



Protecting nature. Preserving life.

***URBAN FLOOD AND HABITAT RESILIENCE FEASIBILITY STUDY  
FOR LOWER DARBY CREEK WATERSHED (PA)***

**REQUEST FOR PROPOSAL**

***AUGUST 2024***

**CONFIDENTIAL**

Disclose and distribute solely to employees of The Nature Conservancy having a need to know  
and to potential vendors' employees with a need to know.

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## **1. GENERAL ADMINISTRATIVE PROVISIONS**

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### **1.1. Statement of Purpose**

It is the intention of The Nature Conservancy ("Customer") to solicit Proposals for an *Urban Flood and Habitat Resilience Feasibility Study* Vendor. Those receiving this Request for Proposal (RFP) are referred to as "Vendor."

#### **THIS IS NOT AN ORDER.**

THE NATURE CONSERVANCY (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 79 countries and territories around the world.

Since 1951, The Nature Conservancy has been working with communities, businesses and people like you to protect more than 125 million acres of land and 5,000 miles of rivers worldwide. We also operate more than 100 marine conservation projects globally. Our mission is to conserve the lands and waters on which all life depends. Our vision is a world where the diversity of life thrives, and people act to conserve nature for its own sake and its ability to fulfill our needs and enrich our lives. Please see [www.nature.org](http://www.nature.org) for more details on what the Conservancy does and where we work.

### **1.2. TNC's Procurement Process**

Procurement activities will be conducted in a nondiscriminatory manner with fair treatment given to all Vendors. The Conservancy reserves the right to reject any and all offers for any reason whatsoever, to waive technicalities, and to pursue purchasing in a manner that is in the best interest of the organization

### **1.3. Customer's Obligations**

Customer incurs no obligation or liability whatsoever by reason of issuance of this RFP or action by anyone relative thereto.

### **1.4. Vendor's Obligations**

Vendor must analyze and respond to all sections of this RFP providing sufficient information to allow Customer to evaluate the Proposal. Vendor, by submitting its Proposal, agrees that any costs incurred by the Vendor in responding to this RFP, are to be borne by Vendor and may not be billed to Customer.

Vendor's proposal must match the order in which the RFP was submitted or clearly state where the information resides. If Customer has any confusion or difficulty in retrieving the required information from a Vendor's proposal, it may result in such proposal to be disqualified. **Vendor may not have the ability to resubmit their proposal to Customer.**

Customer requests cost reimbursement for the proposal. *If a particular entity is chosen as an award winner and any additional costs are presented at the time of agreement negotiations or implementation, Customer has the right to reject that entity as the contract winner.*

Vendor shall not use the names, logos, images or any data or results arising from the anticipated contract for advertising without Customer's prior written consent.

### 1.5. Vendor Submission Requirements

Submission of Proposal:

Vendor will send its response to this RFP via email. Top candidates may be asked for an interview that may include a presentation.

Address and emails for Vendor's Submission of Proposal:

**The Nature Conservancy**  
**Chris Arnott**  
**555 E. North Lane, Suite 6030**  
**Conshohocken, PA 19428**

**Email:** [christine.arnott@tnc.org](mailto:christine.arnott@tnc.org)

**Phone:** 484.680.6165

### 1.6. Critical Dates

<b>RFP Activities</b>	<b>Due Date</b>
Proposal deadline to TNC	September 13, 2024
Proposal evaluation	September 16 – 27, 2024
Final selection of awardee	September 30, 2024
Contract negotiation with awardee	Begins October 1, 2024

Any question about this RFP must be submitted no later than September 4, 2024 to the TNC staff persons identified above.

Customer will use its best efforts to answer questions by September 9, 2024.

Answers may be shared by e-mail with all Vendors. Vendor understands and agrees that it has a duty to inquire about and clarify any RFP questions that the Vendor does not fully understand or believes may be interpreted in more than one way. Customer, however, is not required to answer all questions that are not pertinent to the RFP or are considered to be Customer's proprietary information.

#### **Review of Proposals:**

Bids will be reviewed and evaluated by The Conservancy based upon each bidder's qualifications, experience, experience within project focus area, demonstrated understanding of the Project, ability to complete the project within the specified time frame, and quoted cost(s). All bidders will be notified of The Conservancy's decision by email (or another form of writing).

### 1.7. Restricted Communications

It is the policy of the Customer 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 Vendors. Therefore, to ensure an ethical evaluation process, all inquiries or other communications regarding this RFP shall be exclusively directed to the Customer's authorized Agent, to the person and location specified in Article 1.5.2 of this RFP. Vendors are hereby expressly instructed

not to otherwise communicate with Customer's officers or employees regarding this RFP. This prohibition is also applicable to Vendors' affiliates, officers, employees, agents, consultants, and subcontractors.

#### **1.8. Disposition of Proposals**

All material submitted in response to this RFP will become the property of the Customer and may be returned only at the option of the Customer and at the expense of the Vendor. Successful and unsuccessful vendors will be notified in writing. The Customer shall not be obligated to detail any of the results of the evaluation.

#### **1.9. Contractual Commitment of Proposal**

The contents of submitted Proposals will be considered obligations of the successful Vendor. No information should be submitted that is not intended to be incorporated into the Proposal and any contract which 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.

#### **1.10. Confidentiality**

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

#### **1.11. Conflict of Interest Disclosures**

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 our Conflict of Interest Disclosure Form. 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 Vendor receives the contract.

Please complete the attached Conflict Inquiry Form and send with your RFP response.

*The information will be kept confidential and given out only on a "need to know" basis.*

## 2. PRODUCT, SERVICE AND PRICING

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### 2.1 Scope of Work

#### Scope of Work

##### **Project Background:**

Vendor will support the *Urban Flood and Habitat Resilience Feasibility Study for Lower Darby Creek Watershed* project. The project will result in a feasibility study for flood resilience and habitat restoration using nature-based solutions in Greater Philadelphia's Lower Darby Creek Watershed (see project focus area map below). This project encompasses several underserved communities in Philadelphia and Delaware Counties, as well as the U.S. Fish & Wildlife Service's John Heinz National Wildlife Refuge at Tinicum (Refuge) and critical regional infrastructure such as the Philadelphia International Airport. Residents in this area are often displaced after large storm events, coupled with high tides and storm surges from Delaware Bay. The Refuge is the nation's first urban wildlife refuge and contains Pennsylvania's largest remnant of freshwater tidal marsh. The project will identify and evaluate nature-based solutions that will support flood risk reduction for communities and habitat restoration for fish and wildlife in the Refuge. TNC anticipates the project will span approximately 24 months from the time of the contract execution.

This project is funded by a 2023 National Fish and Wildlife Foundation (NFWF) National Coastal Resilience Fund (NCRF) grant.

##### **Specific Tasks**

###### *Collect field data to support hydrologic and hydraulic modeling*

Collect field data to support hydrologic and hydraulic modeling, e.g. soil data, topographic elevations, visible utilities and site features, general site conditions, and vegetation. A substantial amount of data for the focus areas has been collected by other agencies (i.e. EPA, US Army Corps of Engineers, Philadelphia Office of Sustainability). Vendor is responsible for collecting and aggregating data from partners, identifying gaps, and filling data gaps needed for H&H modeling to support the project. Vendor will save data in a shared database.

###### *Identify preliminary suite of nature-based solutions, develop alternatives analysis, and create Decision-Making Matrix*

Use hydrologic and hydraulic modeling to develop an alternatives analysis that analyzes performance, cost, constructability, public access opportunities, and ecological restoration potential of a preliminary suite of 12-15 nature-based solutions. Work closely with project partners to leverage community engagement activities (e.g. workshops, listening sessions, site walks) to fill in knowledge gaps and ensure community interests are incorporated, including providing preliminary maps and renderings of nature-based solutions. Provide a qualitative analysis of operations and maintenance considerations. Summarize the alternatives analysis in a matrix format used for decision making. Utilize the Decision-Making Matrix with stakeholders to produce a prioritized list of 6-10 nature-based solutions.

###### *Develop a Roadmap and Story Map*

Develop a Roadmap document that includes renderings and high-level analysis of prioritized nature-based solutions, project photographs, infographics, project timeline and stakeholder feedback, next steps to implementation, and funding opportunities. Vendor will also design, format, and edit an online ArcGIS StoryMap to complement the Roadmap.

###### *Report*

Submit a written interim and final progress report that compares accomplishments to objectives. Create a public-facing Final Report that synthesizes project methods and outcomes, results from the Alternatives Analysis, and detailed steps needed to move the final list of solutions through to implementation.

### Coordinate

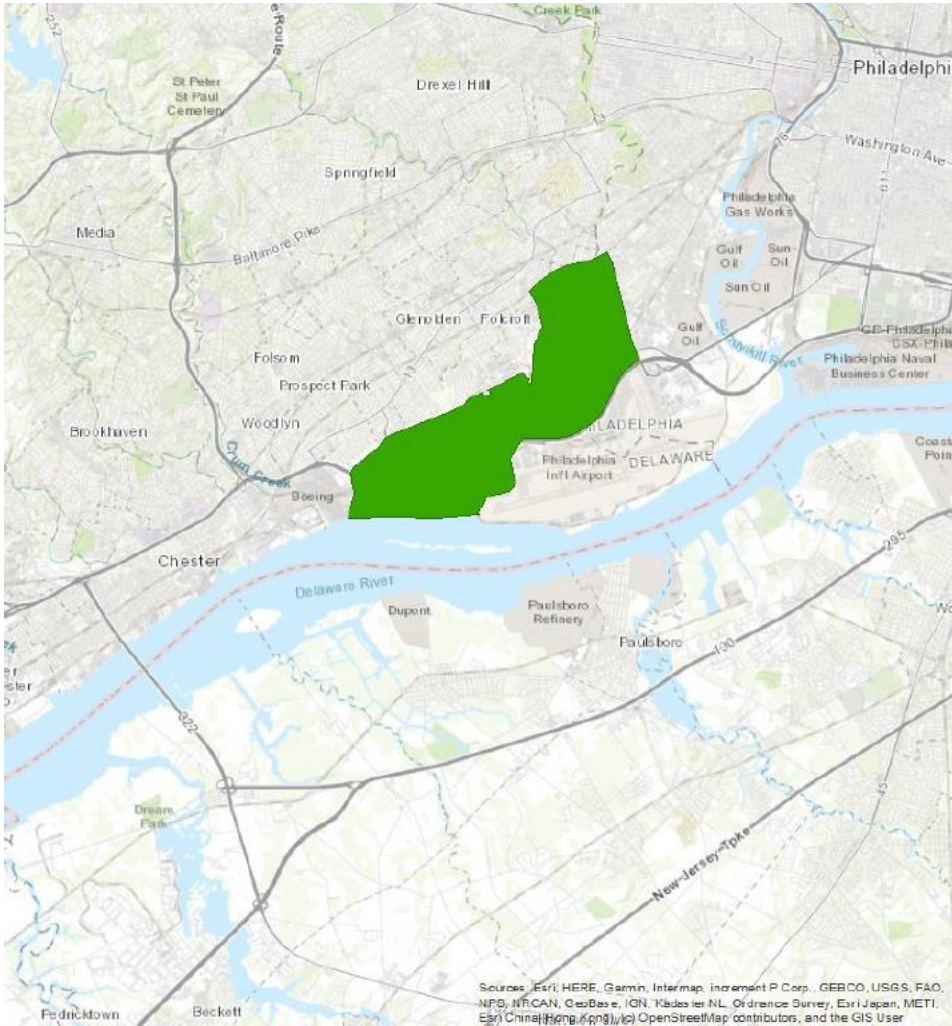
Participate in the co-development of a stakeholder engagement plan.

