all other so-called employer taxes and contributions including, but not limited to, industrial insurance (workers' compensation). The Contractor agrees to indemnify, defend and hold the County harmless from any and all claims, valid or otherwise, made to the County because of these obligations.

The Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes, fees, licenses, excises or payments required by any city, county, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the Contractor and as to all duties, activities and requirements by the Contractor in performance of the work under this Agreement. The Contractor shall assume exclusive liability therefor, and shall meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

5. Ownership. Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Agreement shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

6. Changes. No changes or additions shall be made in this Agreement except as agreed to by both parties, reduced to writing and executed with the same formalities as are required for the execution of this Agreement.

7. County Contact Person. The assigned contact person (or project manager) for the County for this Agreement shall be:

Name:	Marisa Burghdoff
Title:	Water Quality Specialist III
Department:	Conservation & Natural Resources, Surface Water Management Division
Telephone:	(425) 388-3204
Email:	marisa.burghdoff@snoco.org

8. County Review and Approval. When the Contractor has completed any discrete portion of the services, the Contractor shall verify that the work is free from errors and defects and otherwise conforms to the requirements of this Agreement. The Contractor shall then notify the County that said work is complete. The County shall promptly review and inspect the work to determine whether the work is acceptable. If the County determines the work conforms to the requirements of this Agreement, the County shall notify the Contractor that the County accepts the work. If the County determines the work contains errors, omissions, or otherwise fails to conform to the requirements of this Agreement, the County shall reject the work by providing the Contractor with written notice describing the problems with the work and describing the necessary corrections or modifications to same. In such event, the Contractor shall promptly remedy the problem or problems and re-submit the work to the County. The Contractor shall receive no additional compensation for time spent correcting errors. Payment for the work will not be made until the work is accepted by the County. The Contractor shall be responsible for the accuracy of work even after the County accepts the work.

If the Contractor fails or refuses to correct the Contractor's work when so directed by the County, the County may withhold from any payment otherwise due to the Contractor an amount that the County in good faith believes is equal to the cost the County would incur in correcting the errors, in re-procuring the work from an alternate source, and in remedying any damage caused by the Contractor's conduct.

9. Subcontracting and Assignment. The Contractor shall not subcontract, assign, or delegate any of the rights, duties or obligations covered by this Agreement without prior express written consent of the County. Any attempt by the Contractor to subcontract, assign, or delegate any portion of the Contractor's obligations under this Agreement to another party in violation of the preceding sentence shall be null and void and shall constitute a material breach of this Agreement.

10. Records and Access; Audit; Ineligible Expenditures. The Contractor shall maintain adequate records to support billings. Said records shall be maintained for a period of seven (7) years after completion of this Agreement by the Contractor. The County or any of its duly authorized representatives shall have access at reasonable times to any books, documents, papers and records of the Contractor which are directly related to this Agreement for the purposes of making audit examinations, obtaining excerpts, transcripts or copies, and ensuring compliance by the County with applicable laws. Expenditures under this Agreement, which are determined by audit to be ineligible for reimbursement and for which payment has been made to the Contractor, shall be refunded to the County by the Contractor.

11. Indemnification.

a. Professional Liability.

The Contractor agrees to indemnify the County and, if any funds for this Agreement are provided by the State, the State and their officers, officials, agents and employees from damages and liability for damages, including reasonable attorneys' fees, court costs, expert witness

fees, and other claims-related expenses, arising out of the performance of the Contractor's professional services under this Agreement, to the extent that such liability is caused by the negligent acts, errors or omissions of the Contractor, its principals, employees or subcontractors. The Contractor has no obligation to pay for any of the indemnitees' defense-related cost prior to a final determination of liability or to pay any amount that exceeds Contractor's finally determined percentage of liability based upon the comparative fault of the Contractor, its principals, employees and subcontractors. For the purpose of this section, the County and the Contractor agree that the County's and, if applicable, the State's costs of defense shall be included in the definition of damages above.

b. All Other Liabilities Except Professional Liability.

