



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

State of West Virginia Master Agreement

Order Date: 07-02-2024

CORRECT ORDER NUMBER MUST
APPEAR ON ALL PACKAGES, INVOICES,
AND SHIPPING PAPERS. QUESTIONS
CONCERNING THIS ORDER SHOULD BE
DIRECTED TO THE DEPARTMENT
CONTACT.

| | | | |
|-----------------------|-------------------------------|--------------------------|------------|
| Order Number: | CMA 0313 0313 DEPMITCRED006 1 | Procurement Folder: | 1458550 |
| Document Name: | Mitigation Credits | Reason for Modification: | |
| Document Description: | Mitigation Credits | | |
| Procurement Type: | Central Master Agreement | | |
| Buyer Name: | | | |
| Telephone: | | | |
| Email: | | | |
| Shipping Method: | Best Way | Effective Start Date: | 2024-07-15 |
| Free on Board: | FOB Dest, Freight Prepaid | Effective End Date: | 2025-07-14 |

| VENDOR | DEPARTMENT CONTACT | | | | | | | | | | | | | | | | | | | | |
|---|--------------------|---------------------|---------------------|---------------|----|----|--------|---|----|----|--|--|----|----|--|--|----|----|--|--|---|
| Vendor Customer Code: 000000113098 MOUNTAIN STATE MITIGATION CREDITS CO PO BOX 294 MAN WV 25635 US Vendor Contact Phone: 999-999-9999 Extension: Discount Details: <table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>No</td><td></td><td></td></tr><tr><td>#3</td><td>No</td><td></td><td></td></tr><tr><td>#4</td><td>No</td><td></td><td></td></tr></tbody></table> | | Discount Allowed | Discount Percentage | Discount Days | #1 | No | 0.0000 | 0 | #2 | No | | | #3 | No | | | #4 | No | | | Requestor Name: Jessica S Chambers Requestor Phone: (304) 414-1140 Requestor Email: jessica.s.chambers@wv.gov 2025 FILE LOCATION _____ |
| | Discount Allowed | Discount Percentage | Discount Days | | | | | | | | | | | | | | | | | | |
| #1 | No | 0.0000 | 0 | | | | | | | | | | | | | | | | | | |
| #2 | No | | | | | | | | | | | | | | | | | | | | |
| #3 | No | | | | | | | | | | | | | | | | | | | | |
| #4 | No | | | | | | | | | | | | | | | | | | | | |

| INVOICE TO | SHIP TO |
|---|--|
| ENVIRONMENTAL PROTECTION DIV OF WASTE AND WATER MGT 601 57TH ST SE CHARLESTON WV 25304 US | ENVIRONMENTAL PROTECTION DIVISION OF WATER AND WASTE MGT 601 57TH ST SE CHARLESTON WV 25304 US |

Purchasing Division's File Copy

Total Order Amount:

Open End

PURCHASING DIVISION AUTHORIZATION
DATE: *7/16/2024*
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM
DATE: *John L. Gray*
ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION
DATE: *8-1-24*
ELECTRONIC SIGNATURE ON FILE

Extended Description:

The vendor, Mountain State Mitigation Credits Company., agrees to enter into this open-end contract with the agency, The West Virginia Department of Environmental Protection, for the purchase of released mitigation credits from U.S. Army Corp of Engineers approved mitigation bank (s) in various secondary service areas (SSAs) of the State per the specifications, terms and conditions, Addendum #1 issued 5/13/2024, and the vendors submitted bid response dated 5/16/2024 all incorporated herein by reference and made a part hereof.

This is a Multi-Award Contract.

| Line | Commodity Code | Manufacturer | Model No | Unit | Unit Price |
|--------------|----------------|--------------|----------|-------------------------|------------|
| 1 | 94131501 | | | EA | 0.000000 |
| Service From | | Service To | | Service Contract Amount | |
| | | | | 0.00 | |

Commodity Line Description: Stream Credits Per the Attached Exhibit A Pricing Page

Extended Description:

See attached Exhibit Pricing Page. Selection based on location of need and will purchase the needed credits starting with the lowest first until the needed credits are purchased.

**STATE OF WEST VIRGINIA
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): The West Virginia Department of Environmental Protection

Vendor: Mountain State Mitigation Credits Co.

Contract/Lease Number ("Contract"): CMA DEP MITCRED006

Commodity/Service: Mitigation Credits

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**

2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

Any language imposing any interest or charges due to late payment is deleted.