Participate in project team meetings every two weeks.

Participate in Nature-Based Solutions Working Group meetings every two months.

Participate in the City of Philadelphia's Flood Model Coordination Group once per year.

### Project Focus Area Map



## 2.2 Billing/Reports:

2.2.1 Vendor will be required to submit a Federal W-9 form prior to payment.

2.2.2 Payment specifications will be detailed in actual contract for the Vendor awarded this contract. Requests for payment of the Contract Fee must be submitted to TNC in the form of an invoice itemizing the Services performed or delivered during the invoice period. Invoices will be subject to review and approval by TNC.

## **2.3 Work Plan**

The consultant will design a work plan to address the scope of work and specific tasks outlined in Section 2.1

## **2.4 Pricing/Contract**

- 2.4.1 Please list all net pricing (after discounts) for the tasks outlined in the scope of work.
- 2.4.2 In-Kind Match: Vendors are asked to provide some in-kind match for this project. Amount and type of match to be indicated in proposal.
- 2.4.3 Review attached TNC Standard Contract for Services and express any concerns the Vendor has regarding its terms.

## **2.5 Additional Information**

- 2.5.1 Subcontracting: Any subcontractors must be identified along with the defined work they will perform. The Customer will not refuse a proposal based on the use of subcontractors but does retain the right to refuse the subcontractors selected. Vendor shall remain solely responsible for all subcontracted work. Describe your rationale for using subcontractors.
- 2.5.2 References: Customer requires Vendor to provide at least three (3) references with contact name and phone number if Vendor has not worked with Customer in the past. All references must be contacted by Vendor and give permission for the Customer to make contact.
- 2.5.3 TNC is a non-profit organization. We strive to minimize administrative costs to ensure that maximum dollars goes to our mission. If the Vendor can aid in our efforts by a donation or special pricing, it would be greatly appreciated.

## **2.6 Attachments**

- 2.6.1 Conflict Inquiry Form
- 2.6.2 The Nature Conservancy's Standard Contract for Services
- 2.6.3 U.S Government Laws and Regulations Attachment
- 2.6.4 NFWF 80273- Section 5



**3. VENDOR QUESTIONNAIRE**

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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: \_\_\_\_\_

Federal ID: \_\_\_\_\_

Years in Business: \_\_\_\_\_

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**Customer Information:**

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

\_\_\_\_\_

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**Financial Information**

Indicate your annual sales (in thousands of \$) for the past three (3) years.


What is your company's DUNS Number?

What is your company's Central Contractor Registration (CCR) number? \_\_\_\_\_

Please provide the following supporting documentation as attachments to this questionnaire:

- a. Income Statement
- b. Balance Sheet
- c. Annual Report (if applicable)
- d. Current Certificate of Insurance

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**Employee Information**

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

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**Service Information**

Are there any geographical areas that your company is not able to serve?  
\_\_\_\_\_ YES \_\_\_\_\_ NO

If yes, please list.

\_\_\_\_\_  
\_\_\_\_\_

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**Small, Minority and Women - Owned Business Enterprise**

Please indicate below if your firm is at least 51% minority or women owned, controlled and operated, classified as a small business, or a labor surplus area firm. Identify the % of minority or women ownership.

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**Legal**

If your firm is bonded, please indicate type:

Performance Bond \_\_\_\_\_ YES \_\_\_\_\_ NO  
Labor & Material Payment Bond \_\_\_\_\_ YES \_\_\_\_\_ NO

Are there any judgments, suits or claims pending against your firm?  
\_\_\_\_\_ YES \_\_\_\_\_ NO

If yes, please explain:

\_\_\_\_\_  
\_\_\_\_\_

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

What is the DUNS Number of that firm: \_\_\_\_\_  
What is that firm's Central Contractor Registration (CCR) number? \_\_\_\_\_

## CONFLICT INQUIRY FORM

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

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

<b>SECTION 2. FOR-PROFIT ORGANIZATIONS (explain any “yes” answers in Step 3):</b>	<b>Yes</b>	<b>No</b>
a. Is your organization a Substantial Contributor to TNC?		
b. Now, or at the time of the proposed transaction, to the best of your knowledge, do any of the following (individually or collectively with other such persons) (i) own more than 35% of the stock or value of your organization (directly or indirectly) and/or (ii) have a controlling influence over the organization’s management or policies (ex. key management or board member): <ul style="list-style-type: none"> <li>• TNC employee (or former employee who left within the last twelve (12) months);</li> <li>• TNC Key Employee;</li> <li>• TNC Board Member;</li> <li>• Substantial Contributor to TNC;</li> <li>• TNC Chapter Trustee or Advisory Council Member for TNC or TNC’s related entities (or former trustees/members who left within the last twelve (12) months); and/or</li> <li>• Family members or close relatives of the above individuals.</li> </ul>		
c. Now, or at the time of the proposed transaction, have or will any TNC Key Employees or members of the Board of Directors serve in the following positions of your organization? <ul style="list-style-type: none"> <li>• Officer, director, trustee, key employee, or partner;</li> <li>• Member (if your organization is a limited liability corporation); and/or</li> <li>• Shareholder (if your organization is a professional corporation).</li> </ul>		
<b>SECTION 3. NON-PROFIT ORGANIZATIONS (explain any “yes” answers in Step 3):</b>	<b>Yes</b>	<b>No</b>
a. Now, or at the time of the proposed transaction, do any of the following (individually or collectively with other such persons) have the ability to influence management of the entity: <ul style="list-style-type: none"> <li>• TNC employee (or former employee who left within the last twelve (12) months);</li> <li>• TNC Key Employee;</li> <li>• TNC Board Member;</li> <li>• Substantial Contributor to TNC;</li> <li>• TNC Chapter Trustee or Advisory Council Member for TNC or TNC’s related entities (or former trustees/members who left within the last twelve (12) months); and/or</li> <li>• Family members or close relatives of the above individuals.</li> </ul>		

**STEP 3: COMMENTS (Explain any “yes” answers checked above. Attach additional pages as necessary.)**

**STEP 4: NOTICE OF TNC CODE OF CONDUCT & SIGNATURES**

TNC expects itself and everyone with whom it does business to conduct themselves in ways that are consistent with TNC’s Code of Conduct found at [www.nature.org/codeofconduct](http://www.nature.org/codeofconduct). Anyone (whether a part of TNC or not) may contact the TNC Helpline (anonymously, if desired) with questions, concerns, or suspected violations at [www.nature.org/tnc Helpline](http://www.nature.org/tnc Helpline).

**The undersigned certifies the information in the inquiry form is true and correct to the best of their knowledge.**

<b>Signature:</b>	
<b>Printed Name:</b>	
<b>Title</b> <i>(if for an organization):</i>	
<b>Address:</b>	
<b>Date of Signature:</b>	

**TNC COVERED PERSONS**

The following are individuals who are currently or have been, during the preceding five (5) fiscal years, a TNC “Key Employee” or a member of the Board of Directors of TNC or one of its U.S. Related Entities.

List Current as of April 1, 2024

<u>Current Key Employees/ Officers</u>	<u>Former Key Employees/ Officers</u>	<u>Current Board of Directors</u>	<u>Prior Board Members</u>
Matt Arnold Nathalie Augustin David Banks Neel Broker Matt Brown Jan Glendening Tom Neises Bola Olusanya Asha Shah (interim) Michael Sweeney	James Asp Hans Birle William Ginn Wisla Heneghan Brian McPeek Hugh Possingham Heather Tallis Leonard Williams	James Attwood, Jr. Amy Batchelor John Bernstein Michelle DePass William Frist Harry Hagey Margaret Hamburg Fred Hu Shirley Ann Jackson Sally Jewell Nancy Knowlton Edwin Macharia Jennifer Morris Douglas Petno Sergio Rial Vincent Ryan Brenda Shapiro Anna Skoglund Kent J. Thiry Kevin Weil Ying Wu	Shona L. Brown Gretchen C. Daily Laurence Fink Joseph H. Gleberman Andrew Liveris Jane Lubchenco Jack Ma Claudia Madrazo Craig McCaw Thomas J. Meredith Ana M. Parma Stephen Polasky Rajiv Shah Mark Tercek Thomas J. Tierney Moses Tsang Frances A. Ulmer Margaret C. Whitman

