AGREEMENT FOR
ENVIRONMENTAL MAINTENANCE SERVICES (EXOTIC PLANT CONTROL)

THIS AGREEMENT FOR ENVIRONMENTAL MAINTENANCE SERVICES (EXOTIC PLANT CONTROL) ("Agreement") is made and entered into as of the date of execution by both parties, by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Aquatic Weed Control, Inc., a Florida Corporation, whose address is 6536 Pinecastle Blvd, Suite A, Orlando, FL, 32809, and whose Federal tax identification number is 59-3306218, hereinafter referred to as "Contractor."

WITNESSETH

WHEREAS, the County intends to purchase environmental maintenance services related to but not limited to, exotic plant control, native plant installation for restoration and habitat restoration from the Contractor for specific projects as determined by the County (the "Purchase"); and,

WHEREAS, the County issued a solicitation, RFP180418JJB on July 24, 2018 (the "Solicitation"); and,

WHEREAS, the County evaluated the responses received and found the Contractor qualified to provide the necessary products and services; and,

WHEREAS, the County posted a Notice of Intended Decision Proposal Action on September 14, 2018; and,

WHEREAS, the Contractor is one of a pool of firms approved to provide products and services for the Purchase, the County shall award projects as needed, and the Contractor understands and agrees that no work is guaranteed under this Agreement; and,

WHEREAS, the Contractor has reviewed the products and services to be supplied pursuant to this Agreement and is qualified, willing and able to provide all such products and services in accordance with its terms.

NOW, THEREFORE, the County and the Contractor, in consideration of the mutual covenants contained herein, do agree as follows:

I. PRODUCTS AND SERVICES

A. The Contractor agrees to diligently provide all products and services for the Purchase in accordance with the Scope of Services made part of this Agreement as Exhibit A, attached hereto and incorporated herein. Contractor shall comply strictly with all of the terms and conditions of the Solicitation, a copy of which is on file with the County's Department

of Procurement Management and is deemed incorporated into this Agreement.

II. TERM AND DELIVERY

A. This Agreement shall commence immediately upon the effective date and shall continue through a period of one (1) year with the option of three (3) additional one year renewals, subject to mutual written agreement. The effective date shall be **March 27, 2019.**

B. A County Project Authorization shall be issued by the County before commencement of any work or purchase of any goods related to this Agreement.

C. Products and services shall be delivered in accordance with County Project Authorizations and County Project Modifications.

III. COMPENSATION AND PAYMENT

A. The County shall pay the Contractor in accordance with the terms and conditions of this Agreement, and any County Project Authorizations issued hereunder, for providing all products and services as set forth in Exhibit A, and further described in Exhibit B, Fee Schedule, attached hereto and incorporated herein. Said total amount to be all inclusive of costs necessary to provide all products and services as outlined in this Agreement, and as supported by the Contractor's submittal in response to the Solicitation, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.

B. Notwithstanding the preceding, Contractor shall not make any deliveries or perform any work under this Agreement until receipt of a Notice to Proceed from the County. Contractor acknowledges and agrees that no minimum order or amount of product or work is guaranteed under this Agreement and County may elect to issue no County Project Authorizations. If a County Project Authorization is issued, the County reserves the right to amend, reduce, or cancel the work authorization in its sole discretion.

C. All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of non-appropriation of funds by the County for the services provided under this Agreement, the County will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Contractor on fifteen (15) days' prior written notice, but failure to give such notice will be

of no effect and the County will not be obligated under this Agreement beyond the date of termination.

IV. METHOD OF PAYMENT

A. The County shall pay the Contractor in accordance with the Local Government Prompt Payment Act, §218.70, et seq. F.S., as amended from time to time, upon receipt of the Contractor's invoice and written approval of same by the County indicating that the products and services have been provided in conformity with this Agreement.

B. Progress payments and final payment shall be paid in accordance with the County Project Authorization that authorizes the work.

V. MODIFICATIONS

No changes to this Agreement or the performance contemplated hereunder will be made unless the same are in writing and executed by both the Contractor and the County.

VI. LIABILITY OF CONTRACTOR

A. The Contractor shall indemnify and hold harmless Lee County Government from liabilities, damages, losses, and costs, including but not limited to attorney's reasonable fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Agreement.

