



DATE: May 3, 2021

MEMO TO: Jessica Vealitzek, Chair
Operations Committee

FROM: James L. Anderson
Director of Natural Resources

RECOMMENDATION: Recommend approval of a Resolution Approving an Agreement with the Wisconsin Department of Natural Resources (WDNR) for WDNR's payment to the District of up to \$110,000 from grant funds awarded to WDNR under the US EPA's Great Lakes Restoration Initiative (Federal grant agreement GL-00E02348-1) for restoration work to be performed by the District's contractor as part of the Lake Plain Invasive Plant Strike Team Project.

STRATEGIC DIRECTIONS SUPPORTED: Conservation; Leadership; and Organizational Sustainability

FINANCIAL DATA: The agreement that would be approved by the attached resolution would provide funding (\$110,000) from the Wisconsin Department of Natural Resources (from US EPA Great Lakes Restoration Initiative Program grant funds), to be paid to the District for the ongoing Lake Plain Invasive Plant Strike Team Project and, specifically, as partial funding for the contract with Native Restoration Services Inc., which is also being presented to the Operations Committee on May 3, 2021.

BACKGROUND: The Chiwaukee Prairie-Illinois Beach Lake Plain (Lake Plain), situated along the Lake Michigan coast in Northeast Illinois and Southeast Wisconsin, contains high-quality coastal dune and swale habitat across over 4,500 protected acres. These ecologically significant natural areas are protected and managed through the cooperation of 10 land stewardship agencies/groups, including: the Illinois Department of Natural Resources, The Nature Conservancy, Wisconsin Department of Natural Resources, Village of Pleasant Prairie, Village of Winthrop Harbor, University of Wisconsin-Parkside, Chiwaukee Prairie Preservation Fund, Zion Park District, Waukegan Park District and Lake County Forest Preserve District (District). Lake Plain wetlands and associated prairie/savanna complexes provide habitat for over 930 native plant species, 300 animal species, 3 federally-protected species, and 63 state-protected species, including one of the largest known populations of the Blanding's Turtle (*Emydoidea blandingii*) within the Great Lake drainage basin (a candidate species for federal listing) and the largest viable population of eastern prairie fringed orchid (*Platanthera leucophaea*) in the Lake Michigan Lake Plain Prairie physiographic region.

The Lake Plain is also the largest, near contiguous tract of natural area along this portion of Lake Michigan, providing critical stopover and breeding grounds for migratory birds, including

federally protected piping plover (*Charadrius melodus*). In addition, the biological significance and quality of wetland habitat recently lead to the recognition of the Lake Plain as a Wetland of International Importance by the Ramsar Convention on Wetlands (Ramsar 2015; <https://rsis.ramsar.org/ris/2243>).

In cooperation with several of the agencies above, the District has taken a lead role in coordinating restoration work within the Lake Plain, on both District-owned property and on property owned by other agencies, and in coordinating the use of federal grant funds and other funds for the payment of such restoration work. Of course, invasive species do not recognize property lines or State boundary lines. It is in the District's best interest and protects the District's investment in its own restoration efforts on its own property, to serve in this coordination role and to promote restoration work throughout the Lake Plain.

The District has received a grant from the National Fish and Wildlife Foundation's Sustain Our Great Lakes Stewardship Grant program to fund the Lake Plain Invasive Plant Strike Team in the amount of \$250,000.00, along with an anonymous matching donation of \$250,000.00, to effectively and efficiently control a suite of 18 priority invasive plant species across approximately 350 populations within 4,000 acres of high quality coastal natural areas in the Lake Plain, within Kenosha County, Wisconsin and Lake County Illinois. WDNR was awarded a grant from the U.S. EPA Great Lakes Restoration Initiative (\$110,000.00) and is committing these funds to complement the same restoration work. The funds that would be paid by WDNR to the District pursuant to the intergovernmental agreement that would be approved by the attached resolution, would be used by the District to pay Native Restoration Services, Inc., for its restoration work under the Strike Team contract, also be presented to the Operations Committee today.

