





**CONTRACT**

THIS CONTRACT is entered into by and between the FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION, whose address is 620 South Meridian Street, Tallahassee, Florida 32399-1600, hereafter "COMMISSION," and PALM BEACH COUNTY DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT whose address is 3233 Belvedere Road, West Palm Beach, Florida 33406, hereafter "CONTRACTOR," a local government, to provide upland invasive exotic plant control services.

NOW THEREFORE, the COMMISSION and the CONTRACTOR, for the considerations hereafter set forth, agree as follows:

1. **PROJECT DESCRIPTION.** The COMMISSION does hereby retain the CONTRACTOR to provide upland invasive plant related services on a task assignment basis (copies of the Task Assignment Notification Form and Task Assignment Change Order Forms are attached hereto as Attachments A and B, respectively) as defined herein and the CONTRACTOR does hereby agree to perform such services upon the terms and conditions set forth in this Contract, Attachment C (Scope of Services), and all attachments and exhibits named herein which are attached hereto and incorporated by reference. The CONTRACTOR has been determined to be a vendor to the COMMISSION under this Contract.

Each project to be performed by the CONTRACTOR shall be authorized by a separate task assignment notification form. No minimum amount of work is guaranteed under this Contract.

For the purposes of this Contract, the following representatives identified herein are delegated to the authority to execute task assignment and task assignment change order forms for or on behalf of the COMMISSION.

For Task Assignments whose total value does not exceed \$100,000:  
Leader, Invasive Plant Management Section

For Task Assignments whose value is in excess of \$100,000:  
Director, Division of Habitat and Species Conservation

For Task Assignments whose value is in excess of \$500,000:  
Executive Director, Florida Fish and Wildlife Conservation Commission

2. **PERFORMANCE.** The CONTRACTOR shall perform the activities described in the Scope of Services in a proper and satisfactory manner. Any and all equipment, products or materials necessary or appropriate to perform under this Contract shall be supplied by the CONTRACTOR. The CONTRACTOR shall be licensed as necessary to perform under this Contract as may be required by law, rule, or regulation, and shall provide evidence of such compliance to the COMMISSION upon request. The CONTRACTOR shall procure all supplies, pay all charges, fees, taxes and incidentals that may be required for the completion of this Contract. By acceptance of this Contract, the CONTRACTOR warrants that it has the capability in all respects to fully perform the Contract requirements and the integrity and reliability that will assure good-faith performance as a responsible contractor.

3. **TERM.** This Contract shall begin upon execution by both parties and end June 30, 2021, inclusive, unless terminated sooner as provided herein. In accordance with Section 287.058(2), Florida Statutes, the CONTRACTOR shall not be eligible for reimbursement for services rendered prior to the execution date of this Contract nor after the termination date of the Contract.

4. **COMPENSATION.** As consideration for the CONTRACTOR performance under the terms of this Contract, the COMMISSION shall pay the CONTRACTOR on a fixed price and/or cost reimbursement basis in an amount not to exceed the amount specified on the executed task assignment (attachment A) for that fiscal year.

Funding under this Contract shall be authorized by and for each executed Task Assignment as issued by the COMMISSION. The CONTRACTOR is not authorized to perform any services or purchase any commodities that exceed the funding amount authorized for each Task Assignment. Upon completion and final payment of a Task Assignment, any funds remaining from that particular Task Assignment shall be unencumbered by the COMMISSION. The CONTRACTOR hereby agrees that the CONTRACTOR or its subcontractors shall not commence work on a Task Assignment until said Task Assignment has been fully executed by both the Commission and the CONTRACTOR.

5. **PAYMENTS.** The COMMISSION shall pay the CONTRACTOR for satisfactory service upon submission of invoices, accompanied by required reports or deliverables, and after acceptance of services and deliverables in writing by the COMMISSION's Contract Manager. Each invoice shall include the COMMISSION Contract Number and the CONTRACTOR'S Federal Employer Identification (FEID) Number. An original and two (2) copies of the invoice shall be submitted. The COMMISSION shall not provide advance payment. All bills for amounts due under this Contract shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

Travel expenses are included in the amount of this Contract and no additional travel expenses shall be compensated.