3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.

5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.

6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.

7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.

8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.

9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.

10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.

11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.
- Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.
- Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~striketrough~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: DOP

By: Jessica Smith

Printed Name: Jessica Smith

Title: ASMT

Date: 7/11/24

Vendor: Mountain State Mitigation Credits Company

By: [Signature]

Printed Name: Tom Rayburn

Title: Treasurer

Date: July 2, 2024

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. DEFINITIONS: As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

2.1. "Agency" or "Agencies" means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

2.2. "Bid" or "Proposal" means the vendors submitted response to this solicitation.

2.3. "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

2.4. "Director" means the Director of the West Virginia Department of Administration, Purchasing Division.

2.5. "Purchasing Division" means the West Virginia Department of Administration, Purchasing Division.

2.6. "Award Document" means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

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

2.8. "State" means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

2.9. "Vendor" or "Vendors" means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

☐ the contract will continue for _____ years;

☐ the contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's Office (Attorney General approval is as to form only).

☐ **One-Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), and continues until the project for which the vendor is providing oversight is complete.

☐ **Other:** Contract Term specified in _____

4. AUTHORITY TO PROCEED: Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

5. QUANTITIES: The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☒ **Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☐ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One-Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

☐ **Construction:** This Contract is for construction activity more fully defined in the specifications.

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One-Time Purchase contract.

7. REQUIRED DOCUMENTS: All of the items checked in this section must be provided to the Purchasing Division by the Vendor as specified:

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

☐☐☐☐

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: 1,000,000 one million per occurrence.

☐ **Automobile Liability Insurance** in at least an amount of: _____ per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: _____ per occurrence.

☐ **Cyber Liability Insurance** in an amount of: _____ per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

☐ **Pollution Insurance** in an amount of: _____ per occurrence.

☐ **Aircraft Liability** in an amount of: _____ per occurrence.

☐☐☐☐

9. WORKERS' COMPENSATION INSURANCE: Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

10. VENUE: All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

11. LIQUIDATED DAMAGES: This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ _____ for _____.

☐ Liquidated Damages Contained in the Specifications.

☒ Liquidated Damages Are Not Included in this Contract.

12. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

13. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

14. PAYMENT IN ARREARS: Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

15. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

16. TAXES: The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

17. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

19. CANCELLATION: The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

20. TIME: Time is of the essence regarding all matters of time and performance in this Contract.

21. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

22. COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

23. ARBITRATION: Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

24. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

25. WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

26. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

27. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

28. WARRANTY: The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

29. STATE EMPLOYEES: State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

30. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in www.state.wv.us/admin/purchase/privacy.

31. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

32. LICENSING: In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

33. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

34. VENDOR NON-CONFLICT: Neither Vendor nor its representatives are permitted to have any interest, nor shall they acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.

35. VENDOR RELATIONSHIP: The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

36. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

37. NO DEBT CERTIFICATION: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

38. CONFLICT OF INTEREST: Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

39. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☒ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.division@wv.gov.

40. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
 1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
 2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a “substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the Vendor must submit to the Agency a disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

44. PROHIBITION AGAINST USED OR REFURBISHED: Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

45. VOID CONTRACT CLAUSES: This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

46. ISRAEL BOYCOTT: Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

ADDENDUM ACKNOWLEDGEMENT FORM

SOLICITATION NO.: CRFQ-0313-DEP2400000037

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)

- ☒ Addendum No. 1
- ☐ Addendum No. 2
- ☐ Addendum No. 3
- ☐ Addendum No. 4
- ☐ Addendum No. 5

- ☐ Addendum No. 6
- ☐ Addendum No. 7
- ☐ Addendum No. 8
- ☐ Addendum No. 9
- ☐ 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.

Mountain State Mitigation Credits Company

Company

Authorized Signature

May 14, 2024

Date

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

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) Tom Rayburn, Treasurer

(Address) P.O. Box 4255 Chapmanville, WV 25508

(Phone Number) / (Fax Number) 304-541-2917

(email address) trayburn@suddenlinkmail.com

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, 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.

Mountain State Mitigation Credits Company

(Company)

(Signature of Authorized Representative)

Tom Rayburn, Treasurer May 14, 2024

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

(304) 541-2917

(Phone Number) (Fax Number)

trayburn@suddenlinkmail.com

(Email Address)

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

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)

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

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

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.

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.

