**DELETE THESE INTRODUCTORY PARAGRAPHS IN FINAL DRAFT OF CONTRACT***.*

*The following contract has been modified from the Conservancy’s standard contract for services to include provisions specific to hiring a contractor to perform a prescribed burn, and/or to draft a prescribed burn plan on behalf of the Conservancy. The burn specific provisions are shown in blue font. Note that the choice of contractor must be approved by the designated Conservancy Fire Manager. Any and all comments and instructions should be deleted in final version, along with changing all text to black.  
 A* conflict disclosure form *must be completed to allow a determination of whether any conflicts of interest exist. If any actual or potential conflicts are disclosed, contact your Conservancy attorney before proceeding. If no actual or potential conflicts are disclosed, a signed copy of the disclosure form should accompany the draft of any contract submitted for legal review.*

*If you are contemplating a contract with an individual, ensure that the* Employee vs. Independent Contractor Questionnaire *is completed and, if any issues are identified, work with your Conservancy attorney or H.R. representative to resolve them.*

Prescribed Burn Contract

|  |  |  |
| --- | --- | --- |
|  | **CONTRACT NUMBER:** |  |
| **ACCOUNTING INFORMATION** | |
| Cost Center Name: |  |
| Cost Center Number: |  |
|  | Source of funds: | U.S. Government\_\_\_\_\_ Private\_\_\_\_\_  Multi/Bi-lateral Org. \_\_\_\_\_  Host Country Government \_\_\_\_\_ Non-US charitable or for-profit\_\_\_\_\_\_ |

This is a Contract for Services between **The Nature Conservancy**, a District of Columbia non-profit corporation (the “**Conservancy**”), acting through its:

|  |  |
| --- | --- |
| Conservancy Office/Department: |  |
| Address: |  |
| Name and Title of Contact: |  |
| Telephone Number: |  |

and the following person(s) and/or entities (the “**Contractor**”):

|  |  |
| --- | --- |
| Name of Contractor: |  |
| Address: |  |
| Name and Title of Contact: |  |
| Telephone Number: |  |

The Conservancy and the Contractor agree as follows:

**[INSTRUCTIONS FOR 1: There are two alternatives for defining the Contractor’s Duties. Pick one and modify it accordingly. Once you make your choice, delete the other.]**

**[1 -- Alternative 1 –Prepare Prescribed Burn Unit Plan AND conduct burn]**

**1. Contractor’s Duties**. The Contractor, who represents that the Contractor is qualified and willing to perform the services described herein as an independent contractor, shall prepare a written plan for a prescribed burn on \_\_\_\_\_\_\_ acres at the Conservancy’s \_\_\_\_\_\_\_\_\_\_\_\_Preserve, in the County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Burn Plan”). The Burn Plan must contain the elements listed in Exhibit A. The Burn Plan shall be subject to the prior review and approval of the Conservancy; and any changes to the Burn Plan must be approved by the Conservancy Fire Manager and documented by the Contractor before implementation of the burn. The specific perimeter of the area to be burned is highlighted in Exhibit B. [OR The Burn Plan shall include a map showing the specific area to be burned.] The objectives of the burn are to: [*example: remove \_\_% of plant litter in the burn area and top kill \_\_% of woody vegetation less than 1 inch in diameter*]. [OR The Burn Plan shall include the objectives of the burn.] The Contractor shall execute the burn according to the parameters defined in the Burn Plan.

By executing below, the Contractor certifies that each of the following statements is true and correct:

• The Contractor is qualified as a burn boss, and is a certified burn boss according to state regulations or laws where they exist.

* The Contractor has led burns of similar complexity.
* The Contractor has led burns in the same fuel type.
* The Contractor will be on site during the burn.
* All members of the burn crew have been trained (S130-S190, or prescribed fire crew member training or equivalent).
* Crew members are trained and experienced in the use of the equipment needed to conduct the burn.
* All crew members and the Contractor are physically fit to perform the work.
* A wildland fire engine, other water-delivery system, fire plow, or other locally appropriate fire suppression equipment shall be on site during the burn.
* The Contractor and its crew and fire observers shall wear personal protective gear during the burn.

In the event of any inconsistency between the attached Exhibit(s) and this Contract, this Contract shall control.