REVIEW BY OTHERS: Chief Operations Officer, Director of Finance, Corporate Counsel

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
REGULAR MAY MEETING
MAY 11, 2021**

MISTER PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **OPERATIONS COMMITTEE** presents herewith “A Resolution Approving an Agreement with the Wisconsin Department of Natural Resources for the Lake Plain Invasive Plant Strike Team Project,” and requests its approval.

OPERATIONS COMMITTEE:

Date: _____ Roll Call Vote: Ayes: ____ Nays: _____
 Voice Vote Majority Ayes; Nays: _____

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**A RESOLUTION APPROVING AN AGREEMENT WITH THE
WISCONSIN DEPARTMENT OF NATURAL RESOURCES FOR THE
LAKE PLAIN INVASIVE PLANT STRIKE TEAM PROJECT**

WHEREAS, the Chiwaukee Prairie-Illinois Beach Lake Plain (the “Lake Plain”) is a 4,500-acre natural area situated along the Lake Michigan coast in Northeast Illinois and Southeast Wisconsin and contains high-quality coastal dune and swale habitat, including wetlands and associated prairie/savanna complexes; and

WHEREAS, the Lake County Forest Preserve District (the “District”) owns certain property within the Lake Plain known as Spring Bluff Forest Preserve in Lake County, Illinois, that is adjacent to other natural areas within the Lake Plain that are owned by other entities, including, among others, the Chiwaukee Prairie State Natural Area and Wisconsin Dunes owned by Wisconsin Department of Natural Resources in Kenosha County, Wisconsin, and the Illinois Beach State Park owned by the Illinois Department of Natural Resources in Lake County, Illinois; and

WHEREAS, in 2020, the Wisconsin Department of Natural Resources was awarded a Great Lakes Restoration Initiative grant from the United States Environmental Protection Agency, of which, \$110,000.00 was allocated for control of invasive species within the Lake Plain; and

WHEREAS, the agreement in the form attached hereto between the District and WDNR (the “Agreement”) provides for the District to receive grant funds from WDNR for the purpose of effectively and efficiently controlling a suite of 18 priority invasive plant species across approximately 350 populations within 4,000 acres of high quality coastal natural areas in Kenosha County, Wisconsin and Lake County Illinois; and

WHEREAS, pursuant to Section 10 of Article VII of the Illinois Constitution of 1970, units of local government, such as the District may contract or otherwise associate with other states to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or ordinance; and

WHEREAS, pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., any power, privilege, function, or authority exercised by a public agency of this state, including the District, may be exercised, combined, transferred, and enjoyed jointly with any other public agency of another state, to the extent not prohibited by law;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois **THAT**:

Section 1. Recitals. The recitals set forth above are incorporated as a part of this Resolution by this reference.

Section 2. Approval of the Agreement. The Agreement is hereby approved in substantially the form attached hereto.

Section 3. Execution of the Agreement. The Executive Director of the District is hereby authorized and directed to execute the Agreement with WDNR in substantially the form attached hereto.

Section 4. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this _____ day of _____, 2021

AYES:

NAYS:

APPROVED this _____ day of _____, 2021

Angelo D. Kyle, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary

Exhibit No. _____

CONTRACT FOR STRIKE TEAM EARLY DETECTION RAPID RESPONSE OF INVASIVE SPECIES

THIS CONTRACT is entered into by and between the State of Wisconsin, Department of Natural Resources (the Department) and Lake County Forest Preserve District (the Contractor) for the purpose of Contractor engaging third parties for the identification and eradication of early detection rapid response (EDRR) invasive species covering more than 6,000 acres across the area commonly known as the Lake Michigan Lake Plain (the "Property"), which is comprised of individual parcels owned by multiple private and public owners, including the Department and the Contractor.