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: _____
Telephone Number: _____
Fax Number: _____
Email Address: _____

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 | | \$ 640.00 | \$ |
| 2. | wetland credit in ILF SSA 1 | | \$ 50,000.00 | |
| 3. | stream credit in ILF SSA 2 | | \$ N/A | \$ |
| 4. | wetland credits in ILF SSA 2 | | \$ N/A | \$ |
| 5. | stream credit in ILF SSA 4 | | \$ 720.00 | \$ |
| 6. | wetland credit in ILF SSA 4 | | \$ N/A | \$ |
| 7. | stream credit in ILF SSA 5 | | \$ 720.00 | |
| 8. | wetland credit in ILF SSA 5 | | \$ N/A | \$ |

* 1891.52 Credits available now with and additional 568.33 Credits that are presently being released by the USACOE for this site bringing the Total to 2459.85 Credits

Mitigation Bank Information

The following is required as part of the bid.

Bank Name: Indian Creek Mitigation Bank, Big Horse Creek Mitigation Bank, Cloverlick Branch MB

Physical Address: P.O. Box 4255, Chapmanville, WV

Bank Owner Name: Mountain State Mitigation Credits Company

Bank Owner Address: P.O. Box 4255, Chapmanville, WV 25508

Contact Name: Tom Rayburn, Treasurer

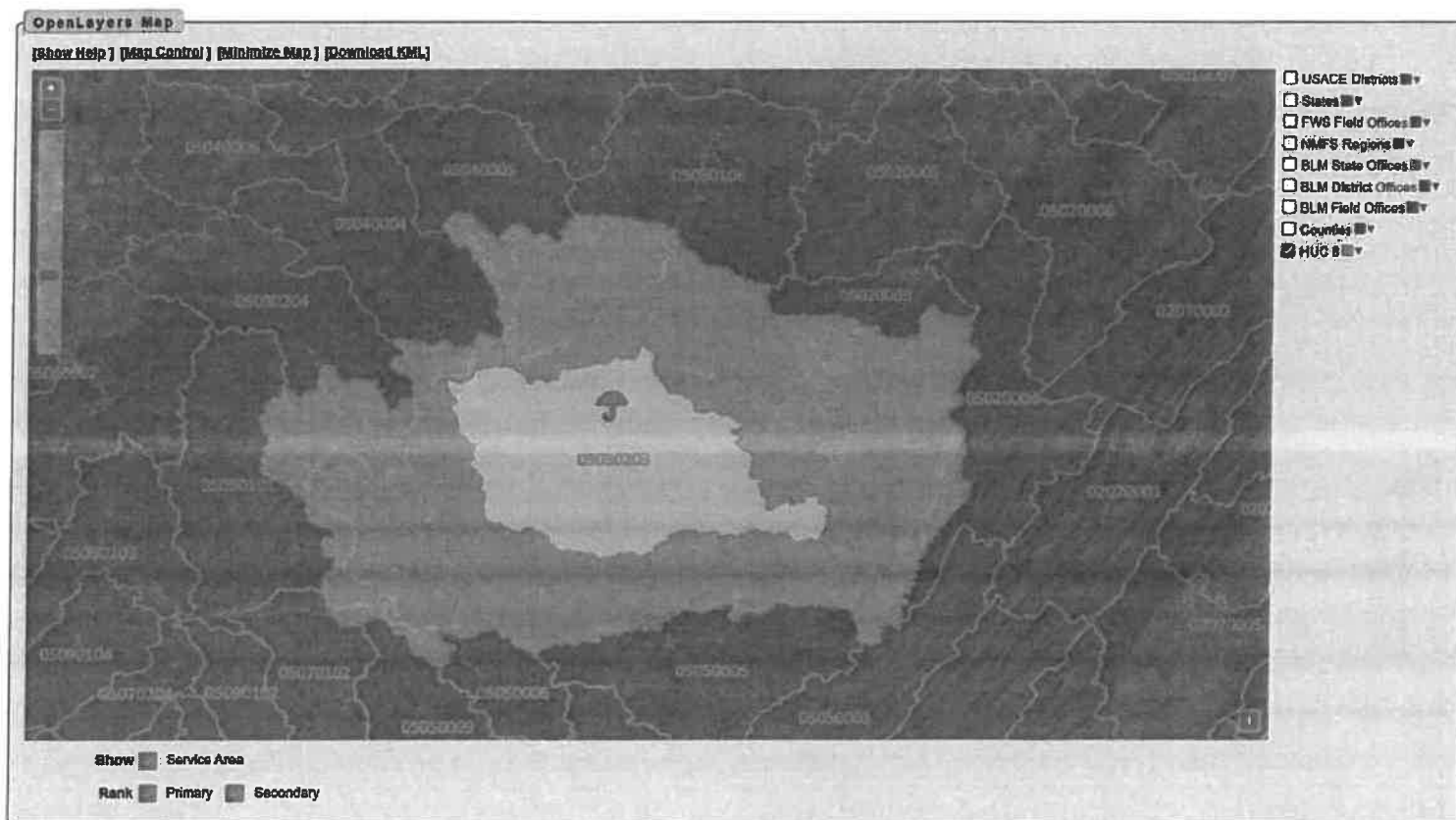
Contact Email: trayburn@suddenlinkmail.com

