




The following documentation is an electronically-submitted vendor response to an advertised solicitation from the *West Virginia Purchasing Bulletin* within the Vendor Self-Service portal at ***wvOASIS.gov***. As part of the State of West Virginia's procurement process, and to maintain the transparency of the bid-opening process, this documentation submitted online is publicly posted by the West Virginia Purchasing Division at ***WVPurchasing.gov*** with any other vendor responses to this solicitation submitted to the Purchasing Division in hard copy format.

Header 03

 List View

General Information

Contact

Default Values


Discount

Document Information

Clarification Request

Procurement Folder: 1412853

Procurement Type: Central Master Agreement

Vendor ID: VS0000005915 


Legal Name: EBX EM LLC

Alias/DBA:

Total Bid: \$599.00

Response Date: 05/16/2024 

Response Time: 12:49

Responded By User ID: EBXEM 

First Name: John

Last Name: Brawner

Email: jbrawner@res.us

Phone: 412-995-2005

SO Doc Code: CRFQ

SO Dept: 0313

SO Doc ID: DEP2400000037

Published Date: 5/13/24

Close Date: 5/16/24

Close Time: 13:30

Status: Closed

Solicitation Description: Mitigation Credits

Total of Header Attachments: 3

Total of All Attachments: 3



Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

State of West Virginia
Solicitation Response

Proc Folder: 1412853
Solicitation Description: Mitigation Credits
Proc Type: Central Master Agreement

Solicitation Closes	Solicitation Response	Version
2024-05-16 13:30	SR 0313 ESR05162400000007133	1

VENDOR
VS0000005915
EBX EM LLC

Solicitation Number: CRFQ 0313 DEP2400000037
Total Bid: 599 Response Date: 2024-05-16 Response Time: 12:49:04
Comments:

FOR INFORMATION CONTACT THE BUYER
Joseph E Hager III
(304) 558-2306
joseph.e.hageriii@wv.gov

Vendor Signature X FEIN# DATE

All offers subject to all terms and conditions contained in this solicitation

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
1	Stream Credits Per the Attached Exhibit A Pricing Page	1.00000	EA	599.000000	599.00

Comm Code	Manufacturer	Specification	Model #
94131501			

Commodity Line Comments:

Extended Description:

Mitigation Credits / DWWMM as outlined on the attached specifications

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: _____

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:

(Check the box next to each addendum received)

<input checked="" type="checkbox"/> Addendum No. 1	<input type="checkbox"/> Addendum No. 6
<input type="checkbox"/> Addendum No. 2	<input type="checkbox"/> Addendum No. 7
<input type="checkbox"/> Addendum No. 3	<input type="checkbox"/> Addendum No. 8
<input type="checkbox"/> Addendum No. 4	<input type="checkbox"/> Addendum No. 9
<input type="checkbox"/> Addendum No. 5	<input type="checkbox"/> Addendum No. 10

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

EBX-EM, LLC

Company



Authorized Signature

5/15/2024

Date

NOTE: This addendum acknowledgment should be submitted with the bid to expedite document processing.

Revised 6/8/2012

DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Printed Name and Title) _____

(Address) _____

(Phone Number) / (Fax Number) _____

(email address) _____

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through WV OASIS, I certify that: I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; that I am authorized by the Vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on Vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.

(Company) _____

(Signature of Authorized Representative) _____

(Printed Name and Title of Authorized Representative) (Date) _____

(Phone Number) (Fax Number) _____

(Email Address) _____

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.:

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

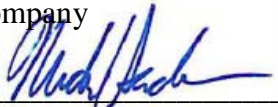
Addendum Numbers Received:

(Check the box next to each addendum received)

- | | |
|---|--|
| <input type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6 |
| <input type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7 |
| <input type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8 |
| <input type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9 |
| <input type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Company



Authorized Signature

Date

NOTE: This addendum acknowledgment should be submitted with the bid to expedite document processing.