**U.S. Related Entity Covered Persons**

BIN = Blue Investments in Nature; CF&R – Conservation Farms & Ranches

<u>Current Key Employees/ Officers</u>	<u>Former Key Employees/ Officers</u>	<u>Current Board of Directors</u>	<u>Prior Board Members</u>
Leah Carriere (BIN) Jerred Dixon (CF&R) Teela Pejsa (CF&R) Angela Ortegon (CF&R)	Stephen Valdes-Robles (BIN) Charlotte Kaiser (BIN) Felicity Fyfe (CF&R) Ankith Patel (CF&R)	Svetoslav Gatchev (BIN) Melissa Garvey (BIN) Jeffery Schutes (BIN) Mark Kramer (CF&R) Rodd Kelsey (CF&R) Susan North (CF&R) Sandi Matsumoto (CF&R) Ankith Patel (CF&R)	Ann Marie Nemanich (CF&R) Scott Morrison (CF&R) Jason Pelletier (CF&R)

**Other TNC Related Entity Covered Persons (If applicable)**

<b>Key Employees (members of Related Entity leadership team):</b>	<b>Current Fiduciary Board Members, if applicable:</b>



<b>Contract Number:</b>	
<b>TNC Accounting Information</b>	
<b>Project Name:</b>	
<b>Project-Award-Activity #:</b>	
<b>Source of funds:</b>	<input type="checkbox"/> Public Funds <input type="checkbox"/> Private funds <input type="checkbox"/> Private funds with donor restrictions <input type="checkbox"/> Private funds as match for public funds

**CONTRACT FOR SERVICES**

This Contract for Services (the “**Contract**”) is entered into by and between **The Nature Conservancy**, a District of Columbia non-profit corporation (“**TNC**”), through the following U.S. office:

TNC Business Unit Name:	
TNC Business Unit Office Address:	
TNC Contact Name and Title:	
TNC Contact Email Address:	

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

Name of Contractor: (Include DBA, if any)	
Address:	
Telephone:	
Email Address:	
Name of Representative (if applicable):	
Type of Entity (if applicable):	
State of Incorporation (if applicable):	

1. **Services.** TNC engages Contractor to provide the services, goods and/or deliverables (collectively, the “Services”) described in **Exhibit A** (“Description of Services”) in accordance with the terms and conditions of this Contract.
2. **Payment.** TNC will compensate Contractor for the Services by paying a “Contract Fee” as follows:
  - a. **Contract Fee Amount** (inclusive of all taxes; exclusive of reimbursable expenses): US \$ [\$\$\$\$]
  - b. **Contract Fee Payment Schedule:**
    - i. US \$ [\$\$\$\$] – Advance payment upon signature of the Contract by both Parties.
    - ii. US \$ [\$\$\$\$] - Payment One upon receipt and approval by TNC of Product [#].
    - iii. US \$ [\$\$\$\$] - Payment Two upon receipt and approval by TNC of Product [#].
    - iv. US \$ [\$\$\$\$] - Payment Three upon receipt and approval by TNC of Product [#].
  - c. **Reimbursable Expenses:** Contractor agrees to furnish (or reimburse TNC for) all tools, supplies, and materials to accomplish this Contract, and shall incur all expenses associated with performance, except as expressly provided herein. TNC may reimburse the Contractor for specific eligible expenses as follows:
    - None. TNC will not reimburse the Contractor for any expenses.
    - TNC will reimburse the Contractor for the following eligible expenses up to a maximum amount of US \$ [\$\$\$\$ maximum amount here] (inclusive of all taxes): Description of what expenses are eligible for reimbursement or N/A.

- d. **Invoices and Payments.** Unless additional acceptance criteria are defined in Exhibit A, TNC shall provide approval of Services and deliverables within 30 days of receipt. Requests for payment of the Contract Fee must be submitted to TNC in the form of an invoice itemizing the Services performed or delivered during the invoice period. Invoices will be subject to review and approval by TNC, and TNC may deny payment of requests received more than sixty (60) days after the final deadline for the completion of Services. TNC will make all payments either (i) by check, subject to TNC's receipt from Contractor of a properly completed IRS Form W-9, or (ii) via Vendor ACH, subject to Contractor's completion of TNC's Vendor ACH Enrollment Form. Expenses authorized for reimbursement by TNC must be: (i) substantiated by adequate documentation (such as receipts), unless waived in writing by TNC; (ii) reasonable in amount; (iii) related to and in furtherance of the Contract purposes; and (iv) submitted with Contractor's invoices for payment. In the event of early termination of the Contract and upon receipt of any termination notice, with or without cause, Contractor shall not incur any further expenses, without express written consent by TNC. TNC shall not pay any expenses to third parties on behalf of the Contractor.
3. **[Section 3, Option 1 – Flexible Expiration Date:]Term.** This Contract will become effective upon the last signature date below and will expire automatically once all the Services have been completed and final payment by TNC has been made (the "Contract Term"). Contractor must comply with all deadlines in Exhibit A and finalize all Services on or before **[INSERT ANTICIPATED END DATE OF SERVICES]**. Any deadlines set forth herein may be extended only with TNC's prior written consent, which may be provided by email. Time is of the essence in the performance of this Contract.
- [Section 3, Option 2 – Fixed Expiration Date. Term.** This Contract shall become effective upon the last signature date below and expires on **[SPECIFIC EXPIRATION DATE]** (the "Contract Term"). Any deadlines set forth herein may be extended only with TNC's prior written consent, which may be provided by email so long as they remain within the Contract Term. Time is of the essence in the performance of this Contract.
4. **Termination.**
- a. **For Convenience.** TNC may terminate this Contract for convenience at any time upon two weeks' written notice to Contractor. TNC will pay Contractor for the Services that have been satisfactorily performed, as determined by TNC, as of the termination date. Contractor shall submit a final invoice within fourteen days following termination of services.
- b. **For Default.** TNC may immediately terminate this Contract for default by written notice to Contractor if Contractor fails to provide satisfactory Services or deliverables, if the Services or deliverables cannot be performed in accordance with Applicable Laws (defined below) or TNC's policies, or if Contractor fails to perform any material duty, obligation, or covenant under this Contract, whether for circumstances within or beyond Contractor's control. Should termination occur as a result of Contractor's default, TNC may, without limiting any other remedies available to it under Applicable Laws, reduce the fees owed to reasonably account for unsatisfactory completion of the work, or recover damages from Contractor resulting from Contractor's default and offset any amounts payable to Contractor against such damages.
- c. **Refund of Advanced Payments.** Regardless of the reason for termination, to the extent the balance of any advance payments made by TNC exceeds the total payments due to Contractor for Services satisfactorily completed, Contractor must promptly return the excess advance payments within fourteen (14) days.
5. **Conflict of Interest Determination.** Contractor represents and warrants that, to the best of Contractor's knowledge, the information Contractor has provided on TNC's Conflict of Interest Inquiry Form (attached as Exhibit B) is true and correct. If any of the information Contractor has provided changes during the term of this Contract, Contractor agrees to promptly notify TNC in writing of such change. The parties acknowledge that publicly traded companies engaging in the normal course of business, government agencies, and universities are not required to submit a Conflict Inquiry Form.
6. **Independent Contractor Status; No Benefits.**
- [Section 6, Option 1 –Entities.]** The parties intend this Contract to create an independent contractor-client relationship and not an employee-employer relationship. Contractor is solely responsible for the conduct and control of the Services and fulfilling Contractor's duties and obligations under this Contract. Contractor is not an agent or employee of TNC, and no partnership, joint venture, or principal-agent relationship exists. Neither party will have any right, power, or authority by virtue of this Contract to create any obligation, express or implied, on behalf of the other party.
- [Section 6, Option 2 – Individuals.]**



- a. **Independent Contractor.** The parties expressly intend this Contract to create an independent contractor-client relationship and not an employee-employer relationship. Contractor is solely responsible for the conduct and control of the Services and fulfilling Contractor's duties and obligations under this Contract. Contractor is not an agent or employee of TNC, and no partnership, joint venture, or principal-agent relationship exists. Neither party will have any right, power, or authority by virtue of this Contract to create any obligation, express or implied, on behalf of the other party. Contractor warrants and represents that Contractor (i) shall timely file and pay all self-employment taxes and other amounts due with respect to payments received hereunder; (ii) may perform work for other clients during this engagement; and (iii) is customarily engaged in an independently-established trade, occupation, profession, or business.
  - b. **No Benefits.** Contractor acknowledges and agrees, and it is the intent of the parties that neither Contractor nor any employees or subcontractors of Contractor be eligible for or receive any TNC-sponsored benefits as either a contractor or employee. Such non-eligible benefits include, but are not limited to, paid vacation, sick leave, holiday leave, notice prior to dismissal, severance, garden leave, overtime pay, medical insurance, and 401(k) participation. If Contractor is reclassified by a state or federal agency, local authority, or court as an employee, Contractor will become a reclassified employee and will receive no benefits except those mandated by U.S. state or federal law, even if by the terms of TNC's benefit plans in effect at the time of such reclassification Contractor would otherwise be eligible for such benefits on a retroactive or prospective basis.
  - c. **Disclosure.** TNC will not provide unemployment compensation coverage for Contractor. Contractor is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by Contractor or some other entity.
7. **Taxes.** Contractor is responsible for filing and paying its own taxes and for complying with the requirements of any applicable tax laws. TNC will not withhold or pay on behalf of Contractor or any of Contractor's employees any U.S. Federal, state, or local income tax, payroll tax, or any excise, sales, or use tax of any kind. TNC will report to the IRS on Form 1099 all fees paid to Contractor, as and to the extent required by Applicable Laws.
  8. **Performance of Work.** Contractor represents and warrants that Contractor is qualified and will perform the Services in accordance with the highest standards of Contractor's profession or craft. Contractor is responsible for the complete performance of the Services notwithstanding the use of any subcontractors or work performed by anyone else under Contractor's direction or control. Contractor will not be paid for any Services found by TNC to be unsatisfactory.
  9. **Liability; Indemnification.** Contractor agrees that it is entering into this Contract and performing the Services entirely at Contractor's own risk. Contractor, on behalf of Contractor and Contractor's employees, subcontractors, and agents, agrees to indemnify, defend, and hold harmless TNC and its directors, officers, employees, agents, and assigns (collectively, the "Indemnified Parties") from and against any and all liabilities, demands, damages, claims, losses, costs, settlements, judgments, fines, penalties, or expenses, including reasonable attorneys' fees and costs, (collectively, "Claims") that directly or indirectly arise out of, relate to, or result in any way from the performance of this Contract, (including but not limited to reclassification as an employee as describe above) whether or not the Claims have merit, involve third parties, or are caused or alleged to be caused by Contractor or any of the Indemnified Parties; provided, however, that Contractor will not be responsible for Claims arising from the sole negligence, gross negligence, or willful misconduct of any of the Indemnified Parties.
  10. **Insurance.** Prior to commencing the Services and during the Contract Term, Contractor must have and maintain the following insurance policies: (a) workers' compensation insurance coverage as required by Applicable Laws; (b) commercial general liability insurance (including contractual liability if the Contract Fee is \$100,000 or more or if requested by TNC) of at least \$1,000,000 per incident, written on an occurrence basis, and covering the Services that are the subject of this Contract, including any related claims; (c) automobile liability insurance, covering all owned and non-owned vehicles used in performing the Services, with a liability limit of at least \$1,000,000 per occurrence; (d) professional liability insurance in the amount of at least \$1,000,000 if Contractor is providing professional services (such as consulting, engineering, design, appraisal, or surveying services); and (e) umbrella coverage of at least \$4,000,000 if the Contract Fee is \$100,000 or more, or if requested by TNC. Contractor's insurance policies must be primary to TNC's insurance policies. Before any of the Services commence, the foregoing requirements must be evidenced by one or more Certificates of Insurance, showing TNC as an additional named insured and requiring at least 30 days advance written notice to TNC of any cancellation, renewal, reduction in limits, or coverage or other material change of the policies. TNC reserves the right to request additional documentation, such as one or more policy endorsements, deemed reasonably necessary to ensure such requirements have been met.

