

**CONTRACT FOR FORREST WOODS NATURE PRESERVE INVASIVE SPECIES
CONTROL**

This Contract is dated, made, and entered into as of the _____ day of _____, 2019, by Black Swamp Conservancy (“BSC”) and _____ (“Contractor”).

Sec. 1. Background and Purpose. This Project funded by a Clean Ohio Fund Green Space Conservation Program grant administered by the Ohio Public Works Commission (“Grant”) (Exhibit A) and is designated by Project Number CEMAA. All terms, conditions, restrictions and documents constituting the Grant are incorporated into this Agreement and, to the extent there is any conflict between this Agreement and the Grant documents, the terms of the Grant documents shall prevail.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor’s. BSC requires invasive species control at three locations in Forrest Woods Nature Preserve, as detailed in (i) the “Forrest Woods Nature Preserve Invasive Control Project Request for Proposals dated March 20, 2019 (referred to as “RFP”) (Exhibit B) and (ii) the Contractor Proposal dated _____ (referred to as “Proposal”) (Exhibit C), (collectively, the “Project”). Contractor shall furnish all licensing, permits, certifications, equipment, materials, labor and supervision, as may be necessary to complete the Project as described herein. Contractor shall abide by all Ohio EPA and United States Environmental Protection Agency regulations for activities on or near open water and otherwise. In this Agreement, “Work” means the services that Contractor is required to perform to complete the Scope of Work for this Project and all of Contractor’s duties to BSC necessary to complete the Scope of Work for this Project. There shall be no additional compensation for mobilization, signage, licensing, permits, certifications, equipment, or materials and no adjustments to the compensation based on changes in the Scope of Work on the Project. Unless the context requires otherwise, if this Project states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor. The Contract Documents consist of this Agreement and Exhibits A, B, and C hereto, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein (the "Agreement").

Sec. 3. Scope of Work.

(a) Project Overview. Contractor shall provide Work as set forth in (i) the RFP (Exhibit B) and (ii) the Proposal (Exhibit C) (collectively, the “Scope of Work”).

(b) Scheduling and Hours of Work. Contractor’s operations shall be governed by the following schedule: Contractor shall coordinate with and provide to BSC a written schedule of activities required to complete the Project. All activities pertaining to Work affecting the Project Areas shall be performed in accordance with Contractor’s pre-approved schedule, and changes to scheduling must be communicated to BSC as soon as possible. Pre-approved scheduling is likely to vary due to weather or other unforeseen events, but it is the responsibility of Contractor to

adhere to this Contract, and to Ohio EPA and United States Environmental Protection Agency regulations. BSC retains the right and authority to cease and reschedule Work to address special needs of BSC, if meteorological conditions degrade, or scheduling conflicts arise which would preclude Contractor's ability to safely and effectively conduct the Work. BSC will notify Contractor and coordinate to reschedule when appropriate.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this Contract, Contractor shall obtain and provide, without additional cost to BSC, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform Work.

Sec. 5. Contractor's Billings to BSC. Compensation. Contractor shall send its invoice to BSC upon completion of the Work. All Work on the Project shall be completed prior to November 15, 2020. Any penalties, fines or other payments assessed to BSC as a result of any delay beyond November 15, 2020, shall be paid by Contractor. Prior to payment, Contractor shall provide lien waivers for all labor and materials furnished to complete the Project. **Upon completion of all Work as defined herein and on the Exhibits attached hereto on or before November 15, 2020, BSC shall pay to the Contractor, the sum of \$ _____. The entire \$ _____ will be paid with funds from the Program Year 11 Clean Ohio Fund - Green Space Conservation Grant. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, CONTRACTOR ACKNOWLEDGES AND AGREES THAT BSC'S ACTUAL RECEIPT OF THE GRANT FUNDS FROM THE OPWC IS A *CONDITION PRECEDENT* TO PAYMENT BY OWNER TO CONTRACTOR FOR THAT WORK.**

Sec. 6. BSC shall be permitted, at the time of payment due to Contractor, to withhold payment or a portion thereof for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the Contractor to make timely payments to its subcontractors for labor, equipment, and materials; and/or other damages suffered to BSC.