To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County and, if any funds for this Agreement are provided by the State, the State, the Contractor shall indemnify and hold harmless the County and the State, their officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incidental to the services and/or deliverables provided by or on behalf of the Contractor. In addition, the Contractor shall assume the defense of the County and, if applicable, the State and their officers and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such services and/or deliverables and shall pay all defense expenses, including reasonable attorneys' fees, expert fees and costs incurred by the County and, if applicable, the State, on account of such litigation or claims.

The above indemnification obligations shall include, but are not limited to, all claims against the County and, if applicable, the State by an employee or former employee of the Contractor or its subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects only the County and, if applicable, the State, under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

In the event that the County or, if applicable, the State incurs any judgment, award and/or cost including attorneys' fees arising from the provisions of this section, or to enforce the provisions of this section, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor.

In addition to injuries to persons and damage to property, the term "claims," for purposes of this provision, shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in an unfair trade practice.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

Nothing contained within this provision shall affect or alter the application of any other provision contained within this Agreement.

12. Insurance Requirements. The Contractor shall procure by the time of execution of this Agreement, and maintain for the duration of this Agreement, (i) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees, and (ii) a current certificate of insurance and additional insured endorsement when applicable.

a. General. Each insurance policy shall be written on an "occurrence" form, except that Professional Liability, Errors and Omissions coverage, if applicable, may be written on a claims made basis. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the work which is the subject of this Agreement.

By requiring the minimum insurance coverage set forth in this Section 12, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

b. No Limitation on Liability. The Contractor's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or in equity.

c. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage at least as broad as, and with limits no less than:

(i) General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operation.

Contractual Liability shall be included with ability to identify contract #s;

Stop Gap shall be included (unless insured as Employers Liability under Part B. of a Workers Compensation Insurance Policy); and

Personal Injury Advertiser's Liability shall be included.

(ii) Automobile Liability: \$1,000,000 combined single limit for bodily injury and property damage, including Waiver of Subrogation endorsement in favor of County, on a coverage form at least as broad as CA 0001 current edition, on all owned, non-owned and hired autos.

If hauling hazardous waste, Pollution Liability at least as broad as that provided under ISO Pollution Liability-Broadened Coverage for Covered Autos Endorsement CA 99 48 shall be provided, and the Motor Carrier Act Endorsement (MCS 90) shall be attached unless the transportation pollution risk is covered under the Contractor's Pollution Liability insurance policy.

(iii) Workers' Compensation: To meet applicable statutory requirements for workers' compensation coverage of the state or states of residency of the workers providing services under this Agreement;

(iv) Employers' Liability or "Stop Gap" coverage: \$1,000,000;

(v) Professional Liability: \$1,000,000 each occurrence, \$2,000,000 agg.

(vi) Additional Project-Specific Insurance:

A. Marine General Liability (OR GL with no marine exclusion) covering bodily injury including wrongful death, third party property damage including loss of use thereof, premises/operations liability, products/completed operations, personal/advertising injury, contractual liability, stop gap or employer's liability (for monopolistic state projects), fire damage legal liability, action over indemnity, sudden and accidental pollution, amended exclusions for care, custody and control and watercraft liability to cover work related to this project. Coverage also to extend to cover stevedores legal liability, wharfinger's legal liability, terminal operator's liability and charterer's legal liability, when applicable. Coverage shall be on an occurrence basis and limits of liability shall not be less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate. The General Aggregate limit is to apply separately to each project.

B. Protection and Indemnity Insurance covering injuries to or death of masters, mates, crews of vessels and Maritime employees. Coverage is to include Voluntary Removal of Wreck and/or Debris Insurance. The limits of liability of such insurance shall be equal to the value of each Vessel covered or \$2,000,000, whichever is greater.

C. For work on or adjacent to water, the Contractor shall make the determination as to whether workers are to be covered under the Longshoremen's and Harbor Worker's Compensation Act administered by the U.S. Department of Labor, Jones Act, or the State Industrial Insurance coverage administered by the Washington State Department of Labor and Industries, or multiple coverages. Policy shall contain an Alternate Employers endorsement in favor of Owner. Such insurance shall provide statutory limits for compensation coverage and with minimum limits of \$1,000,000 for employers and maritime employer's liability.

