



Protecting nature. Preserving life.

**WETLAND AND BUFFER RESTORATION AND
REHABILITATION SERVICES**

MILL CREEK WILDLIFE SANCTUARY

OHIO MITIGATION PROGRAM SITE

MAHONING COUNTY, OHIO

40.976350°, -80.682446°

REQUEST FOR PROPOSALS

October 5, 2023

Proposals must be received by 5:00 pm EST on December 1, 2023

1. GENERAL ADMINISTRATIVE PROVISIONS

BACKGROUND

THE NATURE CONSERVANCY (“Conservancy” or “TNC”) is a District of Columbia, USA, non-profit corporation with its principal place of business in Arlington, Virginia, USA. TNC has offices across the U.S. and in over 30 countries around the world.

Since 1951, TNC has been working with communities, businesses and individuals to protect more than 119 million acres around the world. Our mission is to conserve the lands and waters on which all life depends. Please see www.nature.org for more details on what we do and where we work.

This Request for Proposals (this “RFP”) is being issued as part of TNC’s Ohio Stream and Wetland-In-lieu Fee Mitigation Program (the “Mitigation Program”). An Interagency Review Team (“IRT”) provides oversight of the Mitigation Program and is comprised of the staff from the Huntington District, Buffalo District and Pittsburgh District of the Army Corps of Engineers, as well as agency representatives from the U.S. Environmental Protection Agency (USEPA), Ohio Environmental Protection Agency (Ohio EPA), U.S. Fish and Wildlife Service (FWS), Ohio Department of Natural Resources (ODNR), and Natural Resources Conservation Service (NRCS).

All responses to this RFP shall be consistent with the goals and objectives of the Mitigation Program and all underlying federal and state laws and regulations governing the implementation of the Project in furtherance of the Mitigation Program.

THIS IS NOT AN ORDER.

1.1. STATEMENT OF PURPOSE

It is the intention of TNC to solicit proposals for a contractor (“Contractor”) that can provide services to produce a wetland mitigation design plan and implement said design plan for the Mill Creek Wildlife Sanctuary Mitigation Program site.

TNC is seeking design-build proposals for the Mill Creek Wildlife Sanctuary in Mahoning County, Ohio (“Project”) as described in Attachment B. The “Contractor” shall furnish all necessary drawings, plans, permits, labor, facilities, materials, equipment, and incidentals to complete the Project scope of work (the “Scope of Work”) as described in Attachment B and the Contract for Services in the form of Attachment C to be entered into between TNC and the Contractor. Contractor will include plans for revegetation (planting and seeding). A set of conceptual designs for the restoration project are described in Attachment B. The total amount of compensation sought for completion of the Project shall not exceed \$558,100, inclusive of all taxes.

The Mitigation Plan, relevant GIS shapefiles, and any other pertinent documents may be found at the following link: <https://tnc.box.com/s/7pq52p7yns5vgnglp6i1gallp54c1g6d>

As further described in the attached Scope of Work, this RFP is for a Design-Build Contract. TNC reserves the right to reject any and all proposals for any reason and to pursue purchasing in a manner that is in the best interest of the organization.

The Project is located on property that is owned by Mill Creek MetroParks and will become subject to an

Environmental Covenant held by The Nature Conservancy. TNC will manage the Project on the property.

1.2. TNC'S PROCUREMENT PROCESS

Procurement activities will be conducted in a nondiscriminatory manner with fair treatment given to all Contractors.

1.3. TNC'S OBLIGATIONS

TNC shall incur no obligation or liability whatsoever by reason of issuance of this RFP or action by anyone relative thereto.

1.4. BIDDER'S OBLIGATIONS

Contractor must review and analyze all sections of this RFP and submit all information and materials required under Section 2.1 of this RFP, providing sufficient information to allow TNC to evaluate the Proposal. Contractor, by submitting its proposal, agrees that any costs incurred by the Contractor in responding to this RFP are to be borne by Contractor and may not be billed to TNC.

Contractor's proposal must provide information in the order listed in section 2.1 of this RFP, or clearly state where the information resides. If TNC has any confusion or difficulty in retrieving the required information from a Contractor's proposal, it may result in disqualification of such proposal. **Contractor may not have the ability to resubmit its proposal to TNC.**

TNC requests firm fixed pricing for your proposal. ***If you are chosen as an award winner and any additional costs are presented at the time of agreement negotiations or implementation, TNC has the right to rescind your organization as the award winner.***

TNC does not have a topographic or other technical survey of the Project site. If desired, any such surveys shall be the Contractor's responsibility and should be included within the Contractor's pricing structure. TNC does not have estimated cut and fill calculations. Contractor shall be solely responsible for any additional costs incurred due to underestimating the amount of cut and/or fill required for the Project.

1.5 DISPOSITION OF PROPOSALS

All material submitted in response to this RFP will become the property of TNC and may be returned only at the option of TNC and at the expense of the Contractor. Successful and unsuccessful contractors will be notified in writing or via email. TNC shall not be obligated to detail any of the results of the evaluation.

1.6 CONTRACTUAL COMMITMENT OF PROPOSAL

The contents of submitted proposals will be considered obligations of the successful Contractor. No information should be submitted that is not intended to be incorporated into the proposal and any contract that may result from such proposal. If there is any inconsistency between the terms herein and any of the other contract documents, the terms in the other contract documents shall prevail.

1.7 TNC INFORMATION

Any data, documentation or other business information furnished or disclosed to the Contractor shall be deemed the property of TNC and must be returned to TNC upon request.

1.8 DISCLOSURE STATEMENT

It is the policy of TNC to identify actual, potential or perceived conflicts of interest in business transactions. To assist TNC in complying with this policy, it will be necessary that all individuals and/or organizations that will be involved in a proposed transaction with TNC complete and sign the attached Conflict of Interest Disclosure Form (see Attachment D). This relates to people who will be working, directly or indirectly, to respond to this RFP, as well as may be doing the resultant work if the Contractor receives the contract. TNC will evaluate all information based on its internal policies and procedures regarding conflict of interest, copies of which will be provided upon request. TNC reserves the right to reject any and all proposals if TNC, in its sole discretion, determines that there is a conflict of interest.

1.9 INSURANCE REQUIREMENTS

The Contractor shall provide TNC with a Certificate of Insurance verifying its limits for public liability, property damage, and automobile insurance in an amount not less than Two Million Dollars (\$2,000,000), per occurrence. For the awarded Contract, TNC, and Mill Creek MetroParks shall be specifically named as an “additional insured” on all policies covering work under the Contract and the required Certificate of Insurance shall show that TNC has been added to the policies. All insurance shall be endorsed so that it cannot be canceled in less than thirty (30) days.

1.10 APPLICABLE STATE AND FEDERAL REQUIREMENTS

Contractor shall comply with all applicable Ohio Governor Executive Orders; federal, state and local laws, regulations (rules), assurances, and orders, whether or not specifically referenced herein.

1.11 DRUG FREE WORKPLACE

The Contractor shall comply with all applicable federal, state and local laws regarding smoke-free and drug-free workplaces and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

1.12 INDEPENDENT CAPACITY OF CONTRACTOR

The parties hereto agree that the Contractor, and any agents and employees of the Contractor shall act in an independent capacity and not as officers, employees, or agents of TNC. Nothing herein or in the submitted proposal shall be construed so as to create a partnership, joint venture, or other relationship between the parties.

1.13 LIABILITY

The Contractor agrees to indemnify and to hold TNC and Mill Creek MetroParks harmless and immune from any and all claims for injury or damages arising from this RFP or any awarded Contract which are attributable to Contractor’s own actions or omissions or those of its trustees, officers, agents, employees, subcontractors, suppliers, third parties utilized by Contractor, or joint ventures.

1.14 RIGHT TO REJECT

TNC reserves the right to reject, in its sole and absolute discretion, any and all proposals, for any reason, to waive technicalities, and to pursue purchasing that is in the best interest of the organization. TNC shall not be required to award a contract to any entity that responds to this RFP. Reasons for non-award of this contract may include, but are not limited to, TNC's dissatisfaction of the submitted proposals, and/or the inability to get one or more permits necessary to complete the Project. The final award of the Project is conditional on Contractor executing a written Contract acceptable to TNC, in its sole and absolute discretion.

2. PROPOSAL SUBMISSION AND EVALUATION

2.1 BIDDER SUBMISSION REQUIREMENTS

Submission of Proposal:

2.1.1 Contractor will send its response to this RFP via email.

2.1.2 Email for Contractor's Submission of Proposal: amelia.harris@tnc.org

2.1.3 At a minimum, the following must be included in proposals:

- a. Contractor Questionnaire (Attachment A)
 - i. Statement of qualifications must include descriptions of at least three (3) projects completed by the Contractor that are similar in size and scope to the project described in this RFP.
 - ii. Statement of qualifications must reference Contractor's experience conducting mitigation projects (preferably in Ohio).
- b. Proposal and technical approach for completing all tasks described in the Scope of Work provided in Attachment B. Candidates may provide discussion and comment on alternative approaches to achieve the restoration objectives identified for the site, and to propose alternative and/or complementary tasks to complete the project more economically.
- c. Delivery Schedule
- d. Pricing
 - i. Please list all **net pricing** (after discounts), based on the **Scope of Work provided in Attachment B**, for the task pricing schedule listed below. The Contractor may also include a budget narrative (no more than 1 page) if helpful to better support the budget. All pricing must be inclusive of all taxes.
 - ii. Specify expiration date of bid. Submitted bid pricing must be good through December 31, 2024.

Task Pricing Schedule

Task	Deliverable	Cost
Design		
1	Site Assessment	
2	Development of Preliminary Design Plans, that includes Initial Vegetation Mgt., and Cost Opinion	
3	Development of Final Design Plans	
4	Acquisition of Permits	
Implementation		
5	Initial Vegetation Management*	
6	Planting and seeding *	
7	Construction Implementation and Construction Oversight *	
8	Develop As-Built Report	
9	Corrective Action	

**Proposals are encouraged to include a more detailed budget narrative and/or table that relates to the work to be completed in Tasks 5, 6 and 7. This could include more specific line items for construction, construction oversight, site preparation, planting, invasive treatments, and contingencies.*

e. Contract

Do you agree to use our attached contract (see Attachment C)? If not:

- i. Review attached contract and express any concerns you have regarding the terms of the Agreement using the following conventions:

Agreed - where the terms are acceptable as stated.