Sec. 7. Bonding. The Contractor shall provide a performance bond for 100% of the performance price. This performance bond is intended to secure fulfillment of the Contractor's obligations under this Contract. The bond shall be obtained from a company holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

Sec. 8. Insurance. The Contractor shall maintain insurance not less than the following:

(a) Commercial General Liability, covering premises/operations products/completed operations broad form property damage contractual liability and for independent contractors, if they are used in the performance of this Contract.

(i) BSC must be named additional insured, and an original of the endorsement to affect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)

(ii) Combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year

(b) Automobile Liability Insurance, covering owned, hired or borrowed vehicles, employee vehicles, if used in performance of this Contract

(i) Combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year

(c) Workers' Compensation Insurance, covering statutory benefits covering employees; covering owners, partners, officers and relatives (who work on this Contract)

(d) Employers' liability, \$1,000,000.

(e) All insurance required hereunder shall be provided by:

(i) Companies authorized to do business in the State of Ohio.

(ii) Companies with Best rating of A-VIII or better

(f) Contractor shall furnish BSC with certificates of such insurance, which shall name BSC as an additional insured and shall also specifically provide that coverage will not be canceled or materially changed prior to sixty (60) days' advance written notice to BSC.

(g) Both the insurance certificate and the additional insured endorsement must be originals and must be approved by BSC before Contractor can begin any work under this Contract.

(h) Waiver of Subrogation. The Contractor hereby waives all causes of action and rights of recovery against BSC, and its directors, officers, independent contractors, employees, agents, successors, and assigns for any loss or damage occurring to the Project resulting from any perils covered by insurance regardless of cause or origin, including the negligence of either party, their respective directors, officers, independent contractors, employees, agents, successors, assigns, guests, and invitees to the extent of any recovery under a policy or policies of insurance, provided that any such policy or policies will not be invalidated in whole or in part by this subrogation. To the extent necessary to effect the foregoing waiver of subrogation, the Contractor agrees to obtain from its insurance carrier(s) endorsements to such policies of insurance waiving the right of subrogation of the insurance carrier as to BSC.

Sec. 9. Performance of Work by BSC. If Contractor fails to perform Work in accordance with the schedule referred to in Section 3 above, BSC may, in its sole discretion, perform or cause to be performed some or all of the Work, and doing so shall not waive any of BSC's rights and remedies. Contractor shall reimburse BSC for additional costs incurred by BSC in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 10. Exhibits. The following exhibits are made a part of this Contract:

Exhibit A – Clean Ohio Fund Green Space Conservation Program grant administered by the Ohio Public Works Commission

Exhibit B - Forrest Woods Nature Preserve Invasive Species Control Request for Proposals dated March 20, 2019

Exhibit C – Contractor’s Proposal

In case of conflict between the Exhibits and the text of this Contract excluding the exhibits, the text of the Exhibits shall control.

Sec. 11. Notice. (a) All notices and other communications required or permitted by this Contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To BSC:
Melanie Coulter
Black Swamp Conservancy
P.O. Box 332
Perrysburg, Ohio 43552-0332
419-883-1025
mcoulter@blackswamp.org

To the Contractor:
NAME
COMPANY
ADDRESS
CITY, STATE ZIP
PHONE
EMAIL

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 12. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Contract as a result of acts or omissions of the Contractor or its subcontractors or anyone directly or indirectly employed by any of them or

anyone for whose acts any of them may be liable. In performing its duties under this subsection “a,” the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to BSC. (b) Definitions. As used in subsections “a” above and “c” below -- “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Contract). “Indemnitees” means BSC and its directors, officers, independent contractors, agents, employees, successor, and assigns, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of BSC that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be contained in this Agreement. (d) Survival. This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and/or termination of the services of the Contractor under this Agreement.