Service Area (HUCs): Please see Attached Maps for 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



Credit Ledger Summary

Last Transaction: Aug 28, 2021

ATTENTION

Credit reservations and pending transactions are NOT reflected in the Available Credits total.
Potential purchasers MUST contact the Sponsor to verify credit availability.

| Credit Classification | Jurisdiction | Available Credits | Withdrawn Credits | Released Credits | Potential Credits | Percent Released |
|-----------------------|--------------|-------------------|-------------------|------------------|-------------------|------------------|
| Wetland | | | | | | |
| Wetlands | Federal | 0 | .06 | .06 | .66 | 9.1% |
| Stream | | | | | | |
| Stream | Federal | 1891.62 | 3717.02 | 5808.54 | 9799.87 | 57.2% |

An Additional 568.33 Credits are being applied by USACOE

Indian Creek Mitigation Bank

Umbrella Instrument: Mountain State Mitigation Credits Company

Chair: USACE

Instrument signed by:

USACE District: Huntington

FWS Field Office: West Virginia

NMFS Region: Northeast

BLM State Office: Eastern States

BLM District Office: Northeastern States District Office

State: West Virginia

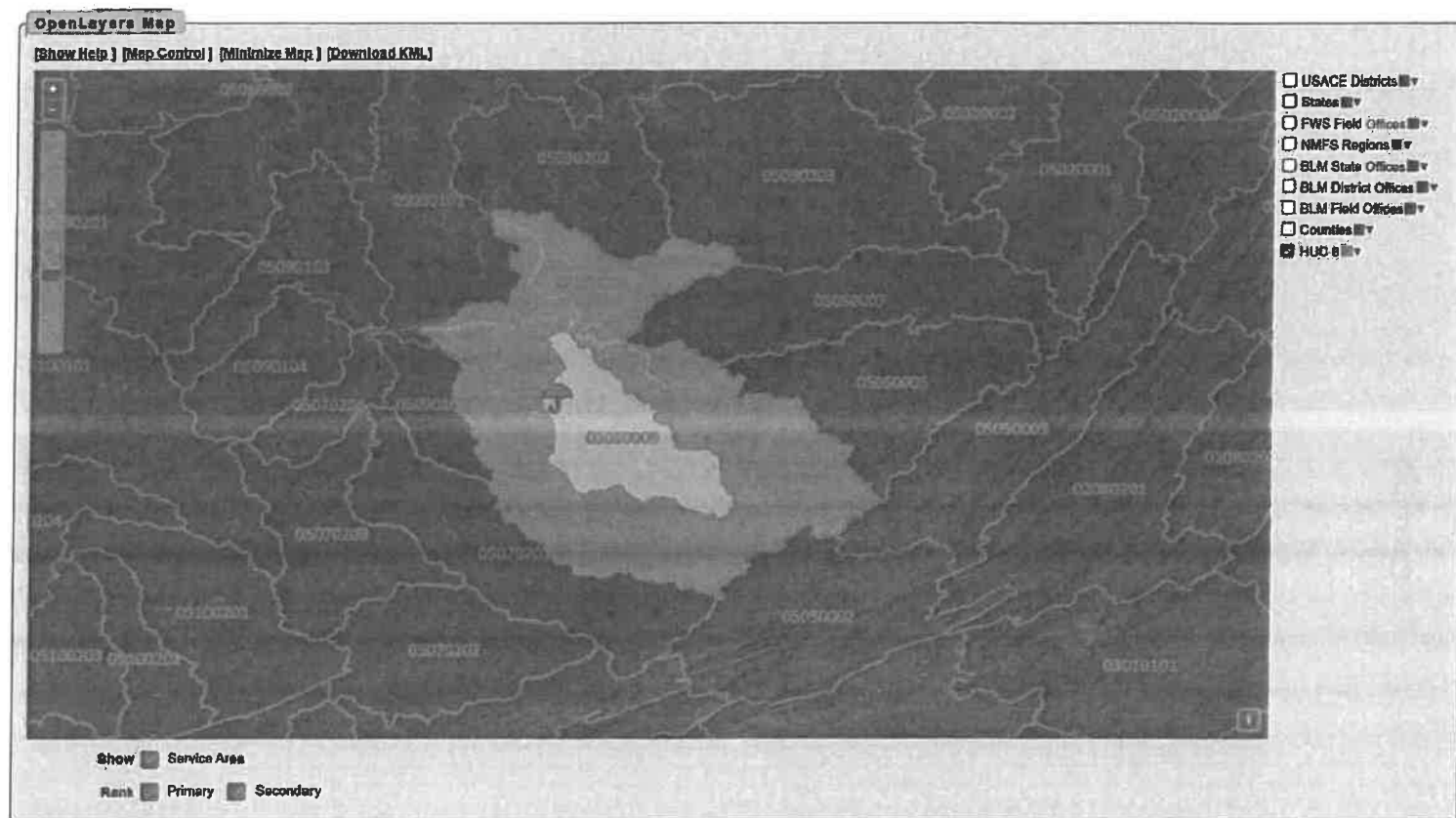
County: Ritchie [WV]