Modification Proposed - where Contractor is unable to accept the terms as stated but will accept a modification of the terms. Contractor must provide: (1) the reason for its inability to accept the term as stated and (2) modified language, which would be acceptable to the Contractor.

Not Agreed - where the term is completely unacceptable and no modification is possible. Please state the reason such term is unacceptable.

- ii. Attach a draft copy of your contract for our review.

- f. Subcontracting. Any subcontractors must be identified along with the defined work they will perform. TNC will not refuse a proposal based on the use of subcontractors but does retain the right to refuse the subcontractors selected. Contractor shall remain solely responsible for all subcontracted work. Describe your rationale for using subcontractors.

- g. Disclosure Form (Attachment D).

2.2 PROPOSAL EVALUATION/SELECTION PROCESS

2.2.1 Contractors are to make written proposals, which present Contractor's qualifications and understanding of the work to be performed. Contractors are asked to address each evaluation criterion and to be specific in presenting their qualifications. TNC's preferred qualification for the Contractor includes the successful completion of at least three wetland design-build projects of similar size and scope to the current request, and not less than \$300,000 in contract amount. Proposals should be as thorough and detailed as possible so that TNC may properly evaluate Contractor's capabilities to provide the required goods/services. Selection of the successful contractor will be based upon submission of proposals meeting the selection criteria.

2.2.2 The minimum selection criteria will include the following:

- a. Qualifications of Contractor;
- b. Demonstrated ability to understand and perform the project;
- c. Technical solution for creating deliverable products;
- d. Quality of proposal/presentation;
- e. Evidence of sufficient insurance;
- f. Costs.

2.3 QUESTIONS REGARDING THIS RFP

Contractor understands and agrees that it has a duty to inquire about and clarify any RFP questions that the Contractor does not fully understand or believes may be interpreted in more than one way. Contractor may only submit questions regarding this RFP to TNC via email listed in Section 2.1.2 by **November 10, 2023**. No phone calls, please. Questions and answers may be shared by e-mail with all Contractors that have been approached with this RFP. TNC, however, is not required to answer any questions that are not pertinent to the RFP or are considered to be proprietary information.

2.4 RESTRICTED COMMUNICATIONS

It is the policy of TNC to avoid situations which (1) place it in a position where its judgment may be biased; (2) create an appearance of conflict of interest with respect to rendering an impartial, fair, technically sound, and objective decision prior to selection; or (3) give an unfair competitive advantage to competing Contractors. Therefore, to ensure an ethical RFP process, bidders will not be able to submit questions or otherwise communicate with TNC after the date listed in the table in Section 2.5 below.

2.5 CRITICAL DATES

2.5.1 Proposal Due Date

Proposals shall be delivered to TNC on or before 5:00 pm on December 1, 2023. See Section 2.1 for Submission Requirements.

RFP Activities	Due Date
Distribute RFP	October 5, 2023
Field Day	October 24, 2023
Communication Period Ends	November 10, 2023
Proposals Due	December 1, 2023

2.5.2 Suggested Schedule of Implementation

The implementation schedule will be contingent upon TNC obtaining final approval from the IRT; however, the following schedule is suggested:

Activity	Projected Date
Project Bidding and Award	December 2023
Site Assessment	January-March 2024
Design, Permitting and Engineering	January-March 2024
Initial Vegetation Management	Spring/Summer 2024
IRT final approval	August 2024
Start of Project Construction	September 2024
Seeding and Planting	Fall/Winter 2024
Project Implementation Substantially Complete	January 2025

2.6 VISITING THE SITE

Contractors interested in submitting proposals are encouraged (but not required) to conduct a site visit to assess the conditions of the site to inform their responses to this RFP. Interested Contractors should contact TNC to schedule a site visit. Drones shall not be flown at the site without approval from TNC and Mill Creek MetroParks.

Please contact TNC to indicate your interest in a site visit by an email to amelia.harris@tnc.org. **The site visit is scheduled for 10:30am on October 24, 2023.**

All visits and inspections of the site are at each Contractor's sole risk and, by their visit to the site, each such Contractor releases TNC and Mill Creek MetroParks from any injuries, illness, liability, or expenses incurred as a result of, or arising out of the site visit.

2.7 Additional Information

2.7.1 TNC is a non-profit organization. We strive to minimize administrative costs to ensure that maximum dollars go to our mission. If the Contractor can aid in our efforts by a donation or special pricing, it would be greatly appreciated.

2.7.2 Minority and women owned businesses, as well as contractors from Labor Surplus Areas, are encouraged to apply. Qualified proposers will receive consideration without regard to race,

creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age.

2.7.3 Laws of Professional Design: Contractor will comply with all laws that may require approval of the work by a registered professional engineer, surveyor, architect, or landscape architect.

ATTACHMENTS

- A Bidder Questionnaire
- B Scope of Work
- C Copy of TNC Standard Contract
- D TNC's Disclosure/Conflict of Interest Form

ATTACHMENT A:
BIDDER QUESTIONNAIRE

Please answer each of the following questions in the space provided. If additional space is required, please continue on a separate sheet and attach it to this form.

General Information:

Company Name: _____
Company Address: _____
Contact Name: _____
Phone & Email: _____
Years in Business: _____

Contractor Information:

Please indicate if you have done business with TNC or Mill Creek MetroParks in the past and provide contact information below.

Statement of Qualifications:

Please provide a statement of qualifications below. This statement of qualifications must include information pertaining to the attached scope of work.

Employee and Project Team Information

Number of Employees: _____

Please identify the key personnel who will be committed to this project, their roles and their qualifications for this project.

Service Information

Are there any geographical areas that your company is not able to serve?

YES NO

If yes, please list.

Safety Information

Does your company have a written safety plan, including one that addresses COVID-19?

YES NO

If yes, please include the plan with your proposal.

Minority and Women - Owned Business Enterprise

Please indicate below if your firm is at least 51% minority or women owned, controlled and operated. Identify the % of minority or women ownership.

Legal

If your firm is bonded, please indicate type:

Performance Bond	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Labor & Material Payment Bond	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO

Are there any judgments, suits or claims pending against your firm?

YES NO

If yes, please explain:

Has your firm operated under a different name? (Please provide)

References

Please provide up to three references with contact name and phone number. Projects for the references included should be of similar size and scope to the current request.

ATTACHMENT B:

**SCOPE OF WORK FOR WETLAND AND BUFFER
RESTORATION SERVICES
FOR THE MILL CREEK WILDLIFE SANCTUARY:
AN OHIO MITIGATION PROGRAM SITE**

A.1 PURPOSE

The purpose of this project is to provide wetland mitigation to offset unavoidable impacts in the Mahoning Watershed (HUC 05030103). To achieve this goal, TNC's Ohio Mitigation Program wetland credits are utilized as the compensatory mitigation. The scope of work for this RFP requires the Contractor to develop and implement a design plan for wetland re-establishment and rehabilitation and upland buffer re-establishment for the subject property per the specifications herein that will meet or exceed the standards for compensatory mitigation in Ohio ([Guidelines for Wetland Mitigation Banking in Ohio Version 2.0, September 2020](#)).

A.2 GENERAL PROJECT INFORMATION

Project Type	Wetland Re-establishment and Rehabilitation and Upland Forest Buffer Re-establishment
Project Name	Mill Creek Wildlife Sanctuary
Landowner	Mill Creek MetroParks
Project Manager	The Nature Conservancy
Locality	Beaver Township, Mahoning County, Ohio
HUC 8	Mahoning (HUC 05030103)
Resources	Wetlands and Upland Buffer

Please see the Mill Creek Wildlife Sanctuary Mitigation Plan at this link:

<https://tnc.box.com/s/7pq52p7yns5vgnglp6i1gallp54c1g6d>

A.3 THE NATURE CONSERVANCY TASKS

TNC shall work with Contractor to secure access to the property for the activities specified within this Scope of Work, which may require the Contractor to execute a license and indemnity agreement separate from the contract. TNC shall coordinate with the Contractor regarding approval of task deliverables. TNC staff shall be onsite as needed during site activities. TNC shall provide the property boundary maps and access point(s) information to the Contractor.

A.4 CONTRACTOR TASKS AND DUTIES

The specific tasks to be completed by the Contractor include: 1) site assessment, 2) development of preliminary design plans, cost opinion, and initial vegetation management plans, 3) development of final design plans, 4) acquisition of permits, 5) initial vegetation management, restoration seeding and planting, 6) construction, 7) develop as-built report, and 8) corrective action.

Design

TASK 1. SITE ASSESSMENT

The Contractor shall conduct fieldwork to identify existing conditions within the project area. Note that a Waters of the U.S. assessment has been completed for the project site which includes the USACE delineation and ORAM data forms. The Contractor shall identify appropriate reference wetlands and buffers within the watershed or nearby and perform the necessary assessments for each relevant reference. The design should be primarily informed by the reference data, as well as any regional curves or other modeling.

The Contractor shall generate existing conditions mapping, utilizing, when possible, the figures and data contained in the mitigation plan which includes all the waters of the U.S. identified during the delineation, National Wetland

Inventory (NWI), National Hydrography Dataset (NHD), soils mapping, USGS quadrangle, aerial photography, and any other relevant data to provide the basis for potential wetland and buffer mitigation.