B. This section shall survive the termination or expiration of this Agreement.

VII. CONTRACTOR'S INSURANCE

A. Contractor shall procure and maintain insurance as specified in Exhibit C, Insurance Requirements, attached hereto and made a part of this Agreement.

B. Contractor shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Agreement, insurance coverage (including endorsements) and limits as described in Exhibit C. These requirements, as well as the County's review or acceptance of insurance maintained by Contractor, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Agreement. Insurance carriers providing coverage required herein shall be licensed to conduct business in the State of Florida and shall possess a current A.M. Best's Financial Strength Rating of B+ Class VII or better. No changes are to be made to these specifications without prior written specific approval by County Risk Management.

VIII. PERFORMANCE AND PAYMENT BOND(S)

A. The Contractor shall procure performance and payment bond(s) in accordance with Exhibit D.

IX. RESPONSIBILITIES OF THE CONTRACTOR

A. The Contractor shall be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Contractor under this Agreement. The Contractor shall, without additional compensation, correct any errors or deficiencies in its products, or if directed by County, supply a comparable replacement product or service.

B. 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 person, company, corporation, individual, or firm other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.

C. The Contractor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

D. Contractor specifically acknowledges its obligations to comply with §119.0701, F.S., as amended from time to time, with regard to public records, and shall:

1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;

2) upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 Florida Statutes or as otherwise provided by law;

3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and

4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public

records disclosure requirements. All records stored electronically shall be provided to the County in a format that is compatible with the information technology system of the County.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901; publicrecords@leegov.com; http://www.leegov.com/publicrecords.

E. The Contractor is, and will be, in the performance of all work, services and activities under this Agreement, an independent contractor. Contractor is not an employee, agent or servant of the County and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement will be at all times, and in all places, subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County will be that of an independent contractor and not as employees of the County. The Contractor will be solely responsible for providing benefits and insurance to its employees.

X. OWNERSHIP OF PRODUCTS

It is understood and agreed that all products provided under this Agreement will become the property of the County upon acceptance by the County.

XI. TIMELY DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES

A. The Contractor shall ensure that all of its staff, contractors and suppliers involved in the production or delivery of the products are fully qualified and capable to perform their assigned tasks.

B. The personnel assigned by the Contractor to perform the services pursuant to this Agreement shall comply with the terms set forth in this Agreement.

C. The Contractor specifically agrees that all products shall be delivered within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" is deemed to be any unforeseeable and unavoidable cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the control of the parties.

XII. COMPLIANCE WITH APPLICABLE LAW

This Agreement will be governed by the laws of the State of Florida. Contractor shall promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations, and rules relating to the services to be performed hereunder and in effect at the time of performance. Contractor shall conduct no activity or provide any service that is unlawful or offensive.

XIII. TERMINATION

A. The County shall have the right at any time upon fifteen (15) days' written notice to the Contractor to terminate this Agreement in whole or in part for any reason whatsoever. In the event of such termination, the County will be responsible to Contractor only for fees and compensation earned by the Contractor, in accordance with Section III, prior to the effective date of said termination. In no event shall the County be responsible for lost profits of Contractor or any other elements of breach of contract.

B. After receipt of a notice of termination, except as otherwise directed, the Contractor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or sub-contracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all Contractors and subcontracts; and settle all outstanding liabilities and claims.

C. The County's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or acceptance and are in addition to the Contractor's obligations under this Agreement.

XIV. DISPUTE RESOLUTION

A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.

B. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.

C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and

waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.

D. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.

E. Unless otherwise agreed in writing, the Contractor will be required to continue all obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.

XV. STOP WORK ORDER

The County may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Agreement. Any order shall be identified specifically as a stop work order issued pursuant to this clause. This order shall be effective as of the date the order is delivered to the Contractor. Upon receipt of such an order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. The Contractor shall not resume work unless specifically so directed in writing by the County. The County may take one of the following actions:

1. Cancel the stop work order; or

2. Terminate the work covered by the order; or

3. Terminate the Agreement in accordance with provisions contained in Section XIII.

In the event the County does not direct the Contractor to resume work, the stop work order may be converted into a notice of termination for convenience pursuant to Section XIII. The notice period for such termination shall be deemed to commence on the date of issuance of the stop work order. In the event the County does not direct the Contractor to resume work within ninety (90) days, the Contractor may terminate this Agreement.