D. Vessel Pollution Insurance covering all owned or operated watercraft used in performing work and/or services related to this project. Such coverage shall be written on the Water Quality Insurance Syndicate policy form, or equivalent, and

shall include bodily injury. Limits of liability shall be in accordance with OPA90, but not less than \$2,000,000 each occurrence, \$5,000,000 aggregate. Vessel owner or operator shall also have Certificate of Financial Responsibility pursuant to OPA90, Coast Guard Regulations and State of California, as required.

E. Environmental Pollution / Contractor's Pollution Liability - Pollution Liability policy form or other policy form acceptable to owner providing coverage for liability caused by pollution conditions arising out of the operations of Contractor. Coverage shall apply to bodily injury; property damage, including natural resources damages, loss of use of damaged property or of property that has not been physically injured; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy limit shall be no less than \$2,000,000 per claim and \$5,000,000 general aggregate. All activities contemplated in the Contract shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites. There shall be no exclusion for work in, on, or under water. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using Subcontractors, the policy must include work performed "by or on behalf" of the insured. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to Owner or any employee or agent of Owner. The policy coverage term shall be equal to the total period of construction and also provide 10 years of completed operations coverage after the project construction is complete.

d. Other Insurance Provisions and Requirements. The insurance coverages required in this Agreement for all liability policies except workers' compensation and Professional Liability, if applicable, must contain, or must be endorsed to contain, the following provisions:

(i) The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2026 07/04" or its equivalent is required.

(ii) The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(iii) Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor.

(iv) Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A:VIII, or, if not rated in the Best's Underwriting

Guide, with minimum surpluses the equivalent of Best's surplus size VIII. Professional Liability, Errors and Omissions insurance coverage, if applicable, may be placed with insurers with a Best's rating of B+:VII. Any exception must be approved by the County.

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits until after forty-five (45) calendar days' prior written notice has been given to the County.

If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

e. Subcontractors. The Contractor shall include all subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. **Insurance coverages provided by subcontractors instead of the Contractor as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.**

13. County Non-discrimination. It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Contractor shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Contractor of the Contractor's compliance with the requirements of Chapter 2.460 SCC. If the Contractor is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Contractor's obligations under other federal, state, or local laws against discrimination.

14. Federal Non-discrimination. Snohomish County assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County sponsored program or activity. Snohomish County further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

15. Employment of County Employees. SCC 2.50.075, "Restrictions on future

employment of County employees,” imposes certain restrictions on the subsequent employment and compensation of County employees. The Contractor represents and warrants to the County that it does not at the time of execution of this Agreement, and that it shall not during the term of this Agreement, employ a former or current County employee in violation of SCC 2.50.075. For breach or violation of these representations and warranties, the County shall have the right to terminate this Agreement without liability.

16. Compliance with Other Laws. The Contractor shall comply with all other applicable federal, state and local laws, rules, and regulations in performing this Agreement.

17. Compliance with Grant Terms and Conditions. The Contractor shall comply with any and all conditions, terms and requirements of any federal, state or other grant, if any, that wholly or partially funds the Contractor’s work hereunder.

18. Prohibition of Contingency Fee Arrangements. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

19. Force Majeure. If either party is unable to perform any of its obligations under this Agreement as a direct result of an unforeseeable event beyond that party’s reasonable control, including but not limited to an act of war, act of nature (including but not limited to earthquake and flood), embargo, riot, sabotage, labor shortage or dispute (despite due diligence in obtaining the same), or governmental restriction imposed subsequent to execution of the Agreement (collectively, a “force majeure event”), the time for performance shall be extended by the number of days directly attributable to the force majeure event. Both parties agree to use their best efforts to minimize the effects of such failures or delays.

20. Suspension of Work. The County may, at any time, instruct the Contractor in writing to stop work effective immediately, or as directed, pending either further instructions from the County to resume the work or a notice from the County of breach or termination under Section 21 of this Agreement.