TASK 2. DEVELOPMENT OF PRELIMINARY DESIGN PLANS AND COST OPINION

The Contractor shall design the project by using the Mill Creek Wildlife Sanctuary In-Lieu Fee Mitigation Plan, existing condition data and reference reach data to design the wetlands and buffers. In addition to a pre-design kickoff, the Contractor shall at a minimum submit design plans at 30%, 60%, and 90% completion in order to solicit TNC feedback. The Contractor should anticipate input from TNC staff throughout the design process and incorporate feedback accordingly. 30% design plans shall define the major elements of the project to align both the Contractor's and TNC's vision for the site, including a general site plan. At the 60% design stage, all expectations and objectives of the project shall be finalized, and design drawings should be advanced to a point of constructability. TNC will provide feedback, including any comments from the IRT, at this stage. Comments shall be addressed and responses provided to TNC for review before beginning the development of the 90% design. The 90% design shall be considered final, including plans and specifications, but shall be subject to review by the IRT. Early and frequent communication between the Contractor and TNC staff will be required.

The Mill Creek Wildlife Sanctuary Project is expected to include the following:

Wetlands

- Re-establish 30.26 acres of forested (PFO) wetlands in areas that have existing hydric soils;
- Rehabilitate 1.27 acres of emergent (PEM) wetlands; and
- Re-establish 0.78 acre of upland forest buffer for wetlands.

Re-establishment of wetlands on-site will focus on locations with verified hydric soils. The supporting hydrology for the re-established wetlands will come from precipitation, groundwater, and seasonal flooding events. Because of the conducive topography and soils, wetland conditions should be easily developed with minimal grading and the disruption of any existing field tiles; any required excavation will likely be shallow (0.25-0.5ft in depth). Where grading is needed, the topsoil will be removed, stockpiled for a short time, and reapplied. During the design phase of the project, additional hydric soils and wetland areas on-site will be analyzed and proposed for re-establishment or rehabilitation when appropriate.

The re-established wetland areas will be planted according to the finished grading/topography of the wetland and hydrologic regime appropriate for the proposed species. For emergent areas, a native seed mix will be applied based on the anticipated hydrologic regime of lower levels of standing water and saturation. For the wetter areas experiencing longer periods of inundation, herbaceous plugs adapted to deeper and longer hydrologic regimes will be installed. In addition, high quality, native woody species will be selected for both the wetlands and their buffers. The revegetation will focus on creating vegetative interspersions and diversity typical for wetlands within the watershed and connection of the wetlands and buffers into one large, highly functional ecosystem.

Included in the design plans shall be all earthwork activities (including site preparation techniques, quantities to be moved, soil placement/disposal procedures, soil management, and final pre-planting site conditions), initial vegetation management plans (including initial invasive control and soil preparation), ingress/egress routes, erosion and sediment control plan, details for the tie-ins with drainages in the project area, results of the soils mapping and wetland delineation, and a phasing/timeline for all work to be completed on the site in detail. The Contractor shall coordinate with TNC and Mill Creek Metroparks to incorporate any plans for a future trail system into the restoration design. The potential trail system will not be constructed as part of this project. Additionally, the Contractor will work with TNC and Mill Creek Metroparks to address any neighbor concerns regarding the potential for the restoration

work to impact their drainage, and groundwater.

The submittal shall also include all design supporting data and documentation, including all information required to design the project. This shall include, at minimum, existing condition information, reference resource information, hydrologic information, and geotechnical information.

The Contractor shall design the project by using TNC's Mill Creek Wildlife Sanctuary Mitigation Plan and existing condition data that will allow the development of a design that will result in high quality, resilient wetlands. TNC strongly advocates a natural approach to wetland re-establishment and rehabilitation. The re-established forested wetlands should be developed within the footprints of historical wetlands and wetlands must be restored on hydric soils. TNC will not approve the use of berms, dams, or other man-made water-control devices as acceptable methods for restoring hydrologic regimes in the designs for the re-established wetlands. Rehabilitation activities should be limited to addressing only those factors that have been degraded from their natural conditions.

Every effort shall be made during the design and construction phases to minimize disturbance to the existing natural areas. Sensitive areas of the project site that will not be part of the changes specified in the design plans will have their perimeters clearly delineated with orange fencing and will be off limits throughout the duration of construction activities. The Contractor shall be responsible for working with/around all infrastructure in the design of the project. The design shall ensure and detail stable and appropriate tie-ins with all drainages in the project area and within the portions of surface water features up and downstream of the project area.

Soils are often unintentionally compacted during the construction process, resulting in decreased soil permeability, water-holding capacity, and plant root growth. The design shall include particular attention to avoiding soil compaction through best management practices, and remediating compaction where it is unavoidable. Suggestions regarding soil protection and remediation should be presented in the proposal, which could include a preliminary Soil Management Plan that indicates: areas to be protected, efforts to minimize soil disturbance (*i.e.*, minimize grading), stockpiling and reuse of topsoil, access routes to concentration equipment access, and efforts that would be used for the restoration of soils disturbed during construction including amending with compost as necessary and scarifying subsoil to achieve a total 12" uncompacted depth.

The Contractor shall use the appropriate Ohio EPA assessments to evaluate existing conditions and potential wetland activities (re-establishment, rehabilitation, and enhancement) and determine the amount of potential credits within the project site as defined by "[Guidelines for Wetland Mitigation Banking in Ohio Version 2.0, September 2020](#)".

The Contractor will be responsible for providing the project's vegetation management plan, including providing sufficient weed control efforts and soil preparation so that the entire project area is set up for successful planting. Depending upon the needs and challenges, the activities may include, but not be limited to, mowing, cut stump treatments, multiple herbicide applications, and disking. The extent of the initial vegetation management should target all areas within the mitigation boundary and the contractor will work with TNC to determine the specific control efforts and planning.

This contract does not cover post-construction invasive control efforts or land stewardship. Additionally, the design should include seeding and planting plans (including vegetation community types, species to be planted and quantities by area, application rates, and planting densities by area). This part of the design will include a wetland and upland/riparian buffer planting plan for the entire project area, including species densities and zonation. Unless stated otherwise, it should be assumed that the entire project area will be planted with trees and shrubs in quantities sufficient to meet the requirements. Only species native to the region, and preferably present in the reference plant communities, will be used in the planting plan. The minimum standards for the planting plan will follow specifications from the Ohio Interagency Review Team's "[Guidelines for Wetland Mitigation Banking and In-Lieu Fee Programs in Ohio Version 2.0](#)". The planting plan will also include the species names and application rates of the permanent and temporary seed mix to be used. The proposal should demonstrate and emphasize the contractor or sub-contractor's experience and

expertise in these specific skills.

Utilizing the preliminary designs, the Contractor shall also provide estimated costs for the project implementation. The cost opinion shall include projected costs associated with implementation and shall include a breakdown of these costs for permitting, wetland and buffer construction, planting, seeding, and all other implementation tasks identified in the design plans.

At the 60% design phase the Contractor shall also develop and submit to TNC a narrative on the wetland and buffer mitigation plan for inclusion in the Mill Creek Wildlife Sanctuary Draft Amendment. The narrative should include a comprehensive overview of the mitigation plan details including: design objectives and re-establishment strategies; number of acres and types of mitigation practices for all wetlands and buffers; planting and seeding details as appropriate; a soil management plan; supporting tables and graphics; and any other important features necessary to complete the Draft Amendment plan. Contractors may propose to use performance standards other than these, but adequate justification for using alternative methods must be provided. Emphasis will be placed on data gathered on reference wetlands, which should be documented and used to guide the restoration design and the development of performance standards.

TNC will prepare the required Draft Amendment for submittal to the IRT. Based on the current IRT-approved timeline there is a 90-day comment period. Following the comment period, the IRT will forward comments to TNC. Once comments are received from the IRT on the mitigation plan the Contractor will be responsible for making any requested changes to the design and redrafting the narrative, including the tables and graphics, for inclusion in the Final Amendment (see Task 3 below).

Note: Notwithstanding anything to the contrary herein, following completion of Tasks 1 & 2, TNC will determine the extent of proposed mitigation activities to be included in remaining tasks of this Scope of Work. TNC may decide to change the extent of restoration activities from those depicted in the mitigation plan developed by TNC and provided to the Contractor as part of the RFP. Contractor understands and agrees that TNC makes no representations or guarantees about the amount of mitigation work to be included in Tasks 3 – 8 of this Scope of Work.

TNC's Vision

The Mill Creek Wildlife Sanctuary Mitigation Plan is based on TNC's preliminary judgments on how the Project site might best be designed and restored to develop the wetlands and upland buffers to comprise an integrated ecosystem of the highest ecological conditions possible. TNC is providing these suggestions so there is full understanding of the goals for the site and the potential ways to meet those goals. However, TNC understands that there may be better ways to reach these goals and encourages bidders to submit their own ideas where and when they believe additional benefit can be attributed to their approach. Please see design below for TNC's vision on how the wetlands and buffers should be restored on the site.

TNC also encourages the bidder to include in their proposal any suggestions they have for cost saving approaches in either the design or implementation of the project. Funds for this project are limited, and such cost savings approaches will weigh importantly in the selection of the contractor.

TNC anticipates approximately 30.00 wetland credits. If the contractor proposes less acreage of wetland restoration, the amount of compensation may be reduced from what is listed in Section 1.1.

Table 1. Anticipated Wetland and Buffer Crediting

Wetland (Type)	Method of Compensation	Acres	Estimated Credit Ratio	Estimated Wetland Credits
Forested Wetland	Re-establishment	28.20	1:1	28.20
	Re-establishment (100 ft Project Buffer)	2.06	1:2	1.03
	Rehabilitation	1.02	1:2	0.51
	Rehabilitation (100 ft Project Buffer)	0.25	1:4	0.06
Upland Buffer	Re-establishment	0.78	1:4	0.20
			TOTAL:	30.00



Mill Creek Wildlife Sanctuary Preliminary Restoration Plan

TASK 3. DEVELOPMENT OF FINAL DESIGN PLANS

Following receipt of comments from the IRT on the Draft Amendment Mitigation Plan, TNC will provide comments to the Contractor. The Contractor shall refine the preliminary plans to develop the final design plans. The final design plans shall be sufficient to support all required permitting and implementation of design activities. The final design plans must also contain all construction plans and specifications necessary for the construction firm. TNC must approve all design components before any implementation activities can go forward. The Contractor shall deliver the final design plans in an electronic version (pdf and GIS files).