Section 215.422, F.S. provides that agencies have 5 working days to inspect and approve goods and services, unless bid specifications or the Contract specifies otherwise. If payment is not available within 40 days, measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved, a separate interest penalty set by the Comptroller pursuant to Section 55.03, F.S., will be due and payable in addition to the invoice amount. To obtain the applicable interest rate, please contact the Agency's Fiscal Section at 850/488-3323 or Purchasing Office at 850/488-3428. Invoice payment requirements do not start until a properly completed invoice is provided to the agency.

A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a State agency, may be contacted at (850) 410-9724 or by calling the State Comptroller's Hotline, 1-800-848-3792.

For Contracts whose term extends beyond the State fiscal year in which encumbered funds were appropriated, the State of Florida's performance and obligation to pay is contingent upon an annual appropriation by the Legislature.

6. **MYFLORIDAMARKETPLACE VENDOR REGISTRATION.** In accordance with Rule 60A-1.030 of the Florida Administrative Code (FAC), each vendor doing business with the State for the sale of commodities or contractual services as defined in Section 287.012, Florida

Statutes, shall register in the MyFloridaMarketPlace system, unless exempted under Rule 60A-1.030(3), F.A.C. Information about the registration process is available, and registration may be completed, at the MyFloridaMarketPlace website (link under Business on the State portal at [www.myflorida.com](http://www.myflorida.com)). Interested persons lacking Internet access may request assistance from the MyFloridaMarketPlace Customer Service at (866-352-3776) or from State Purchasing, 4050 Esplanade Way, Suite 300, Tallahassee, Florida 32399.

7. **TERMINATION.** This Contract shall terminate immediately upon the COMMISSION giving written notice to the CONTRACTOR in the event of fraud, willful misconduct, or breach of this Contract. Either party may terminate this Contract without cause upon 30 business days written notice of the intent to do so, and such action shall in no event be deemed a breach of contract. In the event that this Contract is so terminated, the CONTRACTOR will be paid for all costs incurred and non-cancelable obligations made. Upon receipt of such notice, the CONTRACTOR shall, unless the notice directs otherwise, immediately discontinue all work and services. Upon termination of this Contract, the CONTRACTOR shall promptly render to the COMMISSION all property belonging to the COMMISSION. For the purposes of this section, property belonging to the COMMISSION shall include, but shall not be limited to, all books and records kept on behalf of the COMMISSION. In no event, however, will the CONTRACTOR be entitled to be reimbursed for amounts above all outstanding Task Assignments.

8. **TAXES.** The CONTRACTOR recognizes that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Contract.

9. **NOTICES.** Any and all notices shall be delivered to the parties at the following addresses (or such changed address or addressee as may be provided by notice). A notice or other communication shall be deemed received by the addressee on the next business day after having been placed in overnight mail with the U. S. Postal Service, or other overnight express service such as FedEx, UPS, or similar service. Notices sent by means other than overnight delivery shall be deemed received when actually received by the addressee:

COMMISSION:

Greg Jubinsky  
3900 Commonwealth Blvd  
Tallahassee, FL.32399  
Phone: 850-617-9425

COUNTY:

PALM BEACH COUNTY DEPARTMENT  
OF ENVIRONMENTAL RESOURCES  
MANAGEMENT  
Attn: Richard E. Walesky  
2400 No. Jog Rd., 4th Floor  
West Palm Beach, 33411  
Phone: 561-233- 2400

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10. **AMENDMENT.** No waiver or modification of this Contract or of any covenant, condition, or limitation herein contained shall be valid unless in writing and lawfully executed by the parties. The COMMISSION may at any time, by written order designated to be a Modification, make any change in the work within the general scope of this Contract (e.g., specifications, schedules, method or manner of performance, requirements, etc.). However, all Modifications are subject to the mutual agreement of both parties as evidenced in writing. Any Modification that causes an increase or decrease in the cost or the term of the Contract shall require a formal amendment.

