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## Header 17

List View

## General Information

Contact

Default Values

Discount

Document Information

Clarification Request

Procurement Folder: 782104

Procurement Type: Central Master Agreement

Vendor ID: VC0000049184

Legal Name: LFF IV MITIGATION HOLDINGS LLC

Alias/DBA:

Total Bid: \$182,200.00

Response Date: 10/12/2020

Response Time: 14:15

Responded By User ID: LFFIVHoldings

First Name: David

Last Name: Gibbons

Email: davgibb@swbell.net

Phone: 214-616-0652

SO Doc Code: CRFQ

SO Dept: 0313

SO Doc ID: DEP2100000012

Published Date: 9/22/20

Close Date: 10/13/20

Close Time: 13:30

Status: Closed

Solicitation Description: Mitigation Credits

Total of Header Attachments: 17

Total of All Attachments: 17



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:** 782104  
**Solicitation Description:** Mitigation Credits  
**Proc Type:** Central Master Agreement

Solicitation Closes	Solicitation Response	Version
2020-10-13 13:30	SR 0313 ESR10122000000002909	1

**VENDOR**  
VC0000049184  
LFF IV MITIGATION HOLDINGS LLC

**Solicitation Number:** CRFQ 0313 DEP2100000012  
**Total Bid:** 182200  
**Response Date:** 2020-10-12  
**Response Time:** 14:15:42  
**Comments:**

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

<b>Vendor</b>		
<b>Signature X</b>	<b>FEIN#</b>	<b>DATE</b>

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 in ILF SSA 1	1.00000	EA	700.000000	700.00

Comm Code	Manufacturer	Specification	Model #
94131501			

**Commodity Line Comments:** Stream IFL SSA 1

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
10	Wetland credits in ILF SSA 5	1.00000	EA		

Comm Code	Manufacturer	Specification	Model #
94131501			

**Commodity Line Comments:** no wetland credits available in ILF SSA 5

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
2	Wetland credits in ILF SSA 1	1.00000	EA	60000.000000	60000.00

Comm Code	Manufacturer	Specification	Model #
94131501			

**Commodity Line Comments:** Wetlands IFL SSA 1

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
3	Stream credit in ILF SSA 2	1.00000	EA	750.000000	750.00

Comm Code	Manufacturer	Specification	Model #
94131501			

**Commodity Line Comments:** Stream ILF SSA 2

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications



Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
4	Wetland credits in ILF SSA 2	1.00000	EA	60000.000000	60000.00

Comm Code	Manufacturer	Specification	Model #
94131501			

**Commodity Line Comments:** Wetland ILF SSA 2

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
5	Stream credits in ILF SSA 3	1.00000	EA	750.000000	750.00

Comm Code	Manufacturer	Specification	Model #
94131501			

**Commodity Line Comments:** Stream in IFL SSA 4

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
6	Wetland credits in ILF SSA 3	1.00000	EA	60000.000000	60000.00

Comm Code	Manufacturer	Specification	Model #
94131501			

**Commodity Line Comments:** Wetlands in ILF SSA 4

**Extended Description:**

Mitigation Credits/ DWWM as outlined on the attached specifications

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
7	Stream credits in ILF SSA 4	1.00000	EA		

Comm Code	Manufacturer	Specification	Model #
94131501			

**Commodity Line Comments:** no stream credits available in ILF SSA 3

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
8	Wetland credits in ILF SSA 4	1.00000	EA		

Comm Code	Manufacturer	Specification	Model #
94131501			

**Commodity Line Comments:** No wetland credits available in IFL SSA 3

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
9	Stream credits in ILF SSA 5	1.00000	EA		

Comm Code	Manufacturer	Specification	Model #
94131501			

**Commodity Line Comments:** no stream credits available in ILF SSA 5

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

AGREEMENT FOR PURCHASE AND SALE OF STREAM  
AND WETLAND MITIGATION CREDITS

THIS AGREEMENT FOR PURCHASE AND SALE OF STREAM AND WETLAND MITIGATION CREDITS (the "Agreement") is dated this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between BEARWALLOW RUN MITIGATION HOLDINGS LLC, a Delaware limited liability company, and the operator of a stream and wetland mitigation bank commonly known as the Bearwallow Run Stream and Wetland Mitigation Bank ("Seller"), and DEPARTMENT OF ENVIRONMENTAL PROTECTION – DIVISION OF WASTE AND WATER MANAGEMENT, a West Virginia State agency in the West Virginia Department of Environmental Protection ("Purchaser").

