

Contract for Terrestrial Herbicide Application Services

This Contract, dated this _____ day of _____ 2023, between the SOUTH COLUMBIA BASIN IRRIGATION DISTRICT (District) and _____ (Contractor), is for the application, or spray, of terrestrial herbicides to certain Bureau of Reclamation right of ways which are operated and maintained by the District.

1. Scope. Provide one post-emergent herbicide application. Application will occur in mid-May to early June 2023 possibly earlier depending on weather and weed growth.
2. Location.
 - a. Due to variability in weed growth, the applications may be broken up into smaller secondary applications according to location.
 - b. Typically, canals will have maintenance roads on both sides of the canal. Where roads are both adequate for safe travel, both sides will be sprayed.
 - c. The primary application will consist of approximately 200 miles of canal right of ways.
 - i. Potholes Canal from Mile 32 to Mile 67
 - ii. Wahluke Branch Canal from Mile 3 to Mile 33.6
 - iii. Eltopia Branch Canal from Mile 0 to Mile 24.5
 - iv. EL85 Canal from Mile 0 to Mile 13.8
3. Contractor Performance. The Contractor shall:
 - a. Respond within 10 calendar days of District directing an application to begin.
 - b. Complete each application within 21 calendar days of beginning.
 - c. Provide detailed digital application location data to the District, i.e.. GPS data.
 - d. As needed, alternate between two different herbicide mixes in a single pass.
 - e. Apply a minimum of 15 gallons per acre of mixed herbicide.
 - f. Manage all off-target drift potential.
 - i. If the Contractor chooses not to spray an area due to drift concerns, the Contractor will record via GPS, or equivalent means, the untreated area and provide that digital location data to the District.
 - ii. The Contractor shall not spray within 500 feet upwind of non-dormant vineyard or orchard crops.
 - g. Not spray at temperatures above 85° Fahrenheit.
4. Application Parameters. The application is intended to treat the right of way from the top edge of the canal to the base of the outer embankment, where accessible.
 - a. Right-of-way width varies from 12 feet to 60 feet.
 - b. Herbicide mix for this application is not labeled for aquatic use and every effort will be made to avoid contaminating the inside of the canal prism.
5. Materials Provided. The District will provide the following:
 - a. Herbicides, which will be staged at the District's Mesa Field Office at 101 Pepiot Road, Mesa, WA 99343.

Contract for Terrestrial Herbicide Spray Contract

- b. Application Water is available at each Watermaster section maintenance yard at the following locations and phone numbers:
 - i. Eltopia Yard – 921 Eltopia West Road, Eltopia, WA 99330 (509-297-4210)
 - ii. Mesa Yard – 101 Pepiot Road, Mesa, WA 99343 (509-265-4214)
 - iii. Wahluke Yard – 141 Second Foot Road, Othello, WA 99344 (509-269-445)
 - iv. Mattawa Yard – 18897 Road 24 SW, Mattawa, WA 99349 (509-932-4441)
 - c. KMZ file with facility ROW lines will be provided along with maps of the individual areas to be sprayed.
6. Contractor to be Licensed and Bonded. The Contractor shall be duly licensed, registered and bonded by the State of Washington at all times this Contract is in effect. The Contractor, and all employees applying herbicide under this Contract, shall possess a Washington State Commercial Applicator pesticide license with Aquatics endorsement.
7. Applicable Laws and Standards. The Parties, in performance of the Contract, agree to comply with all applicable federal, state, and local laws, codes and regulations.
8. Safety. The Contractor and its subcontractors shall take all safety precautions and furnish and employ all measures necessary for the prevention of accidents, and shall comply with all laws and regulations with regard to the prosecution of work.
9. Compensation. In consideration of the Contractor performing the work, the District agrees to pay the Contractor the sum of _____ plus Washington State sales tax of _____, for a total of _____, based on the bid submitted by the Contractor and attached hereto as Exhibit A.
10. Payment. The Contractor may elect to be paid in monthly installments, upon presentation of an application for payment in a form satisfactory to the District. Pursuant to Chapter 60.28 RCW, five percent (5%) of the compensation due the Contractor shall be retained by the District. The District reserves the right to withhold payment under this Contract for that portion of the work (if any) which is determined in the reasonable judgment of the District to be non-compliant with this Contract, state standards, or federal standards.
11. Prevailing Wages on Public Works. The Contractor, any subcontractor, or other person doing work under this Contract, shall comply with the requirements of Chapter 39.12 RCW, and shall pay each employee an amount not less than the Prevailing Rate of Wage, as specified by the Industrial Statistician of the Washington State Department of Labor and Industries (“L&I”). If employing labor in a class not shown, the Contractor shall request a determination of the correct wage rate for the class and locality from the Industrial Statistician. The Contractor shall provide a copy of any such determinations to the District.