11. **Work Product; Intellectual Property.** Contractor retains all right, title, and interest in works, inventions, and other intellectual property original to or owned by Contractor prior to the execution of this Contract or created outside the scope of this Contract. If the Services involve the creation of intellectual property including, but not limited to, inventions, concepts, processes, reports, derivative works, studies, photographs, software (including in both object code and source code form), drawings, designs, writings, related drafts, supporting materials, or data (collectively, the "Works"), TNC will own all right, title, and interest, including copyrights, and, if applicable, patent rights, in and to the Works. Contractor agrees that all copyrightable Works are "works made for hire" as defined under the copyright laws of the United States. To the extent that any of the Works are not works made for hire, Contractor unconditionally assigns to TNC and TNC's successors and assigns all right, title, and interest, including copyright, and other intellectual property rights, in and to the Works in all media (whether now known or later developed) worldwide and in perpetuity. Contractor grants to TNC a worldwide, non-exclusive, royalty-free, perpetual license to use, reproduce, distribute, modify, exercise, practice, perform, and exploit any assets subject to Contractor's patents, copyrights, or other intellectual property rights, to the extent that such license is necessary for TNC to enjoy all rights associated with ownership of the Works. Upon request of TNC, Contractor will deliver to TNC all tangible copies (including digital copies) of the Works and will execute and complete all documentation necessary to establish TNC's ownership of the Works. Contractor warrants and covenants that the Works will not infringe on the patent rights, copyrights, or other intellectual property rights of Contractor or third parties.
12. **Use of TNC Name and Logo.** Unless expressly authorized in writing in this Contract or in a separate written agreement, Contractor may not use TNC's name, logo, or other intellectual property in any manner, whether in conjunction with the Services or otherwise, except (a) to deliver invoices or other notices to TNC and (b) within acknowledgements of TNC funding, as authorized in writing by TNC.
13. **Confidential Information.** In performing the Services, Contractor might have access to information, whether verbal, in writing, in electronic format, or in any other tangible form, disclosed by TNC, directly or indirectly, to Contractor that is (a) identified as confidential, or (b) disclosed in a manner in which TNC reasonably communicates, or that Contractor should reasonably have understood, should be treated as confidential, whether or not designated as "confidential" (collectively, "Confidential Information"). Confidential Information includes, without limitation, data sets, personal data (including donor data), marketing plans, research, products, technologies, software source code, software object code, data collection functionalities, trade secrets, pre-publication patent applications, research and development, know-how, and other information relating to TNC and its operations, programs, or systems. Contractor may not publish or divulge any Confidential Information without TNC's prior consent and agrees to use Confidential Information solely in furtherance of the Services. Contractor must use appropriate security procedures to safeguard Confidential Information. Contractor acknowledges and agrees that in the event Contractor receives any personal identifying information (i.e., information that identifies or can be used to identify an individual or that relates to an identified individual), Contractor (i) will be subject to a TNC IT Security review prior to such transfer or exchange and (ii) Contractor will comply with all Applicable Laws relating to the protection of personal identifying information. In addition, Contractor must comply with any additional requirements relating to protection of data as set forth in this Contract and/or as specified in any exhibits to this Contract.
14. **Compliance with Laws and other Safeguards.** Contractor represents, warrants, and agrees that Contractor:
  - a. can lawfully work in the United States and/or the countries where the Services will be performed;
  - b. has or will obtain at Contractor's expense (except to the extent otherwise explicitly stated in this Contract) any permits, licenses, or authorizations required to perform the Services. This includes, without limitation, a property owner's prior permission to enter upon private property and any related permissions for completion of the project;
  - c. will take affirmative steps to inform TNC, prior to signing this Contract, if it is a privately held entity in which a Government Official<sup>1</sup> has equity ownership or, in the case of an individual person providing services as an independent contractor, if the Contractor is a Government Official for any government *other than* a U.S. local, state, or federal government agency;

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

- d. will comply with all statutes, laws, ordinances, executive orders, rules, regulations, court orders, and other governmental requirements for the jurisdiction(s) in which the Services are performed and any other jurisdiction(s) in which Contractor is organized or authorized to do business;
- e. will work with, and require all authorized subcontractors to work with, TNC to identify material risks and develop and implement appropriate environmental and social safeguards (e.g., consistent incorporation of free, prior, and informed consent) when and if the Services could directly impact Indigenous Peoples or Local Communities (IPLCs). Implementations plans must include periodic consultation with TNC;
- f. will not employ any person who is less than 18 years old, unless permissible by applicable laws in the jurisdiction where the Contractor is performing the Services. Under no circumstances shall the Contractor employ any person who is less than 16 years old, *even if* permissible by the applicable laws;
- g. will comply with all applicable anti-bribery or anti-corruption laws and regulations. To that end, Contractor shall not either directly or indirectly, pay, offer, promise to pay, or give anything of value (including any amounts paid by TNC) to any person, including an employee or official of a government, with the reasonable knowledge that it will be used for the purpose of obtaining any improper benefit or to improperly influence any act or decision by such person for the purpose of obtaining, retaining, or directing business. Any amounts paid by TNC to Contractor will be for services actually rendered in accordance with the terms of this Contract. Contractor shall not accept bribes or kickbacks in any form. The Contractor further represents, warrants, and agrees that it has not committed any of the acts prohibited herein or been accused of making or authorizing any acts prohibited herein;
- h. will comply with all applicable counterterrorism, anti-money laundering and economic sanctions laws. To that end, the, Contractor represents and warrants that, to the best of Contractor's knowledge, Contractor and Contractor's subsidiaries, principals, and beneficial owners, if any:
  - i. are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any government agency;
  - ii. (A) are not included on the Specially Designated Nationals and Blocked Persons lists maintained by the U.S. Treasury's Office of Foreign Assets Control, the United Nations Security Council Consolidated List, or similar lists of proscribed entities identified as associated with terrorism; and (B) will not engage in transactions with, or provide resources or support to, any such individuals or organizations or anyone else associated with terrorism;
  - iii. are not a person or entity with whom transacting is prohibited by any trade embargo, economic sanction, or other prohibition of law or regulation; and
  - iv. have not conducted, and will not conduct, their operations in violation of applicable money laundering laws, including but not limited to, the U.S. Bank Secrecy Act and the money laundering statutes of any jurisdictions to which they are subject, and no action or inquiry concerning money laundering by or before any authority is pending;
- i. will comply with all applicable human rights laws, statutes, regulations, and codes as well as any human rights policy, standard operating procedure, guideline, or procedure adopted by TNC and shared with Contractor. Furthermore, in performing the Services, the Contractor shall respect human rights by: (a) identifying, preventing, and mitigating any potential or actual adverse human rights impacts resulting from its activities or the activities of its subcontractors, suppliers, or similar third parties; and (b) remediating any actual adverse human rights impacts which it causes or to which it contributes as soon as is practicable. Finally, the Contractor represents and warrants that neither Contractor nor any of its employees has been found at fault or penalized for any human rights violations or creating an adverse impact on human rights;
- j. will not discriminate against any individual or group based on race, religion, age, sex, national origin, citizenship, disability, sexual orientation, genetic information, or veterans/national guard/military reserve status. If any U.S. government funds are transferred under this Contract, Contractor is also subject to Title VI of the Civil Rights Act of 1964 and related statutes, which prohibit discrimination based on race, color, national origin, age, or disability in federally funded programs;
- k. if the Services involve new construction or alterations of existing structures or facilities, Contractor will ensure that the Services comply with the Americans with Disabilities Act (ADA), including the latest ADA Standards for Accessible Design and any other applicable accessibility requirements arising under federal, state, or local law;

- l. will not take any actions that might cause TNC to be in violation of the laws, statutes, regulations, or similar rules mentioned in this Section (collectively, “Applicable Laws”);
- m. will immediately notify TNC in writing if any of the representations, warranties, certifications, statements, or agreements in this Section change before or during the Contract Term; and
- n. will include provisions at least as restrictive as these in all permitted subcontracts (except for subcontracts purchasing commercially available, off-the-shelf goods or services).

