



***WETLAND RESTORATION, REHABILITATION, AND  
PROTECTION SERVICES***

***CUYAHOGA HEADWATERS  
OHIO MITIGATION PROGRAM SITE  
MONTVILLE, OHIO***

**REQUEST FOR PROPOSALS**

***August 23, 2019***

**Proposals must be received by 5:00 pm on October 9, 2019**

# **1. GENERAL ADMINISTRATIVE PROVISIONS**

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## **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](http://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 district engineers for the Huntington District, Buffalo District and Pittsburgh District, as well as agency representatives from the Ohio EPA, U.S. Environmental Protection Agency (USEPA), 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 design a stream and wetland mitigation design plan and implement said design plan for the Cuyahoga Headwater Ohio Mitigation Program site.

TNC is seeking design/build proposals for Phase 1 of the Cuyahoga Headwaters Wetland Mitigation Project near Montville in Geauga County, Ohio (“Project”) as described in the attached Attachment B. The “Contractor” shall furnish all necessary drawings, plans, permits, labor, facilities, materials, equipment, construction and oversight services, and incidentals to complete the Project scope of work (the “Scope of Work”) as described in the attached Attachment B and the Contract for Services in the form of Attachment C attached hereto to be entered into between TNC and the Contractor. A set of conceptual designs for the restoration project are described in the attached Attachment B. The total amount of compensation sought for completion of the Project shall not exceed **\$150,000**.

As further described in the attached Scope of Work, this is the first phase of a two phased Request for Proposals (RFP) process, in which the Contractor is selected first, starts the design, and works with TNC to select a construction firm through another RFP to be part of the 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 will be located on 119 acres of land owned by West Creek Conservancy, and will become subject to a Conservation Easement held by TNC. 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 match the order in which the RFP was submitted 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 Five Million Dollars (\$5,000,000), per occurrence. For the awarded Contract, TNC 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 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.

## **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, Community Services, and TLPA 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 and provide 1 hard copy to the address below.

2.1.2 Address and email for Contractor's Submission of Proposal:

**The Nature Conservancy**  
ATTN: Devin Schenk  
6375 Riverside Drive, Suite 100  
Dublin, Ohio 43017

**Email:** [dschenk@tnc.org](mailto:dschenk@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 attached as Attachment B
- c. Delivery Schedule
- d. Pricing
  - i. Please list all **net pricing** (after discounts), based on the **Scope of Work attached as 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.
  - ii. Specify expiration date of bid. Submitted bid pricing must be good through October 1, 2019

#### Task Pricing Schedule

Task	Deliverable	Cost
<b>Phase 1 Design</b>		
1	Site Assessment	
2	Development of Preliminary Design Plans and Cost Opinion	
3	Management of Phase 2 RFP Bidding Process	

4	Development of Final Design Plans	
5	Acquisition of Permits	
<b>Phase 2 Implementation</b>		
1	Construction Oversight	TBD*
2	Construction	TBD*
3	Development of As-Built Report	TBD*
4	Corrective Actions	TBD*
* Following completion of the bidding process and development of preliminary design plans, the Contractor will implement an RFP and subcontract with a construction firm for the implementation of the final design plans.		

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. 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 3 stream and/or wetland design-build projects greater than \$250,000 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:

- a. Qualification of Contractor.
- b. Demonstrated ability to understand and perform the project.
- c. Technical solution for creating deliverable products.

- d. Quality of proposal/presentation.
- e. Costs
- f. Evidence of sufficient insurance.

**2.3 QUESTIONS REGARDING THIS RFP**

Contractor may only submit questions regarding this RFP to TNC via email listed in Section 2.1.2 by **September 30, 2019**. No phone calls, please. Questions and answers may be shared by e-mail with all Contractors that have expressed an interest in submitting a proposal. All Contractors interested in submitting a proposal and being included on the question and answer response distribution should notify TNC by email. TNC will use its best efforts to answer questions by **October 4, 2019**. 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. TNC, however, is not required to answer any questions that are not pertinent to the RFP or are considered to be TNC’s 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, TNC will not be able to submit questions or otherwise communicate with TNC after the date listed in Section 2.3 above.

**2.5 CRITICAL DATES**

2.5.1 Proposal Due Date

Proposals shall be delivered to TNC on or before **October 9, 2019**. See Section 2.1 for Submission Requirements.

<b>RFP Activities</b>	<b>Due Date</b>
Distribute RFP	August 23, 2019
Field Day	September 16, 2019
Communication Period Ends	September 30, 2019
Proposals Due	October 9, 2019

2.5.2 Suggested Schedule of Implementation

The implementation schedule will be contingent upon the TNC obtaining final approval from the IRT; however, the following schedule is suggested in order to initiate construction by the Fall of 2020:

Project Bidding and Award	October-November 2019
Site Assessment	November 2019-March 2020
Design, Permitting and Engineering	February 2020 - May 2020
IRT final approval	September 2020
Start of Project Construction	September 2020
Project Construction Substantially Complete	November 2020

## **2.6 VISITING THE SITE**

Contractors interested in submitting proposals must conduct a site visit to assess the conditions of the site to inform their responses to this RFP. A field day is scheduled in which Contractors may tour the site with TNC staff (see the table in Section 2.5 for date). Contractors unable to attend the field day shall visit the site on their own and must coordinate access with the contact listed in Section 2.1.2. Note that the site is an active farm and farm operations may be underway during site visits. All visits and inspections of the site are at each Contractor's sole risk and, by its visit to the site, each such Contractor releases TNC and West Creek Conservancy from any injuries, liability or expenses incurred as a result of or arising out of the site visit.

## **ATTACHMENTS**

- A Contractor Questionnaire
- B Scope of Work
- C TNC's Standard Contract for Services
- D TNC's Disclosure 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.

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**General Information:**

Company Name: \_\_\_\_\_  
Company Address: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Phone & Email: \_\_\_\_\_  
Years in Business: \_\_\_\_\_

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**Contractor Information:**

Please indicate if you have done business with TNC, Community Services or TLPA in the past and provide contact information below.