11. **RELATIONSHIP OF THE PARTIES.** The CONTRACTOR shall perform as an independent contractor and not as an agent, representative, or employee of the COMMISSION. The parties agree that there is no conflict of interest or any other prohibited relationship between the CONTRACTOR and the COMMISSION.

12. **INSURANCE.** The CONTRACTOR warrants and represents that it is self-funded for liability insurance, appropriate and allowable under Florida law, and that such self-insurance offers protection applicable the CONTRACTOR officers, employees, servants and agents while acting within the scope of their employment with the CONTRACTOR.

13. **PUBLIC RECORDS.** Records made or received in conjunction with this contract may be public records under Chapter 119, Florida Statutes. This Contract may be unilaterally canceled by the COMMISSION for refusal by the CONTRACTOR to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the CONTRACTOR in conjunction with this Contract.

14. **RECORD KEEPING REQUIREMENTS.** The CONTRACTOR shall maintain accurate books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract, in accordance with generally accepted accounting principals. The CONTRACTOR shall allow the COMMISSION, the State, or other authorized representatives, access to periodically inspect, review or audit such documents as books, vouchers, records, reports, canceled checks and any and all similar material. Such audit may include examination and review of the source and application of all funds whether from the state, local or federal government, private sources or otherwise. These records shall be maintained for five (5) years following the close of this Contract. In the event any work is subcontracted, the CONTRACTOR shall require each subcontractor to similarly maintain and allow access to such records for audit purposes.

16. **LIABILITY.** Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.

17. **NON-DISCRIMINATION.** No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Contract.

18. **PROHIBITION OF DISCRIMINATORY VENDORS.** In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a

public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

19. **NON-ASSIGNMENT.** This Contract may not be assigned in whole or in part without the written approval of the COMMISSION. Any such assignment or attempted assignment shall be null and void.

20. **PROHIBITION OF UNAUTHORIZED ALIENS.** The employment of unauthorized aliens by any contractor/vendor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor/vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Contract. The CONTRACTOR shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Contract

21. **EMPLOYMENT ELIGIBILITY VERIFICATION.** The CONTRACTOR will enroll in and use the U.S. Department of Homeland Security's E-Verify Employment Eligibility Verification System (<http://www.uscis.gov/portal/site/uscis>) to verify the employment eligibility of all new employees hired by the CONTRACTOR during the term of this Contract.

The Contractor shall include in any subcontracts for the performance of work or provision of services pursuant to this Contract the requirement that the subcontractor use the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

The CONTRACTOR further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the Commission or other authorized state entity consistent with the terms of the CONTRACTOR's enrollment in the program. This includes maintaining a copy of proof of the Contractor's and subcontractors' enrollment in the E-Verify Program (which can be accessed from the "Edit Company Profile" link on the left navigation menu of the E-Verify employer's homepage).

Compliance with the terms of the Employment Eligibility Verification provision is made an express condition of this Contract and the Commission may treat a failure to comply as a material breach of the Contract.

22. **PROHIBITION OF CONTINGENT FEES.** 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 Contract and that it has not paid or agreed to pay any person, comp CONTRACTOR any, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Contract.

23. **SEVERABILITY AND CHOICE OF VENUE.** This Contract has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or

invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract. Any action in connection herewith, in law or equity, shall be brought in Leon County, Florida, to the exclusion of all other lawful venues.

24. **NO THIRD PARTY RIGHTS.** The parties hereto do not intend nor shall this Contract be construed to grant any rights, privileges or interest to any person not a party to this Contract.