The Final Design Plans will include the following in addition to preliminary mitigation design information from Task 2:

- Technical specifications;
- General notes and construction sequence and schedule;
- Narrative description of proposed mitigation activities;
- Final credit calculations and tables;
- Wetlands existing conditions data, reference reach and database data, and design criteria;
- Grading plans;
- Typical sections for the floodplain;
- Bio-engineering details;
- Vegetation control and planting plans, details, and proposed vegetation species lists;
- Erosion and sedimentation control measures;
- Soil management plan; and
- Ingress/egress routes.

TASK 4. ACQUISITION OF PERMITS

The Contractor shall be responsible for acquiring all required federal, state and local permits and authorization in the name of the Contractor, needed to implement the final design. This task includes filling out and signing all necessary permit applications, providing all necessary information (plans, contact info, etc.) to acquire the permits, paying all fees required to acquire the necessary permits, coordinating and attending any necessary site visits or other meetings required to secure permits or authorizations, and addressing agreed upon comments resulting from the permitting agencies' review. Note that this does not include State Historic Preservation Office or USFWS coordination, which will be conducted by TNC.

The Contractor shall be responsible for complying with all conditions of all federal, state, and local permits and requirements for the duration of the project and the contract. Any ramifications (fines, fees, delay in work, etc.) related to the violation of the requirements of the permits shall be the responsibility of the Contractor. The Contractor shall inform TNC immediately of any permit issues/violations that occur on the site.

The Contractor shall notify TNC of any permit conditions and/or restrictions imposed or recommended by the permitting agencies during the permitting process. The Contractor shall not proceed with discussions with the permitting agencies regarding permit conditions and/or restrictions until TNC and the Contractor have agreed on a response to the agencies.

The Contractor shall submit applications for all required permits to complete the implementation of the design to the appropriate agencies following TNC's approval of the final design. The Contractor shall submit copies of all permit documents to TNC following issuance of permits/authorizations. Note that the USACE has requested that the PCN is submitted at the same time as the Final Amendment and no sooner.

Note: Following completion of the final design, TNC will prepare the required Final Amendment Mitigation Plan for submittal to the IRT. TNC will include the final design plans and permits as part of the Final Amendment to the IRT for review, comment, and approval (45 day period). The IRT will review and may provide additional comments, for which the Contractor shall work with TNC as needed to address comments and adjust the Final Design Plans and permits. Once comments are addressed to the satisfaction of the IRT, the Corps will provide final approval which authorizes TNC to move forward with project implementation. The Contractor shall not proceed with tasks beyond Task 4 until TNC (i) receives the final IRT approval, and (ii) provides written notice to proceed.

Implementation

TASK 5. INITIAL VEGETATION MANAGEMENT

The Contractor shall implement the planting activities as approved in the Final Mitigation Design Plans and described in Task 2 and shall provide all materials and labor to complete such activities, including preparing the project area for planting through invasive species control and providing appropriate seed to soil contact. For initial vegetation management the contractor shall provide sufficient weed control efforts and soil preparation to prepare the project areas for successful planting. The activities may include mowing, cut stump treatments, disking, and multiple herbicide applications.

TASK 6. RESTORATION SEEDING AND PLANTING

The Contractor shall implement the planting activities as approved in the Final Mitigation Design Plans and described in Task 2 and shall provide all materials and labor to complete such activities. The Contractor shall order the species and quantities indicated in the approved planting plan and these materials shall be installed in accordance with the approved plan. The Contractor shall coordinate a custom seed mix subject to TNC review. In the case that adequate planting stock is not available, or other stock may be more suitable, suggestions for additional or alternative species shall be coordinated with TNC. All planting materials must be handled and installed in accordance with best management practices. Culling of damaged or inferior planting stock is the responsibility of the Contractor. Mortality due to inferior planting stock or poor workmanship (e.g., improper planting technique or handling) shall be replaced at the sole expense of the Contractor. The planting of buffer and native habitat vegetation and live stakes shall occur during the dormant season; exceptions shall be coordinated with TNC.

TASK 7. CONSTRUCTION AND CONSTRUCTION OVERSIGHT

The Contractor shall be responsible for the implementation of the project in accordance with the final design plans, including managing and overseeing all implementation activities, and all subcontractors. The Contractor shall be responsible for the quality and completion of the project and the work of all subcontractors and for adhering to applicable regulations, permits, plans, and specifications.

The Contractor shall notify TNC at least 5 calendar days prior to any mobilization to the site. The Contractor shall provide an estimated schedule for the number of days required to complete each task. The Contractor shall also provide an estimated demobilization date for construction and notify TNC within 5 calendar days prior to the anticipated demobilization date.

The Contractor shall be responsible for ensuring all components of the design (including all grading, seeding, stabilization, erosion and sediment control measures, planting, establishment of permanent photographic stations, and construction tasks) are implemented according to the final design plans and specifications. The Contractor shall be responsible for the activities of any and all subcontractors hired by the Contractor to

complete the implementation of the design plan. During the field activities, the Contractor shall use best professional judgment to implement necessary changes to the approved design or technical specifications if site conditions warrant such a change. However, the Contractor shall notify TNC as soon as possible to discuss this change. The failure to respond by TNC shall not be construed as a waiver of TNC's right to reject the changes or approval of a change order. All changes shall be submitted and approved in writing.

The Contractor shall be responsible for all usual and customary coordination to locate and protect utilities present within the project corridor. The Contractor shall be responsible for conducting construction activities in a manner that does not damage utilities, other structures, roads or trails, and shall repair or pay for repair of any damages to utilities, other structures, roads or trails occasioned by such activities.

Finished grades must not deviate by more than +/-0.1 feet for wetlands and buffers from elevations shown on final design plan. The Contractor, with TNC's approval, may determine that elevations need to be adjusted to ensure proper wetland or buffer function and/or fit with surrounding field conditions. The Contractor shall then re-grade these areas to meet the appropriate elevations. If finished grades deviate more than +/-0.1 feet from the plan elevations and the Contractor and construction firm, with TNC approval, determine that the deviation does not compromise the wetland or buffer stability or function, additional grading or refilling shall not be required. The Contractor and construction firm shall construct and install all wetland and buffer structures in accordance with the final design plans and specifications. A mix of temporary stabilizing seed and permanent native seed shall be applied to all disturbed areas.

Soil compaction best management practices will be followed and all disturbed areas (including stockpile and staging areas) shall be restored prior to demobilization to provide a final soil condition suitable for planting including loose soil 12-inches minimum depth, and minimal surface soil clods.

The Contractor shall be responsible for the off-site transport and disposal of all unused construction materials (e.g., rock, fill, tree trunks and branches, etc.) not properly used or properly disposed of with TNC's approval on-site.

The Contractor shall provide weekly updates (either written reports or conversations) to TNC on the implementation of the design during the construction activities. These updates may include discussions of where activities are in the phasing of the project, what components have been completed, photographs of project progress, description of changes to the approved design or technical specifications, description of site visits conducted by permit-issuing agencies or discussions with permitting agencies regarding project elements, and the status and projection of completion times for components that are currently being implemented. As part of the updates, the Contractor shall summarize the site activities completed during that week and the anticipated activities for the coming week.

In addition to weekly reporting, the Contractor shall submit reports at 50% and 75% completion of construction. The reports shall include adequate data to show that all project components have been constructed and installed according to the final design plans and construction documents, or are within acceptable tolerances, and any changes or deviations from these documents have been approved by TNC. At a minimum, the reports shall include data sheets with built elevations of wetlands, and buffers. These construction reports shall be submitted within 10 days after 50% or 75% completion of construction.

Meetings shall be conducted on the site at pre-construction, 50% completion, and 100% completion with TNC and the Contractor to ensure that all activities are satisfactorily planned for and completed. A person qualified in each design phase of the project shall be available when required to support the necessary visits. The 100% construction meeting shall be held prior to demobilization. The Contractor shall prepare punch lists for the meetings as needed. Punch lists will be provided to TNC for review and final approval. The Contractor shall be appropriately compensated for adjustments that TNC determines are needed to ensure

project success but that are outside of the original scope of work. Adjustments necessary due to poor workmanship or conflict with the approved plans and specifications shall be performed at no additional cost to TNC.

TASK 8. DEVELOPMENT OF AS-BUILT REPORT

The Contractor shall be responsible for the delivery of an as-built report for mitigation activities. The as-built report shall include adequate data to show that all components have been constructed, installed, managed, and/or planted according to final design plans. The as-built report shall also be used for comparison during future success monitoring.

For wetlands, the Contractor shall determine the location and number of staff gauges, and shall install these staff gauges which can be used to determine levels and fluctuations in wetland water depths. Staff gauges shall be placed across the slope of each wetland's substrates that will allow for the recording of water depths at those locations throughout the growing season.

The Contractor shall conduct pre-construction, construction, and post-construction photo monitoring to document the existing conditions, the progress of the construction, and the final site conditions. Permanent photo stations shall be installed to be used for the as-built survey and future monitoring, and the GPS coordinates of their locations shall be recorded. The photo stations shall be sufficient in number and location to conduct future monitoring to document the condition of wetlands and buffers,

The as-built shall include the following:

- A. Plan view of the wetlands, and their adjacent buffers. Plan view shall show:
 - 1. Location of all permanent photo stations;
 - 2. Location of all wetlands;
 - 3. Contours of wetland substrates;
 - 4. Identification of limits of restoration and enhancement activities;
 - 5. Former, filled channel, if any;
 - 6. Wetland and buffer planting areas;
 - 7. Any crossings, trails, or access roads.
- B. Planting area details including species planted, total planting density, and quantity planted by species within each planting area will be provided.
- C. Photographs (dated and labeled, including directional orientation) taken from permanent photo stations to document pre-construction, construction, and post-construction phases of the project for all wetlands, and their buffers.
- D. Detailed information on the elevations of wetland substrates and microtopography features resulting from the wetland constructions involved in re-establishment and rehabilitation. Show comparison to design profiles and discuss comparison.
- E. Detailed wetland cross-sections taken from permanent locations. For wetlands, items on the cross section shall include measurements every foot for transects on both a north/south and east/west orientation as well as a calculation of the ratio of their slopes. Contractor should show comparison to design cross-sections and discuss comparison.
- F. A table indicating the estimated wetland and buffer credits generated by the project.
- G. A brief narrative/discussion of the comparison and/or discrepancies from the design or from

unstable conditions, in general.