\_\_\_\_\_

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**Statement of Qualifications:**

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

\_\_\_\_\_

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**Employee Information**

Number of Employees: \_\_\_\_\_

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**Service Information**



**ATTACHMENT B:  
SCOPE OF WORK FOR WETLAND MITIGATION SERVICES FOR  
CUYAHOGA HEADWATERS  
AN OHIO MITIGATION PROGRAM SITE**

## **B.1 PURPOSE**

The purpose of this project is to provide wetland mitigation to offset unavoidable impacts in the Cuyahoga River watershed. To achieve this goal, TNC's Ohio Mitigation Program stream and wetland credits are utilized as the compensatory mitigation. The scope of work for this RFP requires the Contractor to develop a design plan for wetland restoration, rehabilitation, and buffer 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, March 2011](#), and [Guidelines for Stream Mitigation Banking and In-Lieu Fee Programs in Ohio, version 1.1, March 2016](#)). Note that invasive species management and restoration planting and seeding are not part of this RFP but will be covered through a separate RFP and contract; however, such work will require coordination between the Contractor and vegetation contractor. Time for this coordination should be accounted for in the proposal as a close working relationship among the Contractor, the Contractor's construction subcontractor and the vegetation contractor is needed to ensure that all planting and seeding occurs at optimal times for all parts of the mitigation project.

## **B.2 GENERAL PROJECT INFORMATION**

<b>Project Type</b>	Wetland and Buffer Restoration, Rehabilitation, and Development
<b>Project Name</b>	Cuyahoga Headwaters
<b>Landowner</b>	West Creek Conservancy
<b>Project Manager</b>	The Nature Conservancy
<b>Locality</b>	Montville, Geauga County, Ohio
<b>HUC 8</b>	Cuyahoga River Watershed (05090202)
<b>Resources</b>	Wetlands, Small Stream Channels, and Their Buffers

Project Description: (Please see Cuyahoga Headwaters Mitigation Plan at this website: <https://tnc.box.com/s/mhx991feqra58x7t84fh73cn1un9mz1r>.)

## **B.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 access will require the Contractor to execute a license and indemnity agreement. 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.

## **B.4 CONTRACTOR TASKS AND DUTIES**

The specific tasks to be completed by the Contractor include: 1) site assessment, 2) development of preliminary design plans and cost opinion, 3) cooperation with TNC and assistance on the Phase 2 RFP process and selection of construction contractor, 4) development of final design plans, and 5) acquisition of permits. In Phase 2, the Contractor will be responsible for: 1) construction oversight, in cooperation with TNC, 2) construction, 3) development of as-built report, and 4) corrective actions.

## **Phase 1 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 that includes the delineation, ORAM, QHEI, and HHEI assessments. The Contractor shall identify appropriate reference wetlands, and buffers (with assistance from TNC) and perform the necessary assessments for each relevant wetland, or buffer area.

The Contractor shall also generate existing conditions mapping, utilizing, when possible, the figures and data already completed in the mitigation plan (<https://tnc.box.com/s/mhx991feqra58x7t84fh73cn1un9mz1r>), that include all the waters of the U.S. identified during the delineation, NWI, NHD, soils mapping, USGS quadrangle, aerial photography, geomorphic controls, characterization of habitat types, mapped locations of invasive species 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 utilizing the Cuyahoga Headwaters In-Lieu Fee Mitigation Plan, existing condition data and reference data to design the wetlands and buffers. On site Category 3 vernal pools and small stream channel wetlands can serve as templates for the wetland restoration work. In the areas of the property currently being row cropped or hayed, the intent is that forested vernal pools will be created through subtle contouring of the landscape to create shallow depressions. Any subsurface drainage tiles will be disrupted and possibly removed to enhance the hydrology supporting these depressional wetlands. The re-established wetlands will be designed and planted to emulate nearby Category 3 vernal pools and stream channel wetlands. The currently row cropped and hay fields located within the boundaries of the project will be reforested to connect the re-established wetlands with buffers to make a large and connected forested ecosystem of high quality and diversity.

The small shallow stream channels/wetlands that are present in parts of the wooded part of the property will be left in their natural state and no significant modifications are anticipated. However, if the Contractor determines that modifications to the existing streams are needed to naturally tie together the stream and wetland resources then that approach should be explained in the proposal. Care shall be taken to ensure the stream/wetland features in the forested parts of the property continue with their existing hydrologic regimes and are incorporated into a stream/wetland ecosystem that includes the existing vernal pools.

Included in the design plans shall be all earthwork activities (including site preparation techniques, quantities to be moved, soil placement/disposal procedures, detailed erosion and sedimentation control plans, and final pre-planting site conditions), ingress/egress routes, erosion and sediment control plan, details for 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 submittal shall also include all design supporting data and documentation, including all information required to design the project. This shall include, at a minimum, existing condition information, reference information, hydrologic information, hydraulic information, and geotechnical information.

The Contractor shall design the project by utilizing the Conservancy's Cuyahoga Headwater Mitigation Plan and existing condition data that will allow the development of a design that will result in high quality, resilient wetlands. The Conservancy strongly advocates a natural approach to wetland re-establishment and rehabilitation. The re-established wetlands should be developed within the footprints of historic wetlands. This means that wetlands must be restored on areas of hydric soils or areas of hydric soil inclusions on non-hydric soils. Natural floodplain wetlands do not have berms or dams or other synthetic means for developing and maintaining their hydrologic regime. Therefore, TNC will not approve the use of berms or dams as approvable methods for restoring hydrologic regimes in the designs for the re-established and rehabilitated wetlands. Rehabilitation activities should be limited to addressing only those factors that have been degraded from their natural conditions. There are stream resources on the property with plant communities that are dominated by wetland plant species and have physical habitat features that are intermediate between stream and wetland resources. TNC wants to see the natural habitat features of these stream channels/wetlands and the depressional wetlands on site maintained where they are still highly functional and rehabilitated where opportunities exist.

Every effort shall be made during the design and construction phases to minimize disturbance to the existing natural areas. Sensitive areas that will not be part of the changes specified in the design plans will have their perimeters clearly delineated 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 and implementation of the project. The design shall ensure and detail stable and appropriate tie-ins with all drainages in the project area and with the portions of streams/reservoirs 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 explained in the proposal which could include a preliminary Soil Management Plan that indicates: areas to be protected, efforts to minimize soil disturbance (minimize grading), stockpiling and reuse of topsoil, and efforts that would be used for the restoration of soils disturbed during construction including amending with compost and scarifying subsoil, for 12" uncompacted depth.

The Contractor shall use the appropriate Ohio EPA assessments to evaluate existing conditions and potential wetland mitigation activities (restoration, enhancement, and preservation) and determine the amount of potential wetland, and wetland buffer credits within the project site as defined by "Guidelines for Wetland Mitigation Banking in Ohio, 2011" and the preliminarily released "[Guidelines for Wetland Mitigation Banking and In-Lieu Fee Programs in Ohio, Version 2.0](#)".