XVI. CONTRACTOR WARRANTY

A. All products provided under this Agreement shall be new (unless specifically identified otherwise in a County Project Authorization) and of the most suitable grade for the purpose intended.

B. If any product delivered does not meet performance representations or other quality assurance representations as published by manufacturers, producers or distributors of the products or the specifications listed in this Agreement, the Contractor shall pick up the product from the County at no

expense to the County. The County reserves the right to reject any or all materials if, in its judgment, the item reflects unsatisfactory workmanship or manufacturing or shipping damage. In such case, the Contractor shall refund to the County any money which has been paid for same.

C. Contractor shall secure from the applicable third party manufacturers, and assign and pass through to the County, at no additional cost to the County, such warranties as may be available with respect to the equipment, parts and systems provided through the Purchase.

XVII. MISCELLANEOUS

A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.

B. The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation) without the prior written consent of the County, except that claims for the money due or to become due to the Contractor from the County under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the County. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the County.

C. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.

D. The failure of the County to enforce one or more of the provisions of the Agreement may not be construed to be and is not a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

E. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.

F. Neither the County's review, approval or acceptance of, nor payment for, the products and services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

G. If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.

H. Any notices of default or termination shall be sufficient if sent by the parties via United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

Aquatic Weed Control, Inc. Representative:		County's Representatives:		
Name:	Eric J Inman	Names:	Roger Desjarlais	Mary Tucker
Title:	President	Titles:	County Manager	Director of Procurement Management
Address:	6536 Pinecastle Blvd. Suite A	Address:	P.O. Box 398	
	Orlando, FL, 32809		Fort Myers, FL 33902	
Telephone:	239-322-3022	Telephone:	239-533-2221	239-533-8881
Facsimile:	239-204-9233	Facsimile:	239-485-2262	239-485-8383
E-mail:	LStephens@aquaticweedcontrol.net	E-Mail:	rdesjarlais@leegov.com	mtucker@leegov.com

I. Any change in the County's or the Contractor's Representative will be promptly communicated by the party making the change.

J. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.

K. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:

1. County Project Authorization(s)
2. Agreement
3. Solicitation # RFP180418JJB
4. Contractor's Submittal in Response to Solicitation # RFP180418JJB

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

Signed By: _____

Print Name: Kathryn Mathieu

Aquatic Weed Control, Inc.

Signed By: _____

Print Name: Les Stephens

Title: West Coast Regional Manager

Date: 10-8-18

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
CHAIR

DATE: _____

ATTEST:
CLERK OF THE CIRCUIT COURT
Linda Doggett, Clerk

BY: _____

APPROVED AS TO FORM FOR THE RELIANCE OF LEE COUNTY ONLY:

BY: _____
OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A
SCOPE OF SERVICES

Contractor shall provide environmental maintenance services in accordance with the Solicitation and County Project Authorizations issued under this Agreement, if any.

A. County Project Authorizations
The term County Project Authorization refers to a written document executed by both parties under this Agreement setting forth and authorizing a limited number of services, tasks, or work for a specific project identified by the County. Such services, tasks, or work is consistent with and has previously been described by the Solicitation and this Agreement.

B. Award of County Project Authorizations
As provided by the Solicitation, individual projects may be awarded, and authorized via County Project Authorizations, to any of the firms approved by the Board of County Commissioners under that solicitation. Award shall be made as follows:

GENERAL

This is a "Master" Contract, which is not for any specific project. Work to be performed under this Contract will be authorized, scheduled, funded, and accounted for by the issuance of CPAs, by the requesting department.

The Contractor shall provide quotes for all products and services as requested by the County. The County's request for a quote does not authorize or otherwise guarantee issuance of a CPA for the work.

The Contractor's quote for each CPA negotiated shall provide, at a minimum:

- Project Detailed Scope of Work
- Itemized pricing
- Term: Number of calendar days to complete the project. If omitted, the default schedule shall commence on the date of the approved CPA and not exceed thirty (30) calendar days.

Each CPA will not exceed $500,000.00. The County will separately and competitively bid any and all job estimates greater than $500,000.00 when the County decides, in its sole discretion, it is in the best interest of the County or project.