25. **JURY TRIAL WAIVER.** As part of the consideration for this Contract, the parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this Contract, or with the products or services provided under this Contract; including but not limited to any claim by the CONTRACTOR of quantum meruit.

26. **DELIVERABLES.** The following services or service tasks are identified as deliverables for the purposes of this Contract:

- a.) Performance of all services set forth in the Scope of Work and Task Assignments.
- b.) Submission of all invoicing, supporting documentation, Corrective Action Plans and reports.

27. **PERFORMANCE AND MONITORING.** The CONTRACTOR will perform the services described in the Scope of Work in 100% compliance with all of the Terms and Conditions of this Contract. The COMMISSION will monitor the CONTRACTOR'S service delivery to determine if the CONTRACTOR has achieved the required level of performance. The COMMISSION reserves the right for any COMMISSION staff to make scheduled or unscheduled, announced or unannounced monitoring visits. If the COMMISSION at its sole discretion determines that the CONTRACTOR failed to meet any of the Terms and Conditions of this Contract, the CONTRACTOR will be sent a formal written notice. Within ten (10) days of receipt of notice the CONTRACTOR will provide with COMMISSION with a formal written Corrective Action Plan in response to all noted deficiencies. The CONTRACTOR will correct all identified deficiencies within forty-five (45) days of notice. The COMMISSION may conduct follow-up monitoring at any time to determine compliance based on the submitted Corrective Action Plan. Failure to meet 100% compliance with all of the Terms and Conditions of this Contract or failure to correct the deficiencies identified in the notice within the time frame specified may result in liquidated damages, and/or termination of this Contract in accordance with the Termination section.

28. **ENTIRE AGREEMENT.** This Contract with all incorporated attachments and exhibits represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, and duly signed by each of the parties hereto, unless otherwise provided herein.

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IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed through their duly authorized signatories on the day and year last written below.

**PALM BEACH COUNTY DEPARTMENT  
OF ENVIRONMENTAL RESOURCES  
MANAGEMENT**

**FLORIDA FISH AND WILDLIFE  
CONSERVATION COMMISSION**

Name: Richard E. Weirby  
Title: Director

\_\_\_\_\_  
(Name and title)

Date: 9/27/11

Date: \_\_\_\_\_

APPROVED AS TO TERMS AND  
CONDITIONS

Approved as to form and legality:

Anthony J. P...  
FWC Attorney

Attachments and Exhibits in this Contract include the following:

- Attachment A Example Task Assignment Notification Form
- Attachment B Example Task Assignment Change Order Form
- Attachment C Scope of Services

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_  
KAREN T. MARCUS, CHAIR

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

Anne Weirby  
ASSISTANT COUNTY ATTORNEY DATE

**ATTEST: Sharon R. Bock, Clerk & Comptroller**

**Deputy Clerk**

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**ATTACHMENT A  
TASK ASSIGNMENT NOTIFICATION FORM**

**CONTRACT NO. FWC 11077**

Task Assignment Number:  
 Task Assignment Term:  
 Contractor Name:  
 Contractor's Contract Manager/Telephone:  
 Contractor's Site Manager/Telephone:  
 FWC Contract Manager/Telephone:  
 Task Description:

Deliverables:  
 Fixed Price Task Assignment Amount  
 Cost Reimbursement Task Assignment Amount:  
 Invoicing Frequency:  
 Final Invoice Due Date:

Funding Information:

Org Code	EO	Fund	Category	Fiscal Year	Obj. Code	Amount
PID:						

**Approvals:**

**Contractor**

**Fish and Wildlife Conservation Commission**

\_\_\_\_\_  
 Contract Manager (or designee)      Date

\_\_\_\_\_  
 Contract Manager      Date

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Section Leader (or designee)      Date  
 Invasive Plant Management Section

\_\_\_\_\_  
 Division Director (or designee)      Date  
 Division of Habitat and Species Conservation