Contract for Terrestrial Herbicide Spray Contract

Before commencing, during, and upon completion of the work, the Contractor shall file all forms and pay all fees required by L&I and shall indemnify and hold the District harmless from any claims related to its failure to comply with Chapter 39.12 RCW.

The following information is provided pursuant to RCW 39.12.030:

- a. State of Washington prevailing wage rates applicable to this public works project, published by L&I, are located at the L&I website address:
<https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>
- b. This project is located in Grant and Franklin Counties.
- c. The effective prevailing wage date is the same date as the quote due date as referenced in the original request for quotes and as may be revised by addenda.

A copy of the applicable prevailing wage rates is also available for viewing at the District business office located at 1135 E. Hillsboro, Suite A, Pasco, WA 99301. Upon request the District will mail a hard copy of the applicable prevailing wages to the Contractor.

12. Records. The District or State Auditor or any of their representatives shall have full access to, and the right to examine during normal business hours, all of the Contractor's records with respect to all matters covered in this Contract. Such representatives shall be permitted to audit, examine, make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, and record of matters covered by this Contract for a period of three years from the date final payment is made hereunder.
13. Relationship of the Parties. It is understood and agreed that the Contractor shall be an independent contractor and not the agent or employee of the District, and that the District is only interested in the results to be achieved. Subject to those requirements as provided for in this Contract, the right to control the particular manner, method, and means in which the services are performed is solely within the discretion of the Contractor. Any and all employees who provide services to the District under this Contract shall be deemed employees solely of the Contractor. The Contractor shall be solely responsible for the conduct and actions of all its employees under this Contract and any liability that may attach thereto.
14. Insurance. The Contractor shall not commence work until it has obtained and exhibited to the District duplicate policies or certificates evidencing all the insurance required hereinafter, nor shall the Contractor allow any subcontractor to commence work on its subcontract until all such insurance has been obtained by the subcontractor and exhibited to the District by delivery of duplicate policies or certificates evidencing all the insurance required hereinafter. All such insurance shall include the District and its directors, officers, employees, agents, and sub-consultants as additional insureds and shall be fully maintained throughout the term of this Contract.

Contract for Terrestrial Herbicide Spray Contract

- a. The Contractor shall obtain and keep in force throughout the term of the Contract, commercial general liability, worker’s compensation, environmental impairment liability, and automobile liability insurance with companies admitted by the State Insurance Commissioner pursuant to Title 48 RCW or a licensed surplus lines carrier. Companies shall be rated A–VII or higher in Best’s Guide.
- b. Prior to the commencement of work, the Contractor shall file with the District a Certificate of Insurance for a primary policy of commercial liability insurance, environmental impairment liability, auto liability insurance, and umbrella liability meeting the requirements set forth herein. This Certificate of Insurance shall be subject to approval by the District as to company, terms, and coverage. Failure of the Contractor to fully comply with the requirements set forth regarding insurance will be considered a material breach of contract and shall be cause for immediate termination of the contract at the option of the District.
- c. The insurance shall specifically name the District and its directors, officers, employees, agents, and sub-consultants as additional insureds hereunder. A copy of the additional insured endorsement shall be included with the certificate. The insurance shall be maintained in full force and effect at the Contractor's expense throughout the term of the Contract. The District shall be given thirty (30) calendar days’ prior written notice by certified mail of any cancellation, reduction, or modification of the insurance.
- d. The insurance shall provide the minimum coverages and limits set forth below:
- e. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01, or equivalent, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop-gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage. The District shall be named as an insured under the Contractor’s Commercial General Liability insurance policy with respect to the work performed for the District using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage. Commercial General Liability insurance, in combination with Umbrella Liability or Excess Liability coverage, shall be written with limits not less than as follows:
 - i. Each Occurrence \$3,000,000
 - ii. General Aggregate Limits (other than products-completed operations) \$3,000,000
 - iii. Products-Completed Operations Limit \$2,000,000
 - iv. Personal and Advertising Injury Limit \$1,000,000
 - v. Fire Damage Limit (any one fire) \$50,000

Contract for Terrestrial Herbicide Spray Contract

- vi. Medical Expense Limit (any one person) \$5,000
- f. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on ISO form CA 00 01, or equivalent. Automobile Liability insurance shall be written with limits no less than \$2,000,000 per occurrence combined single limit, Bodily Injury and Property Damage with \$10,000 maximum deductible.
- g. Environmental Impairment Liability insurance, Contractors Pollution Liability and/or Errors and Omissions coverages applicable to the work being performed and services provided, with a limit no less than \$3,000,000 per claim or occurrence and \$3,000,000 aggregate per policy period of one year. The Pollution Liability policy shall be endorsed to cover Transportation Pollution Liability, covering materials to be transported by the Contractor pursuant to the Contract.