21. Non-Waiver of Breach; Termination.

a. The failure of the County to insist upon strict performance of any of the covenants or agreements contained in this Agreement, or to exercise any option conferred by this Agreement, in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

b. If the Contractor breaches any of its obligations hereunder, and fails to cure the same within five (5) business days of written notice to do so by the County, the County may terminate this Agreement, in which case the County shall pay the Contractor only for the services and corresponding reimbursable expenses, if any, accepted by the County in accordance with Sections 3 and 8 hereof.

c. The County may terminate this Agreement upon two (2) business days' written notice to the Contractor for any reason other than stated in subparagraph b above, in which case payment shall be made in accordance with Sections 3 and 8 hereof for the services and corresponding reimbursable expenses, if any, reasonably and directly incurred by the Contractor in performing this Agreement prior to receipt of the termination notice.

d. Termination by the County hereunder shall not affect the rights of the County as against the Contractor provided under any other section or paragraph herein. The County does not, by exercising its rights under this Section 21, waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provisions of this Agreement. At its sole option, the County may deduct from the final payment due the Contractor (i) any damages, expenses or costs arising out of any such violations, breaches or non-performance and (ii) any other set-offs or credits including, but not limited to, the costs to the County of selecting and compensating another contractor to complete the work of the Agreement.

22. Notices. All notices and other communications shall be in writing and shall be sufficient if given, and shall be deemed given, on the date on which the same has been mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the County:	Snohomish Co. Dept. of Conservation & Natural Resources Surface Water Management Division 3000 Rockefeller Ave, M/S 303 Everett, WA 98201 Attention: Marisa Burghdoff
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If to the Contractor:	Aquatechnex, LLC P.O. Box 30824 Bellingham, WA 98228 Attention: Terry McNabb
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The County or the Contractor may, by notice to the other given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

23. Confidentiality. The Contractor shall not disclose, transfer, sell or otherwise release to any third party any confidential information gained by reason of or otherwise in connection with the Contractor's performance under this Agreement. The Contractor may use such information solely for the purposes necessary to perform its obligations under this Agreement. The Contractor shall promptly give written notice to the County of any judicial proceeding seeking disclosure of such information.

24. 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.

25. Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties. The language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings of this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

26. Complete Agreement. The Contractor was selected through the County's RFP or RFQ identified in Section 1. The RFP or RFQ and the Contractor's response are incorporated herein by this reference. To the extent of any inconsistency among this Agreement, the RFP or RFQ, and the Contractor's response, this Agreement shall govern. To the extent of any inconsistency between the RFP or RFQ and the Contractor's response, the RFP or RFQ shall govern.

27. Conflicts between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

28. No Third Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the County and the Contractor. This Agreement shall not be deemed to have conferred any rights, express or implied, upon any third parties.

29. Governing Law; Venue. This Agreement shall be governed by the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County.

30. Severability. Should any clause, phrase, sentence or paragraph of this Agreement be declared invalid or void, the remaining provisions of this Agreement shall remain in full force and effect.

31. Authority. Each signatory to this Agreement represents that he or she has full and sufficient authority to execute this Agreement on behalf of the County or the Contractor, as the case may be, and that upon execution of this Agreement it shall constitute a binding obligation of the County or the Contractor, as the case may be.

32. Survival. Those provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive.

33. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF the parties execute this Agreement on the date of the last party to sign.

SNOHOMISH COUNTY:

Lacey Harper Digitally signed by Lacey Harper
Date: 2022.08.18 09:22:19
-07'00'

County Executive Date

Approved as to insurance
and indemnification provisions:

Barker, Sheila Digitally signed by Barker, Sheila
Date: 2022.07.11 13:08:58
-07'00'

Risk Management Date

Approved as to form only:

 7/1/2022
Deputy Prosecuting Attorney Date

COUNCIL USE ONLY	
Approved	<u>8/17/2022</u>
ECAF #	<u>2022-0692</u>
MOT/ORD	<u>Motion 22-292</u>

AQUATECHNEX, LLC:

Terence McNabb Digitally signed by Terence McNabb
Date: 2022.07.11 08:12:18 -07'00'

Date

Approved as to form only:

Legal Counsel to the Contractor Date

Schedule A Scope of Services

This Agreement is for services to eradicate or greatly reduce the population of aquatic noxious weeds at lakes in unincorporated Snohomish County to improve ecological health and recreational suitability of local lakes as well as prevent their spread to other lakes.