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

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

16. **Miscellaneous Terms and Conditions.**

- a. **Notices.** Any notice, request, or demand made by either party to this Contract must be in writing and must be sent and deemed delivered as follows: (i) in person – delivered immediately; (ii) by mail, postage prepaid, certified (return receipt requested) – delivered three business days after sending; (iii) by a nationally recognized, next-day delivery service with tracking information and requesting next-business day delivery – delivered the next business day; or (iv) email – delivered the next business day.
- b. **Assignment; Subcontracting.** Contractor may not assign this Contract or subcontract any portion of the Services without TNC’s prior written consent, which may be granted via email or by the inclusion of the subcontract description in Exhibit A. TNC’s consent may be granted or withheld in TNC’s sole discretion. In the event a subcontract is approved, Contractor agrees and warrants that: (i) each individual shall be properly classified as either employee or subcontractor, (ii) it will ensure work is satisfactorily performed by said individuals, and (iii) it is fully responsible and liable for the satisfactory performance of all work performed hereunder. Contractor shall remain fully liable for all work by any subcontractors as if such services were performed by Contractor alone.
- c. **Code of Conduct; Helpline.** TNC expects itself and everyone with whom it does business to conduct themselves in ways that are consistent with its TNC’s Code of Conduct found at [www.nature.org/codeofconduct](http://www.nature.org/codeofconduct). Anyone (whether an employee of TNC or not) may contact the TNC Helpline (anonymously, if desired) with questions, concerns, or suspected violations at [www.nature.org/tachelpline](http://www.nature.org/tachelpline).
- d. **Entire Agreement; Amendments; Order of Precedence.** This Contract will become binding when signed by both parties and, together with its exhibits, which are hereby incorporated into and made a part of this Contract, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous communications, both oral and written, between the parties relating to the Services described in this Contract. Unless explicitly stated otherwise in this Contract, no amendment to this Contract, including a change in the Description of Services, will be effective unless in a writing signed by both parties. In the event of a conflict, priority will be given to documents in the following order: (i) provisions in the main body of this Contract; (ii) provisions of any exhibit pursuant to Section 17 below, if applicable; (iii) Description of Services set forth in Exhibit A; and (iv) any additional exhibits or attachments to this Contract.
- e. **Severability; No Waiver.** If any provision of this Contract is found to be invalid by a court of competent jurisdiction, the other provisions will not be affected by that finding. No delay in exercising any right or remedy under this Contract by either party will constitute a waiver of that right or remedy or of any other right or remedy under this Contract or under Applicable Laws.
- f. **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.
- g. **Counterparts.** This Contract may be executed in one or more counterparts, each of which will be deemed an original and all of which will constitute the complete Contract.

- h. **Consent to electronic signatures.** Facsimile or scanned signatures on this Contract and any related documents, and digital or electronic signatures where authorized under Applicable Laws, will be fully binding for all purposes.
  - i. **Authorization to Sign.** Contractor represents and warrants that the person signing this Contract on behalf of Contractor is duly authorized to sign this Contract on Contractor’s behalf.
  - j. **Force Majeure.** This Contract may be immediately terminated by either party by providing written notice to the other party, and TNC shall pay Contractor for all Services that have been satisfactorily performed as of the date of termination, if acts of God, war, terrorism, widespread pandemics, or other similar circumstances make performance of the Contract illegal, commercially impractical, unsafe, or inadvisable.
  - k. **Survival.** The “Liability; Indemnification,” “Confidential Information,” and “Intellectual Property” Sections of this Contract will survive the expiration or earlier termination of the Contract.
17. **Additional Terms and Conditions.** This Contract is further subject to the additional terms and conditions set forth in the following Exhibit C (and subsequent exhibits, in the event more than one option is selected):

- Additional Service Terms and Conditions Exhibit
- Data Protection Agreement [\[Link\]](#)
- U.S. Government Laws and Regulations Exhibit [\[Link\]](#)
- State/Local Government Terms and Conditions Exhibit
- Private Funder Terms and Conditions [\[Link\]](#)
- Other: \_\_\_\_\_
- None

In consideration of the above, TNC and Contractor execute this Contract effective as of the later date of signature below.

**The Nature Conservancy**

**[Contractor’s Name]**

By: (signature) \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

By: (signature) \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title (if applicable): \_\_\_\_\_  
 Date: \_\_\_\_\_

**The Nature Conservancy**

By: (signature) \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Exhibits:**

- Exhibit A: Description of Services
- [\[If applicable\]](#) Exhibit B: Conflict Inquiry Form
- [\[If applicable\]](#) Exhibit C:

**EXHIBIT A**

**Description of Services**

**“Contract Fee”**

**[Alternative 1:] Contract Fee.** For all of the Services, TNC will pay Contractor a fee of \$[INSERT DOLLAR AMOUNT] ([INSERT WRITTEN AMOUNT]) (the “Contract Fee”), which is inclusive of all taxes, once all of the Services have been fully performed, delivered, and accepted by TNC.

**[Alternative 2:] Contract Fee.** For all of the Services, TNC will pay Contractor a fee (the “Contract Fee”) in accordance with the payment terms set forth in Exhibit A, which is inclusive of all taxes.

**[Alternative 3:] Contract Fee.** For all of the Services, TNC will pay Contractor a fee (the “Contract Fee”) not to exceed a maximum total of \$[INSERT DOLLAR AMOUNT] ([INSERT WRITTEN AMOUNT]), paid at the rate of \$[INSERT DOLLAR AMOUNT] ([INSERT WRITTEN AMOUNT]) per [Insert: hour/day/item], based on invoices submitted to TNC. Contractor shall submit one invoice per month for every month Services are rendered, with the final invoice to be submitted within 60 days after the final deadline for completion of the Services. The Contract Fee is inclusive of all taxes.

**[Alternative 4:] Contract Fee.** For all of the Services, TNC will pay Contractor a fee (the “Contract Fee”) not to exceed a maximum total of \$[INSERT DOLLAR AMOUNT] ([INSERT WRITTEN AMOUNT]), in accordance with the cost schedule found in Exhibit A-1, based on invoices submitted to TNC. Contractor shall submit one invoice per month for every month Services are rendered, with the final invoice to be submitted within 60 days after the final deadline for completion of the Services. The Contract Fee is inclusive of all taxes.

**[Alternative 5:]**

**Contract Fee Payment Schedule.** For all of the Services, TNC will pay Contractor a fee (the “Contract Fee”) not to exceed a maximum total of \$[INSERT DOLLAR AMOUNT] ([INSERT WRITTEN AMOUNT]), which is inclusive of all taxes, in accordance with the following schedule and conditions:

#	Description	Amount
1	Payment upon receipt and approval by TNC of Product [corresponding # or letter from the product’s description in Exhibit A]	
2	Payment upon receipt and approval by TNC of Product [corresponding # or letter from the product’s description in Exhibit A]	
3	Payment upon receipt and approval by TNC of Product [corresponding # or letter from the product’s description in Exhibit A]	
[#]	Variable Payment: TNC will pay the Contractor [\$\$\$\$] per [unit of measurement – hour, word, output, etc.] dedicated to [description of the variable product, such as “draft revisions”] as requested by TNC. The Contractor shall submit one invoice per month for each month that Services are rendered for this deliverable, detailing the Services provided and corresponding rate. The maximum amount allowed for the sum of all units dedicated to this deliverable is [\$\$\$\$]. If TNC requests Services that cause the Contractor to exceed this maximum amount, the Contractor shall immediately notify TNC and, if mutually desired, the parties shall enter into a formal amendment, signed by both Parties, to increase this maximum amount for this deliverable.	Maximum Amount for Variable Payments:
--	Total Contract Fee minus variable payment budget:	
	Maximum Value of Variable Payment:	
	Total Maximum Contract Fee:	

**EXHIBIT B**  
**Conflict Inquiry Form**

## EXHIBIT C [IF APPLICABLE]

**11. Intellectual Property.** The Contractor owns the copyright to all creative works it produces under this Contract (the “Works”). In consideration of the payments set forth in this Contract, Contractor hereby grants to TNC and its agents, related entities, successors, licensees, and assigns (collectively, “Licensed Parties”) a worldwide, perpetual, irrevocable, fully paid license to reproduce, modify, distribute copies of, publish, exhibit, publicly display, digitize, publicly perform, exploit, store, sublicense, prepare derivative works based upon, import, and otherwise use the Works (including without limitation any of their parts and elements) as frequently as the Licensed Parties in their sole discretion determine and in any manner or medium the Licensed Parties deem fit, including but not limited to TNC owned and operated social media properties, in any and all forms and media now known or hereafter created (the “License”).

- a. **Contractor Restrictions.** Although Contractor will retain the copyright ownership in the Works (subject to the license granted herein), the following restrictions to Contractor’s use of the Works apply: (i) **Identifiable Individuals:** Contractor agrees that Contractor will not use, nor will Contractor authorize or permit any third party to use Works (or any portion thereof) showing or depicting identifiable employees, officers, trustees, or board members of the Licensed Parties at any time unless Contractor obtains prior written consent from TNC. (ii) **Model Release.** If applicable, Contractor shall obtain the model release set forth in Exhibit C to this Contract (“**TNC Model Release**”), which is attached hereto and incorporated herein by this reference, from all identifiable persons who appear or are depicted or referred to in the Works. Contractor shall submit each TNC Model Release to TNC no later than fifteen (15) days after the Term of this Contract. (iii) **TNC Property:** Contractor agrees that it will not use, nor will Contractor authorize or permit any third party to use Works that contains the trademark(s), name(s), logo(s) or other proprietary materials of any of the Licensed Parties, without the prior written approval of the applicable Licensed Party.
- b. **Third Party Use:** Contractor releases TNC from any and all liability associated with third parties’ unauthorized use of the Works.
- c. **Representations and Warranties.** Contractor represents and warrants that: (i) Contractor is the exclusive owner of the entirety of the rights in the Works and that Contractor has full authorization and authority to enter into this Contract and grant the licenses herein; (ii) The Works (A) are Contractor’s original works of authorship, (B) are free of any claims of any nature and by any third party, (C) do not infringe any intellectual property rights of anyone, and (D) that TNC’s use of the Works will not infringe or violate the rights of any third party, including any rights of privacy or publicity; (iii) Contractor has obtained or will obtain all necessary permissions, authorizations, licenses, and releases for creating and licensing the Works.
- d. **Moral Rights and Attribution.** TNC will endeavor to credit Contractor for Works when practicable. Notwithstanding the foregoing, Contractor hereby waives to the maximum extent permissible by law the benefit of any provision of law known as droit moral or moral rights or any similar or analogous law or decision in any country of the world. Contractor further waives any right to attribution, and the Licensed Parties shall have no obligation to publish the Works with visible attribution to Contractor, however, TNC will endeavor to credit all photographs when practicable.
- e. **[Optional] Exclusivity:** Contractor agrees that Contractor will not use, nor will Contractor authorize or permit any third party to use any of the Works (or any portions thereof) in any manner or media now known or hereafter devised until the expiration of the “**Exclusivity Period**” defined as the period commencing on the effective date of this Contract and ending on date to be determined at the commencement of the shooting period. This clause does not prevent the Contractor from providing services to other clients.
- f. **[Optional.] Corporate Partner Use.** TNC may work to spread and advance its mission with for-profit companies (“**Corporate Partners**”). TNC may, in its sole discretion, sublicense the Works to one or more Corporate Partner(s). Notwithstanding the license set forth herein, and without any further limitation, Contractor grants the Licensed Parties a worldwide, perpetual, irrevocable, fully paid license to sublicense the Works to the Corporate Partners for the limited purpose to publicly communicate and promote its partnership with TNC on the web, in print, and on social media. No Corporate Partner will be authorized to use the Works for its own commercial use.