RECITALS

A. On November 25, 2015, Seller acquired from WV Bunrootis LLC the right to create and operate a wetland and stream mitigation bank on approximately 225 acres located at the Indian Creek Stream and Wetland Mitigation Bank in Ritchie County, West Virginia (the "Bank");

B. WVB Holdings is a wholly owned subsidiary of LFF IV Mitigation Holdings LLC, which is registered with wvOasis as vendor account code VC0000049184;

C. Seller is a subsidiary of WVB Holdings and has been authorized by WVB Holdings to manage and operate the Bank on WVB Holdings' behalf, including the right to sell mitigation credits generated by the Bank;

D. The Bank will be developed and operated pursuant to United States Army Corps of Engineers - Huntington District (the "Corps") and the West Virginia Department of Environmental Protection ("WVDEP") Nationwide Permit No. 27 - LRH-2014-00392-LKR, the Bank Development Plan and Mitigation Banking Instrument for the Bearwallow Run Stream and Wetland Mitigation Bank (the "MBI") dated January 2017 which was approved on August 9, 2018 by the Corps and the WVDEP to operate as a wetland and stream mitigation bank with wetland and stream credits available for sale. A copy of the permit will be provided upon request;

E. The Bearwallow Run Stream and Wetland Mitigation Bank is an instrument modification of the previously approved WV Bunrootis LLC Umbrella Mitigation Banking Instrument (the "UMBI") for the State of West Virginia, which operates as the Hayes Run Stream Mitigation Bank and was approved on August 7, 2012 by the Corps (file LRH-2009-150-LKR);

F. Seller has received approval from the Corps and WVDEP to offer wetland and stream credits from the Bank for sale as compensation for the loss of wetlands and streams due to impacts to such aquatic resources within the "Service Area," as defined by the MBI, which shall include the areas identified by the following eight-digit Hydrologic Unit Codes ("HUCs") as designated by the U.S. Geological Survey ("USGS"): Primary – Little Kanawha (05030203) and Secondary – Tygart Valley (05020001), Elk (05050007), West Fork (05050002), Middle Ohio South (05030202 ), Lower Kanawha (05050008 ), and Middle Ohio North (05030201); and,

F. Purchaser desires to purchase from Seller and Seller desires to sell to Purchaser stream and wetland mitigation credits pursuant to the terms and conditions set forth herein.

### AGREEMENT

In consideration of the foregoing and the mutual promises, covenants, agreements and obligations of the parties contained in this Agreement, the adequacy and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Seller and Purchaser agree as follows:

**1. Recitals.** The recitals to this Agreement are herein incorporated by reference and made an integral part hereof.

**2. Agreement to Sell and Purchase.** Seller hereby sells to Purchaser or its designee(s), and Purchaser, or its assignee(s), hereby purchases from Seller \_\_\_\_\_ (\_\_\_\_\_) stream mitigation credits (the "Stream Credits") and \_\_\_\_\_ (\_\_\_\_\_) wetland mitigation credits (the "Wetland Credits") in the Bank. Upon execution of the Agreement to purchase Credits from Seller, Seller shall provide Purchaser with an invoice for the Purchase Price (as defined in Section 3 below) and Purchaser shall remit payment within 30 days of receipt of the invoice. Purchaser shall have the right to apply the Credits for use on any enforcement issue, current project and/or future project, and Seller consents to such re-conveyances and agrees to cooperate with and assist Purchaser in the documentation of such re-conveyances, including delivery of notices of such re-conveyances to the Corps, WVDEP, United States Environmental Protection Agency ("EPA") and any other governing agency with jurisdiction over the creation and operation of wetland and stream mitigation banks.

**3. Purchase Price.** The purchase price for the \_\_\_\_\_ (\_\_\_\_\_) Stream Credits shall be **Seven Hundred Fifty Five** and 00/100 Dollars (**\$755.00**) for each Credit for a Purchase Price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and the purchase price for the \_\_\_\_\_ (\_\_\_\_\_) Wetland Credits shall be **Sixty Thousand** and

00/100 Dollars **(\$60,000.00)** for each credit for a Purchase Price of \_\_\_\_\_ (\$\_\_\_\_\_) and a total purchase price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Total Purchase Price").

Upon payment of the Total Purchase Price in full, neither Purchaser, nor its successors, assignees or designees shall be liable for the payment of any other consideration or fee in connection with the conveyance or assignment and/or re-conveyance of the Credits.