The desired plant control will be achieved through the application of aquatic herbicides to infested areas of the lake. The immediate priority target plants for treatments are Eurasian watermilfoil (EWM) and fragrant waterlily. The anticipated herbicides used for treatment are florypyrauxifen-benzyl (ProcellaCOR) for the treatment of EWM and imazapyr, imazamox and glyphosate as treatment options for fragrant waterlily. If an adjuvant is needed for the application, a product that is classified as “practically non-toxic” by the Washington State Department of Agriculture must be used and must be approved by Snohomish County. Treatment of other noxious weeds (slender arrowhead, yellow-flag iris, purple loosestrife, etc.) and additional herbicides for treatment may be requested as needed. The application should also be done in a safe and effective manner that reduces impacts to native plants and animals, water quality and recreational enjoyment of the lake.

The County will provide the following for each requested lake treatment: location map for each target plant, the acreage of the treatment area for each target plant, the estimated average depth of the treatment area for each target plant (if applicable), the preferred herbicide, and the frequency of treatments. The proposed plans will be sent by the County to the Contractor approximately three weeks prior to the desired treatment date.

The Contractor shall respond as soon as possible but no later than two weeks following receipt of the County’s plans with a proposed treatment plan for each lake which will include the proposed herbicide, application methodology, application rate, dosage calculations, treatment schedule and estimated cost based on the tables found in Schedule B. For florypyrauxifen-benzyl (ProcellaCOR) the plan shall include the recommended Prescription Dose Unit per acre-foot of water.

The County will work with the Contractor to adjust the proposed plan as necessary and send the final plan for each lake with approval for the Contractor to proceed per the schedule. The final plan must be approved by the County prior to the Contractor conducting any treatment activities. Any deviations from a final plan need to be agreed upon in writing by the Contractor and the County.

Contractor must maintain the following qualifications or training:

- A. Licensed pesticide applicator, with the appropriate Washington State Department of Agriculture (WSDA) license and certification for aquatic herbicides who shall have direct supervision responsibilities for the use of herbicides.
- B. Licensed/certified to obtain and apply ProcellaCOR®
- C. Current training for all personnel applying herbicides in the use of proper equipment for safe and effective herbicide applications with approved application techniques.

Contractor responsibilities for Treatment:

- A. Provide, maintain and calibrate all application equipment and herbicides. Only appropriately trained personnel shall calibrate the application equipment for herbicide application.
- B. Use all known, available, and reasonable methods of pollution control, prevention, and treatment (AKART) when applying herbicides. The requirements of the Washington Pesticide Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) label constitute AKART.
- C. Transport, handle, store, and use all oil, fuel, herbicides, adjuvants, or products in a manner that prevents spills. The contractor shall have absorbent materials available for cleanup or the appropriate spill containment materials recommended in the Material Safety Data Sheet for that product.
- D. Ensure safety of all employees and subcontractors including safety training of all personnel and the use of appropriate personal protective equipment. Also ensure safe and legal operation of boats. All boat operators must have Boater Education Cards as required by Washington State.
- E. Decontaminate all equipment prior to entry into the lake and after leaving the lake to prevent the introduction of any aquatic invasive species into the lake. Equipment includes, but is not limited to, barge(s), boat(s), boat and vehicle trailers and tires, all on-board gear, hoses, pumps, distribution lines, booms, barge/boat motors, personal gear such as boots, and any on-shore equipment or gear that could come in contact with lake water or allow aquatic invasive species to be washed into the lake. Minimum decontamination procedures are the Washington State Department of Fish and Wildlife Invasive Species Management Protocols, Level 1 Decontamination Protocol – Basic. If the equipment is known to have been exposed to aquatic invasive species, Special Protocols – Boats and Other Large Aquatic Conveyances Transported Overland must be used.