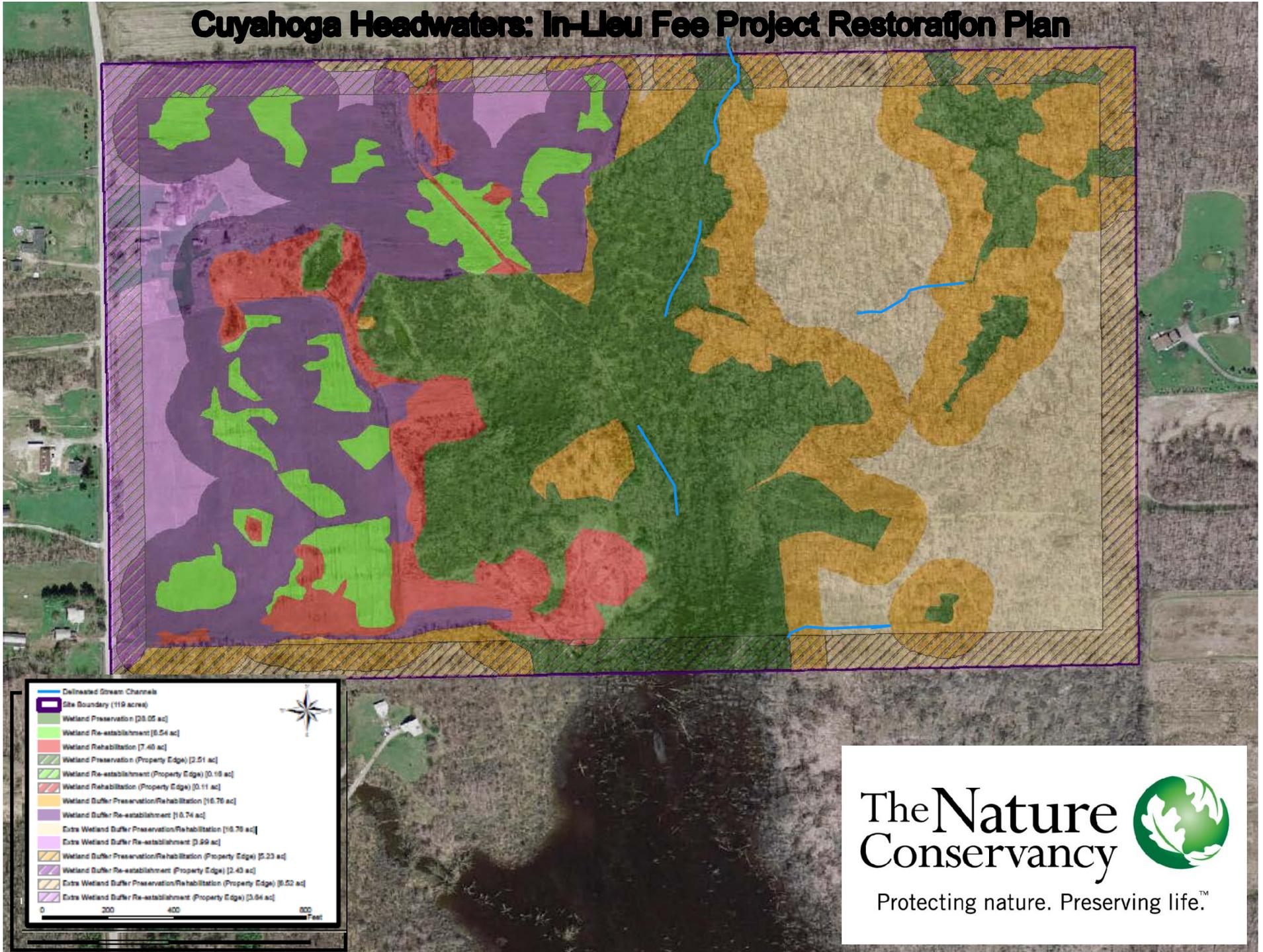
Note that there will be a separate contract for the project's vegetation management including the invasive species management plan and seeding and planting plans (including vegetation community types, species to be planted and quantities by area, application rates, and planting densities by area) unless the Contractor suggests certain aspects of this work should be contained under this contract, in which event the Contractor should include said aspects in its proposal and cost opinion. The separate contract will include a wetland and wetland buffer planting plan for the project area, including species, densities, and zonation. Only species native to the region will be used in the planting plan. The planting plan will use specifications from the Ohio Interagency Review Team's "Ohio Guidelines for Wetland Mitigation Banking, 2011" and "Guidelines for Wetland Mitigation Banking and In-Lieu Fee Programs in Ohio version 2.0". Again, given that there are stream resources on the property that have plant communities that are dominated by wetland plant species the vegetation contractor will be asked to take the uniqueness of these habitats into consideration when planning their plant communities. The planting plan will also include the species names and application rates of the permanent and temporary seed mix to be used.

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, stream construction (if warranted), wetland construction, buffer construction, planting, invasive species management, and all other implementation tasks identified in the design plans. Such costs will be modified and confirmed once the construction contractor and vegetation contractor are selected and the design plans are finalized.

### **TNC's Vision**

The Cuyahoga Headwaters Mitigation Plan is based on the TNC Ohio Mitigation Program's TNC's preliminary judgements on how the Cuyahoga Headwater Project site might best be managed to develop the wetlands and their associated buffers to comprise an integrated ecosystem of the highest ecological conditions possible. 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. Again, note that a separate vegetation contractor will be working on the planting of the wetlands, and buffers, which will require the Contractor to coordinate and not unreasonably interfere with the vegetation contractor.

# Cuyahoga Headwaters: In-Lieu Fee Project Restoration Plan



The Nature Conservancy



Protecting nature. Preserving life.™

## Streams Work Plan

Currently, the stream channels on the property are limited to those areas that are forested. TNC believes that the streams are functioning naturally and possess high quality and sensitive plant communities. However, TNC also recognizes that the streams connect some of the wetlands and that rehabilitation of the wetlands may require minor modifications to the stream channels. It is TNC's vision that the Contractor will develop a plan that incorporates the streams in a manner that connects all of the aquatic resources with little to no disruption of the highly intact stream channels.