**4. Delivery of Credits.** Upon receipt of the Purchase Price, Seller shall deliver to Purchaser, its successors, assignees or designees the following documents to evidence the conveyance of the Credits:

(a) An affidavit in the same form as Exhibit A attached hereto, with the project number filled in, if requested, and which upon the written request of Purchaser shall also be delivered by Seller to the Corps and, if appropriate, the WVDEP.

(b) A bill of sale for the Credits in the same form as Exhibit B attached hereto.

**5. Representations, Warranties and Covenants.** Seller hereby warrants and represents to, and covenants with, Purchaser as follows:

(a) Seller expressly represents, warrants, and covenants the matters set forth as Recitals A, B, C, D, E, and F above.

(b) Seller has a sufficient number of credits in the Bank to consummate the transactions contemplated herein.

(c) Seller shall follow and comply with all the requirements for the maintenance of the Bank as required by the Corps, WVDEP, EPA, and any other agency having jurisdiction over the Bank.

(d) Seller has full power and authority to convey the Credits to Purchaser and to consummate the transactions contemplated herein.

(e) Seller shall deliver the Credits to Purchaser free and clear of any liens, security interests or other encumbrances.

(f) There is no pending or threatened action or proceeding affecting Seller before any court, governmental agency, or arbitrator that would adversely affect Seller's ability to comply with its obligations hereunder.

(g) Seller hereby covenants and agrees with Purchaser that Seller shall not sell any number of credits in the Bank that would prevent the consummation of the transactions contemplated herein.

(h) Seller shall be solely responsible, at its sole cost and expense, for compliance with the requirements of this Agreement and with all statutes, regulations, and other requirements applicable to the operation, management, and maintenance of the Bank (collectively the "Bank Regulatory Requirements"). Seller shall indemnify, defend, and hold harmless Purchaser and Purchaser's successors, assigns, and designees from and against any action, order, investigation, or proceeding initiated by any individual or entity, including, but not limited to, any governmental agency, and arising from or based on Seller's failure to comply with (i) this Agreement, including, but not limited to, a breach by Seller of any of its representations, warranties and covenants herein, and (ii) any Bank Regulatory Requirements, such indemnification to include any and all costs and expenses, including without limitation, reasonable attorneys' fees, incurred by Purchaser or its successors assigns and designees related thereto.

(i) That the execution and delivery of this Agreement on behalf of Seller has been duly authorized and such execution and delivery shall constitute the valid and binding agreement of Seller and is enforceable in accordance with its terms.

(j) All of Seller's representations, warranties, and covenants herein shall survive the termination of this Agreement and the delivery of the bill or bills of sale pursuant to this Agreement.

## **6. Miscellaneous**

(a) Notices. Any notice, demand or request which is required or permitted hereunder shall be deemed effective when hand delivered, sent by a receipted overnight delivery service, or mailed, via certified mail, to the following addresses:

Seller: Bearwallow Run Mitigation Holdings LLC  
Attn: David Gibbons  
23 South Main Street, 3<sup>rd</sup> Floor  
Hanover, NH 03755

### **With a copy to:**

The Lyme Timber Company LP  
General Counsel  
23 South Main Street, 3<sup>rd</sup> Floor  
Hanover, NH 03755

Purchaser: West Virginia Department of Environmental Protection  
Attn: Scott Settle  
601 57<sup>th</sup> Street SE  
Charleston, West Virginia 25304

Payment for the credits shall be made payable to Bear Wallow Mitigation Holdings LLC and will be sent to:

The Lyme Timber Company LP  
Attn: Katherine Czaplicki  
23 South Main Street, 3<sup>rd</sup> Floor  
Hanover, NH 03755

The parties may change the address for notices by change order to this Agreement.

(b) Brokerage Commission. Seller and Purchaser each warrant to the other that no broker, agent, salesman or similar person is entitled to a commission or other fee in connection with this transaction. In the event any claims arise for commissions, fees, or other compensation in connection with this transaction, the party causing such claims or through whom such claims are made shall indemnify, defend, and hold harmless the other party for any loss or damage incurred by such party because of such claim. The foregoing indemnification shall survive the cancellation, termination or consummation of this Agreement

(c) Governing Law. The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia, with the proper venue being Kanawha County, except to the extent that any applicable federal law or regulation shall supersede West Virginia law in relation to the matters set forth in this Agreement.