REQUEST FOR QUOTATION
Mitigation Credits

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the Department of Environmental Protection to establish an open-end contract for the purchase of released mitigation credits from U.S. Army Corps of Engineers approved mitigation bank(s) in various secondary service areas (SSAs) of the State.
2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
 - 2.1 **“Agreement for Credit Purchase and Sale”** means a binding contract between the listed parties for the purchase of released stream and/or wetland credits from an approved Mitigation Bank.
 - 2.2 **“Contract Item” or “Contract Items”** means the list of items identified in Section 3.1 below and on the Pricing Pages.
 - 2.3 **“DEP ILF”** is the West Virginia Department of Environmental Protection’s In Lieu Fee Program.
 - 2.4 **“IRT”** is the Interagency Review Team which is an interagency team comprised of representatives from U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, US Fish and Wildlife Service, WV Department of Environmental Protection, WV Division of Natural Resources and other federal, state and local agencies as appropriate.
 - 2.5 **“Mitigation Banking”** is the restoration, creation, enhancement, or preservation of a wetland, stream, or other habitat area undertaken expressly for the purpose of compensating for unavoidable resource losses in advance of development actions, when such compensation cannot be achieved at the development site or would not be as environmentally beneficial.
 - 2.6 **“A mitigation bank”** is a site developed for mitigation banking. The person or entity undertaking such restoration work is referred to as a mitigation banker.
 - 2.7 **“Mitigation Credits”** are units of exchange defined as the ecological value associated with the accrual or attainment of aquatic resource function, condition, or other performance measure at a mitigation site. Mitigation credits are determined based on the West Virginia Stream and Wetland Valuation Metric. The Interagency Review Team periodically releases bank credits as the bank meets certain performance milestones. This happens over the course of the "establishment period", which lasts around 10 to 12 years. When the IRT releases potential bank

REQUEST FOR QUOTATION
Mitigation Credits

credits, they become available credits meaning they can be purchased for ecological offset.

2.8 “Released Mitigation Credits” are those credits available for sale to offset impacts. Credits are based on meeting performance standards and approved by the IRT.

2.9 “Pricing Pages” means the schedule of prices, estimated order quantity, and totals contained in wvOASIS or attached hereto as Exhibit A and used to evaluate the Solicitation responses.

2.10 “RIBITS” (Regulatory In lieu fee and Bank Information Tracking System) is a website created by the US Army Corps of Engineers (USACE) with information on mitigation and conservation banks and in-lieu fee (ILF) program sites. It houses information about all mitigation and ILF sites including site documents, mitigation credit availability, and service areas as well as tracks all credit transactions.

2.11 “Solicitation” means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

2.12 “SSA” means Secondary Service Area as identified in the WV In Lieu Fee Stream and Wetland Mitigation Program Instrument.

3. GENERAL REQUIREMENTS:

3.1 Contract Items and Mandatory Requirements: Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. This contract will be awarded to multiple Vendors based on the need to have access to mitigation credits statewide. Contract Items must meet or exceed the mandatory requirements as shown below.

3.1.1 Released Credits from a U.S. Army Corps of Engineers approved mitigation bank in SSA 1 (Estimated Quantities 3800 stream credits and 1 wetland credit)

3.1.2 Released Credits from a U.S. Army Corps of Engineers approved mitigation bank in SSA 2 (Estimated Quantities 1 stream credit and 1 wetland credit)

3.1.3 Released Credits from a U.S. Army Corps of Engineers approved mitigation bank in SSA 3 (Estimated Quantities 1 stream credit and 1 wetland credit)

REQUEST FOR QUOTATION
Mitigation Credits

- 3.1.4** Released Credits from a U.S. Army Corps of Engineers approved mitigation bank SSA 4 (Estimated Quantities 1 stream credits and 1 wetland credit)
- 3.1.5** Released Credits from a U.S. Army Corps of Engineers approved mitigation bank in SSA 5 (Estimated Quantities 1 stream credit and 1 wetland credit)

4. BIDDER'S MINIMUM QUALIFICATIONS

- 4.1** Bidders shall be the owner or authorized representative of a stream and/or wetland mitigation bank that is approved by the USACE. The mitigation bank shall be active and operating in compliance with applicable federal and state permits, laws and regulations and be in good regulatory standing.
- 4.2** A copy of the bank's geographic service area map or equivalent must be provided with the bid submission.
- 4.3** The mitigation bank shall include with its bid submission the Bank's typical Agreement for Credit Purchase and Sale.
- 4.4** The mitigation bank shall have the number and type of credits released by the IRT and available for sale upon signing of the Agreement for Credit Purchase and Sale.
- 4.5** Any authorizations or approvals required by the USACE, IRT or other regulatory organizations regarding the use or availability of mitigation credits must be completed prior to the date of the Agreement for Credit Purchase and Sale.

5. CONTRACT AWARD:

- 5.1 Contract Award:** The Contract is intended to provide the DEP ILF with a purchase price on all Contract Items. The Contract shall be awarded to Vendors that provide the Contract Items meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.
- 5.2 Pricing Pages:** Vendor should complete the Pricing Pages by providing a unit cost and multiplying by the estimated quantity to calculate the extended cost. Vendor should complete the Pricing Pages in their entirety as failure to do so may result in Vendor's bids being disqualified.

The Pricing Pages contain a list of the Contract Items and estimated purchase volume. The estimated purchase volume for each item represents

REQUEST FOR QUOTATION

Mitigation Credits

the approximate volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

Vendor should type or electronically enter the information into the pricing page to prevent errors in the evaluation.

Vendor's who wish to respond to a centralized Request for Quotation (CRFQ) online may submit information through the state's wvOASIS Vendor self-service (VSS). If unable to respond online, Vendor must submit their pricing page with their submitted bid prior to the scheduled bid opening date.

Vendor should electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. Vendor can download the electronic copy of the Pricing Pages from the wvOASIS Vendor Self-Service (VSS) website. If responding with a paper bid, Vendors should download and/or print the assembled CRFQ document (with the highest version number) from wvOASIS and insert their unit price and extended cost for each line item.

6. ORDERING AND PAYMENT:

6.1 Ordering: Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.

6.1.1 Agency will issue an Agency Delivery Order (ADO) for purchase of mitigation credits. Agency must use the lowest bid Vendor unless it is determined that the Vendor does not have mitigation credits available for purchase at the time of request.

6.1.2 If lowest bid Vendor has credits available but not enough to complete the requested amount, then the DEP will procure the credits available from the lowest bid Vendor and then contact the next lowest bid Vendor to obtain the requested amount of mitigation credits and so on until the total amount is obtained.

6.1.3 If there is a tie among the lowest bid Vendors, the DEP may request another quote to procure the mitigation credits or procure mitigation

REQUEST FOR QUOTATION
Mitigation Credits

credits from the Vendor that has mitigation bank credits closest to where the DEP ILF funds were taken in.

6.1.4 Once the Agreement for Credit Purchase and Sale is signed, the Vendor shall place those credits in reserve until the purchase is complete.

6.2 Payment: Within ten (10) business days of the Credit Transfer into the DEP ILF RIBITS stream credit ledger, Vendor shall provide the DEP ILF with an invoice for the Purchase Price (“*Invoice*”) and DEP ILF shall remit Purchase Price payment in accordance with the payment procedures of the State of West Virginia.

7. DELIVERY AND RETURN:

7.1 Delivery Time: Within ten (10) business days of signing the Agreement for Credit Purchase and Sale for the released credits the Vendor shall transfer the purchased number of Stream Credits to the DEP ILF Program by notifying the Corps to debit Vendor’s online Corps-maintained RIBITS Stream Credit ledger in the amount of the purchased Stream Credits (“*Credit Transfer*”).

7.2 Late Delivery: The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

Any Agency seeking to obtain items from a third party under this provision must first obtain approval of the Purchasing Division.

7.3 Return of Unacceptable Items: If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor’s expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency’s discretion.

7.4 Return Due to Agency Error: Items ordered in error by the Agency will be returned for credit within 30 days of receipt.

REQUEST FOR QUOTATION
Mitigation Credits

8. VENDOR DEFAULT:

8.1 The following shall be considered a Vendor default under this Contract.

- 8.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
- 8.1.2** Failure to comply with other specifications and requirements contained herein.
- 8.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 8.1.4** Failure to remedy deficient performance upon request.

8.2 The following remedies shall be available to Agency upon default.

- 8.2.1** Immediate cancellation of the Contract.
- 8.2.2** Immediate cancellation of one or more release orders issued under this Contract.
- 8.2.3** Any other remedies available in law or equity.

9. MISCELLANEOUS:

- 9.1 No Substitutions:** Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.
- 9.2 Vendor Supply:** Vendor must carry sufficient inventory of the Contract Items being offered to fulfill any Agreement for Credit Purchase and Sale signed under this Contract. By signing the Agreement for Credit Purchase and Sale, Vendor certifies that it can supply the Contract Items needed at that time.

REQUEST FOR QUOTATION
Mitigation Credits

- 9.3 Reports:** Vendor shall provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.
- 9.4 Contract Manager:** During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

Contract Manager: John Brawner
Telephone Number: 918.899.2205
Fax Number: 713.520.5401
Email Address: jbrawner@res.us

West Virginia Department of Environmental Protection - In-Lieu Fee Program

Mitigation Credits

May 2024





Table of Contents

Pricing Page	1
Stream Credits in ILF SSA1	3
Bank Information	3
Service Area Map.....	5
Bank's Agreement for Credit Purchase and Sale.....	8

EXHIBIT A
PURCHASE OF STREAM AND/OR WETLAND MITIGATION CREDITS
BY WV DEP IN LIEU FEE PROGRAM
PRICING PAGE

The following shall be provided according to the contract terms and conditions contained herein. Price may be provided for any of the following in whole or in part. A price must be provided for each item listed below in order for the vendor to be eligible to sell within that SSA (Secondary Service Area) to the ILF Program for the duration of this contract.

Item	Description	Estimated Quantity	Unit Price	Total Cost/Extended Price
1.	stream credits in ILF SSA 1	3800	\$ <u>599.00</u>	\$ <u>2,276,200</u>
2.	wetland credit in ILF SSA 1	1	\$ <u>N/A</u>	\$ <u>N/A</u>
3.	stream credit in ILF SSA 2	1	\$ <u>N/A</u>	\$ <u>N/A</u>
4.	wetland credits in ILF SSA 2	1	\$ <u>N/A</u>	\$ <u>N/A</u>
5.	stream credit in ILF SSA 4	1	\$ <u>N/A</u>	\$ <u>N/A</u>
6.	wetland credit in ILF SSA 4	1	\$ <u>N/A</u>	\$ <u>N/A</u>
7.	stream credit in ILF SSA 5	1	\$ <u>N/A</u>	\$ <u>N/A</u>
8.	wetland credit in ILF SSA 5	1	\$ <u>N/A</u>	\$ <u>N/A</u>

Mitigation Bank Information

The following is required as part of the bid.

Bank Name: See attached for list of Banks

Physical Address: _____

Bank Owner Name: _____

Bank Owner Address: _____

Contact Name: _____

Contact Email: _____

Service Area (HUCs): _____

Required Items: Return the following with your bid.

Bank geographic service area map or equivalent

Bank's Agreement for Credit Purchase and Sale



Stream Credits in ILF SSA1

Bank Information

Bank Name	Cline Run Mitigation Bank
Physical Address	Latitude 39° 21' 34.844"N, Longitude 80° 57' 25.14"W Facility Address: Route 20/1, Haddox Run Rd. Tyler County, WV
Bank Owner Name	EBX-EM, LLC
Bank Owner Address	137 ½ East Main Street, Suite 210 Oak Hill, West Virginia 25901
Contact Name	John Brawner
Contact Email	jbrawner@res.us
Service Area (HUCs)	Primary: Little Kanawha 05030203; Middle Ohio North 05030201 Secondary: Middle Ohio South 05030202; Upper Ohio South 05030106; Upper Ohio North 05030101

Bank Name	Foster Run Mitigation Bank
Physical Address	Latitude 39° 21' 31.50"N, Longitude -80° 57' 25.70"W Wheelers Run Road 7/6 Tyler County, WV
Bank Owner Name	EBX-EM, LLC
Bank Owner Address	137 ½ East Main Street, Suite 210 Oak Hill, West Virginia 25901
Contact Name	John Brawner
Contact Email	jbrawner@res.us
Service Area (HUCs)	Primary: Middle Ohio North 05030201 Secondary: Middle Ohio South 05030202; Little Kanawha 05030203; West Fork 05020002; Monongahela 05020003; Upper Ohio South 05030106

Bank Name	Sandy Creek Mitigation Bank
Physical Address	Latitude 39° 22' 25.46"N, Longitude -80° 46' 56.12"W Sandy Creek Road 6/2 Shirley, WV
Bank Owner Name	EBX-EM, LLC
Bank Owner Address	137 ½ East Main Street, Suite 210 Oak Hill, West Virginia 25901







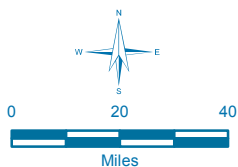
Contact Name	John Brawner
Contact Email	jbrawner@res.us
Service Area (HUCs)	Primary: Middle Ohio North 05030201 Secondary: Middle Ohio South 05030202; Little Kanawha 05030203; Upper Ohio South 05030106; Upper Ohio North 05030101



Horizontal Datum is NAD83 StatePlane WV N.
Project limits are approximate.

Legend

-  Cline Run Mitigation Bank Site
-  8 Digit HUC Watershed
-  Secondary Service Area
-  Primary Service Area



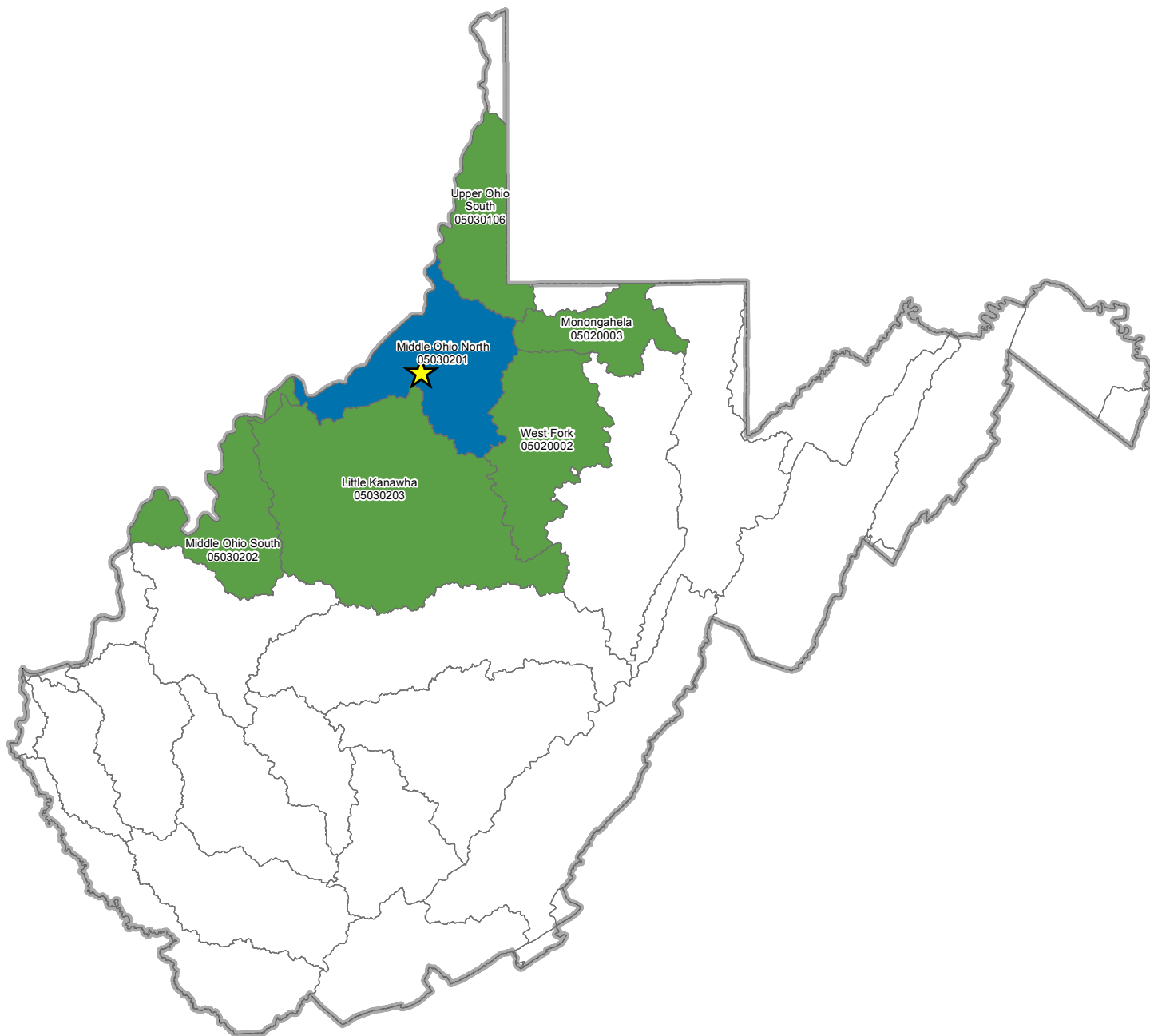
EBX-EM, LLC
Cline Run Mitigation Bank Site
Service Area Map
West Virginia

Date: 1/31/2017

Drawn by: KPR





Checked by: JAS

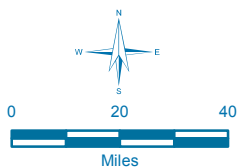




Horizontal Datum is NAD83 StatePlane WV N.
Project limits are approximate.

Legend

-  Foster Run Mitigation Bank Site
-  8 Digit HUC Watershed
-  Primary Service Area
-  Secondary Service Area



EBX-EM, LLC

**Foster Run Mitigation Bank Site
Service Area Map**

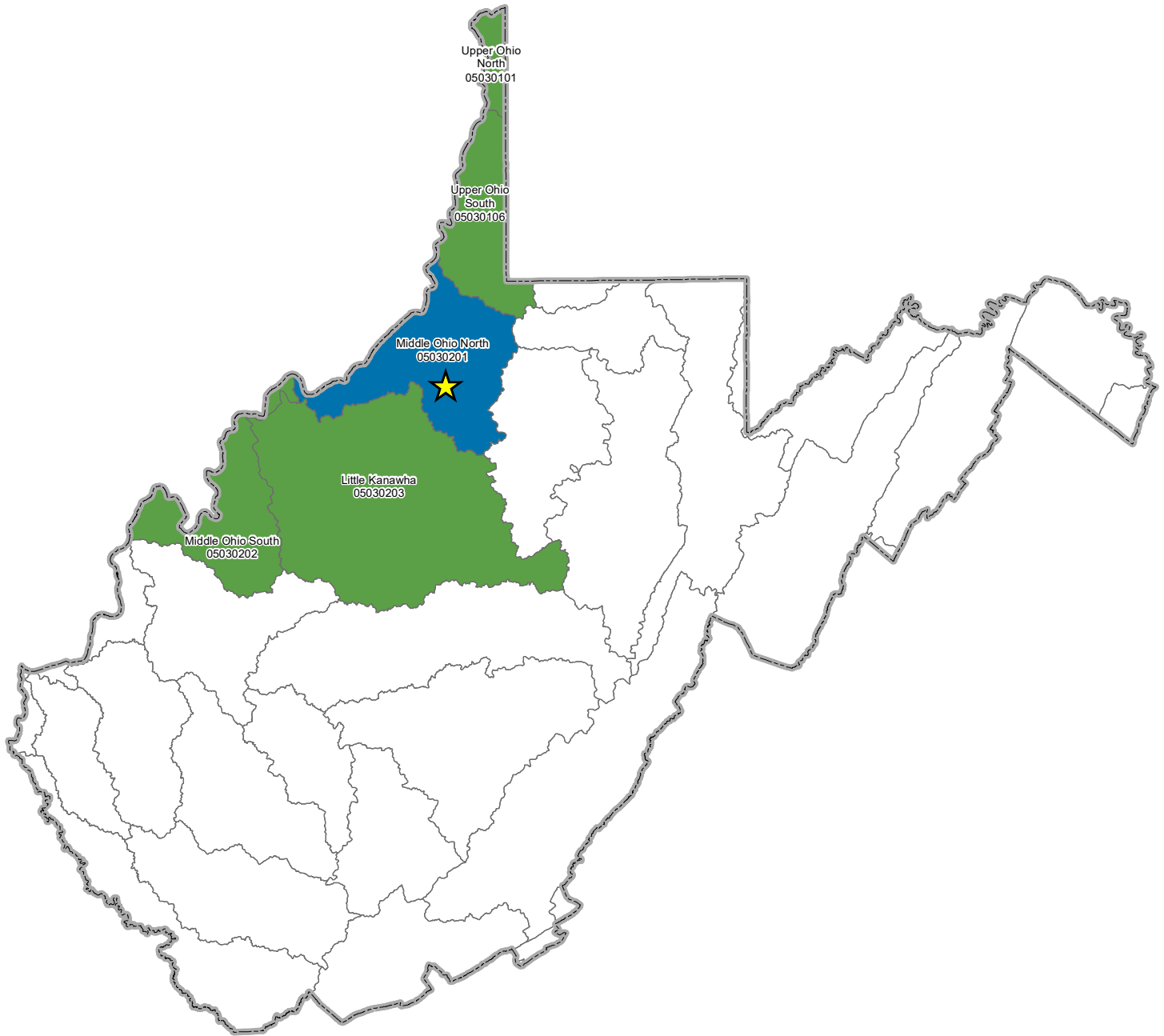
West Virginia

Date: 2/6/2017

Drawn by: KPR




Checked by: JAS

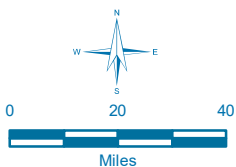




Horizontal Datum is NAD83 StatePlane WV N.
Project limits are approximate.

Legend

-  Sandy Creek Mitigation Bank Site
-  Primary Service Area
-  Secondary Service Area



EBX-EM, LLC

**Sandy Creek Mitigation Bank Site
Service Area Map**

West Virginia

Date: 4/8/2019

Drawn by: KPR

Checked by: KLR



MITIGATION CREDIT SUPPLY AGREEMENT

THIS MITIGATION CREDIT SUPPLY AGREEMENT (this “Agreement”) by and between EBX-EM, LLC (“RES”) and West Virginia Department of Environmental Protection (“Buyer”) is effective as of _____, 2024 (the “Effective Date”).

RECITALS:

WHEREAS, RES has established a mitigation bank known as the **Foster Run, Cline Run, and Sandy Creek** (the “Bank”) authorized by the United States Army Corps of Engineers (the “Permitting Agency”) pursuant to a mitigation banking instrument (as amended or modified from time to time, the “Bank Instrument”);

WHEREAS, RES is authorized to operate the Bank and to sell and transfer mitigation credits, as described in the Bank Instrument (“Mitigation Credits”), in accordance with the Bank Instrument; and

WHEREAS, Buyer desires to purchase from RES, and RES desires to sell to Buyer, Mitigation Credits, upon the terms and subject to the conditions set forth in this Agreement.

THEREFORE, for and in consideration of the premises and the payment set forth herein, RES and Buyer agree to the following terms and conditions:

AGREEMENTS:

1. Purchase of Mitigation Credits.

- a. Purchase. RES hereby agrees to sell to Buyer, and Buyer hereby agrees to buy from RES, the Mitigation Credits described in Exhibit A, on the terms, and subject to the conditions, set forth herein (the “Purchased Credits”).
- b. Purchase Price. The purchase price for the Purchased Credits is **\$2,276,200.00** (the “Purchase Price”). Buyer agrees to pay RES the Purchase Price by wire transfer to the account specified on Exhibit B no later than thirty (30) days after the Effective Date. All amounts paid by Buyer under this Agreement shall, when paid, be deemed fully earned by RES and non-refundable.
- c. Default. If Buyer fails to pay any portion of the Purchase Price when due, then: (i) RES shall not be required to perform hereunder and shall not be responsible for any breach, liability, or damages resulting from such non-performance, and (ii) RES may terminate this Agreement, pursue such remedies as may be available to it at law and in equity and, without limiting the foregoing, ownership of the Purchased Credits shall automatically revert to RES, and RES shall be free to sell the Purchased Credits to one or more third parties.

2. Ownership and Application of Purchased Credits.

- a. Ownership. As of the Effective Date, Buyer shall own the Purchased Credits, subject to Sections 1.c. and 2.d. of this Agreement.
- b. Application of Purchased Credits. At any point on or after the Effective Date, Buyer may request that RES apply the Purchased Credits to a permit by delivering a written notice to RES (an “Application Notice”). Each Application Notice shall include (i) Buyer’s name and contact information; (ii) the Permitting Agency’s name and contact information; (iii) Buyer’s project name and location; (iv) Buyer’s permit application number and date; and (v) a brief description of the impacts mitigated by the Mitigation Credits (e.g., impact of [x] acres of wetlands). Upon request, Buyer shall promptly provide RES any additional information necessary to meet the requirements set forth in the Bank Instrument or required by the Permitting Agency. Upon receipt of an Application Notice and, if the Purchase Price has not been paid, payment of the Purchase Price in full, RES shall promptly provide the Permitting Agency with the documentation required by the Bank Instrument to apply the Purchased Credits to the permit application specified by Buyer. Buyer is solely responsible for the accuracy of the information provided to RES in an Application Notice and any other information provided by Buyer to RES in connection with the Purchased Credits or the application of the Purchased Credits to a permit. RES shall have neither the duty to confirm the accuracy of the information provided by Buyer nor any liability for inaccurate information.
- c. Exculpation of RES. In no event will RES be responsible (i) if the Permitting Agency does not allow the Purchased Credits to be applied to a permit; (ii) for determining the nature or amount of mitigation required by Buyer for any

project, for any permit, or under any applicable law; or (iii) for compliance with the terms and conditions of any permit ultimately issued to Buyer in connection with any project or otherwise.

- d. Substitute Credits. Notwithstanding anything to the contrary herein, RES may, in its discretion and in lieu of supplying the Purchased Credits, obtain substitute Mitigation Credits from mitigation banks or other sources ("Substitute Credits") and apply those Substitute Credits to the permit specified by Buyer in the Application Notice; provided, that such substitution does not adversely impact Buyer. If RES provides Substitute Credits in lieu of the Purchased Credits, ownership of the Purchased Credits shall automatically revert to RES, and RES shall be free to sell the Purchased Credits to one or more third parties.
- e. Bank Closeout. If all of the Purchased Credits have not been applied to a permit by the five-year anniversary of the Effective Date, and, as a result, RES is prevented from closing the Bank, Buyer will take any and all actions requested by RES to achieve Bank closeout.

3. Miscellaneous.

- a. Buyer Rights. For the avoidance of doubt, this Agreement does not give the Buyer (i) rights to any monies generated by the Bank, or (ii) rights of ownership or use of the real property associated with the Bank or any other property interests of RES or its affiliates.
- b. Confidentiality. Neither this Agreement nor the terms hereof may be furnished to any third party without the written consent of all parties, except as may otherwise be required by law or a court of competent jurisdiction; provided, that the foregoing shall not prohibit the parties from providing this Agreement or the terms hereof to their attorneys, consultants, professional advisors, affiliates, current investors and lenders, and prospective investors and lenders. Buyer acknowledges and agrees that RES may, as part of the process for transferring the Purchased Credits, disclose information provided by Buyer to the Permitting Agency and other applicable regulatory authorities.
- c. Governing Law and WAIVER OF JURY TRIAL. This Agreement and all matters arising out of or relating to this Agreement are governed by the laws of Texas, without giving effect to any conflict of laws provisions thereof. Either party may only institute legal suits, actions, and proceedings arising out of or relating to this Agreement in the federal or state courts located in Houston, Texas. **EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY: (A) CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE AFOREMENTIONED COURTS; (B) WAIVES ANY OBJECTION TO THAT CHOICE OF FORUM BASED ON VENUE OR TO THE EFFECT THAT THE FORUM IS NOT CONVENIENT; AND (C) WAIVES ANY RIGHT TO TRIAL BY JURY.**
- d. Counterparts and Authorization. This Agreement may be signed by facsimile or electronic PDF signature, which signature shall be deemed to constitute an original signature and be binding as such. This Agreement may be executed in identical counterparts, each of which when so executed and delivered will constitute an original, but all of which taken together will constitute one and the same instrument. The parties each separately represent that the person signing this Agreement is duly authorized to sign this Agreement.
- e. Force Majeure. No party shall be liable or responsible to the other party, or be deemed to have breached this Agreement, for any failure or delay in satisfying its obligations hereunder if such failure or delay is attributable to any of the following: strikes, riots, acts of God, shortages of labor or materials, war, terrorist acts or activities, orders, laws, regulations, or restrictions, adverse determinations from the Permitting Agency or any other governmental authority, or any other causes which are beyond the reasonable control of the responsible party.
- f. Consequential Damages. Notwithstanding anything to the contrary herein, no party shall be liable for any lost or prospective profits or any other indirect, consequential, special, incidental, punitive, or other exemplary losses or damages, whether based in contract, warranty, indemnity, negligence, strict liability, or other tort or otherwise, regardless of the foreseeability or the cause thereof. Each party expressly agrees that the affiliates, members, partners, and shareholders of any defaulting or breaching party hereunder are not jointly, solidarily, or severally liable for any costs, expenses, losses, or damages arising from such party's breach or default under this Agreement.
- g. Notice. All notices sent by one party to the other pursuant to this Agreement shall be in writing, addressed as set forth on the signature page of this Agreement, and either (i) sent by email with confirmed receipt, or (ii) delivered or sent (A) in person; (B) by U.S. Mail, postage prepaid and certified with return receipt requested; or (C) by nationally recognized overnight delivery service, shipping prepaid. Either party may change its email address or physical address by notifying the other party in writing of the change.

- h. Interpretation. The Parties expressly agree that this Agreement was jointly drafted and that each Party had opportunity to negotiate its terms and to obtain assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall not be construed against or in favor of any Party but shall be construed in a neutral manner.
- i. Survival. Notwithstanding anything to the contrary herein, Section 1.c. and Article 3 shall survive any termination of this Agreement.
- j. General. Buyer's rights under this Agreement shall not be assigned or apportioned, either voluntarily or by operation of law, without the prior written consent of RES. This Agreement constitutes the entire agreement and understanding between the parties with respect to the purchase and sale of the Purchased Credits, and supersedes and replaces any prior agreements and understandings, whether oral or written, between them with respect to such matters. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of either party. This Agreement may not be changed, amended, or modified except by an instrument in writing signed by both parties. The unenforceability, invalidity, or illegality of any provision hereof shall not render any other provision unenforceable, invalid, or illegal. This Agreement is not intended to create, and it shall not create, any partnership, joint venture, or similar arrangement between Buyer and RES. No party's failure or delay in exercising any of its rights hereunder will constitute a waiver of such rights unless expressly waived in writing.

[Signature Page Follows]

The parties have executed this Mitigation Credit Supply Agreement effective as of the Effective Date.

EBX-EM LLC,
a Delaware limited liability company

By: Environmental Banc & Exchange, LLC,
a Maryland limited liability company,
its manager

By: Resource Environmental Solutions, LLC,
a Louisiana limited liability company,
its manager

By: _____
Name: _____
Title: _____

Address:
c/o Resource Environmental Solutions, LLC
6575 West Loop South, Suite 300
Bellaire, Texas 77401
Attn: Legal Department
Email: contracting@res.us

West Virginia Department of Environmental Protection

By: _____

Name: _____

Title: _____

Physical Address: _____

Email Address: _____

Exhibit A

Credit Type	Quantity	Price/Credit
Foster Run Stream Credits	2,222.520	\$599.00
Cline Run Stream Credits	550.44	\$599.00
Sandy Creek Stream Credits	1,027.040	\$599.00

Exhibit B

Bank: First Horizon Bank
11 Greenway Plaza
Suite 2700
Houston, TX 77046

Routing No.: 084000026

Account No.: 200-0137-8163

Account Name: EBX-EM, LLC Checking Account

For questions, please call Thomas Judice with RES at (225) 372-6113.