## Wetlands Work Plan

The Cuyahoga Headwaters mitigation site provides multiple opportunities to rehabilitate wetlands with the forested parts of the property and re-establish wetlands in the row crop and hay fields. Currently, 7 wetlands are present on the site. The proposed mitigation project will:

- **Wetland Re-establishment.** An additional 16 depressional vernal pool wetlands comprising 7.48 acres will be restored on hydric soil areas in the row crop and hay fields. Most of these wetlands do not currently exist, but a few are extensions of the above wetlands. Their substrates of the new wetlands will be naturally graded with shallow slopes and drainage tiles will be decommissioned in the fields to restore their natural hydrologic regimes.
- **Wetland 1.** This 32.7 acre wetland has portions that are PEM, PSS, and PFO. Preservation will be the predominate mitigation mechanism with some rehabilitation of parts of the existing wetland, by controlling invasive plants, planting and seeding native hydrophytes as replacements, and securing natural hydrologic regime. (Responsibility of Vegetation Contractor)
- **Wetland 2.** This is a 3.09 acre PFO wetland. Again, preservation will be combined with rehabilitation of parts of the existing wetland, by controlling invasive plants, planting and seeding native hydrophytes as replacements, and securing its natural hydrologic regime. (Responsibility of Vegetation Contractor)
- **Wetlands 3, 4 and 5.** PEM wetlands of 0.067, 0.106, and 0.077 acres, respectively will require major rehabilitation work including control of invasive plants, planting and seeding native hydrophytes as replacements, and securing their natural hydrologic regimes. (Responsibility of Vegetation Contractor)
- **Wetland 6 and 7.** Both are PFO wetlands of 0.545 and 0.116 acres, respectively and will largely be preserved with only minimal rehabilitation including control of invasive plants, planting and seeding native hydrophytes as replacements, and securing their natural hydrologic regimes. (Responsibility of Vegetation Contractor)
- **Wetland Buffer Preservation/Rehabilitation.** 38.75 acres of forested wetland buffer will be protected and enhanced adjoining the existing on-site wetlands. (Responsibility of Vegetation Contractor)
- **Wetland Buffer Re-establishment.** 23.18 acres of forested extra wetland buffer will be restored immediately outside the wetland borders. (Responsibility of Vegetation Contractor)
- **Extra Wetland Buffer Preservation/Rehabilitation (Property Edge).** An additional 6.52 acres of forested wetland buffers will be protected and enhanced on the property borders. (Responsibility of Vegetation Contractor)
- **Extra Wetland Buffer Re-establishment (Project Edge).** An additional 3.64 acres of forested wetland buffers will be restored on the property borders. (Responsibility of Vegetation Contractor)

## Re-established Wetland Areas

Re-establishment of wetlands on site will focus on the agricultural areas where the topography is flat and there is

the presence of hydric soils. The plan will re-establish at least three wetlands (Wetland E, Wetland F, and Wetland G) totaling 2.09 acres. Because of the topography and soils, wetland conditions should be easily developed, with minimal grading paired with 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 once the grading is ready.

### **Rehabilitated Small Stream Segments**

It is envisioned that the small surface water disconnected streams will need little to no enhancement. However, if some modifications are deemed necessary those adjustments should be designed to be as minimal as possible and to provide interconnection between the streams and wetlands.

### **TASK 3. MANAGEMENT OF PHASE 2 RFP BIDDING PROCESS**

The Contractor, coordinating with TNC, shall manage the RFP process to select a construction firm or firms to implement the mitigation design plans, including construction, and other activities identified by the Contractor, and the Contractor shall enter into the subcontract with the selected firm(s).

The Contractor shall develop an RFP for selecting an implementation subcontractor once the preliminary design plans are developed and approved by TNC. The RFP should at a minimum evaluate the qualifications of the subcontractor, their demonstrated ability to understand and perform the project, their technical ability for creating deliverable products, the quality of proposal/presentation, and the proposed costs.

The RFP will be submitted to TNC for review and approval prior to release of the RFP. The Contractor shall develop a list of firms that will be sent the RFP and shall submit the list to TNC for review and approval prior to release of the RFP. Following approval of the RFP by TNC, the Contractor shall send the RFP to at least 3 firms qualified in completing the activities detailed in the design plans each of whom shall be required to provide satisfactory insurance as well as payment and performance bonds for the work.

The Contractor shall conduct a mandatory pre-bid meeting for candidate construction firms. A representative of the Contractor qualified in each design phase of the project shall participate in the meeting.

The Contractor shall submit all bids received to the TNC. The Contractor shall evaluate the bids received and answer questions raised by contractors, as appropriate. The Contractor shall be responsible for representing the best interests of the TNC during the bidding process. The Contractor shall develop a bid scoring matrix which evaluates proposals based on qualifications, cost, schedule, and other criteria relevant to the scope of work.

Following bid evaluation, the Contractor shall make a recommendation to TNC on the firm(s) to be selected for implementation of the mitigation plan. TNC will review the recommendation and retain the right to reject the Contractor's selection. If approved by TNC, the Contractor shall contract with the firm(s) to implement the mitigation design plans.

Upon selection of the firm(s), joint meetings shall be conducted on the preliminary design and cost opinion both with the construction firm and TNC to ensure that all activities are satisfactorily planned and designed as well as adequately budgeted. The Contractor shall deliver the draft preliminary design plans and cost opinion in both hardcopy (1 set) and electronic version (pdf and GIS files). TNC shall review the preliminary design plans and provide comments to the Contractor. **TNC and the Contractor shall then enter into a contract amendment to include costs for implementation of the design plans.** Costs for these activities will be based on the construction firm's review and feedback on the design, construction, and any other implementation activities identified by the Contractor. Notwithstanding the foregoing, the Conservancy reserves the right to not enter into a contract amendment with the Contractor and to select a different contractor to provide construction oversight and management of the implementation of the design plans, including issuance of an RFP specifically for that purpose, in the event the Contractor has not performed satisfactorily for the Phase I tasks or if the Conservancy and Contractor are not able to come to terms on a mutually agreeable contract price for the Phase 2 tasks.

Based upon comments and agreed-to-items resulting from TNC's review, the Contractor shall refine the draft

preliminary plans and work with TNC on the submittal of the Draft Final Amendment Mitigation Plan to the IRT.

#### **TASK 4. DEVELOPMENT OF FINAL DESIGN PLANS**

Following receipt of comments from the IRT on the Draft Final 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 both hardcopy (2 sets) and electronic version (pdf and GIS files).

#### **TASK 5. 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 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 or other meetings required to secure permits or authorizations, and addressing agreed upon comments resulting from the permitting agencies' review.