**[1 -- Alternative 2 –Prepare Prescribed Burn Unit Plan ONLY]**

**1. Contractor’s Duties**. The Contractor, who represents that the Contractor is qualified and willing to perform the services described herein as an independent contractor, shall prepare a written plan for a prescribed burn on \_\_\_\_\_\_\_ acres at the Conservancy’s \_\_\_\_\_\_\_\_\_\_\_\_Preserve, in the County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Burn Plan”). The Burn Plan must contain the elements listed in Exhibit A. The specific perimeter of the area to be burned is highlighted in Exhibit B. [OR The Burn Plan shall include a map showing the specific area to be burned.] The objectives of the burn are to: [*example: remove \_\_% of plant litter in the burn area and top kill \_\_% of woody vegetation less than 1 inch in diameter*]. [OR The Burn Plan shall include the objectives of the burn.]

In the event of any inconsistency between the attached Exhibit(s) and this Contract, this Contract shall control.

**[INSTRUCTIONS FOR 2 - Payments. You have four choices. Pick one and modify it if necessary. Delete the others and the instructions in red.]**

**[GENERAL INSTRUCTIONS REGARDING WIRE TRANSFERS: Wire transfers should be avoided, as a rule, and may only be used for payments outside the U.S. For contracts with non-U.S. service providers, include the following under “Terms of Payment”: “Any applicable currency conversion shall be calculated at the market rate at the time of payment.” Additional information about wire transfers is contained in the Financial Management Handbook.]**

**[2 - Alternative 1 - rate-based compensation with expense reimbursement:]**

**2. PAYMENTS.**

**A. Compensation.** For all of the services described above, the Conservancy shall pay the Contractor [at the rate of $\_\_\_\_\_\_ per hour] [at the rate of $\_\_\_\_\_\_ per day, based on an average of [#] hours worked per day][in accordance with the budget attached hereto as Exhibit B (“Budget”)]. Total compensation shall not exceed $\_\_\_\_\_\_ without the prior written consent of the Conservancy.

Payments will be made according to the following schedule:

***[INSTRUCTIONS: List amounts and due dates of payments. Tie payments to any reports and/or deliverables. Include conditions to be met before payment will be made, such as “subject to receipt and acceptance of final report”.]***

**B.** **Expense Reimbursement**: In addition to the compensation in 2.A., the Conservancy shall reimburse the Contractor for the actual cost of \_\_\_\_\_\_\_\_\_\_ *[****Sample:***  *economy travel (with automobile mileage at* **$.50** *per mile), materials, supplies, and other out-of-pocket expenses]* as and to the extent incurred by the Contractor in the performance of the services hereunder, provided that total reimbursable expenses shall not exceed $\_\_\_\_\_\_\_\_\_\_ without the prior written approval of the Conservancy. Any unused materials or supplies paid for by the Conservancy shall remain the property of the Conservancy and shall be returned to the Conservancy at the termination of this Contract.

***[NOTE: TNC’s standard mileage reimbursement rate is updated periodically. The current rate is posted in the “Reference” section of the Finance intranet site under “TNC Numbers to Know”.]***

**C.** **Expense Reimbursement Documentation:** Expenses submitted by the Contractor for reimbursement by the Conservancy shall be substantiated by proper and adequate documentation and receipts. Such expenses must be reasonable in amount, related to and in furtherance of the contract purposes and must be incurred in accordance with IRS regulations and procedures regarding business expenses, as more fully described in IRS Publication 463 "Travel, Entertainment, Gift and Car Expenses."

**D. Terms of Payment**: Receipts for authorized expenses and invoices for services must be presented to the Conservancy before payment can be made. The Conservancy shall pay the Contractor within thirty (30) days after the Conservancy receives such receipts and invoices and, in the latter case, accepts the service(s) performed. Payment will be sent either by check or, for payment outside the U.S., by wire transfer.

**[2. - Alternative 2 – rate-based compensation with no additional expenses:]**

**2. PAYMENTS.**

**A.** **Compensation.** For all of the services described above and all goods and materials supplied and expenses incurred by the Contractor, the Conservancy shall pay the Contractor [at the rate of $\_\_\_\_\_\_ per hour] [at the rate of $\_\_\_\_\_\_ per day, based on an average of [#] hours worked per day][in accordance with the budget attached hereto as Exhibit B (“Budget”)]. Total compensation shall not exceed $\_\_\_\_\_\_ without the prior written consent of the Conservancy.

Payments will be made according to the following schedule:

*[INSTRUCTIONS: List amounts and due dates of payments. Tie payments to any reports and/or deliverables. Include conditions to be met before payment will be made, such as “subject to receipt and acceptance of final report”.]*

**B. Terms of Payment**: Invoices for services must be presented to the Conservancy before payment can be made. The Conservancy shall pay the Contractor within thirty (30) days after the Conservancy receives an invoice and accepts the service(s) performed. Payment will be sent either by check or, for payment outside the U.S., by wire transfer .

**[2 - Alternative 3 - fixed price compensation with expenses:]**

**2. PAYMENTS.**

**A. Compensation.** For all of the services described above, the Conservancy shall pay the Contractor a fixed price total of $\_\_\_\_\_\_\_\_\_\_\_.

Payments will be made according to the following schedule:

*[INSTRUCTIONS: List amounts and due dates of payments. Tie payments to any reports and/or deliverables. Include conditions to be met before payment will be made, such as “subject to receipt and acceptance of final report”.]*

**B.**  **Expense Reimbursement**: In addition to the compensation in 2.A., the Conservancy shall reimburse the Contractor for the actual cost of \_\_\_\_\_\_\_\_\_\_ *[****Sample:***  *economy travel (with automobile mileage at* **$.50** *per mile), materials, supplies, and other out-of-pocket expenses]* as and to the extent incurred by the Contractor in the performance of the services hereunder, provided that total reimbursable expenses shall not exceed $\_\_\_\_\_\_\_\_\_\_ without the prior written approval of the Conservancy. Any unused materials or supplies paid for by the Conservancy shall remain the property of the Conservancy and shall be returned to the Conservancy at the termination of this Contract.

***[NOTE: TNC’s standard mileage reimbursement rate is updated periodically. The current rate is posted in the “Reference” section of the Finance intranet site under “TNC Numbers to Know”.]***

**C. Expense Reimbursement Documentation:** Expenses submitted by the Contractor for reimbursement by the Conservancy shall be substantiated by proper and adequate documentation and receipts. Such expenses must be reasonable in amount, related to and in furtherance of the contract purposes and must be incurred in accordance with IRS regulations and procedures regarding business expenses, as more fully described in IRS Publication 463 "Travel, Entertainment, Gift and Car Expenses."

**D.** **Terms of Payment**: Receipts for authorized expenses and invoices for services must be presented to the Conservancy before payment can be made. The Conservancy shall pay the Contractor within thirty (30) days after the Conservancy receives such receipts and invoices and, in the latter case, accepts the service(s) performed. Payment will be sent either by check or, for payment outside the U.S., by wire transfer.

**[2 - Alternative 4 - fixed price compensation with no additional expenses:]**

**2. PAYMENTS.**

**A. Compensation.** For all of the services described above and all goods and materials supplied and expenses incurred by the Contractor, the Conservancy shall pay the Contractor a fixed price total of $\_\_\_\_\_\_\_\_\_\_\_.

Payments will be made according to the following schedule:

***[INSTRUCTIONS: List amounts and due dates of payments. Tie payments to any reports and/or deliverables. Include conditions to be met before payment will be made, such as “subject to receipt and acceptance of final report”.]***

**B. Terms of Payment**: Invoices for services must be presented to the Conservancy before payment can be made. The Conservancy shall pay the Contractor within thirty (30) days after the Conservancy receives an invoice and accepts the services performed. Payment will be sent either by check or, for payment outside the U.S., by wire transfer.

**3. TERM OF CONTRACT**. This Contract shall begin on and shall expire on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Expiration Date”). [Optional: Preparation of firebreaks may begin after this Contract is fully executed. No other prescribed fire activities may begin until the Burn Plan has been reviewed and approved by the Conservancy Fire Manager] Any extension beyond the Expiration Date must be in writing and signed by the Conservancy.

**4. PERFORMANCE OF WORK**. The Contractor is qualified and willing to perform the services described above as an independent contractor in accordance with the highest standards of the Contractor’s profession or craft and to the satisfaction of the Conservancy. The Contractor shall not be paid for any work found by the Conservancy to be unsatisfactory. If two or more persons or entities are identified as “the Contractor” on the first page hereof, their obligations hereunder shall be joint and several.

**[Note that level of insurance coverage should be determined by a calculation of the potential losses based on geography and other factors. Consult with your attorney and Fire Manager]**

**5. LIABILITY/INSURANCE**. The work to be performed under this Contract shall be performed entirely at the Contractor’s risk. Notwithstanding involvement by the Conservancy in preparation or review of the burn plan, the Contractor agrees to indemnify and hold the Conservancy harmless for any and all liability or loss arising in any way out of the performance of this Contract. The Contractor shall carry appropriate workers’ compensation insurance coverage during the term of this Contract. The Contractor shall carry at least $1,000,000 of hazard and liability insurance written on an occurrence basis during the term of this Contract. The Contractor’s insurance policy shall cover prescribed burn activities, including accidents or injuries resulting from smoke. Contractor’s policy(ies) shall be primary insurance to any other valid and collectible insurance available to the Conservancy with respect to any claim arising out of Contractor’s performance of this contract. The Contractor shall have the Conservancy named as an additional insured on the Contractor’s policy, on a primary and non-contributory basis, and shall provide the Conservancy with evidence that the appropriate insurance coverage is in effect (specifically listing the prescribed burn and smoke coverage) at least 10 days prior to conducting the burn, and shall provide the Conservancy with 30 days advance written notice of cancellations, non-renewals or reduction in limits or coverage or other material change.  Contractor is responsible for payment of insurance deductibles.  If Contractor is self-insured, a Certification of Self-Insurance must be attached. If the Conservancy finds the insurance coverage to be insufficient, the Conservancy may immediately terminate this Contract.

**6. TERMINATION AND REMEDIES.** The Conservancy may cancel this Contract at any time upon two weeks written notice, or immediately if the Conservancy has any concerns regarding safety or the ecological integrity of the burn activities. Should this occur, payment for work satisfactorily completed shall be adjusted accordingly. In addition, if the Contractor defaults in performance of the Contractor’s duties under this Contract, whether for circumstances within or beyond the control of the Contractor, the Conservancy may immediately terminate this Contract by written notice to the Contractor. Should termination occur as a result of the Contractor’s default, the Conservancy shall be entitled to damages from the Contractor resulting from the Contractor’s default and shall be entitled to offset any amounts payable to the Contractor for work satisfactorily completed against such damages. The balance of amounts payable to the Contractor for work satisfactorily completed, if any, shall be paid to the Contractor. Notice of termination shall be sent to the Contractor's address listed on page 1.

**7. INDEPENDENT CONTRACTOR**. The parties intend that an independent contractor-client relationship will be created by this Contract**.** The conduct and control of the work will lie solely within the purview of the Contractor. The Contractor is not to be considered an agent or employee of the Conservancy for any purpose, and no joint venture or principal-agent relationship exists. The Contractor and employees of the Contractor are not entitled to any of the benefits that the Conservancy provides for its employees. Neither the Conservancy nor the Contractor shall have any right, power, or authority to create any obligation, expressed or implied on behalf of the other.

**8. ASSIGNMENT/SUBCONTRACT**. The Contractor may not assign or transfer this Contract or subcontract for the work to be performed without the prior written consent of the Conservancy.

***[Use the following for work performed in the U.S. For work performed outside the U.S., consult your local attorney for appropriate language.]***

**9. OWNERSHIP OF DOCUMENTS AND DATA**. All right, title, and interest, including without limitation copyright, in any reports, studies, photographs, software, drawings, designs, writings or other works or documents produced under this Contract, along with all drafts, versions and other material created in connection therewith (collectively the "Works"), are "works made for hire" as defined under the copyright laws of the United States. To the extent that any Works are not works made for hire, the Contractor hereby unconditionally assigns to the Conservancy and its successors and assigns all right, title and interest, including without limitation copyright and other intellectual property rights, in and to the Works. The Contractor further assigns to the Conservancy all rights in any supporting data and material to the extent not protected by copyright and to the extent assignable. Upon request from the Conservancy, the Contractor shall deliver to the Conservancy (i) all tangible copies (including digital copies) of any Works, supporting data or material not delivered to the Conservancy under Paragraph 1 "Contractor’s Duties", and (ii) any further documentation of the Conservancy’s ownership as provided herein. The Contractor may use the Works, supporting data and material only with the prior written approval of the Conservancy, and any use shall include an acknowledgment that the material used is the property of The Nature Conservancy.

The Contractor warrants and covenants to the Conservancy that the Contractor shall not infringe the intellectual property rights of others in the performance of this Contract, and that the Works are original to Contractor and do not infringe the intellectual property rights of others. The Contractor shall indemnify and hold harmless the Conservancy and its affiliates and representatives from and against all demands, claims, damages, losses, and expenses, including attorneys’ fees, arising out of or resulting from any action by a third party against the Conservancy or its affiliates or representatives relating to the Works, supporting data or materials.

**10. USE OF CONSERVANCY NAME/LOGO. *[Use the following if permission WILL NOT be granted.]*** The Contractor may not use the Conservancy’s name and/or logo in any way without prior written consent from the Conservancy, except to the extent the work performed contemplates their inclusion in the final work product. ***[Use the following if permission WILL be granted. If you use this alternative, you must get legal review of the contract as well as any approval required by the Use of the Name and Logo by Outside Parties Policy.]*** The Contractor is granted a license to use the Conservancy’s name and/or the Conservancy’s logo ***[choose the language that is appropriate]*** to the extent the work performed contemplates their inclusion in the final work product and also in the following manner: (and for no other purpose without the Conservancy’s prior written consent):

**11. CONFIDENTIAL INFORMATION**. During the course of the performance of this Contract, the Contractor may have access to materials, data, strategies, other information relating to the Conservancy and its programs, or systems, which are intended for internal use only. Any such information acquired by the Contractor shall not be used, published, or divulged by the Contractor to any person, firm, or corporation or in any advertising or promotion regarding the Contractor or the Contractor’s services, or in any manner or connection whatsoever without first having obtained the written permission of the Conservancy, which permission the Conservancy may withhold in its sole discretion.

**[INSTRUCTIONS FOR 12- Taxes: In consultation with a Conservancy attorney, modify if necessary to include applicable State or Country laws.]**

**12. TAXES**. The Contractor agrees to be responsible for any and all filing and payment of taxes and for compliance with any and all provisions and requirements arising under any applicable tax laws. Neither federal, nor state, nor local income tax, nor payroll tax of any kind shall be withheld or paid by the Conservancy on behalf of the Contractor, or employees of the Contractor. If appropriate, the Conservancy shall report all fees paid to the Contractor to the IRS on Form 1099.

**[INSTRUCTIONS FOR 13 - Compliance with Laws: There are two options depending on whether the work is being completed within or outside the United States. Delete the inapplicable section.]**

**[13 -- Alternative 1 *– Work is being completed within the U.S.*]**

**13. COMPLIANCE WITH LAWS**. The Contractor represents, warrants, and agrees that, in connection with the transactions contemplated by this Contract: (a) the Contractor can lawfully work in the United States; (b) the Contractor shall obtain, at its own expense (except to the extent otherwise explicitly stated in this Contract) any permits or licenses required for the Contractor’s services under this Contract; and (c) the Contractor shall comply with all statutes, laws, ordinances, rules, regulations, court orders, and other governmental requirements of the United States, the State of \_\_\_\_\_\_\_\_\_, and any other jurisdiction(s) in which the Contractor is organized or authorized to do business, including but not limited to any applicable anti-bribery statutes, which are applicable to the work to be done by the Contractor under this Contract (in each case, an “Applicable Law”). The Contractor shall not take any actions that might cause the Conservancy to be in violation of any of such Applicable Laws.

# [13 -- Alternative 2 *– Work is being completed outside the U.S*]

**13. COMPLIANCE WITH LAWS**. The Contractor represents, warrants and agrees that:

1. the Contractor can lawfully work in the country or countries in which the work under this Contract will be performed;
2. the Contractor will obtain at its own expense (except to the extent otherwise explicitly stated in this Contract) any permits or licenses required for the Contractor’s services under this Contract;
3. Contractor will comply with all applicable laws and regulations, including but not limited to all laws and regulations in the country or countries in which it works and all applicable anti-bribery or anti-corruption laws and regulations (“Applicable Laws”).The Contractor will not take any actions that might cause the Conservancy to be in violation of any Applicable Laws;
4. if the Contractor is an individual person:

i. Contractor represents that he/she is not a Government Official or a member of the immediate family (spouse, parent, child, sibling or sibling's spouse) of a Government Official, except as may be disclosed in Exhibit\_\_\_\_ if attached hereto.

ii. Contractor agrees that, in performing any activity in connection with this Contract, he/she:

a. will not pay, give, or authorize the payment or giving of, any money or anything of value to any Government Official for the purpose of influencing any act or decision of such Government Official or otherwise promoting the interests of TNC in any respect.

b. will not pay, give or authorize the payment or giving of any money or anything of value to any third party knowing or having reason to know that such third party will in turn give all or any portion of the payment or the item(s) of value, directly or indirectly, to a Government Official for the purpose of influencing any act or decision of such Government Official or otherwise promoting the interests of TNC in any respect.

iii. Contractor agrees to promptly notify the Conservancy in writing if, during the term of this Contract, Contractor (a) becomes a Government Official; or (b) receives a request to take any action which would or might violate its obligations under this Paragraph 13 of the Contract.

iv. Contractor represents that (a) he/she has not made or authorized any payment, gift or transfer prohibited in Paragraph 13(d)(ii) above, and (b) has not been accused of, indicted for, or convicted of, making or authorizing any payment, gift or transfer prohibited in Paragraph 13(d)(ii) above.

1. If the Contractor is a corporate or other legal entity:

i. Contractor represents that none of its directors, officers, employees or agents is a Government Official or a member of the immediate family (spouse, parent, child, sibling or sibling's spouse) of a Government Official, and that no Government Official is, directly or indirectly, an owner of or investor in the Contractor, except as may be disclosed in Exhibit \_\_\_\_\_\_if attached hereto.

ii. Contractor agrees that, in performing any activity in connection with this Contract, neither Contractor nor any of its directors, officers, employees, agents, owners or shareholders:

a. will pay, give, or authorize the payment or giving of, any money or anything of value to any Government Official for the purpose of influencing any act or decision of such Government Official or otherwise promoting the interests of TNC in any respect.

b. will pay, give or authorize the payment or giving of any money or anything of value to any third party knowing or having reason to know that such third party will in turn give all or any portion of the payment or the item(s) of value directly or indirectly to a Government Official for the purpose of influencing any act or decision of such Government Official or otherwise promoting the interests of TNC in any respect.

iii. Contractor agrees to promptly notify the Conservancy in writing if, during the term of this Contract (a) any director, officer, employee or agent of Contractor or a member of the immediate family (spouse, parent, child, sibling or sibling's spouse) of any of the foregoing becomes a Government Official, (b) any Government Official becomes, directly or indirectly, an owner of or investor in the Contractor; or (c) Contractor receives a request to take any action which would or might violate its obligations under Paragraph 13 of this Contract.

iv. Contractor represents that neither it nor any of its directors, officers, employees, agents, owners or shareholders (a) have made or authorized any payment, gift or transfer prohibited in Paragraph 13(e)(ii) above, and (b) have been accused of, indicted for, or convicted of, making or authorizing any payment, gift or transfer prohibited in Paragraph 13(e)(ii) above.

**F.** For purposes of this Contract, a "Government Official” includes (i) any official or employee of any government, any political party, or any public international organization, and (ii) 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.

**14.** **CERTIFICATION REGARDING MATERIAL SUPPORT AND RESOURCES TO TERRORISTS**.

A. The Contractor hereby certifies:

**i.** The Contractor does not commit, attempt to commit, advocate, facilitate, or participates in terrorist acts, nor has it committed, attempted to commit, facilitated, or participated in terrorist acts.

**ii.** The Contractor will take all reasonable steps to ensure that Contractor does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts.

**iii.** Before providing any material support or resources to an individual or entity, the Contractor will consider all information about that individual or entity of which it is aware or that is available to the public.

**iv.** The Contractor will implement reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support terrorist activity.

B. For purposes of this Certification:

1. “Material support and resources” means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

2. “Terrorist act” means:

(i) an act prohibited pursuant to one of the 12 United Nations Conventions and Protocols related to terrorism (see UN terrorism conventions Internet site: http://untreaty.un.org/English/Terrorism.asp); or

(ii) an act of premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents; or

(iii) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

3. “Entity” means a partnership, association, corporation, or other organization, group or subgroup.

C. In the event that any material misrepresentation in this Certification is discovered during the term of this Contract, the Conservancy may elect to declare this Contract null and void and immediately terminate it. In the case of an intentional material misrepresentation, the Conservancy may, at its option, recover damages resulting from the termination. Notice of termination shall be given to contractor's address listed on page 1.

***[15 – Alternative 1 – Contractor has not completed a Disclosure Form within the last 12 months.]***

**15.**  **CERTIFICATION FOR CONFLICT OF INTEREST DETERMINATION.**  The Contractor certifies that the information it has provided on the Attachment entitled "Disclosure Form" is true and correct to the best of the Contractor's knowledge. In the event that any material misrepresentation in the Disclosure Form is discovered during the term of this Contract, the Conservancy may elect to declare this Contract null and void and immediately terminate it. In the case of an intentional material misrepresentation, the Conservancy may, at its option, recover damages resulting from the termination and shall be entitled to offset any amounts payable to the Contractor for work satisfactorily completed against such damages. The balance of amounts payable to the Contractor for work satisfactorily completed, if any, shall be paid to the Contractor. Notice of termination shall be given to contractor's address listed on page 1.

***[Attach the completed Disclosure Form for all Contracts.]***

***[15 – Alternative 2 – Contractor has completed Disclosure Form within the last 12 months, there has been no material change in information relating to a conflict of interest, and the Contractor does not want to complete the Form again.]***

**15.**  **CERTIFICATION FOR CONFLICT OF INTEREST DETERMINATION.**  The Contractor certifies that to the best of the Contractor's knowledge the information provided on the Disclosure Form previously completed by the Contractor on \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ continues to be true and correct as of the date of this Contract. In the event that any material misrepresentation in the Disclosure Form is discovered during the term of this Contract, the Conservancy may elect to declare this Contract null and void and immediately terminate it. In the case of an intentional material misrepresentation, the Conservancy may, at its option, recover damages resulting from the termination and shall be entitled to offset any amounts payable to the Contractor for work satisfactorily completed against such damages. The balance of amounts payable to the Contractor for work satisfactorily completed, if any, shall be paid to the Contractor. Notice of termination shall be given to contractor's address listed on page 1.

**[INSTRUCTIONS FOR 16 - Choice of Law/Forum: Consult your attorney and insert the appropriate State/Country.]**

**16. CHOICE OF LAW/FORUM.** This Contract shall be interpreted, construed and governed by the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and such laws of the United States as may be applicable. In the event of any litigation over the interpretation or application of any of the terms or provisions of this Contract, the Conservancy and the Contractor agree that litigation shall be conducted in the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [name of state/province].

**17. BINDING EFFECT/AMENDMENTS.** This Contract shall become binding when signed by the parties. This Contract supersedes all prior or contemporaneous communications and negotiations, both oral and written and constitutes the entire Contract between the parties relating to the work set out above. No amendment shall be effective except in writing signed by both parties.

**18.** **SEVERABILITY AND INTEGRATION**. If any provision of this Contract is held invalid, the other provisions shall not be affected thereby. Any recital or preliminary statement in this Contract and all Exhibits referred to in this Contract are an integral part of this Contract and are incorporated by reference into this Contract.

**[INSTRUCTIONS FOR 19 - U.S. Government Laws and Regulations– If the Contract is funded by federal or state funds, or any federal or state agency is a party, consult your Grants Specialist who will tell you whether you need to insert the following language and include Attachment “U.S. Government Regulations and Laws.” Otherwise, Section 19 should be deleted.]**

**19. U.S. GOVERNMENT LAWS AND REGULATIONS**. The Contractor understands that this Contract will be funded by U.S. Government funding and that the 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 in the Attachment entitled "U.S. Government Laws and Regulations."

**[INSTRUCTIONS FOR 20 - Other Provisions: Insert any other terms of the contract that are not addressed above. If there are no additional provisions, delete this paragraph.]**

**20. OTHER PROVISIONS.**

IN WITNESS WHEREOF, the Contractor and the Conservancy have executed this Contract, effective as of the last date written below.

**[INSTRUCTIONS FOR SIGNATURE BLOCKS - Select Alternative 1 for a contractor that is an entity (e.g., corporation, partnership, limited partnership) and select Alternative 2 for a contractor(s) who is/are individual(s). Delete the other alternative.]**

**[Alternative 1 - Entity Contractor]**

|  |  |
| --- | --- |
| **[FULL NAME OF CONTRACTOR]** | **THE NATURE CONSERVANCY** |

|  |  |  |  |
| --- | --- | --- | --- |
| By: |  | By: |  |
|  | Print Name  Authorized Representative |  | Print Name  Authorized Representative |
|  |  |  |  |
|  | Signature |  | Signature |
| Title: |  | Title: |  |
| Date: |  | Date: |  |
|  |  | Attorney approval: |  |
|  |  | Date: |  |
|  |  | By: |  |
|  |  |  | (E.g. fax/ phone/ E-mail) |

**[Alternative 2 - Individual(s) Contractor]**

|  |  |
| --- | --- |
| **[CONTRACTOR]** | **THE NATURE CONSERVANCY** |

|  |  |  |  |
| --- | --- | --- | --- |
| Signa-ture: |  | By: |  |
|  | Print Name: |  | Print Name:  Authorized Representative |
| Date: |  |  |  |
|  |  |  | Signature |
|  |  | Title: |  |
|  |  | Date: |  |
|  |  | Attorney approval: |  |
|  |  | Date: |  |
|  |  | By: |  |
|  |  |  | (E.g. fax/ phone/ E-mail) |

**[Attach Disclosure Form - The Nature Conservancy signed by the Contractor.]**

**[Attach Exhibit A and Exhibit B if applicable.]**

**U.S. GOVERNMENT LAWS AND REGULATIONS**

**[INSTRUCTIONS: Sections A-D must be included in every federally-funded contract. Sections E-N should only be included if applicable. Sections O-P apply only to EPA-funded contracts. Delete the sections that do not apply to the contract. If the Contract is not federally-funded, please delete this attachment.]**

**U.S. GOVERNMENT LAWS AND REGULATIONS**. The Contractor understands that this Contract will be funded by U.S. Government funding and that the 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 the 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**. The Conservancy, 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 the 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 CERTIFICATION.** The Contractor certifies, by signature on this Contract, that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any U.S. Federal department or agency. Where the Contractor is unable to certify to this statement, the Contractor shall attach an explanation to this Contract, and, at the Conservancy's option, this Contract shall become null and void.

**D.** **CONTRACTOR LIABILITY.** The 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 the funding agency or any authorized agency rule, through audit exception or some other appropriate means, that expenditures from funds allocated to the Contractor were not made in compliance with applicable cost principles and regulations of the funding agency, or the provisions of this Contract.

**[Include in contracts under which the Contractor will perform work within the U.S.A.]**

**E. EQUAL EMPLOYMENT OPPORTUNITY**. The 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."

**[Include in contracts under which the Contractor will perform work outside the U.S.A.]**

F. **FLY AMERICA**. The Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Fly America Act, 49 U.S.C. 40118.

**[Include in contracts for more than $100,000.]**

**G.** **BYRD RULE ANTI-LOBBYING AMENDMENT.** The Contractor certifies, to the best of the Contractor’s knowledge and belief that,

1. No U.S. Federal appropriated funds have been paid or will be paid, by the Contractor or on behalf of the 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, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The Contractor shall require that the language of this certification be included in the award documents for all subawards/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.

**[Include in construction or repair contracts for in excess of $2,000.]**

**H.** **COPELAND ANTI-KICKBACK ACT**. The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874), 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").

**[Include in contract when required by U.S. Federal program legislation, for construction contracts in excess of $2,000.]**

**I.** **DAVIS-BACON ACT**. The Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7) 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").

**[Include contracts in excess of $100,000 that involve the employment of mechanics or laborers.]**

**J.** **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**. The contractor shall comply the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.), as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

**[Include in construction or facility improvement contracts less than or equal to $100,000,]**

**K.** **GUARANTEES AND BONDING**. The Contractor shall follow its own bid guarantee, performance bond, and payment bond requirements.

**[Include in construction or facility improvement contracts in excess of $100,000.]**

**L.** **GUARANTEES AND BONDING**. In situations where the Conservancy does not examine the Contractor's bid guarantee and bonding requirements and has not notified the Contractor that the U.S. Federal Government's interest is adequately protected, the Contractor shall comply with OMB Circular A-110, Sec. 48(c).

**[Include in contracts in excess of $100,000.]**

**M.** **CLEAN AIR ACT**. 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.).

**[Include in contracts for the performance of experimental, developmental, or research work.]**

**N**. **INVENTIONS.** The Contractor shall provide for the rights of the U.S. Federal Government and the Conservancy in any inventions resulting from performance of this Contract in accordance with 37 C.F.R. Part 401.

**[Include Section O-P only if funding is through EPA.]**

# 

**O. MBE-WBE**. The Contractor agrees to ensure to the fullest extent possible that at least a \_\_\_\_\_\_ percent “Fair Share” of federal funds for subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women, and historically black colleges and universities.

The Contractor agrees to include in its bid specifications, and require all of its contractors to include in their bid specifications for subcontracts, a\_\_\_\_\_ percent “Fair Share.”

The Contractor agrees to document all efforts taken to achieve the “Fair Share” and to report on all procurement actions regardless of the size of the subagreement.

**P.** **SBRA.** The Contractor shall take the following affirmative steps in awarding subcontracts, if any: (1) place one or more Small Business in Rural Areas (SBRA) on solicitation lists; (2) ensure that SBRA’s are solicited whenever they are potential sources; (3) divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by SBRA’s; (4) establish delivery schedules, where the requirements of work shall permit, which would encourage participation by SBRA’s; (5) utilize the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate.

**Exhibit A**

The Prescribed Burn Unit Plan must include at minimum the following elements:

* Signature Page
* Geographic location
* Sources of emergency assistance
* Description of the prescribed burn unit area (vegetation type and fuel models by percent of unit; narrative description of unit)
* Goals and objectives
* Fuel and weather prescription
* Desired fire behavior to meet objectives (narrative description)
* Smoke management
* Crew (number and organization)
* Equipment
* Day of burn operations (firebreak prep, ignition plan, holding plan, communications, mop-up standards, public relations)
* Contingency plan (predicted fire behavior for free-running fire, both inside and outside the unit; location, type and response time of emergency resources; secondary control lines)
* Backup source of water delivery
* Safety and medical information
* Documentation (confirmation of required planning, exemptions and justifications for any TNC guidelines)
* Go/No Go Checklist
* Post-burn activities
* Maps
* Conservancy Consequence Analysis (to provided by the Conservancy for completion by Contractor)