The Contractor shall submit the draft as-built report for construction within 30 calendar days of 100% completion of construction activities. TNC shall review the draft as-built report and provide comments to the Contractor. Based upon comments and agreed-to-items resulting from TNC's review, the Contractor shall refine the draft as-built report for final submission. TNC and the Contractor shall give written approval of all agreed-to-items that shall be incorporated into the draft as-built report for the final report. The Contractor shall deliver the as-built report as an electronic (pdf, GIS and CAD) version.

TASK 9. CORRECTIVE ACTION

Contractor shall provide a warranty against design and construction-related failures that occur within the first 2 years after substantial completion of construction. Contractor shall provide a warranty against defective design, materials, or workmanship for a period of two (2) years from the date of project completion, or for such longer time period as may be prescribed by law or by the terms of any applicable special guarantee or warranty. If any corrective actions are identified within the 2-year period that are not attributable to defective design, materials, or workmanship, TNC and Contractor will work together to develop a corrective action plan to be carried out by the Contractor. No funds associated with this line item will be spent until the action plan is approved by TNC.

ATTACHMENT C:

COPY OF TNC STANDARD CONTRACT

The contract will be in a form similar to the form below. However, terms may be added or changed to the final form by TNC based on the proposal received, the requirements of the IRT or OMP, requirements of the landowner, public health and safety requirements, or to comply with TNC’s internal requirements or applicable law.

Contract Number:	
Accounting Information –	
Project Name:	
Project-Award-Activity Number:	
Source of funds:	U.S. Government <input type="checkbox"/> State Government <input type="checkbox"/> Private <input checked="" type="checkbox"/> Private as Gov’t Match <input type="checkbox"/>

CONTRACT FOR SERVICES

This Contract is entered into by and between **The Nature Conservancy**, a nonprofit corporation (“TNC”), through the following U.S. office:

TNC Business Unit:	Ohio
Contact:	Devin Schenk
Address:	6375 Riverside Drive, Suite 100
Telephone:	614-717-2770, ext. 135
Email Address:	dschenk@tnc.org

and the following person or entity (“Contractor”):

Name of Contractor:	
Contact:	
Address:	
Telephone:	
Email Address:	

1. Services. Contractor agrees to perform the services described in the Scope of Work attached as **Exhibit A** for the Project described therein, including any deliverables cited (collectively, the “Services” or the “Work”), in accordance with the “Standard Terms and Conditions” attached as **Exhibit B** and any other exhibits or attachments to this Contract, all of which are incorporated by reference into this Contract. *Following completion of Tasks 1 & 2 of the Scope of Work, TNC will determine the extent of proposed mitigation activities to be included in remaining tasks of the Scope of Work. Contractor understands and agrees that TNC makes no representation or guarantees about the amount of mitigation work to be included in Tasks 3 – 8 of the Scope of Work. Further, the Contractor shall not proceed with tasks beyond Task 4 until TNC (i) receives the final approval from the US Army Corps of Engineers under TNC’s “Ohio Stream and Wetland In-Lieu Fee Mitigation Program,” and (ii) TNC provides the Contractor with written notice to proceed.*

Unless otherwise noted, in the event of a conflict between the terms of the Scope of Work and any other terms of this Contract, including any other Exhibit, such other terms will control. The Services are to be performed on land that is owned by Mill Creek MetroParks, and which will be subject to a environmental covenant held by TNC. TNC has obtained permission for the Services to be performed on the land.

2. Payments. TNC will compensate Contractor for the Services as follows:

a. Contract Fee. For all of the Services, TNC will pay Contractor a fee, inclusive of all taxes (the “Contract Fee”) not exceeding \$ _____ subject to and in accordance with the terms set forth in **Exhibit A.**

The pricing amounts set forth below for Tasks 3-8 are based on conceptual design information, which may not accurately reflect the approved final design, and the extent of proposed activities agreed to by TNC and the IRT. Following the completion of Tasks 1-2, Contractor shall refine pricing for Tasks 3-8. If a reduction of pricing is warranted, the Contract will be amended to reflect the reduced pricing and Contract Fee.

b. Payment Milestones. Payments will be made according to the following pricing and schedule. Invoices may be submitted to TNC monthly per the below tasks, which shall be paid after TNC has verified successful completion of the work items involved in each invoice in accordance with the terms of this Contract. Notwithstanding anything in this Contract to the contrary, TNC shall retain ten percent (10%) of each payment made to the Contractor for any implementation tasks pursuant to each invoice. After TNC has verified successful completion of all tasks TNC shall release such retainage, or portion thereof remaining pursuant to this Contract, to the Contractor upon TNC’s final payment to the Contractor. The Contractor shall notify TNC upon completion of each milestone described below, and TNC shall verify completion of such milestone within ten (10) business days after such notification. Any tasks that exceed or are outside the Scope of Work must be submitted in writing to TNC for TNC’s written approval in accordance with Change Orders Section of this Contract. No claim for an adjustment from the payment amount specified in this Contract will be valid without such written authorization. TNC shall have the right at all times to inspect the work, all materials and workmanship; to reject any defects in any of the above; and/or to require that any such defects be corrected.

Design

Task 1. Site Assessment. Portion of Contract Fee: \$ _____.

Task 2. Development of Preliminary Design Plans, that includes Initial Vegetation Mgt., and Cost Opinion. Portion of Contract Fee: \$ _____

Task 3. Final Design Plans. Portion of Contract Fee: \$ _____

Task 4. Acquisition of Permits. Portion of Contract Fee: \$ _____

Implementation

Task 5. Initial Vegetation Management. Portion of Contract Fee: \$ _____

Task 6. Restoration Planting and Seeding. Portion of Contract Fee: \$ _____

Task 7. Construction Implementation and Oversight. Portion of Contract Fee: \$ _____

Task 8. As-Built Report. Portion of Contract Fee: \$ _____

Task 9. Corrective Action. Portion of Contract Fee: \$ _____

Time is of the essence for this Contract. Contractor shall indemnify and hold TNC and its directors, officers, employees and agents from and against any and all liabilities, demands, damages, claims, actions, losses, costs, settlements, judgments, fines, penalties, or expenses, including reasonable attorneys’ fees and costs that directly or indirectly arise out of, relate to, or result in any way from Contractor’s failure to adhere to the schedule of deliverables set forth above. However, Contractor shall not be responsible for failure to perform or for delays in the performance of services which arise out of causes beyond the control and/or without the fault or

negligence of Contractor.

(c) No Expense Reimbursement. Unless explicitly stated otherwise in this Contract, Contractor will not be reimbursed for any expenses it incurs in performing the Services.

(d) Invoices and Payments. Requests for payment of the Contract Fee must be submitted to TNC in the form of an invoice summarizing the work performed during the invoice period. Invoices will be subject to review and approval by TNC, and TNC may deny payment of requests received more than sixty (60) days after the final deadline for completion of the Services. TNC will make all payments either (i) by check, subject to TNC's receipt from Contractor of a properly completed IRS Form W-9, or (ii) via Vendor ACH, if requested by Contractor and subject to Contractor's completion of TNC's Vendor ACH Enrollment Form. TNC shall pay Contractor within thirty (30) days after TNC receives an invoice and accepts the service(s) performed by Contractor. TNC may withhold payment in whole or in part to the extent reasonably necessary to protect TNC, from loss for which the Contractor is responsible, because of (i) defective work not remedied; (ii) third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to TNC is provided by the Contractor; (iii) failure of the Contractor to make payments properly to subcontractors or suppliers for labor, materials or equipment; (iv) damage to TNC; (v) repeated failure to carry out the Services in accordance with the Contract.

(e) Withholding by the Conservancy. Contractor shall provide TNC with a list of all subcontractors and laborers working on the Services, as well as all suppliers of material or equipment for the Services (whether purchased or rented), and shall update such list promptly in the event of any changes, no later than one business day after the change. Without limiting the terms of Section 2(d) above, TNC, on the basis of reasonable and verifiable evidence, may withhold from any payment otherwise due to Contractor under this Contract such amounts as may be necessary for protection against loss caused by defective work not remedied, reasonable evidence that the work cannot be completed for the then remaining unpaid portion of the amount payable hereunder, damages and/or delays caused by Contractor, and for any legitimate set-off TNC may have (including, but not limited to, any which may result from any notice of mechanic's lien that TNC or the current landowner may receive with respect to the Services). If any claim of lien or other demand for payment or security therefor is made or filed with TNC or as to the Services by any person claiming that Contractor or any subcontractor or supplier, or any other person claiming under any of them, has failed to perform its contractual obligations or to make payment for any labor, materials, equipment or other item furnished or obligation incurred in connection with the Services, or if at any time there shall be evidence of such nonperformance or nonpayment of any claim of lien or other demand for which, if established, TNC, the landowner and/or the property on which the Services are being performed might become liable, then TNC shall have the right to retain from any payment then due or thereafter to become due under this Contract or to be reimbursed to Contractor an amount sufficient to: (1) satisfy, discharge and defend against any such claim of lien or other demand, or any action or proceeding thereon which may be brought to judgment or award; (2) make good any such nonpayment, nonperformance, damage, failure or default; and/or (3) compensate TNC and/or the current landowner for and indemnify both of them against any and all loss, liability, damage, cost and expense (including attorneys' and consultant's fees and costs) which may be sustained or incurred in connection therewith. If appropriate, TNC may also elect to make any given payment due under this Contract jointly to Contractor and any person or entity which may make any such claim of lien or other demand.

(f) Release Bonds. Should any subcontractor, supplier or other person make, record or file, or maintain any action on or respecting a claim of mechanic's lien, equitable lien, payment of performance bond, or another lien, relating to the Services, Contractor shall immediately and at its own expense procure, furnish and record appropriate statutory release bonds which will extinguish or expunge such claim or lien.