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: TNC will submit the final design plans as part of the Final Amendment Mitigation Plan to the IRT for review, comment, and approval. The Contractor shall not proceed with tasks beyond Task 5 until TNC (i) receives the final IRT approval, and (ii) provides written notice to proceed.*

### **Phase 2 Implementation**

#### **TASK 1. CONSTRUCTION OVERSIGHT**

The Contractor shall be responsible for the implementation of the project in accordance with the final design plans, including contracting with the construction firm, and managing and overseeing all implementation activities, the construction firm, and all subcontractors. The Contractor shall retain the responsibility for the quality and completion of the project and the work of the sub-contracted construction firm and all sub-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 estimate 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, establishment of permanent photographic stations, and construction tasks) are implemented according to the final design plans and specifications. This includes the oversight

of all implementation activities. The Contractor shall be responsible for the activities of any and all contractors hired by the Contractor or the construction firm 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 on-site as-needed, at a minimum two days per week (10 hours (5 hours per day) minimum) and more often as appropriate, during the construction phase to ensure that the site is built in accordance with the design plans, specifications, and approved permits. The Contractor shall communicate regularly with the construction firm and when on-site shall meet with the construction firm on-site as-needed, at a minimum one day per week, regarding the progression of construction.

The Contractor shall provide weekly written updates 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 wetland and stream buffers. Additionally, they shall include in-stream structures and data collected and plotted for channel cross sections located approximately every 500 feet of channel length to verify correct channel dimensions. The reports shall also include data sheets with built elevations of wetlands and wetland and riparian 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 reasonably 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 2. CONSTRUCTION**

The Contractor and construction firm shall implement the construction activities as approved in the final design plan and shall provide all materials and labor to complete such activities.

The Contractor and construction firm shall be responsible for all usual and customary coordination to locate and protect easements and utilities present within the project corridor. The Contractor and construction firm 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 wetland and riparian buffers from elevations shown on final design plan. The Contractor and construction firm, with TNC's approval, may determine that elevations need to be adjusted to ensure proper stream, wetland or buffer function and/or fit with surrounding field conditions. The Contractor and construction firm shall then re-grade these areas to meet the appropriate elevations. If finished grades deviate more than +/-0.1 feet for wetlands and buffers from the plan elevations and the Contractor and construction firm, with TNC approval, determines that the deviation does not compromise the channel,

wetland, or buffer stability or function, additional grading shall not be required. The Contractor and construction firm shall construct and install all stream, wetland, and buffer structures in accordance with the final design plans and specifications.

A mix of temporary stabilizing native seed and permanent native seed shall be applied to all disturbed areas. Biodegradable erosion control matting shall also be installed per approved specifications on all disturbed streambanks, and other areas where needed, immediately following construction.

Soil compaction best management practices will be followed and all disturbed areas (including stockpile and staging areas) shall be restored prior to demobilization providing a final soil condition suitable for planting including loose soil 24-inches minimum depth, and minimal surface soil clods.

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

### **TASK 3. DEVELOPMENT OF AS-BUILT REPORT**

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

If there is any stream construction and the IRT requires it, the Contractor and construction firm shall determine the location, number of, and shall install permanent cross-sections to be used for the as-built surveys and future success monitoring. Cross-sections shall be sufficient in number to show that all design aspects (riffles, pools, etc.) were constructed to design parameters. The cross-sections shall be clearly marked with rebar endpins, stakes (minimum 4 feet tall) identifying the cross-section number/station, and flagging. The cross-sections shall include elevations of channel features such as the thalweg, inner-berm (if present), and bankfull, and shall characterize the floodplain for a reasonable distance. Permanent markers shall be installed at the upstream and downstream termini of the longitudinal profile for the as-built survey and future monitoring. The locations shall be clearly marked with rebar endpins, and stakes (minimum 4 feet tall) identifying the number/station of terminus points.

The Contractor and construction firm 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.

The as-built survey shall be certified by a licensed land surveyor or a licensed professional engineer. The survey shall include the following:

A. Plan view of the wetlands and adjacent buffers. Plan view shall show:

1. Location of all permanent photo stations;
2. Location of all wetlands;
3. Contours of wetland substrates;
4. Live stake and wetland and riparian buffer planting areas (to be provided by the Vegetation Contractor);
5. Invasive species management areas (to be provided by the Vegetation Contractor); and
6. Any Crossings and Access Roads.

- B. Planting area details including species planted, total planting density, and quantity planted by species within each planting area will be provided by the Vegetation Contractor.
- 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, and installed stream structures (structure location, elevation, anchoring, etc.) Show comparison to design profiles and discuss comparison.
- E. Detailed wetlands 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. Show comparison to design cross-sections and discuss comparison.
- F. A table indicating the estimated wetland and buffer credits generated by the project.
- G. In addition to the wetland cross-sections, include 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 in both hardcopy (2 sets) and electronic (pdf and CAD) version.

#### **TASK 4. CORRECTIVE ACTIONS**

Contractor shall provide a warranty against design and construction-related failures that occur within the first 2 years after substantial completion of construction.

***Note: The Conservancy reserves the right to select a different contractor to provide construction oversight and management of the Phase 2 Implementation, including issuance of an RFP specifically for that purpose, in the event the Contractor has not performed satisfactorily for the Phase 1 tasks or if the Conservancy and Contractor are not able to come to terms on a mutually agreeable contract price for the Phase 2 tasks.***

**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, or to comply with TNC’s internal requirements or applicable law.

<b>Contract Number:</b>	
<b>Accounting Information –</b>	
<b>Project Name:</b>	
<b>Project-Award-Activity Number:</b>	
<b>Source of funds:</b>	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:	<a href="mailto:dschenk@tnc.org">dschenk@tnc.org</a>

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. ***The Contractor shall not proceed with tasks beyond Phase 1 Task 5 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 West Creek Conservancy (“WCC”), and which is or will be subject to a conservation easement 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 (the “Contract Fee”) not exceeding \$ \_\_\_\_\_ in accordance with the terms set forth in **Exhibit A**.

(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 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 Section 3.5 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.

**Phase 1 Design**

- Task 1. Site Assessment
- Task 2. Preliminary Design Plans
- Task 3. Management of Phase 2 RFP Bidding Process
- Task 4. Final Design Plans
- Task 5. Acquisition of Permits

**Phase 2 Implementation**

- Task 1. Construction Oversight
- Task 2. Construction
- Task 3. As-Built Report
- Task 4. Corrective Actions

(c) **Withholding by the Conservancy.** Contractor shall provide TNC with a list of all subcontractors and laborers working on the Project, as well as all suppliers of material or equipment for the Project (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. 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 Project). If any claim of lien or other demand for payment or security therefor is made or filed with TNC or as to the Project 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 Project, 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 Project is located 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.