USACE Permit/Tracking No.: LRH-2015-01071-LKR

Status/Date: Approved 08/23/2018

Establishment Date: 08/23/2018

Type: Public Commercial



Credit Ledger Summary

Last Transaction: Jul 30, 2021

ATTENTION

Credit reservations and pending transactions are NOT reflected in the Available Credits total.
Potential purchasers MUST contact the Sponsor to verify credit availability.

| Credit Classification | Jurisdiction | Available Credits | Withdrawn Credits | Released Credits | Potential Credits | Percent Released |
|-----------------------|--------------|-------------------|-------------------|------------------|-------------------|------------------|
| Stream | Federal | 0 | 1892.0072 | 1892.0072 | 1822.553 | 92.8% |

Big Horse Creek Mitigation Bank

Umbrella Instrument: Mountain State Mitigation Credits Company

Chair: USACE

Instrument signed by:

USACE District: Huntington

FWS Field Office: West Virginia

NMFS Region: Northeast

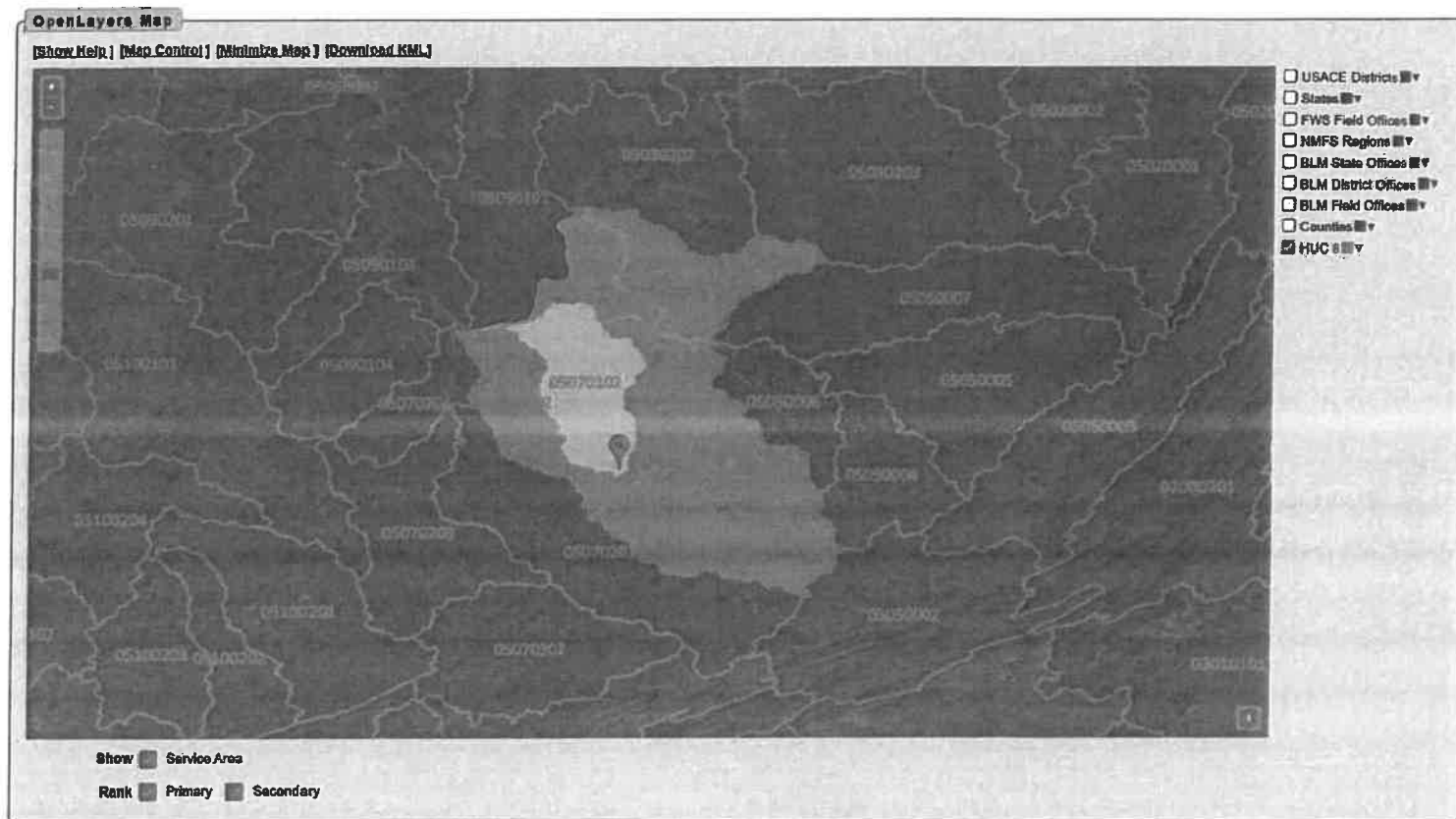
BLM State Office: Eastern States

BLM District Office: Northeastern States District Office

State: West Virginia

County: Lincoln [WV]

USACE Permit/Tracking No.: LRH-2013-751-BCR



Credit Ledger Summary

Last Transaction: Aug 07, 2023

ATTENTION

Credit reservations and pending transactions are NOT reflected in the Available Credits total.
Potential purchasers MUST contact the Sponsor to verify credit availability.

| Credit Classification | Jurisdiction | Available Credits | Withdrawn Credits | Released Credits | Potential Credits | Percent Released |
|-----------------------|--------------|-------------------|-------------------|------------------|-------------------|------------------|
| Stream | Federal | 3628.35 | 0 | 3628.35 | 18708.36 | 18.4% |