Any project $50,000.00 or less may be awarded to any firm holding a valid contract under this Solicitation and who is able to meet the required schedule. Any project over $50,000.00 but less than $500,000.01 must be quoted by a minimum of three (3) awarded firms holding a valid contract under this Solicitation. The firm with the lowest price and that can meet the schedule will be awarded the project via a CPA. In the event that less than three (3) firms hold a valid contract under this solicitation, quotes will be obtained from all firms under contract.

EXHIBIT A
SCOPE OF SERVICES

Any CPA over $100,000.00 must provide a payment and performance bond.

No firm will be paid more than $4,000,000.00 per year.

The County retains the right to select any firm to whom a multiple-vendor award has been made.

C. Change Orders To County Project Authorizations
A modification to a County Project Authorization may be authorized by a County Project Modification properly executed by both parties.

D. Additional Purchases
If the County requires the Contractor to perform additional services or provide additional product(s) related to this Agreement, then the Contractor shall be entitled to additional compensation based on the Fee Schedule as amended to the extent necessary to accommodate such additional work or product(s). The additional compensation shall be agreed upon before commencement of any additional services or provision of additional product(s) and shall be authorized by a County Project Modification. The County will not pay for any additional service, work performed or product provided before a properly executed County Project Modification.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Contractor, the Contractor will not be entitled to additional compensation.

E. Performance of Work under this Agreement
All work shall be provided and performed in accordance with the Technical Specifications of the Solicitation and as further described in any County Project Authorizations issued under this Agreement.

EXHIBIT B
FEE SCHEDULE

Payment for actual work completed shall be made in accordance with the terms of this Agreement and any County Project Authorizations issued hereunder.

EXHIBIT C
INSURANCE REQUIREMENTS

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LEE COUNTY
SOUTHWEST FLORIDA

Insurance Requirements

Minimum Insurance Requirements: ***Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided***

a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

$1,000,000 per occurrence
$2,000,000 general aggregate
$1,000,000 products and completed operations
$1,000,000 personal and advertising injury

b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

$1,000,000 combined single limit (CSL)
$500,000 bodily injury per person
$1,000,000 bodily injury per accident
$500,000 property damage per accident

c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

$500,000 per accident
$500,000 disease limit
$500,000 disease – policy limit

****The required minimum limit of liability shown in a. and b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."***

EXHIBIT C
INSURANCE REQUIREMENTS

Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

   a. The certificate holder shall read as follows:

   Lee County Board of County Commissioners
   P.O. Box 398
   Fort Myers, Florida 33902

   b. "*Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials*" will be named as an "Additional Insured" on the General Liability policy, including Products and Completed Operations coverage.

Special Requirements:

1. An appropriate "Indemnification" clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to insure that all subcontractors comply with all insurance requirements.
3. Place the project name and number in the Description of Operations box.
4. Insurance carriers providing coverage required herein shall be licensed to conduct business in the State of Florida and shall possess a current A.M. Best's Financial Strength Rating of B+ Class VII or better

End of Insurance Guide section

EXHIBIT D
PERFORMANCE AND PAYMENT BONDS

For each County Project Authorization authorizing work for a cost of $100,000.00 or more, the Contractor shall procure performance and payment bonds in accordance with this Agreement and the Solicitation.

A. In accordance with Chapter 255.05, Florida Statutes, as may be amended from time to time, and Lee County Ordinance 95-2-102, as may be amended form time to time, public performance and payment bonds are to be issued in a sum equal to one-hundred (100%) percent of the total awarded County Project Authorization amount by a surety company considered satisfactory by Lee County and otherwise authorized to transact business in the State of Florida.

B. Any bonding company submitting a performance and payment bond to Lee County Government shall be licensed to transact a fidelity and surety business in the State of Florida.

C. Public performance and payment bonds shall be properly executed by the Surety Company and Contractor and recorded with the Lee County Clerk of Court within seven (7) calendar days after notification by Lee County of the approval to award the County Project Authorization. The Contractor is responsible for all fees and charges associated with the bonds, including the cost of recording.

D. A clean irrevocable letter of credit or cash bond may be accepted by the County in lieu of the public performance and payment bonds.