(d) 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 Project, 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 Performance Bond. Contractor shall post a payment and performance bond for the Phase 2 Implementation work. The bond shall be in favor of Contractor and TNC, be in an amount equal to the anticipated cost of the work, and be issued by an issuer and otherwise be in form and substance reasonably acceptable to the Contractor and TNC.

3.2 Clean-Up. The 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.

3.3 Safety. The Contractor shall ensure the Work is performed in a safe manner, and shall give all required notices and comply with all applicable rules, regulations, orders 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 Work, 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.

3.4 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 Work 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 Contractor's Work, 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 or contracted by the subcontractors, as he is for acts and omissions of persons directly employed by himself.

### 3.5 Change Orders.

(a) *TNC Issues Change Order*. By issuing a written order, TNC may require the Contractor to make changes in the Work which are within the general scope of this Contract. Adjustments in the Contract Price, 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 Work, adjustment in the Contract Price and contract time. TNC may by written order direct the Contractor to perform incidental changes in the Work which do not

involve adjustments in the Contact Price or contract time. The Contractor shall promptly implement written orders for such incidental changes.

(b) ***Contractor Issues Change Order.*** If Contractor desires to propose work, materials, or other services outside the scope of the Work, 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 Work. The request from Contractor for a written order for a change in the scope of the Work 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.

3.6 **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.

3.7 **Payment Not Acceptance.** Payment to the Contractor does not constitute or imply acceptance of any portion of the Work.

3.8 **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. It should be noted that nominal adjustments to the stream system that do not adversely affect stream function or the achievement of the required performance standards (each as solely determined by TNC in its reasonable discretion) will not be considered failure for purposes of warranty.

3.9 **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 project 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.

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

#### **4. Conduct on the Property.**

4.1 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 of TNC.

4.2 There shall be no harassment or killing of animals on the Property.

**5. Contract Commencement and Expiration.** 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 once all the Services have been completed and final payment by TNC has been made. Upon such expiration, the parties will have no further rights or obligations under this Contract, except as otherwise provided in **Exhibit B**.

**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. Conflict of Interest Determination.** Contractor represents that to the best of its knowledge the information it has provided on TNC's Disclosure Form, now or up to two years prior to the commencement date of this Contract, is true and correct.

**2. Independent Contractor.** The parties intend this Contract to create an independent contractor-client relationship and Contractor is solely responsible for the conduct and control of the Services and fulfilling its duties and obligations under this Contract. Contractor is not an agent or employee of TNC, and no joint venture or principal-agent relationship exists. Contractor and its employees, if applicable, are not entitled to any of the benefits that TNC provides for its employees. Neither TNC nor Contractor will have any right, power, or authority by virtue of this Contract to create any obligation, express or implied, on behalf of the other.

**3. Performance of Work.** Contractor represents that it is qualified and willing to perform the Services in accordance with the highest standards of Contractor's profession or craft. Contractor will not be paid for any Services found by TNC to be unsatisfactory. The Contractor shall at all times provide protection from weather conditions so as to maintain all work, materials, apparatus and fixtures free from damage. At the end of a day's work, all work likely to be damaged shall be protected and the premises secured. Any work damaged by failure to provide protection as required above shall be replaced with new work at Contractor's expense. TNC's acceptance of and/or payment for the completed work performed by the Contractor, and payment therefor by TNC, shall not relieve the Contractor of its obligation to TNC and the current landowner, which obligation is hereby acknowledged, to discharge any and all liens for the benefit of subcontractors, laborers, material persons, or any other persons performing labor upon, or furnishing material or machinery 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.

**4. Assignment.** Contractor must not assign this Contract without TNC's prior written consent

**5. Termination; Remedies.** TNC may terminate this Contract at any time, in its sole discretion, upon two (2) weeks' notice to Contractor. Should this occur, Contractor must cease all work immediately upon receipt of the termination notice and TNC will pay Contractor for

the Services that have been satisfactorily completed, as determined by TNC, as of the termination date. In addition, if Contractor defaults in the performance of 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 law and/or TNC's policies and standard operating procedures, then TNC may immediately terminate this Contract by notice to Contractor. Should termination occur as a result of Contractor's default, TNC may, without limiting any other remedies available to it under applicable law, recover damages from Contractor resulting from Contractor's default and may offset any amounts payable to Contractor against such damages. TNC will pay to Contractor any remaining balance of such payable amounts.

**6. Liability; Indemnification; Insurance.** Contractor acknowledges and agrees that it is performing the Services entirely at its own risk, and agrees to indemnify, defend, and hold TNC, Community Services, TLPA and their respective directors, officers, employees and agents harmless from and against any and all liabilities, demands, damages, claims, losses, costs, or expenses, including reasonable attorneys' fees, to the extent that they arise out of or result, directly or indirectly, from the negligence, misconduct, breach of warranty, representation, or covenant, or any act or omission by Contractor or any of its employees or agents (including any permitted subcontractors) in performing the Services. Contractor's indemnity and defense obligations under this Contract will survive for a period of three (3) years after the expiration or earlier termination of this Contract with respect to any matters that occurred, or rights that accrued, prior to such expiration or earlier termination. Contractor must also carry, throughout the term of this Contract, one or more insurance policies providing: (a) workers' compensation insurance, as and to the extent required by applicable law; (b) commercial liability insurance written on an occurrence basis, with a liability limit of at least \$5,000,000 per occurrence; (c) motor vehicle liability insurance, covering all owned and non-owned vehicles used in performing the Services, with a liability limit of at least \$2,000,000 per occurrence; and (d) if Contractor is providing consulting services, professional liability insurance written on a claims made basis. Contractor's policy(ies) must be primary insurance to any other valid and collectible insurance available to TNC with respect to any claim arising out Contractor's performance of the Services. If requested by TNC, Contractor must have

TNC named as an additional insured on Contractor's commercial liability insurance policy on a primary, non-contributory basis and provide TNC with evidence that the required coverage is in effect before any work under the Contract commences.