## U.S. Government Laws and Regulations Attachment

**U.S. GOVERNMENT LAWS AND REGULATIONS.** Contractor understands that this Contract will be funded by U.S. Government funding and that Contractor shall be responsible for ensuring that all work/travel is carried out in compliance with any pertinent regulations and laws including but not limited to those listed below.

**A. RECORD RETENTION.** Financial records, supporting documents, statistical records, and all other records pertinent to this Contract shall be retained by Contractor for a period of three years from the date of submission of the final expenditure report. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

**B. ACCESS TO RECORDS.** TNC, the U.S. Federal entity providing the funding from which this Contract will be paid, the Comptroller General of the United States, or any of their duly authorized representatives, shall have the right of timely and unrestricted access to any books, documents, papers, and other records of Contractor that are pertinent to the Contract for the purpose of making audits, examinations, excerpts, copies, and transcriptions. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

**C. DEBARMENT AND SUSPENSION.** No contract shall be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**D. CONTRACTOR LIABILITY.** Contractor assumes sole responsibility for reimbursement to the Conservancy or the U.S. Federal Government, whichever is appropriate, of a sum of money equivalent to the amount of any expenditures disallowed should TNC, the U.S. Federal entity providing funding, or any authorized agency rule, through audit exception or some other appropriate means, that expenditures from funds allocated to Contractor were not made in compliance with the provisions of this Contract.

### **E. TRAFFICKING IN PERSONS.**

- (a) Contractor (including its officers, directors, employees and agents) must not -
  - (i) Engage in severe forms of trafficking in persons during the Contract Term;
  - (ii) Procure a commercial sex act during the Contract Term; or
  - (iii) Use forced labor in the performance of the Contract or in any subcontracts.
- (b) TNC may unilaterally terminate this Contract, without penalty, if Contractor is determined by TNC to have violated this provision through:
  - (i) Conduct that is either associated with performance under this Contract;
  - (ii) Conduct imputed to Contractor or his subcontractor.
- (c) Other Requirements:
  - (i) Contractor shall inform TNC immediately of any information received from any source alleging a violation of a prohibition in paragraph (a)(i) of this provision.
  - (ii) Contractor shall include the requirements of this provision in any subcontract made under this Contract.
- (d) Definitions. For purposes of this provision:
  - (i) "Employee" means either:

A. An individual employed by Contractor or a subcontractor who is engaged in the performance of the project or program under this Contract; or

B. Another person engaged in the performance of the project or program under this Contract and not compensated by Contractor, including, but not limited to, a volunteer or individual whose services are contributed by a third party.

(ii) "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(iii) "Severe forms of trafficking in persons" means (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(iv) "Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

(v) "Coercion" means (a) threats of serious harm to or physical restraint against any person; (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (c) the abuse or threatened abuse of the legal process.

**F. CONSTRUCTION, REPAIR and FACILITIES IMPROVEMENTS.** If the activities funded by this contract involve construction, repair or facilities improvements, the following provisions may apply:

1. Davis-Bacon Act. If the value of this contract exceeds \$2,000, and if required by the U.S. Federal funding agency, Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141 – 3144 and 3146 - 3148) and as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction").
2. Federal Contractor Minimum Wage Requirement. If this contract is subject to the Davis-Bacon Act, the Service Contract Act, or is otherwise in connection with Federal property, land, or services to federal employees, Executive Order 13658 applies and all hourly/nonexempt employees directly working on this contract or performing support services must be paid the Federal Contractor Minimum Wage rate as established by the Department of Labor each year. This minimum wage requirement is subject to change, and Contractor must ensure that staff and any subcontractors are paid the minimum wage that is in effect.
3. Copeland Anti-Kickback Act. In any construction or repair contract, Contractor shall comply with the Copeland Anti-Kickback Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").
4. For construction or facility improvement contracts exceeding \$150,000 Contractor shall follow its own bid guarantee, performance bond, and payment bond requirements. For those contracts exceeding \$150,000, in situations where the Conservancy does not examine Contractor's bid guarantee and bonding requirements and has not notified Contractor that the U.S. Federal Government's interest is adequately protected, Contractor shall comply with 2 CFR 200.325.
5. Equal Opportunity. If this Contract meets the definition of a "federally assisted construction contract" as described in 41 CFR Part 60-1.3, Contractor must comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal

Employment Opportunity" and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**G. BYRD RULE ANTI-LOBBYING AMENDMENT.** If the value of this agreement exceeds \$100,000, Contractor shall certify, to the best of Contractor's knowledge and belief, that:

1. No U.S. Federal appropriated funds have been paid or will be paid, by Contractor or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any U.S. Federal contract, the making of any U.S. Federal grant, the making of any U.S. Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any U.S. Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than U.S. Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection the underlying U.S. Federal award, Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. Contractor shall require that the language of this certification be included in the award documents for all subcontracts under this Contract and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**H. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** If the value of this agreement exceeds \$100,000 and the activities require the employment of mechanics or laborers, Contractor shall comply the Contract Work Hours and Safety Standards Act (40 U.S.C. 3702 and 3704.), as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

**I. CLEAN AIR ACT.** If the value of this agreement exceeds \$150,000, the Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**J. INVENTIONS.** If the work to be done under this contract involves the performance of experimental, developmental, or research work, Contractor shall comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

## U.S. Government Laws and Regulations Attachment

**U.S. GOVERNMENT LAWS AND REGULATIONS.** Contractor understands that this Contract will be funded by U.S. Government funding and that Contractor shall be responsible for ensuring that all work/travel is carried out in compliance with any pertinent regulations and laws including but not limited to those listed below.

**A. RECORD RETENTION.** Financial records, supporting documents, statistical records, and all other records pertinent to this Contract shall be retained by Contractor for a period of three years from the date of submission of the final expenditure report. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

**B. ACCESS TO RECORDS.** TNC, the U.S. Federal entity providing the funding from which this Contract will be paid, the Comptroller General of the United States, or any of their duly authorized representatives, shall have the right of timely and unrestricted access to any books, documents, papers, and other records of Contractor that are pertinent to the Contract for the purpose of making audits, examinations, excerpts, copies, and transcriptions. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

**C. DEBARMENT AND SUSPENSION.** No contract shall be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**D. CONTRACTOR LIABILITY.** Contractor assumes sole responsibility for reimbursement to the Conservancy or the U.S. Federal Government, whichever is appropriate, of a sum of money equivalent to the amount of any expenditures disallowed should TNC, the U.S. Federal entity providing funding, or any authorized agency rule, through audit exception or some other appropriate means, that expenditures from funds allocated to Contractor were not made in compliance with the provisions of this Contract.

### **E. TRAFFICKING IN PERSONS.**

(a) Contractor (including its officers, directors, employees and agents) must not -

- (i) Engage in severe forms of trafficking in persons during the Contract Term;
- (ii) Procure a commercial sex act during the Contract Term; or
- (iii) Use forced labor in the performance of the Contract or in any subcontracts.

(b) TNC may unilaterally terminate this Contract, without penalty, if Contractor is determined by TNC to have violated this provision through:

- (i) Conduct that is either associated with performance under this Contract;
- (ii) Conduct imputed to Contractor or his subcontractor.

(c) Other Requirements:

- (i) Contractor shall inform TNC immediately of any information received from any source alleging a violation of a prohibition in paragraph (a)(i) of this provision.

(ii) Contractor shall include the requirements of this provision in any subcontract made under this Contract.

(d) Definitions. For purposes of this provision:

(i) "Employee" means either:

A. An individual employed by Contractor or a subcontractor who is engaged in the performance of the project or program under this Contract; or

B. Another person engaged in the performance of the project or program under this Contract and not compensated by Contractor, including, but not limited to, a volunteer or individual whose services are contributed by a third party.

(ii) "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(iii) "Severe forms of trafficking in persons" means (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(iv) "Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

(v) "Coercion" means (a) threats of serious harm to or physical restraint against any person; (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (c) the abuse or threatened abuse of the legal process.