Sec. 13. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This Contract shall be deemed made in Wood County, Ohio. This Contract shall be governed by and construed in accordance with the law of Ohio. The exclusive forum and venue for all actions arising out of this Contract shall be the Court of Common Pleas of Wood County, Ohio or the United States District Court located in Toledo, Ohio. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. “Agent for Service of Process” means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor.

(b) Waiver. No action or failure to act by BSC shall constitute a waiver of any of its rights or remedies that arise out of this Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Severability. If any provision of this Contract shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

(d) Assignment, Successors and Assigns. Without BSC's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Agreement. BSC may consent or not consent to an assignment in its sole discretion. Unless BSC otherwise agrees in writing, the Contractor and all assignees shall be subject to all of BSC's defenses and shall be liable for all of the Contractor's duties that arise out of this Agreement and all of BSC's claims that arise out of this Agreement.

Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this Agreement shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(e) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(f) EEO Provisions. During the performance of this Agreement the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, BSC may cancel, terminate, or suspend this Contract, in whole or in part, and BSC may declare the Contractor ineligible for further BSC contracts. (5) Unless exempted by BSC, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this Agreement and in every subcontract related to this Agreement so that these EEO provisions will be binding upon such subcontractors and vendors.

(g) No Third Party Rights Created. This Contract is intended for the benefit of BSC and the Contractor and not any other person.

(h) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this Contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this Contract. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this Contract will not apply to the extent the context requires otherwise.

(i) Modifications. Entire Agreement. A modification of this Agreement shall not be enforceable unless it is in writing and signed by both parties. Further, a modification is not enforceable against BSC unless it is signed by Melanie Coulter, BSC's Project Manager on behalf of BSC. This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises,

agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement.

Sec. 14. Termination for Convenience (“TFC”). (a) *Procedure*. Without limiting any party’s right to terminate for breach, the parties agree that BSC may, without cause, and in its discretion, terminate this Agreement for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this Agreement titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give BSC all Work, including partly completed Work. In case of TFC, the Contractor shall follow BSC’s instructions as to which subcontracts to terminate. (c) *Payment*. Within 20 days after TFC, BSC shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, BSC shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 15. Defective Work and Materials. Contractor shall immediately remedy at its own expense all Work that BSC determines, in its sole discretion, is not in accordance with this Agreement. Payment for work performed shall not be considered as acceptance of that work at any time before the work is inspected and found to be adequate.

Sec. 16. Subcontractors. Contractor shall not assign or subcontract any portion of this Contract without the written consent of Melanie Coulter, BSC’s Project Manager. Contractor shall be held responsible for the faithful completion of that part of the work and the assignment or subcontracting shall not relieve the Contractor of any of the obligations or requirements under the Contract.

Sec. 17. Licenses, Permits, and Certifications. Any fees or charges for licenses, permits, registrations, and/or certifications required for the project shall be paid by Contractor. Contractor shall be responsible for all applicable safety and environmental considerations with regards to the application of any herbicides and/or other chemicals to be employed in this Contract. Any additional equipment or items required shall be obtained, maintained, and paid for by Contractor at no additional cost to BSC.

Sec. 18. Damages and Damage Prevention. i. Contractor shall use appropriate Best Management Practices to prevent pollution, contamination, and spillage into streams and adjacent property of fuel, oils, chemicals, debris, or other harmful material. If such pollution, contamination, and/or spillage occurs, remediation shall include, but not be limited to, removal of contamination and material, removal and replacement of contaminated soil, and payment of

any associated fees, fines or other costs incurred. Contractor must notify BSC immediately in the case of chemical spills or any pollution. BSC shall be notified of damages immediately upon occurrence as well.