## 7. Intellectual Property Rights.

- A. Works Made for Hire. With the exception of works that are original to or otherwise owned by Contractor prior to the commencement date of this Contract, all right, title, and interest, including copyright, in any reports, studies, photographs, software (including programming codes), drawings, designs, writings, or other works or documents produced in performing the Services, along with all related drafts, versions, and other material created as part of the Services (collectively the "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, through this Contract, unconditionally assigns to TNC and its 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) throughout the world in perpetuity. Contractor further assigns to TNC all rights in any supporting data and material used in creating the Works, if and to the extent that the copyright is not held by others. Contractor also grants to TNC a worldwide, non-exclusive, royalty-free, perpetual license to use any works created or otherwise owned by Contractor prior to the commencement date of this Contract that are used to produce, or are otherwise incorporated into, the Works.
- B. Delivery of Works and Other Documentation. Upon request from TNC, Contractor must deliver to TNC (i) all tangible copies (including digital copies) of the Works or any portion of the Works, supporting data, or material not previously delivered to TNC, and (ii) any further documentation of TNC's ownership of the Works as provided under this Contract as may be requested by TNC.
- C. Authorized Use by Contractor. Contractor may use the Works, supporting data and material only with TNC's prior written consent, and any such use must include an acknowledgment that the Works, supporting data, and material used are the property of TNC. Unless otherwise provided in this Contract, to the extent that any portion of the Works consists of research reports or studies, Contractor may use, publish or distribute that portion of the Works in

academic papers and scientific or academic journals, with or without co-authors, provided that Contractor acknowledges that funding for such research reports or studies was provided by TNC.

- D. Warranty. Contractor warrants to TNC and covenants that (i) the Works will be original to Contractor alone and will not infringe the intellectual property rights of others, and (ii) to the extent that the Works contain any intellectual property owned by others, Contractor has been authorized, by license or otherwise, to assign to TNC the rights described in this Contract.

8. **Use of TNC Name and Logo**. Contractor must not use TNC's name, logo or other intellectual property in any manner, whether in conjunction with the Services or otherwise, except (a) to the extent reasonably necessary in order to perform the Services; (b) in order to deliver invoices or other notices to TNC; and (c) if and to the extent otherwise explicitly stated in this Contract.

9. **Confidential Information**. In performing the Services, Contractor might have access to materials, data, strategies, trade secrets, proprietary information, systems, or other information relating to TNC and its programs that are intended for internal use only. Contractor must not, without TNC's prior written consent, use, publish, or divulge any such information to any person, firm, or corporation, or use it in any advertising or promotion regarding Contractor or Contractor's services, unless required to do so by law or by a court of competent jurisdiction or if such information becomes part of the public domain. Contractor must return to TNC promptly upon completion of the Services any and all TNC confidential information Contractor has in its possession.

10. **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 its employees any U.S. Federal, state, or local income tax or payroll tax of any kind.

11. **Compliance with Laws**. Contractor represents, warrants and agrees as follows, wherever applicable to the performance of the Services: (a) Contractor can lawfully work in the United States; (b) Contractor will obtain, at its own expense (except to the extent otherwise explicitly stated in this Contract) any permits or licenses required to perform the Services; and (c) Contractor will comply with all applicable Ohio Governor Executive Orders; Federal, state and local statutes, laws, ordinances, rules, regulations, court orders, and other governmental requirements of the United States, the state(s) in which the

Services are performed (and the state in which the TNC Business Unit set forth on the first page of this Contract is located, if different), and any other U.S. jurisdiction(s) in which Contractor is organized or authorized to do business. Contractor must not take any actions that might cause TNC to be in violation of any such laws.

**12. Drug Free Workplace.** The 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.

**12. Notices.** Any formal notice, request, or demand made by one of the parties pursuant to this Contract (each, a "Notice") must be in writing and given to the respective named contact above by at least one of the following delivery methods, unless another form of delivery is explicitly required elsewhere in this Contract: (a) in person, (b) certified mail (return receipt requested, postage prepaid), (c) nationally recognized next day delivery service, or (d) electronic mail ("email"). A Notice will be deemed given: (1) immediately, if delivered in person; (2) if sent by certified mail, on the earlier to occur of: (i) the date of first attempted delivery; or (ii) the third business day after being deposited in the mail; (3) if sent by next day delivery service, on the following business day; and (4) if sent by email, on the date it is transmitted, unless the transmission is completed on a non-business day or after 5:00 p.m. in the recipient's time zone, in either of which cases it will be deemed given on the next following business day.

**13. Binding Effect; Amendments.** This Contract will become binding when signed by both parties. This Contract supersedes all prior or contemporaneous communications and negotiations, both oral and written, and constitutes the entire agreement between the parties relating to the activities described in this Contract. No amendment will be effective except in writing signed by both parties.

**14. Governing Law; Forum.** This Contract and claims relating to this Contract, whether based on contract, tort, or other law, will be interpreted, construed and governed by the laws of the state in which the TNC Business Unit set forth on the first page of this Contract is located (excluding such state's choice of law principles, if any), and such other U.S. laws as are applicable. In the event of any litigation over the interpretation or application of any of the terms or provisions of this Contract, the parties agree that litigation will be

conducted in the state in which the TNC Business Unit set forth on the first page of this Contract is located.

**15. 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 will constitute a waiver of that right or remedy or of any other right or remedy under this Contract or under applicable law.

**16. 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.

**17. Counterparts; Facsimile Signatures.** This Contract may be executed in one or more counterparts, each of which will be deemed an original and all of which, taken together, constitute the complete Contract. Facsimile or scanned signatures on this Contract and any related documents, and digital or electronic signatures where authorized under applicable law, will be fully binding for all purposes under this Contract, although any documents that are to be recorded must be executed by both parties with original signatures (and delivered promptly to the party responsible for recording).

**18. Compliance with Anti-Terrorism Laws.** Contractor must not use any funds received under this Contract in violation of any applicable antiterrorist financing and asset control laws, regulations, rules and executive orders, including the USA Patriot Act of 2001 and Executive Order 13224.

*[End of Exhibit B]*

**ATTACHMENT D:  
DISCLOSURE FORM**

The Nature Conservancy

CONFLICT OF INTEREST DISCLOSURE FORM

It is the policy of The Nature Conservancy ("TNC") to identify actual, potential or perceived conflicts of interest in any situation in which TNC has a significant business interest. To assist TNC in complying with this policy, we request that all individuals and/or organizations that will be involved in a proposed transaction with TNC complete this form.

TRANSACTION (TNC staff to complete transaction section)

For Real Estate transactions, describe the property, its size and the type of deal (e.g., purchase or sale, gift, fee, easement, or other).

For all other transactions, describe the type of agreement (e.g., service contract, grant from TNC to grantee, etc.).

Total dollar value of transaction: \$ \_\_\_\_\_

[For cashless barter transactions, provide the value of the benefits being provided each party.]

STEP 1: ORGANIZATION TYPE

Please check the box to indicate the type of party for which this form is being completed, list all individuals and/or organizations that will be involved in this transaction. An "organization" includes a for profit corporation, partnership, trust, estate, joint venture, limited liability corporation, professional corporation or unincorporated entity of any kind, a foundation, public board, commission, and a 501(c)(3) or other charitable organization.