Contractor & County Responsibilities for the Washington State Aquatic Plant and Algae Management General Permit:

For each treatment waterbody, the County will obtain coverage under the Washington State's Aquatic Plant and Algae Management General (APAM) Permit. The County shall provide the APAM Permit, Snohomish County's letter of coverage under the APAM Permit, and the associated Discharge Management Plans for any lake to be treated under this Agreement. The Contractor shall adhere to all APAM Permit conditions unless identified as a County responsibility described below:

The Contractor will be responsible for the following Notification, Inspection and Posting Requirements specified Section S5 and Spill Prevention and Control Sections S8 of the APAM Permit:

- A. S5.A. Ecology Notification Requirements - The Contractor shall be responsible for submitting a detailed application report to the County (project manager) within ten business days of completing each herbicide application. The report shall include the date of treatment, treatment start and stop times, the amount of product used (in pounds), the treatment acreage for each herbicide used, and a map showing where each herbicide was applied.
- B. S5.E - Shoreline Posting Requirements – The Contractor shall be responsible for all shoreline posting notifications.
- C. S5.A and S8 - Spill Prevention and Control – The Contractor shall be responsible for spill preventions, notifications and spill clean-up requirements in section S8 of the APAM Permit. The Contractor shall immediately report spills to Ecology by calling 1-800-645-7911 and 1-425-649-7000 and notify the County. In the event of a spill, the Contractor shall begin immediate containment and cleanup using appropriate materials. Cleanup shall take precedence over normal work. Cleanup includes proper disposal of any spilled materials and used cleanup materials.

The County will be responsible for the following Notification, Inspection and Posting Requirements specified Section S5 and Reporting and Recordkeeping Requirements S7 of the APAM Permit:

- A. S5.A. Ecology Notification Requirements - The County shall be responsible for pre and post permit notifications to Ecology.
- B. S5.B Ecology Inspection Requirements - The County shall be responsible for coordination of Ecology inspections. If an inspection occurs, the Contractor may not apply chemicals until an inspection occurs or as outlined in the APAM Permit.
- C. S5.C Residential and Business Notification - The County shall be responsible for all residential and business notification requirements.
- D. S5.D Shoreline Recreational Facilities Notification Requirements - The County shall be responsible for all recreational facilities notification requirements.
- E. S7 The County shall be responsible for all reporting and recordkeeping requirements

Schedule B Compensation

The County will compensate the Contractor for the mobilization and demobilization for each herbicide treatment and the cost per acre of herbicide treatment as described in Table 1 below. The amounts listed in Table 1 below include all Contractor's expenses including but not limited to mobilization/debmobilization costs (including shoreline postings), the cost of the herbicides, adjuvants and/or dye and the application cost. The County will only reimburse the Contractor for herbicide treatments conducted under an approved treatment plan as described in Schedule A.

Table 1

Item #	Items	Qty.	Cost
1	Mobilization/Demobilization	Per Treatment	\$1200
2	Florpyrauxifen-benzyl treatment (ProcellaCOR®),		
	Prescription Dose Unit of 1	Per Acre	\$218
	Prescription Dose Unit of 2	Per Acre	\$261
	Prescription Dose Unit of 3	Per Acre	\$304
	Each Additional Prescription Dose Unit Added	Per Acre	\$43
3	Imazapyr treatment	Per Acre	\$325
4	Imazamox treatment	Per Acre	\$375
5	Glyphosate treatment	Per Acre	\$325

The County will compensate the Contractor for the costs of project design, finalization of treatment plans, and reporting requirements using the hourly rates as described in Table 2 below. The County will only reimburse the Contractor using the hourly rates for each appropriate position needed to meet the requirements described in Schedule A, including development of treatment plan proposals and required pre and post treatment reporting. Hourly rates are fully loaded (including all costs).

Table 2

Position Title	Proposed Work	Onsite Fully Loaded Hourly Rate	Remote Fully Loaded Hourly Rate
Senior Biologist	Project design, treatment plan, reporting	\$110.00	\$110.00
Biologist	Project design, treatment plan, reporting	\$75.00	\$75.00