3. General Conditions.

3.1 **Payment & Performance Bond.** Prior to commencing any of the Implementation tasks (i.e., Tasks 5 through Task 8), Contractor shall (or shall cause a permitted subcontractor) to post a payment and performance bond for the Implementation tasks. The bond shall be in favor of Contractor and TNC, be in an amount equal to the anticipated cost of the work for the Implementation tasks (including Task 8), and be issued by an issuer and be in form and substance reasonably acceptable to TNC.

3.2 **Safety.** The Contractor must have a written COVID-19 safety plan applicable to all employees and subcontractors which is enforced at all times.

3.3 **Effect of Payment.** Notwithstanding anything herein to the contrary, TNC's acceptance of and/or payment for the completed work performed by Contractor, and payment therefor by TNC, shall not relieve Contractor of its obligation to TNC, which obligation is hereby acknowledged, to complete the Services in accordance with the highest standards of Contractor's profession or craft and to the satisfaction of TNC, and to discharge any and all liens for the benefit of subcontractors or materialmen for the work covered by this Contract, which have attached or may subsequently attach to the property on which the work has been performed or to any interest of TNC therein.

3.4 **Warranty as to Work.** The Contractor shall guarantee all Work performed under this Contract against defective design, materials or workmanship for a period of two (2) years from the date of final acceptance by TNC, or for such longer time period as may be prescribed by law or by the terms of any applicable special guarantee or warranty. The Contractor at Contractor's cost shall remedy any defects appearing within that time period and pay for any damage resulting therefrom.

4. Contract Commencement and Expiration. This Contract will become effective upon the last signature date below and will expire automatically once all the Services have been completed and final payment by TNC has been made (the "Contract Term"). Unless otherwise indicated in **Exhibit A**, Contractor must begin performing the Services promptly after this Contract has been signed by both parties and the above Conditions have been met, and must complete all of the Services no later than _____ or, as to specific tasks, such earlier date(s) as may be specified in **Exhibit A** (provided that no work may commence before the later signature date below). Any deadline(s) set forth in **Exhibit A** may be extended only with TNC's prior written consent. This Contract will expire automatically at the end of the Contract Term and the parties will have no further rights or obligations under this Contract, except as otherwise provided in **Exhibit B**.

At any time during the term of this Contract, TNC reserves the right to suspend the Work due to public health guidance or recommendations, in which event the suspended days shall be added to the completion date.

The Nature Conservancy

[Contractor]

By:

By:

(signature)

(signature)

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A
Scope of Work

See Attachment B in the Request for Proposals

Exhibit B

Standard Terms and Conditions

1. **Termination.**

(a) Without Cause. TNC may terminate this Contract without cause at any time upon fourteen (14) days written notice to Contractor. TNC will pay Contractor for the Services that have been satisfactorily performed, as determined by TNC, as of the termination date. Contractor shall submit a final invoice within fourteen (14) days following termination of services.

(b) For Cause. TNC may immediately terminate this Contract for cause by written notice to Contractor if Contractor fails to perform any duty, obligation, or covenant under this Contract, whether for circumstances within or beyond Contractor's control, or if TNC determines at any time that the Services cannot be performed in accordance with Applicable Laws (defined below) or TNC's policies or operating procedures. Should termination occur as a result of Contractor's default, TNC may, without limiting any other remedies available to it under Applicable Laws, recover damages from Contractor resulting from Contractor's default and may offset any amounts payable to Contractor against such damages.

(c) Refund of Advanced Payments. Regardless of the reason for termination, to the extent the balance of any advance payments made by TNC exceeds the total payments due to Contractor for Services satisfactorily completed, Contractor must return the excess advance payments within fourteen (14) days.

2. **Conflict of Interest Determination.** Contractor represents that to the best of its knowledge the information it has provided on TNC's Conflict of Interest Inquiry Form, now or up to two years prior to the commencement date of this Contract, is true and correct. If any of the information Contractor has provided changes during the term of this Contract, Contractor agrees to promptly notify TNC in writing of such change. The parties acknowledge that publicly traded companies engaging in the normal course of business, government agencies, and universities are exempt from this requirement.
3. **Independent Contractor Status.** The parties intend this Contract to create an independent contractor-client relationship and not an employee-employer relationship. Contractor is solely responsible for the conduct and control of the Services and fulfilling Contractor's duties and obligations under this Contract. Contractor is not an agent or employee of TNC, and no partnership, joint venture, or principal-agent relationship exists. Neither party will have any right, power, or authority by virtue of this Contract to create any obligation, express or implied, on behalf of the other party.
4. **Taxes.** Contractor is responsible for filing and paying its own taxes and for complying with the requirements of any applicable tax laws. TNC will not withhold or pay on behalf of Contractor or any of Contractor's employees any U.S. Federal, state, or local income tax, payroll tax, or any excise, sales, or use tax of any kind. TNC will report to the IRS on Form 1099 all fees paid to Contractor, as and to the extent required by Applicable Laws.
5. **Performance of Work.** Contractor represents and warrants that Contractor is qualified and will perform the Services in accordance with the highest standards of Contractor's profession or craft. Contractor is responsible for the complete performance of the Services notwithstanding the use of any subcontractors or work performed by anyone else under Contractor's direction or control. Contractor will not be paid for any Services found by TNC to be unsatisfactory. The Contractor shall be responsible to TNC for acts and omissions of the Contractor's employees, subcontractors, consultants, and their agents and employees, and other persons or entities performing

portions of the Services for, or on behalf of, the Contractor or any of its subcontractors. The Contractor shall supervise and direct the Services, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, jobsite safety, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Services under the Contract.

6. **Liability; Indemnification.** Contractor agrees that it is entering into this Contract and performing the Services entirely at Contractor's own risk. To the fullest extent permitted by the law, the Contractor, on behalf of Contractor and Contractor's employees, subcontractors, and agents, agrees to indemnify, defend, and hold harmless TNC and its directors, officers, employees, agents, and assigns (collectively, the "Indemnified Parties") from and against any and all liabilities, demands, damages, claims, losses, costs, settlements, judgments, fines, penalties, or expenses, including reasonable attorneys' fees and costs and out of pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, (collectively, "Claims") that directly or indirectly arise out of, relate to, or result in any way from the performance of this Contract, whether or not the Claims have merit, involve third parties, or are caused or alleged to be caused by Contractor or any of its directors, officers, agents, employees, subcontractors, consultants, suppliers, or other third parties utilized by Contractor; provided, however, that Contractor will not be responsible for Claims to the extent arising from the negligence of any of the Indemnified Parties. Only to the extent necessary to prevent this Section from being void under Ohio Rev. Code § 2305.31, entitled "Promisee Indemnified Against Damage Liability," this indemnity provision shall not require the Contractor to indemnify any of the Indemnified Parties against their own negligence. In claims against any person or entity indemnified under this Section 6 by an employee of the Contractor, a subcontractor, a consultant, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, this indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts. Provided TNC has fulfilled its payment obligations under the Contract, the Contractor shall defend and indemnify TNC from all loss, liability, damage or expense, and any actions, lawsuits and proceedings, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any subcontractor, consultant, or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, TNC shall notify the Contractor. The Contractor shall discharge all liens upon demand by TNC, and may contest a lien only if the Contractor furnishes TNC with security acceptable to TNC or procures a lien bond that complies with the requirements stated herein. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted in an amount not less than one hundred fifty percent (150%) of such lien claim or such greater amount as may be required by law. Neither the posting of a lien bond nor obtaining other security shall relieve the Contractor of any responsibilities or obligations under this Section, including without limitation the duty to defend and indemnify TNC. The cost of any fee or premium incurred in connection with such bonds or security shall be the sole responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Fee. Notwithstanding anything to the contrary in the Contract, if the Contractor fails to post a bond or obtain other security acceptable to TNC in connection with any lien claim, TNC may discharge such lien claim by payments to the lien claimant or by such other means as TNC, in TNC's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse TNC, upon demand, for any payments so made. The duties and obligations of this Section shall survive completion or termination of the Contract.
7. **Insurance.** Prior to commencing the Services and during the Contract Term, Contractor must have and maintain the following insurance policies: (a) workers' compensation insurance coverage as required by Applicable Laws; (b) commercial general liability insurance (including contractual liability) of at least \$2,000,000 per incident, written on an occurrence basis, and covering the Services that are the subject of this Contract, including any related claims; (c) automobile liability insurance, covering all owned and non-owned vehicles used in performing the Services, with a liability limit of at least \$5,000,000 per occurrence; (d) professional liability insurance in the amount of at least \$5,000,000 if Contractor is providing professional services (such as

consulting, engineering, design, appraisal, or surveying services); and (e) umbrella coverage of at least \$4,000,000. Contractor's insurance policies must be primary and non-contributory to TNC's insurance policies and shall apply to both ongoing and completed operations. Before any of the Services commence, the foregoing requirements must be evidenced by one or more Certificates of Insurance, showing TNC named as an additional insured and requiring at least 30 days advance written notice to TNC of any cancellation, renewal, reduction in limits, or coverage or other material change of the policies. The additional insured coverage must be primary and non-contributory to TNC's insurance policies and shall apply to both ongoing and completed operations. TNC reserves the right to request additional documentation, such as one or more policy endorsements, deemed reasonably necessary to ensure such requirements have been met. Contractor's commercial general liability policy under this Section shall not contain an exclusion or restriction of coverage for claims related to earth subsidence or movement or claims related to explosion, collapse and underground hazards.