- Individuals (list all, then complete Section 1): \_\_\_\_\_
For Profit Organizations (list all, then complete Section 2): \_\_\_\_\_
Not for Profit Organizations (list all, then complete Section 3): \_\_\_\_\_

STEP 2: QUESTIONS

Complete the applicable section of questions below. Individuals complete Section 1. For Profit Organizations complete Section 2. Not for Profit Organizations complete Section 3. Note: Please refer to the attached list of TNC key employees and current and prior members of TNC's Board of Directors when completing the rest of this form.

Section 1. INDIVIDUALS: Please check all that apply and attach an explanation for any "Yes" answers.

Table with 3 columns: Question, Yes, No. Rows include questions about being a TNC key employee, TNC employee, contributing to TNC, and being a family member.

living quarters under circumstances that closely resemble a marital relationship or who is financially dependent upon the covered person.)		
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**Section 2. FOR PROFIT ORGANIZATIONS:**

Please check all that apply and attach an explanation for any "Yes" answers.

	Yes	No
a. Has the organization made total aggregate contributions to TNC (i) U.S. 5 million or more during the current fiscal year (July 1 – June 30), or (ii) U.S. \$25 million or more, cumulatively, during the current fiscal year and the prior four fiscal years?		
b. Now or at the time of the proposed transaction, does or will any <b>Substantial Contributor</b> (as defined in 1.c.); <b>TNC employee (includes former TNC employee who left within the last 12 months); member of TNC’s Board of Directors or key employees (see list attached); or TNC Chapter Trustee or Advisory Council member (includes former ones who served within the last 12 months)</b> , individually or collectively with other such persons (including <b>Family Members</b> of such persons; see Section 1(d) above for definition of Family Members), <b>own more than 35% of the stock or value of the organization</b> (directly or indirectly), or have the legal or <i>de facto</i> <b>power to exercise a controlling influence over the organization’s management or policies</b> , e.g., as an officer, key management employee, board member or partner?		
c. Now, or at the time of the proposed transaction, have or will any members of <b>TNC’s current Executive Team or Board of Directors</b> (see attached list) serve as: <ul style="list-style-type: none"> <li>• an officer, director, trustee, key employee, or partner; or</li> <li>• if the entity is a limited liability corporation, a member; or</li> <li>• if the entity is a professional corporation, a shareholder?</li> </ul>		

**Section 3. NOT FOR PROFIT ORGANIZATIONS**

Please check all that apply and attach an explanation for any "Yes" Answers.

	Yes	No
a. Now or at the time of the proposed transaction, have or will any <b>Substantial Contributor</b> (as defined in 1.c.); <b>TNC employee (includes former TNC employee who left within the last 12 months); member of TNC’s Board of Directors or key employees (see list attached); Chapter Trustee or Advisory Council member (includes former ones who served within the last 12 months)</b> , or <b>Family Members</b> of any of these, individually or collectively, <b>have the ability to control management of the entity?</b> See Section 1(d) above for definition of Family Members.		

**STEP 3: COMMENTS**

Please explain any "Yes" answers checked above.

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**Individuals who in the current fiscal year (FY20) are or during the preceding five fiscal years have been a Conservancy “key employee” or a member of the Board of Directors:**

**Key Employees**

James Asp  
David Banks  
Charles Bedford  
Michelle Beistle  
Giulio Boccaletti  
Matt Brown  
Maria Damanaki  
Michael Doane  
Andrea Erickson-Quiroz  
Santiago Gowland  
Sherri Hammons  
Wisla Heneghan  
Jack Hurd  
Marianne Kleiberg  
Richard Loomis  
Joyce Ma  
Pascal Mittermaier  
Hugh Possingham  
Aurelio Ramos  
Lynn Scarlett  
Heather Tallis  
Michael Tetreault  
Leonard Williams  
Heather Wishik

**Other/Former Key Employees**

Justin Adams  
Kacky Andrews  
Karen Berky  
Mark Burget  
Mario D’Amico  
Addison Dana  
William Ginn  
Lynne Hale  
Steve Howell  
Peter Kareiva  
Joe Keenan  
Michelle Lakly  
Robert McKim  
Brian McPeek  
Glenn Prickett  
Lois Quam  
Angela Sosdian  
Michael Sweeney

Mark Tercek  
Marc Touitou  
Peter Wheeler  
Janine Wilkin  
Heather Zichal

**Current Board of Directors (FY ‘20)**

Shona L. Brown  
Laurence Fink  
William Frist  
Joseph H. Gleberman  
Harry Hagey  
Margaret Hamburg  
Sally Jewell  
Nancy Knowlton  
Andrew Liveris  
Jack Ma  
Claudia Madrazo  
Craig McCaw

Ana M. Parma  
Douglas Petno  
Vincent Ryan  
Brenda Shapiro  
Thomas J. Tierney  
Moses Tsang  
Frances A. Ulmer  
Margaret C. Whitman  
Ying Wu

**Prior Board Members (FYs ’15-’19)**

Teresa Beck  
David Blood  
Gretchen C. Daily  
Steven A. Denning  
Jeremy Grantham  
Frank E. Loy  
Jane Lubchenco  
Thomas J. Meredith  
Thomas Middleton  
Stephen Polasky  
Roberto Hernández Ramirez  
Muneer A. Satter  
Rajiv Shah  
Mark Tercek  
P. Roy Vagelos

Stephen Polasky  
James E. Rogers  
Vincent Ryan  
Rajiv Shah  
Brenda Shapiro  
Mark Tercek  
Thomas J. Tierney  
Moses Tsang  
Frances A. Ulmer  
Margaret C. Whitman  
Ying Wu

**Prior Board Members (FYs ’14-’18)**

Teresa Beck  
David Blood  
Steven A. Denning  
Jeremy Grantham  
Frank E. Loy  
Jane Lubchenco  
Thomas Middleton  
James C. Morgan  
Roberto Hernández Ramirez  
Muneer A. Satter  
P. Roy Vagelos

**STEP 4: SIGNATURES**

The undersigned certifies that the information in the disclosure form is true and correct to the best of his/her knowledge.

**Signatures for For Profit or Not for Profit Organizations:**

Name of Organization: \_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_  
\_\_\_\_\_

Printed name of person \_\_\_\_\_  
\_\_\_\_\_

Title \_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_  
\_\_\_\_\_

**Signatures for Individuals:**

Signature:

Printed name:

Date:

Signature:

Printed name: