

**CONSULTING SERVICES AGREEMENT
2023-031**

THIS AGREEMENT is made and entered by and between COLLIN COUNTY, TEXAS, a political subdivision of the State of Texas, hereinafter referred to as "County", and THE NATURE CONSERVANCY, a District of Columbia non-profit corporation acting through its Texas Chapter, hereinafter referred to as "Consultant", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the County desires to engage the services of the Consultant to continue a program to restore Parkhill Prairie. The program will include: 1) Herbicide application, 2) Preparation for prescribed fire, 3) Supervision, if needed, of mowing and removal of vegetation, 4) Treatment of Johnson grass, purple scabies, and encroaching woody vegetation on an as-needed basis. Restoration and management work at Parkhill Prairie, hereinafter referred to as the "Project"; and

WHEREAS, the Consultant desires to render such services for the County upon the terms and conditions provided herein.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. Retention of the Consultant

The County hereby agrees to retain the Consultant to perform services in connection with the Project; Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement, exercising the same degree of care, skill, and diligence as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances.

II. Scope of Services

The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written change orders may be authorized from time to time by the County

III. Schedule of Services

3.1 The Consultant agrees to commence its services immediately upon execution of this Agreement, or as otherwise directed in writing by the County, and to proceed diligently with said services to completion as described in the Completion Schedule attached hereto as Exhibit "A" and thereby made a part of this Agreement. Consultant shall not be considered in default of this Agreement for delays in performance caused by circumstances beyond its reasonable control. Should such circumstances occur, the Consultant shall, within a reasonable time of being prevented from

performing, give written notice to the County describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

3.2 In the event that the Consultant is delayed in the progress of the work on the Project by an act or neglect of the County, County's employees, separate contractors employed by the County, by changes ordered in the Project, fire, adverse weather conditions not reasonably anticipated, unavoidable casualties or other causes beyond the Consultant's control, delay authorized by the County pending arbitration, or by other causes which the County and Consultant agree may justify delay, then the Contract Time shall be reasonably extended by Change Order. The County shall have the right at any time to delay or suspend the work or any part thereof for any reasonable time, and if this happens, the Consultant's sole remedy for any delays or suspension shall be an extension of time. The County shall not be independently liable to the Consultant for any delay or interference caused by circumstances beyond the County's control or any delay caused by any other person or entity.

IV. Compensation and Method of Payment

The parties agree that Consultant shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto as Exhibit "B" and thereby made a part of this Agreement. Consultant further agrees that it will prepare and present such quarterly progress reports and itemized statements as are described in said Exhibit "B". Payment will be made in accordance with The Texas Government Code, Title 10, Subtitle F, Chapter 2251. Consultant further agrees to the following terms prior to payment being due by County:

A. Invoice and Payment

- (1) The Consultant shall provide the County sufficient documentation to reasonably substantiate the invoices.
- (2) The Consultant will issue invoices for all work performed under the Agreement.
- (3) In the event of disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The County will exercise reasonableness in contesting any portion thereof. NO interest will accrue on any contested portion of the billing until mutually resolved.
- (4) In the event of any conflict between Paragraph IV and Chapter 2251 of the Texas Government Code, The Texas Government Code shall prevail.

V. Information to be provided by the County

5.1 The County agrees to furnish to Consultant, prior to the Consultant's commencement of its services, all that information set forth and described on Exhibit "C", which is attached hereto and thereby made a part of this Agreement.

5.2 The County will make its facilities accessible to the Consultant as required for the Consultant's performance of its services. The Consultant represents that it understands the scope of this Agreement and has reviewed and inspected the Project site, and can fully perform its obligations pursuant to this Agreement. Any failure of the Consultant to acquaint itself with the available information will not relieve the Consultant from its responsibilities pursuant to this Agreement.

VI. Insurance

Consultant agrees to meet all insurance requirements as set forth on Exhibit "D" which is attached hereto and thereby made a part of this Agreement.

VII. Indemnity

7.1 The Consultant agrees to the fullest extent permitted by law, to indemnify and hold harmless the County and its officers, agents and employees of and from damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, arising out of or occasioned by Consultant's breach of any of the terms or provisions of this Agreement, or by any other negligent act, error or omission of the Consultant, its agents, servants, employees, subcontractors, licensees, invitees, or any other persons or entities for whose acts the Consultant is legally liable. These indemnity requirements shall be limited to the extent of compensation provided to Consultant under this Agreement and those liabilities not caused by the act, error or omission of the County.

7.2 In claims against any person or entity indemnified under this Section 7.1 by an employee of the Consultant, anyone directly or indirectly employed by the Consultant or anyone for whose acts the Consultant may be liable, the indemnification obligation under this Section 7.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.3 The Consultant must be in compliance with the provisions of Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code. The Consultant shall perform services (1) with professional skill and care ordinarily provided by competent Consultants practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent Consultant.

VIII. Independent Contractor

In the performance of services hereunder, the Consultant shall be deemed an independent contractor and shall not, with respect to its acts or omissions, be deemed an agent, subcontractor or employee of the County.

IX. Assignment and Subletting

The Consultant agrees that neither this Agreement nor the services to be performed hereunder will be assigned or sublet without the prior written consent of the County. The Consultant further agrees that the assignment or subletting of any portion or feature of the services required in the performance of this Agreement shall not relieve the Consultant from its full obligations to the County as provided by this Agreement. For the purposes of this agreement, the County consents to the subcontracting of Services by the Consultant. All other requirements of Section IX will continue to apply, and in addition, Consultant agrees to favorably satisfy any dispute with subcontractors and hereby releases the County from any liability, including but not limited to payments, involving such disputes to the extent the dispute or liability is not caused by the act, error or omission of the County.

X. Audits and Records/Prohibited Interest

10.1 The Consultant agrees that at any time during normal business hours, and as often as County may deem necessary, Consultant shall make available to representatives of the County for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the County to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or of such other or longer period, if any, as may be required by applicable statute or other lawful requirements.

10.2 The Consultant agrees that it is aware of the conflict of interest requirements of the state law, which are applicable to persons entering into contracts with the County and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit shown in Exhibit "E". Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the agreement voidable.

10.3 The Consultant acknowledges to the County that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interest, direct or indirect, in property abutting the proposed Project and business relationships with persons or entities with interest in abutting properties.

XI. Contract Termination

The parties agree that County shall have the right to terminate this Agreement without cause upon thirty (30) days written notice to Consultant. In the event of such termination without cause, Consultant shall deliver to County all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Consultant in connection with this Agreement. Consultant shall have the right to terminate this Agreement upon thirty (30) days written notice to County in the event of the County's breach of any material term of this Agreement, including but not limited to compensation and method of payment. Regardless of which party initiates termination, Consultant shall be entitled to compensation for any and all services completed to the satisfaction of County in accordance with the provisions of this Agreement prior to termination.

XII. Ownership of Documents

Original reports and/or specifications created by Consultant under this Agreement shall become the property of the County. County grants to the Consultant a royalty-free non-exclusive license to use the reports, specifications and any other data created or produced under this Agreement.

XIII. Complete Contract

This Agreement, including the exhibits hereto numbered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument, signed by the County and the Consultant.

XIV. Mailing of Notices

Unless instructed otherwise in writing, Consultant agrees that all notices or communications to the County permitted or required under this Agreement shall be addressed to the County at the following address:

Collin County Purchasing	Collin County Administrator	Collin County Engineer
Gina Zimmer	Bill Bilyeu	Tracy Homfeld
2300 Bloomdale Rd., Ste. 3160	2300 Bloomdale Rd., Ste 4192	4690 Community Ave., Ste 200
McKinney, TX 75071	McKinney, TX 75071	McKinney, TX 75071
972-548-4165	972-548-4698	972-548-3733
gzimmer@collincountytexas.gov	bbilyeu@collincountytexas.gov	thomfeld@collincountytexas.gov

County agrees that all notices or communications to Consultant permitted or required under this Agreement shall be addressed to Consultant at the following address:

The Nature Conservancy
Brandon Belcher
PO Box 26
Celeste, TX 75423
903-752-0676
brandon.belcher@tnc.org

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the date such notice or communication is posted by the sending party.

XV. Miscellaneous

A. Paragraph Headings

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Interpret Contract Fairly

Although this Agreement is drafted by County, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorable for either party.

C. Venue/Governing Law

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. The venue for any litigation related to this Agreement shall be in Collin County, Texas.

D. Parties Bound

County and Consultant, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date

This Agreement shall be effective from and after execution by both parties hereto.

G. Term of Agreement

The term of this Agreement shall conform to the schedule as stipulated in Exhibit "A" attached herein. No other extension shall be authorized unless granted by written agreement between the County and Consultant.

H. Observe and Comply

Consultant shall at all times observe and comply with all federal and State laws and regulations and with all City ordinances and regulations which in any way affect this Agreement and the work hereunder, and shall observe and comply with all orders, laws, ordinances and regulations which may exist or may be enacted later by governing bodies having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof shall be considered. Consultant agrees to defend, indemnify and hold harmless County and all of its officers, agents, and employees from and against all claims or liability arising out of the violation of any such order, law, ordinance, or regulation, whether it be by itself or its employees.

I. Funding

Funds for payment for Collin County expenditures have been provided through the Collin County budget approved by the Commissioners Court for 2023 fiscal year only, October 1, 2022 through September 30, 2023. State of Texas statutes prohibit any obligation of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that arise past the end of the current fiscal year shall be subject to budget approval. The County shall notify the Consultant at least 30 days prior to the end of each Year identified on Exhibit A as to the approval of the funding for the next Year.

J. Expenses for Enforcement

In the event either Party hereto is required to employ an attorney to enforce the provisions of this Agreement or is required to commence legal proceedings to enforce the provisions hereof, the prevailing Party shall be entitled to recover from the other, reasonable attorney's fees and court costs incurred in connection with such enforcement, including collection.

K. Force Majeure

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot or other civil unrest; actions, embargoes or blockades in effect on or after the date of this Agreement; or national or regional emergency (each of the foregoing, a "Force Majeure Event"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

WITNESS OUR HANDS AND SEALS on the date indicated below.

Date: 12/13/22


COLLIN COUNTY, TEXAS

By: 
Michelle Charnoski, NIGP-CPP, CPPB
Purchasing Agent

Court Order No. 2022-1317-12-12

Date: 11-29-2022

THE NATURE CONSERVANCY, TEXAS CHAPTER

By: 
Title: Texas State Director

ACKNOWLEDGMENT

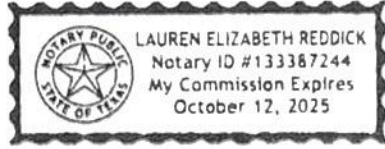
STATE OF TEXAS }

COUNTY OF BEXAR }

LAUREN REDDICK,
BEFORE ME, NOTARY PUBLIC on this day personally appeared SUZANNE SCOTT,
~~TEXAS STATE DEPT~~ of THE NATURE CONSERVANCY, a District of Columbia non-profit corporation,
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to
me that he/she executed the same as the act and deed of the corporation, for the purposes and consideration
therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 29 day of NOVEMBER, 2022.

Lauren Reddick
Notary Public, State of Texas



LAUREN REDDICK
Printed Name

My Commission expires on the 12 day of OCTOBER, 2025.

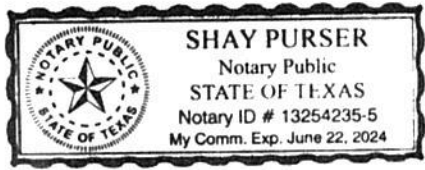
STATE OF TEXAS }

COUNTY OF COLLIN }

BEFORE ME, Shay Purser on this day personally appeared Michelle Charnoski, CPPB, Purchasing
Agent of COLLIN COUNTY, TEXAS, a political subdivision of the State of Texas, known to me to be the
person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed
the same as the act and deed of COLLIN COUNTY, TEXAS, for the purposes and consideration therein
expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 13 day of December, 2022.

Shay Purser
Notary Public, State of Texas



Shay Purser
Printed Name

My Commission expires on the 22 day of June, 2024.

EXHIBIT "A"

SCOPE OF SERVICES

Restoration of Collin County Parkhill Prairie, The Nature Conservancy

Collin County's Parkhill Prairie is a rural public park operated under the county's Parks and Open Spaces program. TNC assisted with acquisition of the property in the late 1980s and led grassland restoration on a portion in early 1990s. The 436-acre property protects a 52-acre prairie remnant and two 25-acre restoration areas. Parkhill Prairie drains into Arnold Creek, western border of the site, and is located just upstream of a reservoir providing drinking water to more than 1 million residents, Lake Lavon. Over the last two decades, TNC has been contracted by Collin County to maintain the grasslands portions of the property. The Park is open daily to the public, has two TNC-maintained walking trails through the prairie, fishing ponds, several pavilions, and restroom facilities. Additionally, visitors are drawn to wildflower displays and wildlife viewing opportunities, occasional outdoor nature-based classes are held onsite by various educational organizations, and a number of scientific research projects have been conducted in the Park's prairie.

Once spanning 12 million acres, the Blackland Prairie ecoregion of Texas now contains less than 0.1% in virgin, unplowed condition. Remaining remnant prairie patches are small in size with most less than 100-acres. Parkhill Prairie is located very nearby to TNC's Clymer Meadow Preserve (750-acre prairie, 1,450-acre site) and Countyline Prairie Preserve (25-acre prairie, 40-acre site). Connectivity between high quality sites such as these is critical to maintaining intrinsic ecological diversity found within these very rare and fragile grassland communities.

During the 2023 calendar year, and for the next succeeding years, the following tasks will be undertaken by Consultant as needed:

- Brush management by mechanical and/or chemical means to ensure prairie grassland health;
- Control of exotic invasive species, including tall fescue, Johnsongrass, scabiosa, and others, by mechanical and/or chemical means;
- Preparations for periodic prescribed fire treatments to reduce woody cover and thatch buildup, stimulate germination, and to improve nutrient availability for prairie grassland maintenance (with any prescribed burns to be conducted being subject to separate agreement);
- Supervision of mowing and removal of vegetation (haycutting);
- Restoration activities including harvesting and/or purchase of seed materials, preparation of seedbeds in selected areas, and planting native seed to enhance local plant community;
- Ecological monitoring and scientific surveys of vegetation, hydrologic function, and other ecological processes to inform adaptive management.

Terms:

Year 1 – January 1, 2023 – December 30, 2023

Year 2 – January 1, 2024 – December 30, 2024

Year 3 – January 1, 2025 – December 30, 2025

Year 4 – January 1, 2026 – December 30, 2026

Year 5 – January 1, 2027 – December 30, 2027

Collin County Budget - 2023-2027

Year 1

Personnel *	\$5,500
Supplies **	\$1,200
Direct	\$6,700
Indirect at 22.4%	\$1,500.00
Total Request	\$8,200.00

Year 2

Personnel *	\$5,500
Supplies **	\$1,200
Direct	\$6,700
Indirect at 22.4%	\$1,500.00
Total Request	\$8,200.00

Year 3

Personnel *	\$5,500
Supplies **	\$1,200
Direct	\$6,700
Indirect at 22.4%	\$1,500.00
Total Request	\$8,200.00

Year 4

Personnel *	\$5,500
Supplies **	\$1,200
Direct	\$6,700
Indirect at 22.4%	\$1,500.00
Total Request	\$8,200.00

Year 5

Personnel *	\$5,500
Supplies **	\$1,200
Direct	\$6,700
Indirect at 22.4%	\$1,500.00
Total Request	\$8,200.00

5-year Total Request

\$41,000.00

* Includes NTX staff and fire crew salaries, travel mileage for fire crews, and overtime as deemed necessary by the Consultant to accomplish project objectives.

** Purchase of herbicides, seed materials, replacement parts for equipment, and small tools as deemed necessary by the Consultant to accomplish project objectives.

EXHIBIT "B"

PAYMENT SCHEDULE

Invoices will be transmitted to the County on a quarterly basis billing for actual time and expenses incurred. See Exhibit A. The County shall remit payment in accordance with V.T.C.A Government Code 2251.

EXHIBIT "C"

INFORMATION TO BE PROVIDED TO THE COUNTY

The County will make available to the Consultant any data relating to the projects specifically defined in Exhibit "A" and/or information pertaining to the existing contracts and/or services currently being provided to the County.

EXHIBIT "D"
INSURANCE REQUIREMENTS

1.1 Before commencing work, the vendor shall be required, at its own expense, to furnish the Collin County Purchasing Agent with certified copies of all insurance certificate(s) indicating the coverage to remain in force throughout the term of this contract.

1.1.1 **Commercial General Liability** insurance including but not limited to the coverage indicated below. Coverage shall not exclude or limit Products/Completed Operations, Contractual Liability, or Cross Liability. Shall include independent contractor's coverage at limits of \$1,000,000 (only necessary if vendor employs independent contractors). Includes Waiver of Subrogation.

- Each Occurrence: \$5,000,000
- Personal & Adv Injury: \$5,000,000
- Products/Completed Operation: \$5,000,000
- General Aggregate: \$5,000,000

1.1.2 **Workers Compensation** insurance as required by the laws of Texas, and Employers' Liability. Includes Waiver of Subrogation.

Employers' Liability

- Liability, Each Accident: \$500,000
- Disease-Each Employee: \$500,000
- Disease – Policy Limit: \$500,000

1.1.3 **Commercial Automobile Liability** insurance including owned, non-owned, and hired vehicles used in connection with the contract. Includes Waiver of Subrogation.

- Combined Single Limit – Each Accident: \$500,000

1.1.4 **Professional/Errors & Omissions Liability** insurance with a two (2) year extended period of coverage, (i.e. tail coverage). If you choose to have project coverage endorsed onto your base policy, this would be acceptable. Includes Additional Insured and Waiver of Subrogation.

- Each Occurrence/Aggregate: \$1,000,000
- Aggregate: \$1,000,000

1.1.5 **Pesticide and Herbicide Endorsement**

- Contractor shall endorse their General Liability policy with a Pesticide and Herbicide Applicator Coverage Endorsement, CG 22 64 07 98

1.2 The required limits may be satisfied by any combination of primary, excess or umbrella liability insurance, provided the primary policy complies with the above requirements and the excess umbrella is following form. The Vendor may maintain reasonable and customary deductibles subject to approval by Collin County.

1.3 With reference to the foregoing insurance requirement, the vendor shall endorse applicable insurance policies as follows:

1.3.1 A *waiver of subrogation* in favor of Collin County, its officials, employees, volunteers and officers shall be for General Liability, Commercial Automobile Liability and Workers' Compensation.

1.3.2 The vendor's insurance coverage shall name Collin County as *additional insured* under the General Liability policy.

1.3.3 All insurance policies shall be endorsed to require the insurer to immediately notify Collin County of any decrease in the insurance coverage limits.

1.3.4 All insurance policies shall be endorsed to the effect that Collin County will receive at least thirty (30) days notice prior to cancellation, non-renewal or termination of the policy.

1.3.5 All copies of Certificates of Insurance shall reference the project/contract number.

1.4 All insurance shall be purchased from an insurance company that meets the following requirements:

1.4.1 A financial rating of A+VII or better as assigned by the BEST Rating Company or equivalent.

1.5 Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain provisions representing and warranting the following:

1.5.1 Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.

1.5.2 Sets forth the notice of cancellation or termination to Collin County.

EXHIBIT "E"

AFFIDAVIT OF REGULATION OF CONFLICTS OF INTEREST

The undersigned declares and affirm that during the term of this contract they will maintain compliance as defined in Vernon's Texas Codes Annotated, Local Government Code Title 5, Section C, Chapter 171.

I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract voidable.

Name of Consultant The Nature Conservancy

Title of Officer Texas State Director

Signature of Officer *Shanne Scott*

Date: 11-29-2022

ACKNOWLEDGMENT

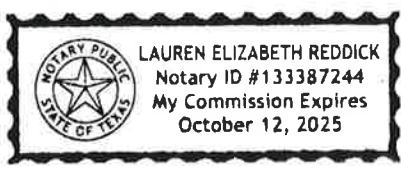
STATE OF TEXAS }
 }
 COUNTY OF BEXAR }

BEFORE ME, on this day personally appeared SUZANNE SCOTT, TEXAS STATE DIRECTOR, known to me (or proved to me on the oath of _____ or through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 29 day of NOVEMBER, 2022.

Lauren Reddick
 Notary Public, State of Texas

LAUREN REDDICK
 Printed Name



My Commission expires on the 12 day of OCTOBER, 2025.