**F. CONSTRUCTION, REPAIR and FACILITIES IMPROVEMENTS.** If the activities funded by this contract involve construction, repair or facilities improvements, the following provisions may apply:

1. Davis-Bacon Act. If the value of this contract exceeds \$2,000, and if required by the U.S. Federal funding agency, Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141 – 3144 and 3146 - 3148) and as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction").
2. Federal Contractor Minimum Wage Requirement. If this contract is subject to the Davis-Bacon Act, the Service Contract Act, or is otherwise in connection with Federal property, land, or services to federal employees, Executive Order 13658 applies and all hourly/nonexempt employees directly working on this contract or performing support services must be paid the Federal Contractor Minimum Wage rate as established by the Department of Labor each year. This minimum wage requirement is subject to change, and Contractor must ensure that staff and any subcontractors are paid the minimum wage that is in effect.
3. Copeland Anti-Kickback Act. In any construction or repair contract, Contractor shall comply with the Copeland Anti-Kickback Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

4. For construction or facility improvement contracts exceeding \$150,000 Contractor shall follow its own bid guarantee, performance bond, and payment bond requirements. For those contracts exceeding \$150,000, in situations where the Conservancy does not examine Contractor's bid guarantee and bonding requirements and has not notified Contractor that the U.S. Federal Government's interest is adequately protected, Contractor shall comply with 2 CFR 200.325.
5. Equal Opportunity. If this Contract meets the definition of a "federally assisted construction contract" as described in 41 CFR Part 60-1.3, Contractor must comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity" and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**G. BYRD RULE ANTI-LOBBYING AMENDMENT.** If the value of this agreement exceeds \$100,000, Contractor shall certify, to the best of Contractor's knowledge and belief, that:

1. No U.S. Federal appropriated funds have been paid or will be paid, by Contractor or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any U.S. Federal contract, the making of any U.S. Federal grant, the making of any U.S. Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any U.S. Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than U.S. Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection the underlying U.S. Federal award, Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. Contractor shall require that the language of this certification be included in the award documents for all subcontracts under this Contract and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**H. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** If the value of this agreement exceeds \$100,000 and the activities require the employment of mechanics or laborers, Contractor shall comply the Contract Work Hours and Safety Standards Act (40 U.S.C. 3702 and 3704.), as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

**I. CLEAN AIR ACT.** If the value of this agreement exceeds \$150,000, the Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**J. INVENTIONS.** If the work to be done under this contract involves the performance of experimental, developmental, or research work, Contractor shall comply with the requirements of 37 CFR Part 401,

“Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

## **SECTION 5 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS RELATING TO FEDERAL FUNDS – FUNDING SOURCE SPECIFIC**

NFWF Subrecipient acknowledges that when all or part of this Agreement is funded by a federal award that certain representations, certifications, and other statements relating to the use of such funds or performance of the Project may be necessary. These representations, certifications and other statements are set forth below. Unless otherwise stated in this Agreement, the execution and submission of this Agreement serves as affirmative acknowledgement of an agreement with the below representations, certifications, and other statements. Further, should circumstances of the NFWF Subrecipient change during the performance of this Agreement that would render one of these representations, certifications and/or other statements inaccurate, invalid or incorrect, the NFWF Subrecipient shall promptly notify NFWF of such change in circumstance. Finally, NFWF reserves the right to update and require subsequent acknowledgement of an agreement with new or revised representations, certifications, and other statements at no additional cost under this Agreement.

### **FC.R520 Grant Terms**

#### **Department of Commerce (DOC) Compliance Requirements.**

The NFWF Subrecipient must comply with the terms and conditions of a DOC financial assistance award, including applicable provisions of the OMB Uniform Guidance (2 C.F.R. Part 200), and all associated Terms and Conditions set forth in the Department of Commerce Financial Assistance Standard Terms and Conditions Dated November 12, 2020, available at [http://www.osec.doc.gov/oam/grants\\_management/policy/](http://www.osec.doc.gov/oam/grants_management/policy/). See 2 C.F.R. § 200.101(b)(1) (Applicability), which describes the applicability of 2 C.F.R. Part 200 to various types of Federal awards and §§200.331-333 (Subrecipient monitoring and management). Additionally, the NFWF Subrecipient must flow these requirements down to all subrecipients and contractors, including lower tier subrecipients.

#### **Field Work.**

The NFWF Subrecipient is required to follow recognized best practices for minimizing impacts to the human and natural environment when applicable and will provide for safety in their projects as needed, including addressing the safety of personnel, associates, visitors, and volunteers in their projects. In addition, any use of unoccupied aircraft systems in projects under this award must be in compliance with all applicable Federal Aviation Administration regulations, and any other applicable federal, state, or local regulations.

#### **Required Use of American Iron, Steel, Manufactured Products, and Construction Materials.**

If applicable, and pursuant to the Infrastructure Investment and Jobs Act (“IIJA”), Pub.L. No. 117-58, which includes the Build American, Buy American (BABA) Act, Pub. L. No. 117-58, §§ 70901-52 and OMB M-22-11, recipients of an award of Federal financial assistance from the Department of Commerce (DOC) are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless: (1) all iron and steel used in the project are produced in



the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project. This requirement also applies to subrecipients.

Waivers: When necessary, recipients may apply for, and DOC may grant, a waiver from these requirements. DOC will notify the recipient for information on the process for requesting a waiver from these requirements. When DOC has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which DOC determines that: a. applying the domestic content procurement preference would be inconsistent with the public interest; b. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or c. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. A request to waive the application of the domestic content procurement preference must be in writing. DOC will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [whitehouse.gov/omb/management/made-in-america](https://www.whitehouse.gov/omb/management/made-in-america).

Definitions: “Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives —that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinyl chloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall. “Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States. “Infrastructure” includes, at a minimum, the structures, facilities, and equipment

for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy. "Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States. -- 1 Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives. 2 IJA, § 70917(c)(1).

### **Implementation of Domestic Sourcing Requirements**

Prior to initiation of any construction that may arise in this award, the NFWF Subrecipient is required to inform NFWF whether it is using iron, steel, manufactured products, or construction materials as described in "Required Use of American Iron, Steel, Manufactured Products, and Construction Materials" above. In addition, the NFWF Subrecipient is required to inform NFWF whether those materials are produced or manufactured in the United States, or alternatively, it is requesting one or more waivers, as described in the award condition.

### **Data Sharing Directive.**

The Data and Publication Sharing Directive for NOAA Grants, Cooperative Agreements, and Contracts ensures that environmental data funded extramurally by NOAA are made publicly accessible in a timely fashion (typically within two years of collection), and that final manuscripts of peer-reviewed research papers are deposited with the NOAA Central Library (upon acceptance by the journal, or no later than at time of publication). Therefore, non-Federal entities, or recipients, must make data produced under financial assistance publicly accessible in accordance with the Data Management Plan included with the Proposal, unless the grant program grants a modification or an exemption. The text of the Directive is available at <https://nosc.noaa.gov/EDMC/PD.DSP.php>.

- a. Data Sharing: Environmental data collected or created under this Grant, Cooperative Agreement, or Contract must be made publicly visible and accessible in a timely manner, free of charge or at minimal cost that is no more than the cost of distribution to the user, except where limited by law, regulation, policy, or national security requirements. Data are to be made available in a form that would permit further analysis or reuse: data must be encoded in a machine-readable format, preferably using existing open format standards; data must be sufficiently documented, preferably using open metadata standards, to enable users to independently read and understand the data. The location (internet address) of the data should be included in the final report. Pursuant to NOAA Information Quality Guidelines, data should undergo quality control (QC) and a description of the QC process and results should be referenced in the metadata. Failure to perform quality control does not constitute an excuse not to share data. Data without QC are considered "experimental products" and their dissemination must be accompanied by explicit limitations on their quality or by an indicated degree of uncertainty.

- b. Timeliness: Data accessibility must occur no later than publication of a peer-reviewed article based on the data, or two years after the data are collected and verified, or two years after the original end date of the grant (not including any extensions or follow-on funding), whichever is soonest, unless a delay has been authorized by the NOAA funding program.
- c. Disclaimer: Data produced under this award and made available to the public must be accompanied by the following statement: "These data and related items of information have not been formally disseminated by NOAA, and do not represent any agency determination, view, or policy."
- d. Failure to Share Data: Failing or delaying to make environmental data accessible in accordance with the submitted Data Management Plan, unless authorized by the NOAA Program, may lead to enforcement actions, and will be considered by NOAA when making future award decisions. Funding recipients are responsible for ensuring these conditions are also met by sub-recipients and subcontractors.
- e. Funding acknowledgement: Federal funding sources shall be identified in all scholarly publications. An Acknowledgements section shall be included in the body of the publication stating the relevant Grant Programs and Award Numbers. In addition, funding sources shall be reported during the publication submission process using the FundRef mechanism (<http://www.crossref.org/fundref/>) if supported by the Publisher.
- f. Manuscript submission: The final pre-publication manuscripts of scholarly publications produced with NOAA funding shall be submitted to the NOAA Institutional Repository at <http://library.noaa.gov/repository> after acceptance, and no later than upon publication, of the paper by a journal. NOAA will produce a publicly-visible catalog entry directing users to the published version of the article. After an embargo period of one year after publication, NOAA shall make the manuscript itself publicly visible, free of charge, while continuing to direct users to the published version of record.
- g. Data Citation: Publications based on data, and new products derived from source data, must cite the data used according to the conventions of the Publisher, using unambiguous labels such as Digital Object Identifiers (DOIs). All data and derived products that are used to support the conclusions of a peer-reviewed publication must be made available in a form that permits verification and reproducibility of the results.

#### **Scientific Integrity.**

- a. *Maintaining Integrity.* The NFWF Subrecipient shall maintain the scientific integrity of research performed pursuant to this grant or financial assistance award including the prevention, detection, and remediation of any allegations regarding the violation of scientific integrity or scientific and research misconduct, and the conduct of inquiries, investigations, and adjudications of allegations of violations of scientific integrity or

scientific and research misconduct. All the requirements of this provision flow down to subrecipients.

- b. *Peer Review.* The peer review of the results of scientific activities under a NOAA grant, financial assistance award, or cooperative agreement shall be accomplished to ensure consistency with NOAA standards on quality, relevance, scientific integrity, reproducibility, transparency, and performance. NOAA will ensure that peer review of "influential scientific information" or "highly influential scientific assessments" is conducted in accordance with the Office of Management and Budget (OMB) Final Information Quality Bulletin for Peer Review and NOAA policies on peer review, such as the Information Quality Guidelines.
- c. In performing or presenting the results of scientific activities under the NOAA grant, financial assistance award, or cooperative agreement and in responding to allegations regarding the violation of scientific integrity or scientific and research misconduct, the NFWF Subrecipient and all subrecipients shall comply with the provisions herein and NOAA Administrative Order (NAO) 202-735D, Scientific Integrity, and its Procedural Handbook, including any amendments thereto. That Order can be found at <https://nrc.noaa.gov/ScientificIntegrityCommons.aspx>.
- d. *Primary Responsibility.* The NFWF Subrecipient shall have the primary responsibility to prevent, detect, and investigate allegations of a violation of scientific integrity or scientific and research misconduct. Unless otherwise instructed by the grants officer, the recipient shall promptly conduct an initial inquiry into any allegation of such misconduct and may rely on its internal policies and procedures, as appropriate, to do so.
- e. By executing this grant, financial assistance award, or cooperative agreement the NFWF Subrecipient provides its assurance that it has established an administrative process for performing an inquiry, investigating, and reporting allegations of a violation of scientific integrity or scientific and research misconduct; and that it will comply with its own administrative process for performing an inquiry, investigation, and reporting of such misconduct.
- f. The NFWF Subrecipient shall insert this provision in all subawards at all tiers under this grant, financial assistance award, or cooperative agreement.