\_\_\_\_\_  
 Executive Director (or designee)      Date

cc:      Contracts Office  
          Finance and Budget Office

**ATTACHMENT B**

**TASK ASSIGNMENT CHANGE ORDER FORM  
CONTRACT NO. FWC 11077**

Task Assignment Number:                      Change Order Number:                      Date:

Task Assignment Term:  
Contractor Name:  
Contractor's Contract Manager:  
FWC Contract Manager:  
FWC Site Manager:  
Description of Change:

CHANGE IN TASK AMOUNT

<u>Item</u>	<u>Cost Reimbursement</u>
Original task amount:	\$
Task amount prior to this change order:	\$
Net increase in task amount	\$
Net decrease in task amount:	\$
Task amount with all change orders:	\$

CHANGE IN TASK TERM

Original task completion date:  
Completion date prior to this change:  
Net increase/decrease in task period:  
Completion date with all change order:  
New Final Invoice Due Date:

Change in Funding Information:

Org Code	EO	Fund/FID	Category	Fiscal Year	Obj. Code	Amount
PID:						

**Approvals:**

Contractor

Fish and Wildlife Conservation Commission

\_\_\_\_\_  
Contract Manager (or designee)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contract Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Section Leader (or designee)  
Invasive Plant Management

\_\_\_\_\_  
Date

\_\_\_\_\_  
Division Director (or designee)  
Division of Habitat and Species Conservation

\_\_\_\_\_  
Date

\_\_\_\_\_  
Executive Director (or designee)

\_\_\_\_\_  
Date

cc:    Contracts Office  
      Finance and Budget

**ATTACHMENT C**  
**SCOPE OF SERVICES**

The work to be performed consists of the Contractor furnishing all labor, equipment, and herbicides as described herein for the control of invasive upland exotic plants on public conservation lands within their jurisdiction. The Contractor shall be directed by the Site Manager per the task assignment to perform upland invasive exotic plant control operations. The location of work sites and the upland exotic plant control operations to be performed will be specified by the Department of Environmental Protection's Upland Invasive Exotic Plant Program Manager (Contract Manager) in the task assignment.

The Contractor shall at all times provide on-site a ground crew supervisor that is certified by the Florida Department of Agriculture and Consumer Services as part of the work force. Ground Crew Supervisors will be responsible for: 1) coordination with program site manager on a daily/weekly basis; 2) all control activities and safety on project sites; 3) assuring that all contract crews are knowledgeable of, and remain within property and treatment boundaries; 4) assuring appropriate herbicide labels, Material Safety Data Sheets (MSDS), and a copy of the fully executed task assignment with maps are on site; 5) avoid damage to native vegetation and wildlife; and 6) strict adherence to all herbicide label application, precautionary, and safety statements.

The Contractor will be responsible for providing applicators with all supplies and equipment for upland invasive exotic plant control, including vehicles, watercraft for transportation to work sites, GPS equipment for collecting site positions, herbicides and adjuvants, sprayers, machetes, hand tools, chainsaws, brush cutters, safety equipment, potable water, and suitable communications capability to facilitate operational coordination and safety of crew members. Contractor shall be responsible for obtaining all permits related to the control and disposal of targeted vegetation unless otherwise noted in the Task Assignment.

The Contractor shall provide the Department, at the conclusion of each Task Assignment, a written record of:

- (a) total gallons/lbs of herbicides and adjuvants applied,
- (b) total number of individuals and types of upland invasive exotic plants treated,
- (c) total hours of operating time,
- (d) total hours of lay time,
- (e) total hours of adverse weather lost time,
- (f) wind data measurements as applicable under the Florida Pesticide Law and Rules.

All control efforts (except cogon grass treatment) shall be at least 95% effective in preventing re-sprout of all target vegetation. If 95% kill rate is not achieved for any area of the project after two months following project completion, one additional thorough treatment of the plant species listed in the Task Assignment will be the responsibility of the Contractor at no cost to the Department.

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