Cloverlick Branch MB

Chair: USACE

Instrument signed by: USACE

USACE District: Huntington

FWS Field Office: West Virginia

NMFS Region: Northeast

BLM State Office: Eastern States

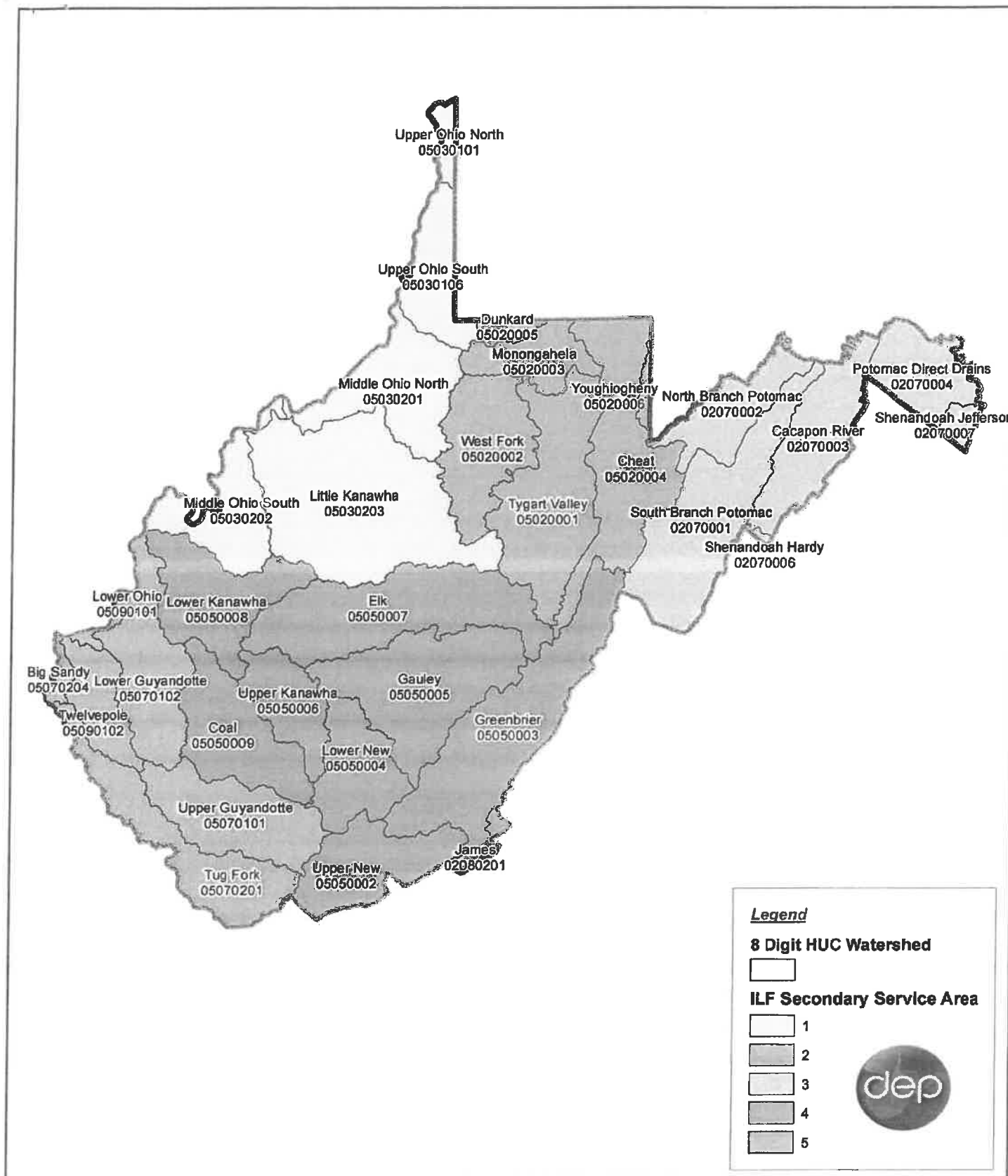
BLM District Office: Northeastern States District Office

State: West Virginia

County: Logan [WV]

USACE Permit/Tracking No.: LRH-2017-00711-GUY

Status/Date: Approved 05/07/2024



DRAFT

MITIGATION CREDIT PURCHASE AGREEMENT

This **MITIGATION CREDIT PURCHASE AGREEMENT** ("Agreement") is made and entered into this _____ day of _____, _____ by and between _____, (ADDRESS) and **MOUNTAIN STATE MITIGATION CREDITS COMPANY**, a West Virginia corporation having an address at P.O. Box 4255 Chapmanville, WV 25508 ("MSMCC"). _____ and MSMCC are hereinafter jointly referred to as the "Parties".

WITNESSETH:

WHEREAS, MSMCC's Umbrella Mitigation Banking Instrument ("UMBI") (DA No. LRH- 2009-00153-GUY) was approved on September 16, 2011 by United States Army Corps of Engineers (the "USACE");

WHEREAS, MSMCC has developed a stream mitigation bank, known as the Buffalo Creek Mitigation Bank (LRH-2009-153-GUY) ("BCMB"), the primary service area for this mitigation bank is the Upper Guyandotte Watershed (HUC 05070101) and the secondary watersheds are the Lower Guyandotte (HUC 5070102), Coal (HUC 5050009), Twelvepole (HUC 5090102), Tug Fork (HUC 5070201), Lower New (HUC 5050004), and Upper New (HUC 5050002) watersheds. The secondary service areas are subject to USACE individual review and approval prior to the sale of the credits from the BCMB. The development and operation of such bank shall consist of stream or wetland restoration, creation, enhancement, or preservation, to the extent required by the USACE to secure the release of credits, which MSMCC can sell to third parties;

WHEREAS, MSMCC is authorized to sell _____ stream credits to third parties to satisfy their mitigation obligation(s) pursuant to a 404 Permit;