FOR AND IN CONSIDERATION of the terms and conditions contained in this contract, the above-named parties agree:

1. **PERIOD OF AGREEMENT:** This contract shall commence upon its signing by both parties and continue until November 1, 2022 during which period all performance as described in this contract shall be fully completed in accordance with this contract.
2. **CANCELLATION.** The Department reserves the right to cancel this contract in whole or in part, without penalty, due to nonappropriation of funds or for failure of the Contractor to comply with terms, conditions, or specifications of this contract. Contractor reserves the right not to commence the Work (defined below) until the Department has confirmed in writing that funds have been appropriated.
3. **ENTIRE CONTRACT; AMENDMENTS.** This contract, together with the specifications in the bid request (if any) and referenced parts and attachments, shall constitute the entire agreement and previous communications or agreements pertaining to the subject matter of this contract are hereby superseded. Any contractual revisions including cost adjustments and time extensions may be made only by a written amendment to this contract, signed by both parties prior to the ending date of this contract.
4. **ASSIGNMENT.** Neither this contract nor any right or duty in whole or in part of Contractor under this contract may be assigned, delegated or subcontracted without the written consent of the Department. If upon the written consent of the Department this contract or any right or duty in whole or in part is assigned, the Assignee(s) shall expressly agree to assume and perform all relevant obligations expressed under the terms of this contract and be bound by the terms and conditions of this contract. Assignment in whole or in part of this contract does not absolve the Contractor of any liability or obligation expressed and agreed to hereunder.
5. **DESCRIPTION OF WORK OR PRODUCTS.** The Contractor agrees to engage third party services to identify, control and/or eradicate the 350+ populations of invasive species mapped within the Property (the "Work"), which services are more specifically defined and mapped in Exhibit B (Attachment B Specifications and Attachment C List of Drawings). The goal is 97% - 100% kill of each population of all target species at each population and/or acre treated and prevention of seeding of all target species populations. Contractor will perform the Work on 75 acres of the Property or an acreage completed at the hourly rate at which the Contractor contracts the services, whichever is greater.
6. **REPORTING.** With each payment request, the Contractor shall provide an **Interim Report** summarizing the work during the requested payment period. The report shall include a narrative describing control methods used, amount of each chemical used, acreage of target species controlled in total and by species annually, total number of master populations treated in total and by species annually, the number of new populations found and treated and the hours and hourly rates of third parties completing the work. Work shall be described in terms of EDRR species and isolated populations of widespread species. The report shall also include observations on percent control achieved, problems encountered, anticipated future control work needed. One week prior

to the completion date of the project, the contractor shall provide the Department with a **Final Report** that summarizes the two-year project.

7. **PAYMENT.** The Contractor, for completing the Work in accordance with this contract, shall receive the following consideration:

\$110,000 for the Work on 75 acres of the Property or an acreage completed at the hourly rate at which the Contractor contracts the services, whichever is greater, by September 30, 2022.

Billings shall be submitted by the Contractor on a quarterly basis for review and acceptance.

Sharon Fandel
Department of Natural Resources
3911 Fish Hatchery Rd.
Fitchburg, WI 53711

Final payment will be made upon receipt and acceptance of the **Final Report** by September 30, 2022.

8. **RECORDS, ACCESS.** The Contractor shall, for a period of three (3) years after completion and acceptance by the Department of the work performed by Contractor, maintain books, records, documents and other evidence directly pertinent to performance on work under this contract in accordance with generally accepted accounting principles and practices. The Contractor shall also maintain the financial information and data used in the preparation or support of the cost submission in effect on the date of execution of this contract and a copy of the cost summary submitted to the Department. The Department, US Environmental Protection Agency, their agents and their duly-authorized representatives shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit and copying. The Contractor shall provide proper facilities for such access and inspection. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such dispute, performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such dispute, appeal, litigation, claim or exception.
9. **INDEPENDENT CONTRACTOR.** The Contractor is an independent contractor for all purposes and is not an employee or agent of the Department.

The Department agrees that the Contractor shall have sole control of the method, hours worked, and time and manner of any performance under this contract other than as specifically provided herein. The Department reserves the right only to inspect the job site or premises for the purpose of ensuring that the performance is progressing or has been completed in compliance with the contract. The Department takes no responsibility for supervision or direction of the performance of the contract to be performed by the Contractor or the Contractor's employees or agents. The Department further agrees that it will exercise no control over the selection and dismissal of the Contractor's employees or agents.

10. **INDEMNIFICATION.** The Contractor agrees to save, keep harmless, defend and indemnify the State of Wisconsin, Department of Natural Resources and all its officers, employees and agents, against any and all liability, claims and costs of whatever kind and nature, for injury to or death of any person or persons, and for loss or damage to any property (state or other) occurring in connection with or in any way incident to or arising out of Contractor's negligent acts or omissions in the occupancy, use, service, operation or performance of work in connection with this contract, including the negligent acts or omissions of Contractor's employees, agents or representatives.

11. **INSURANCE RESPONSIBILITY:** The contractor performing services for the State of Wisconsin shall:
 - a) Maintain worker's compensation insurance for all employees engaged in the work.
 - b) Maintain commercial liability and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned, and hired vehicles that are used in carrying out the contract. Minimum coverage shall be one million (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.
 - c) Provide an insurance certificate indicating this coverage, counter-signed by an insurer licensed to do business in the state where the work will be performed covering the period of the agreement/contract. The insurance certificate is required to be presented prior to issuance of the purchase order or before commencement of the contract.
 - d) The state reserves the right to require higher or lower limits where warranted. If Contractor is unable or unwilling to provide such higher or lower limits, it may terminate this contract.
12. **NONDISCRIMINATION.** In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in section 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor further agrees to take affirmative action to ensure equal employment opportunities. The Contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this nondiscrimination clause. Failure to comply with the conditions of this clause may result in the Contractor being declared an "ineligible" contractor, termination of the contract, or withholding of payment.
13. **AFFIRMATIVE ACTION.** If this contract is for an amount of fifty thousand dollars (\$50,000) or more the Contractor agrees to submit a written affirmative action plan to the Department within 15 business days after the contract commences if an acceptable plan is not already on file with the State of Wisconsin. (Contractors with an annual work force of fewer than fifty (50) employees are exempted from this requirement.) Failure to comply with the conditions of this clause may result in the Contractor being declared an "ineligible" contractor, termination of the contract, or withholding of payment.
14. **GUARANTEED DELIVERY.** Failure of the Contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the Contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the Department's administrative costs.
15. **APPLICABLE LAW.** This contract shall be governed by the laws of the State of Wisconsin. The Contractor shall at all times comply with all federal, state and local laws, ordinances and regulations in effect during the period of this contract.
16. **ANTITRUST ASSIGNMENT.** The Contractor and the Department recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Department. Therefore, the Contractor hereby assigns to the Department any and all claims for

such overcharges as to goods, materials or services purchased in connection with this contract.

17. **PAYMENT TERMS AND INVOICING.** Payment shall be considered timely if the payment is mailed, delivered, or transferred by the later of the following:
- a) The date specified on a properly completed invoice for the amount specified in the order or contract, or
 - b) Within thirty (30) days after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or contract or within thirty (30) days after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later if the Department does not notify the sender of receipt of an improperly completed invoice within ten (10) working days after it receives the invoice of the reason it is improperly completed.
18. **TAXES.** The Department is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of all federal tax and Wisconsin sales or use tax on its purchases. The State of Wisconsin, Department of Natural Resources has a tax-exempt number of 040690. The Department may be subject to other states' taxes on its purchases in that state depending on the laws and of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials, unless they have their own exemption.
19. **TAX DELINQUENCY.** Contractors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.
20. **LIABILITY.** The Work to be performed under this contract is to be performed entirely at Contractor's risk. Contractor hereby assumes all liability with all work and all services to be provided by the Contractor under this contract.
21. **ADDENDUM:** The Contractor shall also follow "Exhibit A - Administrative Conditions" that are part of the Federal grant agreement GL-00E02348-1 funding this award as they apply to this Contract.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

Date _____

By: _____

Title: _____

CONTRACTOR

Date _____

By: _____

Title: _____

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10805 LCFP Contract