If General Liability and/or Contractors Pollution Liability and/or Errors and Omissions coverages are written on a claims-made form:

- h. The retroactive date must be shown and must be before the date of the contract or the beginning of the contract work.
 - i. Insurance must be maintained, and evidence of insurance must be provided for at least one year after completion of the contract work.
 - j. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase an Extended Reporting Period (also known as Tail Coverage) for a minimum of one year after the completion of contract work.
 - k. A copy of claims reporting requirements must be submitted to the District for review.
 - l. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
 - m. Providing of coverages in these stated amounts shall not be construed to relieve the Contractor from liability in excess of such limits. Additional insurance requirements or conditions may be added to the order by addendum, and the District, at its discretion, may require the Contractor to provide evidence of such insurance.
15. Indemnity, Hold Harmless, and Defense. To the maximum extent permitted by law, the Contractor shall indemnify, hold harmless, and defend the District and its directors, officers, employees, agents, and sub-consultants from and against liability for all claims for injuries or death or loss or damage to property arising out of or resulting from the Contractor's or any subcontractor's performance or failure to perform the Contract.

The Contractor's obligation to indemnify, hold harmless, and defend includes any claim by the Contractor's officers, agents, employees, representatives, or invitees, or any claim by any subcontractor, its officers, agents, employees, or invitees. The Contractor's

Contract for Terrestrial Herbicide Spray Contract

obligation to indemnify, hold harmless, and defend shall be binding on the Contractor regardless of fault, breach of contract, or negligence of the District and its directors, officers, employees, agents, and sub-consultants except liability for claims that have been adjudicated to have been caused by or resulting from the sole negligence of the District and its directors, officers, employees, agents, and sub-consultants, in which event such indemnity, hold harmless, and defense provisions will be enforceable only to the extent of the negligence of the Contractor, its officers, agents, employees, sub-contractors, or invitees.

The Contractor expressly waives the Contractor's immunity under industrial insurance, Title 51 RCW, but only to the extent of the Contractor's agreement to provide indemnity, to hold harmless, and defend the District and its directors, officers, employees, agents, and sub-consultants.

The Contractor's indemnity, hold harmless, and defense obligations shall survive the termination or completion of the Contract and remain in full force and effect until satisfied in full.

The Contractor acknowledges that by entering into the Contract with the District, the Contractor has mutually negotiated the above indemnity, hold harmless, and defense provisions with the District, and the Contractor agrees to the terms herein.

These indemnification provisions are independent of, and shall not in any way be limited by, the insurance requirements of this Contract. District approval of the insurance coverage required by this Contract does not in any way relieve the Contractor from liability under this section.

16. Notices. Notice shall be given in writing as follows:

TO THE DISTRICT:

TO THE CONTRACTOR:

John O'Callaghan, Secretary/Manager
South Columbia Basin Irrigation District
1135 E. Hillsboro, Suite A
Pasco, WA 99301-1006

17. Disputes. All disputes arising under or related to this Contract that cannot be resolved through informal discussion and negotiations shall be resolved by litigation filed in the Superior Court of the State of Washington for Franklin County unless otherwise required by applicable federal or state law.

Contract for Terrestrial Herbicide Spray Contract

18. Applicable Law. The Contractor shall comply with all applicable federal, state, and local laws and regulations, which are deemed to be incorporated into this Contract. This Contract shall be construed, for all purposes, solely and exclusively in accordance with and pursuant to the laws of the State of Washington. Venue of any action filed to enforce or interpret the provisions of this Contract shall be in Franklin County Superior Court. In the event of litigation to enforce the provisions of this Contract, the prevailing Party shall be entitled to reasonable attorney's fees in addition to any other relief allowed.
19. Waiver. No officer, employee, agent, or other individual acting on behalf of either Party has the power, right, or authority to waive any of the conditions or provisions of this Contract. No waiver in one instance shall be held to be a waiver of any other subsequent breach or non-performance. All remedies afforded in this Contract or by law shall be taken and construed as cumulative and in addition to every other remedy provided herein or by law. Failure of either Party to enforce at any time any provision hereof shall in no way be construed to be a waiver of such provisions nor shall it affect the validity of this Contract or any part thereof.
20. Amendment. This Contract may not be changed, modified, or altered except in writing signed by the Parties.

IN WITNESS WHEREOF, the Parties have signed this Contract the date first above written.

SOUTH COLUMBIA BASIN
IRRIGATION DISTRICT

(SEAL)

President Maurice Balcom

ATTEST:

Secretary/Manager John O'Callaghan

(CONTRACTOR)

(NAME)

(TITLE)