8. **Compliance with Laws; Authorizations.** Contractor represents, warrants, and agrees that Contractor:
- a. can lawfully work in the United States and/or the countries where the Services will be performed;
 - b. has or will obtain at Contractor's expense (except to the extent otherwise explicitly stated in this Contract) any permits, licenses, or authorizations required to perform the Services. This includes, without limitation, a property owner's prior permission to enter upon private property and any related permissions to and ensure TNC has any future permissions necessary for completion of the project, if applicable;
 - c. will take affirmative steps to inform TNC, prior to signing this Contract, if it is a privately-held entity in which a Government Official¹ has equity ownership or, in the case of an individual person providing services as an independent contractor, if the Contractor is a Government Official for any government other than a U.S. local, state, or federal government agency;
 - d. will comply with all statutes, laws, ordinances, executive orders, rules, regulations, court orders, and other governmental requirements for the jurisdiction(s) in which the Services are performed and any other jurisdiction(s) in which Contractor is organized or authorized to do business;
 - e. will work with, and require all authorized subcontractors to work with, TNC to identify material risks and develop and implement appropriate environmental and social safeguards (e.g., consistent incorporation of free, prior, and informed consent) when and if the Services could directly impact Indigenous Peoples or Local Communities (IPLCs). Implementations plans must include periodic consultation with TNC;
 - f. will not employ any person who is less than 18 years old, unless permissible by applicable laws in the jurisdiction where the Contractor is performing the Services. Under no circumstances shall the Contractor employ any person who is less than 16 years old, even if permissible by the applicable laws;
 - g. will comply with all applicable anti-bribery or anti-corruption laws and regulations. To that end, Contractor shall not either directly or indirectly, pay, offer, promise to pay, or give anything of value (including any amounts paid by TNC) to any person, including an employee or official of a government, with the reasonable knowledge that it will be used for the purpose of obtaining any improper benefit or to improperly influence any act or decision by such person for the purpose of obtaining, retaining, or directing business. Any amounts paid by TNC to Contractor will be for services actually rendered in accordance with the terms of this Contract. Contractor shall not accept bribes or kickbacks in any form. The Contractor further represents, warrants, and agrees that it has not committed any of the acts prohibited herein or been accused of making or authorizing any acts prohibited herein.

- h. will comply with all applicable counterterrorism, anti-money laundering and economic sanctions laws. To that end, the Contractor represents and warrants that, to the best of Contractor's knowledge, Contractor and Contractor's subsidiaries, principals, and beneficial owners, if any:
 - i. are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any government agency;
 - ii. (A) are not included on the Specially Designated Nationals and Blocked Persons lists maintained by the U.S. Treasury's Office of Foreign Assets Control, the United Nations Security Council Consolidated List, or similar lists of proscribed entities identified as associated with terrorism; and (B) will not engage in transactions with, or provide resources or support to, any such individuals or organizations or anyone else associated with terrorism;

¹ For purposes of this Contract, TNC defines a "Government Official" as any official or employee of any government, political party, or public international organization, and any candidate for political office, regardless of whether the person purports to act in a private capacity or serves without compensation. For purposes of this definition, the "government" means any agency, department, embassy, instrumentality, or other governmental entity, including any company or other entity owned or controlled by the government.

- iii. are not a person or entity with whom transacting is prohibited by any trade embargo, economic sanction, or other prohibition of law or regulation; and
 - iv. have not conducted, and will not conduct, their operations in violation of applicable money laundering laws, including but not limited to, the U.S. Bank Secrecy Act and the money laundering statutes of any and all jurisdictions to which they are subject, and no action or inquiry concerning money laundering by or before any authority is pending;
- i. will comply with all applicable human rights laws, statutes, regulations, and codes as well as any human rights policy, standard operating procedure, guideline, or procedure adopted by TNC and shared with Contractor. Furthermore, in performing the Services, the Contractor shall respect human rights by: (a) identifying, preventing, and mitigating any potential or actual adverse human rights impacts resulting from its activities or the activities of its subcontractors, suppliers, or similar third parties; and (b) remediating any actual adverse human rights impacts which it causes or to which it contributes as soon as is practicable. Finally, the Contractor represents and warrants that neither Contractor nor any of its employees has been found at fault or penalized for any human rights violations or creating an adverse impact on human rights;
- j. will not discriminate against any individual or group on the basis of race, religion, age, sex, national origin, citizenship, disability, sexual orientation, genetic information, or veterans/national guard/military reserve status. If any U.S. government funds are transferred under this Contract, Contractor is also subject to Title VI of the Civil Rights Act of 1964 and related statutes, which prohibit discrimination on the basis of race, color, national origin, age, or disability in federally funded programs;
- k. will not take any actions that might cause TNC to be in violation of the laws, statutes, regulations, or similar rules mentioned in this Section (collectively, "Applicable Laws");
- l. will immediately notify TNC in writing if any of the representations, warranties, certifications, statements, or agreements in this Section change before or during the Contract Term; and
- m. will include provisions at least as restrictive as these in all permitted subcontracts (except for subcontracts purchasing commercially available, off-the-shelf goods or services).

If TNC determines that any of the representations, warranties, certifications, statements, or agreements in this Section are false, no longer valid, or have materially changed, whether or not the Contractor is at fault, TNC may terminate this Contract effective immediately upon written notice to Contractor, with no further obligation by TNC under this Contract, including payment, and TNC may pursue all available remedies under Applicable Laws.

9. **Use of TNC Name and Logo.** Unless expressly authorized in writing in this Contract or in a separate written agreement, Contractor may not use TNC's name, logo, or other intellectual property in any manner, whether in conjunction with the Services or otherwise, except (a) to deliver invoices or other notices to TNC and (b) within acknowledgements of TNC funding, as authorized in writing by TNC.

10. **Confidential Information.** In performing the Services, Contractor might have access to information, whether oral, in writing, in electronic format, or in any other tangible form, disclosed by TNC, directly or indirectly, to Contractor that is (a) identified as confidential, or (b) disclosed in a manner in which TNC reasonably communicates, or that Contractor should reasonably have understood, should be treated as confidential, whether or not designated as "confidential" (collectively, "Confidential Information"). Confidential Information includes, without limitation, data sets, donor data, marketing plans, research, products, technologies, software source code, software object code, data collection functionalities, trade secrets, pre-publication patent applications, research and development, know-how, and other information relating to TNC and its operations, programs, or systems. Contractor may not, without TNC's prior written consent, use, publish, or divulge any Confidential Information, and agrees to use Confidential Information solely in furtherance of the Services and for no other reason. Contractor must use appropriate security procedures to safeguard Confidential Information. Contractor acknowledges and agrees that in the event Contractor receives any personal identifying information (i.e., information that identifies or can be used to identify an individual or that relates to an identified individual), Contractor (i) will be subject to a TNC IT Security review prior to such transfer or exchange and (ii) Contractor will comply with all Applicable Laws relating to the protection of personal identifying information. In addition, Contractor must comply with any additional requirements relating to protection of data as set forth in this Contract and/or as specified in any exhibits to this Contract.

11. **Work Product; Intellectual Property.** Contractor retains all right, title, and interest in works, inventions, and other intellectual property original to or owned by Contractor prior to the execution of this Contract or created outside the scope of this Contract. If the Services involve the creation of intellectual property including, but not limited to, inventions, concepts, processes, reports, derivative works, studies, photographs, software (including in both object code and source code form), drawings, designs, writings, related drafts, supporting materials, or data (collectively, the "Works"), TNC will own all right, title, and interest, including copyrights, and, if applicable, patent rights, in and to the Works. Contractor agrees that all copyrightable Works are "works made for hire" as defined under the copyright laws of the United States. To the extent that any of the Works are not works made for hire, Contractor unconditionally assigns to TNC and TNC's successors and assigns all right, title, and interest, including copyright, and other intellectual property rights, in and to the Works in all media (whether now known or later developed) worldwide and in perpetuity. Contractor grants to TNC a worldwide, non-exclusive, royalty-free, perpetual license to use, reproduce, distribute, modify, exercise, practice, perform, and exploit any assets subject to Contractor's patents, copyrights, or other intellectual property rights, to the extent that such license is necessary for TNC to enjoy all rights associated with ownership of the Works. Upon request of TNC, Contractor will deliver to TNC all tangible copies (including digital copies) of the Works and will execute and complete all documentation necessary to establish TNC's ownership of the Works. Contractor warrants and covenants that the Works will not infringe on the patent rights, copyrights, or other intellectual property rights of Contractor or third parties.

12. **Drug Free Workplace.** Contractor shall comply with all applicable federal, state and local laws regarding

smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

13. Miscellaneous Terms and Conditions.

(a) **Clean-Up.** Contractor shall follow TNC's clean-up directions and shall at all times ensure that the project site and premises are free from debris resulting from the Work.

(b) **Safety.** Contractor shall ensure the Services are performed in a safe manner and shall give all required notices and comply with all applicable rules, regulations, orders, public health recommendations and other lawful requirements related to health and safety, and/or established to prevent injury, loss or damage to persons or property. The Contractor shall be responsible for implementing appropriate safety measures pertaining to the Services, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the site and adjacent thereto from injury, loss or damage. At all times, Contractor shall use properly qualified individuals or entities and subcontractors to carry out the Work in a safe manner. The Contractor shall give prompt notice to TNC of any accident involving personal injury, property damage, or any failure that could have resulted in serious personal injury. A detailed written report of said accident or failure shall be furnished to TNC.

(c) **Assignment; Subcontracting.** Contractor may not assign this Contract or subcontract any portion of the Services without TNC's prior written consent, which may be granted via email or by the inclusion of the subcontract description in Exhibit A. TNC's consent may be granted or withheld in TNC's sole discretion.

(d) **Subcontractors.** All subcontracted work shall be performed only by subcontractors sufficiently skilled and, when required, licensed to perform the subcontracted work. All work performed by a subcontractor shall be pursuant to a written agreement between the Contractor and the subcontractor (and where appropriate, between subcontractors and sub-subcontractors). All such agreements shall require performance by the subcontractors in conformity with the terms of this Contract, and shall include all the terms of this Contract which are applicable to subcontractors. The use of subcontractors in no way relieves the Contractor from full responsibility for the Services or from full compliance with the Contract. The Contractor shall promptly pay each subcontractor. Upon the final completion of a subcontractor's work prior to the final completion of the Services, Contractor shall forward to TNC a subcontractor's executed release of lien. TNC shall not have any obligation to pay or to see to the payment of any monies to any subcontractor except as may otherwise be required by law.