ii. Contractor shall take measures to avoid and minimize the removal, injury, or damage to any non-target vegetation and adjacent property by the appropriate selection of manual methods for work on the Project.

iii. Damage to Project Areas, adjacent property, infrastructure, and landscaping due to any cause shall be corrected by Contractor. Any work that leads to damaged material must be removed and properly disposed of as soon as is reasonably practicable at no additional cost to BSC. If any damage or material represents a hazard to the public or BSC, then removal must occur immediately.

iv. Contractor shall conduct operations so as to minimize damage to all turf, roads, road banks, trails, ditches, storm drains, culverts, other infrastructure and other improvements, landscaping etc in the Project Area. Operations shall be scheduled and conducted to minimize erosion of soils to prevent siltation and/or excessive discharge of sediment into streams, rivers, and impoundments.

v. Except as otherwise specified, Contractor shall notify BSC of any damages within twelve hours of occurrence. Any damage caused by Contractor, other than normal wear, shall be repaired at Contractor's expense. If Contractor fails to repair and/or replace damaged material to the satisfaction of BSC, BSC shall charge the Contractor the cost of all labor & materials required to repair and/or replace damaged material. BSC will notify Contractor prior to replacement or repair.

Sec. 19. Safety. Contractor shall protect the entire Work embraced in this Contract until the final acceptance of the same. The Contractor shall be responsible for any act or omission by it or its employees or agents causing any injuries to persons or any damages to public or private property.

i. Appropriate safety equipment must be used and in operating condition. OSHA compliance must be adhered to when performing Work on BSC properties and Contractor shall adhere strictly to all OSHA regulations. The use of high visibility clothing and head protection is strongly advised. Personnel shall wear appropriate personal protective clothing and/or equipment as recommended. First aid equipment, a supply of clean water, soap, and eyewash equipment shall be provided by Contractor and must meet OSHA regulations. Spills shall be reported to BSC immediately. Spills shall be handled in accordance with the standard procedures for spill clean-up. A spill is considered a Damage as per Section 18 Damages and Damage Prevention of this Contract and shall be treated accordingly.

Sec. 20. Changes to Work. It is agreed that BSC will have the right to determine the amount of work to be done under this Contract and at any time may make changes to the quantity of work to be done or may entirely exclude any of the items or work. Changes to the Scope of Work in which a reduction or elimination of Services is made shall result in a reduction of fee based on the price as described herein. Any additional pricing as described in this Contract and not associated with the change of Scope of Work shall not be altered or invalidated. BSC reserves the right to extend the Agreement upon the same terms and conditions for a period mutually agreed upon in writing by both parties. BSC reserves the right to request that

Contractor do additional work not covered in this Agreement. Such extensions of work may be at any point where extensions are authorized by written agreement of both parties signed by Melanie Coulter, BSC's Project Manager on behalf of BSC. Contractor shall accept as payment such prices as authorized by written agreement of both parties signed by Melanie Coulter, BSC's Project Manager on behalf of BSC prior to the commencement of such work. No work or labor shall be done or materials furnished other than those included in the Contract except as authorized by written agreement of both parties signed by Melanie Coulter, BSC's Project Manager on behalf of BSC prior to the commencement of such work. Without such a written agreement, Contractor shall not be entitled to payment for such work, either on the principle of oral contract, implied contract, quantum merit, unjust enrichment, extra work, or any other legal or equitable theory.

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IN WITNESS WHEREOF, BSC and the Contractor have caused this Contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

Black Swamp Conservancy

By: _____
Melanie Coulter, Project Manager

CONTRACTOR

By: _____ (SEAL)
Title of officer: _____

STATE OF OHIO, WOOD COUNTY, SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as _____ and _____, as _____, of the Black Swamp Conservancy on behalf of the corporation.

My commission expires:

Notary Public

STATE OF OHIO, _____ COUNTY, SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as _____ and _____, as _____, of _____.

My commission expires:

Notary Public