DRAFT

WHEREAS, _____ desires to purchase from MSMCC pursuant to the terms and conditions this Agreement and MSMCC desires to sell to _____ credits to offset its impacts from the (PROJECT NAME-USACE PERMIT #) in the _____ watershed ("Project"); and

NOW THEREFORE, for and in consideration of the mutual terms and conditions set forth below, the sufficiency of which is hereby acknowledged, _____ and the Parties hereby agree as follows:

1. **AGREEMENT:** MSMCC hereby agrees to sell to _____ and _____ agrees to purchase from MSMCC _____ stream credits.
2. **PURCHASE PRICE:** MSMCC shall receive _____ per stream credit as compensation for the sale of _____ stream credits the sum of _____ which shall be paid upon execution of this Agreement, the receipt of which is hereby acknowledged by MSMCC.
3. **CONVEYANCE OF CREDITS:** MSMCC shall transfer and convey the _____ stream credits to _____ pursuant to a bill of sale in the form, attached hereto as **Exhibit A**.
4. **NO PARTNERSHIP:** Nothing herein shall be deemed to create a partnership or joint venture between the parties hereto, to convey to either party, by operation of law or otherwise, any interest in rights to or ownership of, any property of the other party, or to constitute MSMCC as an agent for _____ for any purpose.
5. **INDEMNIFICATION:**
 - a. MSMCC hereby agrees to indemnify, defend and save harmless _____, its officers, directors, and employees against any and

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from any losses, liabilities, damages, demands, obligations, fines or civil penalties arising out of, connected with or related to (a) MSMCC's failure to fully comply with the USACE Nationwide 27 Permit; (b) MSMCC's failure to fully comply with federal, state or local laws, rules, ordinances, regulations or permits now enacted or issued or hereafter enacted or issued respecting the credits to be sold hereunder; and (c) MSMCC's acts or omissions in the performance of its obligations hereunder.

- b. _____ hereby agrees to indemnify, defend and save harmless MSMCC, its offices, directors, and employees against and from any losses, liabilities, damages, demands, obligations, fines or civil penalties arising out of, connected with or related to (a) _____ failure to fully comply with the _____ USACE 404 Permit, (b) _____ failure to fully comply with federal, state or local laws, rules, ordinances, regulations or permits now enacted or issued or hereafter enacted or issued respecting _____ USACE 404 Permit hereunder, and (c) _____ acts or omissions in the performance of its obligations hereunder.

6. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement between the parties hereto, and no officer or representative of either party shall have the authority to subsequently change the same orally, and any subsequent change in this Agreement shall not be valid unless the same shall be in writing and duly executed by the parties hereto.

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7. **GOVERNING LAW:** This Agreement shall be construed according to the laws of the state of West Virginia.
8. **COUNTERPARTS:** This Agreement may be executed manually, by facsimile, or by email and in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which taken together shall constitute one and the same Agreement.
9. **CONFIDENTIALITY:** The Parties agree that the Purchase Price is confidential and shall remain confidential unless otherwise agreed to by the Parties in writing.
10. **NOTICE:** Any notice required or permitted under this Agreement or under state law shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested addressed as follows:

If to MSMCC: MSMCC
PO Box 294
Man, WV 25635

If to _____ : _____

11. **ASSIGNMENT:** Neither Party shall assign this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed. Subject to the foregoing, this Agreement shall be binding upon the heirs, executors, administrators, successors, and permitted assigns of the Parties; provided, however, that _____ may assign some or all of its rights or delegate some or all of its obligations hereunder to one or more of its wholly-owned subsidiaries.

IN WITNESS WHEREOF, the parties have heretofore set their hand and seal this day and year first written above.

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William K. Abraham
President
Mountain State Mitigation Credits Company

STATE OF _____
COUNTY OF _____

I, _____, Notary Public in and for said County and Commonwealth, do hereby certify that the foregoing was this day produced to me in the aforesaid County and Commonwealth and duly acknowledged before me by _____ of _____.

Given under my hand this _____ day of _____, 2019.
My Commission expires _____.

(OFFICIAL SEAL)

Notary Public

STATE OF _____
COUNTY OF _____

I, _____, Notary Public in and for said County and Commonwealth, do hereby certify that the foregoing was this day produced to me in the aforesaid County and Commonwealth and duly acknowledged before me by **William K. Abraham of MOUNTAIN STATE MITIGATION CREDITS COMPANY.**

Given under my hand this _____ day of _____, 2019.
My Commission expires _____.

(OFFICIAL SEAL)

Notary Public