Contractor shall be as fully responsible to TNC for the acts and omissions of any subcontractor and of persons either directly or indirectly employed by the subcontractors, as he is for acts and omissions of persons directly employed by itself.

(e) **Change Orders.**

(1) TNC Issues Change Order. By issuing a written order, TNC may require the Contractor to make changes in the Services which are within the general scope of this Contract. Adjustments in the Contract Fee, if any, resulting from such changes shall be set forth in a change order signed by TNC and the Contractor stating their agreement upon the change in the scope of the Services, adjustment in the Contract Fee and contract time. TNC may by written order direct the Contractor to perform incidental changes in the Services which do not involve adjustments in the Contact Fee or contract time. The Contractor shall promptly implement written orders for such incidental changes.

(2) Contractor Issues Change Order. If Contractor desires to propose work, materials, or other

services outside the scope of the Services, the Contractor shall issue a written order to TNC and receive written approval from TNC for any such work, materials, or other services that exceed or are outside the scope of the Services. The request from Contractor for a written order for a change in the scope of the Services shall contain the following information: (i) a detailed summary of the additional work proposed and the basis therefor; (ii) the increase in the Contract cost associated with the task; (iii) the amount of time expected to complete such task; and (iv) any impact in the projected date for completion of the Services arising from such proposed change order.

(f) **Damage to work and property on site.** All damage or loss to any property or improvements on or near the site (other than incidental damage to the property at the site, such as disturbance of grass and soil) caused in whole or in part by the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor at Contractor's expense.

(g) **Title free of liens at time of each progress payment.** The Contractor warrants and guarantees that title to all work, materials, and equipment covered by an invoice for payment, whether incorporated in the Services or not, will pass to TNC upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests, or encumbrances. Notwithstanding such passage of title, Contractor shall continue to be solely responsible for protecting and replacing, if necessary, such work, materials, and equipment without expense to TNC until final completion and acceptance.

(h) **Unconditional Final Lien Waiver.** Prior to TNC's final payment to Contractor pursuant to Section 2 of this Contract (captioned "Payments"), Contractor shall deliver to TNC an unconditional final lien waiver from the Contractor, together with a sworn statement from the Contractor covering all Services.

(i) **Conduct on the Property.** There will be no smoking, no open burning, no alcohol use or use of controlled substances, and no hunting or fishing on the job site or anywhere else on the land by the Contractor or its employees or subcontractors. Any smoking by employees of the Contractor or subcontractors shall occur on breaks and only in the personal vehicles of the employees, and all butts and other residues including all matches shall remain inside such vehicles and shall be properly disposed of offsite. It is extremely important that no butts and matches be tossed out of vehicles anywhere on the property. There shall be no harassment or killing of animals on the Property.

(j) **Notices.** Any notice, request, or demand made by either party to this Contract must be in writing and must be delivered: (i) in person; (ii) by mail, postage prepaid, certified (return receipt requested); (iii) by a nationally recognized, next-day delivery service with tracking information and requesting next-business day delivery; or (iv) email. Notices must be addressed to the other party at that party's address first stated above and will be deemed delivered: (i) immediately if delivered in person; (ii) three business days after deposit in the mail if sent as described above; (iii) the next business day if sent by an overnight service and sent as required above; or (iv) on the first business day after sending by email.

(k) **Governing Law; Forum.** This Contract and claims relating to this Contract will be interpreted, construed and governed by the laws of the state in which the TNC Business Unit set forth on the first page this Contract is located (excluding such state's choice of law principles, if any). In the event of any litigation over the interpretation or application of any of the terms of this Contract, litigation will be conducted in the state or federal courts in the state in which the TNC Business Unit set forth on the first page of this Contract is located.

(l) **Code of Conduct; Helpline.** TNC expects itself and everyone with whom it does business to conduct themselves in ways that are consistent with its TNC's Code of Conduct found at www.nature.org/codeofconduct.

Anyone (whether an employee of TNC or not) may contact the TNC Helpline (anonymously, if desired) with questions, concerns, or suspected violations at www.nature.org/tnc Helpline.

(m) **Entire Agreement; Amendments; Order of Precedence.** This Contract will become binding when signed by both parties and, together with its exhibits, which are hereby incorporated into and made a part of this Contract, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous communications, both oral and written, between the parties relating to the Services described in this Contract. Unless explicitly stated otherwise in this Contract, no amendment to this Contract, including a change in the Description of Services or any change order, will be effective unless in a writing signed by both parties. In the event of a conflict, priority will be given to the documents in the following order: (i) provisions in this Exhibit B;

(ii) provisions in the main body of this Contract; (iii) the Description of Services set forth in Exhibit A; and (iv) any additional exhibits or attachments to this Contract.

(n) **Severability; No Waiver.** If any provision of this Contract is found to be invalid by a court of competent jurisdiction, the other provisions will not be affected by that finding. No delay in exercising any right or remedy under this Contract by either party will constitute a waiver of that right or remedy or of any other right or remedy under this Contract or under Applicable Laws.

(o) **Joint and Several Liability.** If two or more persons or entities are identified as Contractor in this Contract, their obligations under this Contract are and will be joint and several.

(p) **Counterparts.** This Contract may be executed in one or more counterparts, each of which will be deemed an original and all of which will constitute the complete Contract.

(q) **Consent to electronic signatures.** Facsimile or scanned signatures on this Contract and any related documents, and digital or electronic signatures where authorized under Applicable Laws, will be fully binding for all purposes.

(r) **Authorization to Sign.** Contractor represents and warrants that the person signing this Contract on behalf of Contractor is duly authorized to sign this Contract on Contractor's behalf.

(s) **Survival.** The "Liability; Indemnification," "Use of TNC Name and Logo," "Confidential Information," "Work Product; Intellectual Property," Sections of this Contract, and any right, obligation, or required performance of the parties to this Contract which, by its express terms or nature and context is intended to survive termination or expiration of this Contract, shall will survive the expiration or earlier termination of the Contract.

[End of Exhibit B]

ATTACHMENT D:
DISCLOSURE FORM

CONFLICT INQUIRY FORM

STEP 1: DESCRIPTION OF PARTIES & TRANSACTION	
Name of individual or organization entering into transaction with TNC:	
Legal identity of individual or organization* entering into transaction with TNC (select one):	<input type="checkbox"/> Individual <input type="checkbox"/> For-Profit Organization <input type="checkbox"/> Non-Profit Organization
<small>**Organization* includes a for profit corporation, partnership, trust, estate, joint venture, limited liability corporation, professional corporation, an unincorporated entity, a foundation, public board, commission, 501(c)(3) or other charitable organization.</small>	
Type of Transaction (select one):	Contract for Services <input type="checkbox"/> Grant Agreement Purchase Order <input type="checkbox"/> Licensing Agreement Real Estate Transaction <input type="checkbox"/> Other
If you selected "Other" or "Real Estate," include description here (for real estate, describe property, size, and type of deal (sale, gift, lease, etc.)):	

STEP 2: DEFINITIONS & QUESTIONS (Complete <u>*only*</u> the section relevant to your organization)		
<p>(1) TNC Key Employees and Board of Directors: Please refer to the attached list of Key Employees and members of Board of Directors (includes individuals who have left relevant TNC positions within the past five (5) years).</p> <p>(2) TNC Trustee: Individuals serving as a Trustee or Advisor to TNC.</p> <p>(3) Substantial Contributors: Individuals or organizations who have made total aggregate contributions to TNC of (i) ≥ US \$5 million during the current fiscal year or (ii) ≥ US \$25 million within the last five (5) fiscal years. Fiscal years run from July 1st through June 30th.</p> <p>(4) Family Members and Close Relatives: Family members of any individual listed above, such as spouse, domestic partner, parent, sibling, child, dependent, other progeny and ancestors.</p>		
SECTION 1. INDIVIDUALS (explain any "yes" answers in Step 3):	Yes	No
a. Are you now, or have you been in the last five (5) fiscal years, (i) a TNC "Key Employee" or (ii) a member of the TNC Board of Directors?		
b. Are you now, or have you been in the last twelve (12) months, (i) a TNC Employee, (ii) a Chapter Trustee, or (iii) a member of a Country Program Advisory Council or a similar advisory group?		
c. Are you a Substantial Contributor to TNC?		
d. To your knowledge, are you a family member or close relative of any individual identified in paragraphs a, b, or c above?		

SECTION 2. FOR-PROFIT ORGANIZATIONS (explain any "yes" answers in Step 3):

Yes

No

a. Is your organization a Substantial Contributor to TNC?

b. Now, or at the time of the proposed transaction, to the best of your knowledge, do any of the following (individually or collectively with other such persons) (i) own more than 35% of the stock or value of your organization (directly or indirectly) and/or (ii) have a controlling influence over the organization's management or policies (ex. key management or board member):

- TNC employee (or former employee who left within the last twelve (12) months);
- TNC Key Employee;
- TNC Board Member;
- Substantial Contributor to TNC;
- TNC Chapter Trustee or Advisory Council Member for TNC or TNC's related entities (or former trustees/members who left within the last twelve (12) months); and/or
- Family members or close relatives of the above individuals.

c. Now, or at the time of the proposed transaction, have or will any TNC Key Employees or members of the Board of Directors serve in the following positions of your organization?

- Officer, director, trustee, key employee, or partner;
- Member (if your organization is a limited liability corporation); and/or
- Shareholder (if your organization is a professional corporation).

SECTION 3. NON-PROFIT ORGANIZATIONS (explain any "yes" answers in Step 3):

Yes

No

a. Now, or at the time of the proposed transaction, do any of the following (individually or collectively with other such persons) have the ability to influence management of the entity:

- TNC employee (or former employee who left within the last twelve (12) months);
- TNC Key Employee;
- TNC Board Member;
- Substantial Contributor to TNC;
- TNC Chapter Trustee or Advisory Council Member for TNC or TNC's related entities (or former trustees/members who left within the last twelve (12) months); and/or
- Family members or close relatives of the above individuals.