## FC.R561 - Grant Terms

### **Department of Commerce (DOC) Compliance Requirements.**

The NFWF Subrecipient must comply with the terms and conditions of a DOC financial assistance award, including applicable provisions of the OMB Uniform Guidance (2 C.F.R. Part 200), and all associated Terms and Conditions set forth in the Department of Commerce Financial Assistance Standard Terms and Conditions Dated November 12, 2020, available at [https://www.commerce.gov/sites/default/files/2020-11/DOC%20Standard%20Terms%20and%20Conditions%20-%2012%20November%202020%20PDF\\_0.pdf](https://www.commerce.gov/sites/default/files/2020-11/DOC%20Standard%20Terms%20and%20Conditions%20-%2012%20November%202020%20PDF_0.pdf). See 2 C.F.R. § 200.101(b)(1) (Applicability), which describes the applicability of 2 C.F.R. Part 200 to various types of Federal awards and §§200.331-333 (Subrecipient monitoring and management). Additionally, the NFWF Subrecipient must flow these requirements down to all subrecipients and contractors, including lower tier subrecipients.

### **Data Sharing Directive.**

The Data and Publication Sharing Directive for NOAA Grants, Cooperative Agreements, and Contracts ensures that environmental data funded extramurally by NOAA are made publicly accessible in a timely fashion (typically within two years of collection), and that final manuscripts of peer-reviewed research papers are deposited with the NOAA Central Library (upon acceptance by the journal, or no later than at time of publication). Therefore, non-Federal entities, or recipients, must make data produced under financial assistance publicly accessible in accordance with the Data Management Plan included with the Proposal, unless the grant program grants a modification or an exemption. The text of the Directive is available at <https://nosc.noaa.gov/EDMC/PD.DSP.php>.

- a) Data Sharing: Environmental data collected or created under this Grant, Cooperative Agreement, or Contract must be made publicly visible and accessible in a timely manner, free of charge or at minimal cost that is no more than the cost of distribution to the user, except where limited by law, regulation, policy, or national security requirements. Data are to be made available in a form that would permit further analysis or reuse: data must be encoded in a machine-readable format, preferably using existing open format standards; data must be sufficiently documented, preferably using open metadata standards, to enable users to independently read and understand the data. The location (internet address) of the data should be included in the final report. Pursuant to NOAA Information Quality Guidelines, data should undergo quality control (QC) and a description of the QC process and results should be referenced in the metadata. Failure to perform quality control does not constitute an excuse not to share data. Data without QC are considered “experimental products” and their dissemination must be accompanied by explicit limitations on their quality or by an indicated degree of uncertainty.
- b) Timeliness: Data accessibility must occur no later than publication of a peer-reviewed article based on the data, or two years after the data are collected and verified, or two years after the original end date of the grant (not including any extensions or follow-on

funding), whichever is soonest, unless a delay has been authorized by the NOAA funding program.

- c) Disclaimer: Data produced under this award and made available to the public must be accompanied by the following statement: "These data and related items of information have not been formally disseminated by NOAA, and do not represent any agency determination, view, or policy."
- d) Failure to Share Data: Failing or delaying to make environmental data accessible in accordance with the submitted Data Management Plan, unless authorized by the NOAA Program, may lead to enforcement actions, and will be considered by NOAA when making future award decisions. Funding recipients are responsible for ensuring these conditions are also met by sub-recipients and subcontractors.
- e) Funding acknowledgement: Federal funding sources shall be identified in all scholarly publications. An Acknowledgements section shall be included in the body of the publication stating the relevant Grant Programs and Award Numbers. In addition, funding sources shall be reported during the publication submission process using the FundRef mechanism (<http://www.crossref.org/fundref/>) if supported by the Publisher.
- f) Manuscript submission: The final pre-publication manuscripts of scholarly publications produced with NOAA funding shall be submitted to the NOAA Institutional Repository at <http://library.noaa.gov/repository> after acceptance, and no later than upon publication, of the paper by a journal. NOAA will produce a publicly-visible catalog entry directing users to the published version of the article. After an embargo period of one year after publication, NOAA shall make the manuscript itself publicly visible, free of charge, while continuing to direct users to the published version of record.
- g) Data Citation: Publications based on data, and new products derived from source data, must cite the data used according to the conventions of the Publisher, using unambiguous labels such as Digital Object Identifiers (DOIs). All data and derived products that are used to support the conclusions of a peer-reviewed publication must be made available in a form that permits verification and reproducibility of the results.

#### **Scientific Integrity.**

- a) *Maintaining Integrity.* The NFWF Subrecipient shall maintain the scientific integrity of research performed pursuant to this grant or financial assistance award including the prevention, detection, and remediation of any allegations regarding the violation of scientific integrity or scientific and research misconduct, and the conduct of inquiries, investigations, and adjudications of allegations of violations of scientific integrity or scientific and research misconduct. All the requirements of this provision flow down to subrecipients.

- b) *Peer Review*. The peer review of the results of scientific activities under a NOAA grant, financial assistance award, or cooperative agreement shall be accomplished to ensure consistency with NOAA standards on quality, relevance, scientific integrity, reproducibility, transparency, and performance. NOAA will ensure that peer review of "influential scientific information" or "highly influential scientific assessments" is conducted in accordance with the Office of Management and Budget (OMB) Final Information Quality Bulletin for Peer Review and NOAA policies on peer review, such as the Information Quality Guidelines.
- c) In performing or presenting the results of scientific activities under the NOAA grant, financial assistance award, or cooperative agreement and in responding to allegations regarding the violation of scientific integrity or scientific and research misconduct, the NFWF Subrecipient and all subrecipients shall comply with the provisions herein and NOAA Administrative Order (NAO) 202-735D, Scientific Integrity, and its Procedural Handbook, including any amendments thereto. That Order can be found at <https://nrc.noaa.gov/ScientificIntegrityCommons.aspx>.
- d) *Primary Responsibility*. The NFWF Subrecipient shall have the primary responsibility to prevent, detect, and investigate allegations of a violation of scientific integrity or scientific and research misconduct. Unless otherwise instructed by the grants officer, the recipient shall promptly conduct an initial inquiry into any allegation of such misconduct and may rely on its internal policies and procedures, as appropriate, to do so.
- e) By executing this grant, financial assistance award, or cooperative agreement the NFWF Subrecipient provides its assurance that it has established an administrative process for performing an inquiry, investigating, and reporting allegations of a violation of scientific integrity or scientific and research misconduct; and that it will comply with its own administrative process for performing an inquiry, investigation, and reporting of such misconduct.
- f) The NFWF Subrecipient shall insert this provision in all subawards at all tiers under this grant, financial assistance award, or cooperative agreement.

**Required Use of American Iron, Steel, Manufactured Products, and Construction Materials.**

If applicable, and pursuant to the Infrastructure Investment and Jobs Act ("IIJA"), Pub.L. No. 117-58, which includes the Build American, Buy American (BABA) Act, Pub. L. No. 117-58, §§ 70901-52 and OMB M-22-11, recipients of an award of Federal financial assistance from the Department of Commerce (DOC) are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless: (1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the

total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project. This requirement also applies to subrecipients.

Waivers: When necessary, recipients may apply for, and DOC may grant, a waiver from these requirements. DOC will notify the recipient for information on the process for requesting a waiver from these requirements. When DOC has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which DOC determines that: a. applying the domestic content procurement preference would be inconsistent with the public interest; b. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or c. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. A request to waive the application of the domestic content procurement preference must be in writing. DOC will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [whitehouse.gov/omb/management/made-in-america](https://whitehouse.gov/omb/management/made-in-america).

Definitions: “Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives —that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinyl chloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall. “Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States. “Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy. “Project”



means the construction, alteration, maintenance, or repair of infrastructure in the United States. --  
1 Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives. 2 IIA, § 70917(c)(1).

### **Implementation of Domestic Sourcing Requirements**

Prior to initiation of any construction that may arise in this award, the NFWF Subrecipient is required to inform NFWF whether it is using iron, steel, manufactured products, or construction materials as described in "Required Use of American Iron, Steel, Manufactured Products, and Construction Materials" above. In addition, the NFWF Subrecipient is required to inform the NFWF whether those materials are produced or manufactured in the United States, or alternatively, it is requesting one or more waivers, as described in the award condition.

### **Field Work.**

The NFWF Subrecipient is required to follow recognized best practices for minimizing impacts to the human and natural environment when applicable and will provide for safety in their projects as needed, including addressing the safety of personnel, associates, visitors, and volunteers in their projects. In addition, any use of unoccupied aircraft systems in projects under this award must be in compliance with all applicable Federal Aviation Administration regulations, and any other applicable federal, state, or local regulations.

### **Invasive Species Control.**

Pursuant to Executive Order # 13112, recipients of NOAA funding cannot implement any actions that are likely to cause or promote the introduction or spread of invasive species, and should provide for restoration of native species and habitat conditions in ecosystems that have been invaded. The NFWF Subrecipient is expected to take positive steps to prevent the introduction of invasive species, provide for control of invasive species, and minimize the economic, ecological, and human health impacts that invasive species cause. Where possible and/or practicable, the NFWF Subrecipient should also respond rapidly to and control populations of invasive species in an environmentally sound manner, promote public education on invasive species, and conduct post-construction monitoring to ensure that impacts on native species did not occur (as applicable). NOAA can provide additional guidance on the detection, control and prevention of invasive species impacts upon request.

### **Equipment Reporting.**

Equipment or supplies (aggregate supplies, not per unit) at a cost of \$5,000 or greater per unit value, including its fair market value, must be inventoried at least once every two years and at award closeout (2 CFR 200.313). NFWF Subrecipients may use the outdated SF-428 form series to report on tangible property or submit their own customized report including a description of federally owned equipment, identification information, acquisition cost, and acquisition date. More guidance on property definitions and forms is posted online at [coast.noaa.gov/funding/forms.html](http://coast.noaa.gov/funding/forms.html).