(d) Compliance with Applicable Laws. Both parties shall comply with all applicable federal, state, and local laws, rules, regulations, and orders in the conduct of their obligations hereunder.

(e) Severability. The provisions of this Agreement shall be deemed severable and, if any term herein shall be held invalid, illegal, or unenforceable, the remainder of this Agreement shall continue to be effective and binding on the parties.

(f) Additional Assurances. Both of the parties agree to execute and deliver any other document or documents that may be requested from time to time by the other party necessary to perform such party's obligations under this Agreement.

(g) Nature of Credits. The sale and conveyance of the Credits pursuant to this Agreement shall not constitute the conveyance or transfer of any right, interest, or ownership of real property or the Bank, nor shall such conveyance impose upon Purchaser any obligation, duty, or liability arising from or incident to ownership of an interest in real property.

(h) Duration. This Agreement shall continue in existence until ninety (90)

days after the conveyance of all of the Credits, including without limitation, any conveyance at the request of Purchaser in accordance with the provision of Sections 3 and 6(k) herein; provided, however, that the provisions of Section 5 and 6(m) shall survive the termination of this Agreement upon the payment in full of the Purchase Price.

(k) Assignability. Purchaser may assign its rights and obligations hereunder to any other project undertaken by Purchaser's parent company or by any affiliate or subsidiary of Purchaser's parent company. Seller shall not assign its rights and obligations hereunder to any third-party entity without the prior written consent of Purchaser, which may be withheld in Purchaser's sole discretion.

(l) Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall together constitute one and the same Agreement. Signed signature pages may be transmitted by facsimile or email and any such signature or electronic signature shall have the same legal effect as an original.

WITNESS the following authorized signatures:

SELLER: BEARWALLOW RUN MITIGATION HOLDINGS LLC

By: \_\_\_\_\_

Printed: David E. Gibbons

Its: Authorized Representative

PURCHASER: DEPARTMENT OF ENVIRONMENTAL PROTECTION – DIVISION  
OF WASTE AND WATER MANAGEMENT, a West Virginia State  
agency in the West Virginia Department of Environmental Protection

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_



EXHIBIT A

AFFIDAVIT OF WETLAND AND STREAM MITIGATION SALE

I, David E. Gibbons, certify that I am now, and at all times mentioned herein have been, the Authorized Representative of Bearwallow Run Mitigation Holdings LLC, a Delaware limited liability company (the "Company"), and as such I hereby certify the following.

The Company, as of the date hereof, has granted, sold, and transferred or made available for transfer \_\_\_\_\_ (\_\_\_\_\_) stream credits and \_\_\_\_\_ (\_\_\_\_\_) wetland credits to the Department of Environmental Protection – Division of Waste Water Management, a West Virginia State agency in the West Virginia Department of Environmental Protection from the Bearwallow Run Stream and Wetland Mitigation Bank located in Ritchie County, West Virginia, established under the authority of the United States Army Corps of Engineers – Huntington District Nationwide Permit No. 2014-2014-00392-LKR issued on August 9, 2018.

The execution and delivery of this Affidavit has been duly authorized and is not in violation of the incorporation or organizational documents of the Company or any other agreement, document, or obligation to which the Company is bound.

IN WITNESS WHEREOF, I have duly executed this Affidavit as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Bearwallow Run Mitigation Holdings LLC, a  
Delaware limited liability company

By: \_\_\_\_\_

Printed:       David E. Gibbons

Title:         Authorized Representative

STATE OF TEXAS:

COUNTY OF DALLAS:

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020 the undersigned Notary Public for and in the jurisdiction aforesaid, by David E. Gibbons, the Authorized Representative of the Bearwallow Run Mitigation Holdings LLC, a Delaware limited liability company.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

EXHIBIT B

BILL OF SALE

THIS BILL OF SALE is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020, by BEAR WALLOW RUN MITIGATION HOLDINGS LLC, a Delaware limited liability company ("Seller"), and the DEPARTMENT OF ENVIRONMENTAL PROTECTION – DIVISION OF WASTE AND WATER MANAGEMENT, a West Virginia State agency in the West Virginia Department of Environmental Protection ("Purchaser").

Seller (by and through its operator and manager, Bearwallow Run Mitigation Holdings LLC) and Purchaser have entered into that certain Agreement for Purchase and Sale of Stream and Wetland Mitigation Credits dated \_\_\_\_\_, 2020 (the "Agreement"), the terms of which are incorporated herein by reference and made a part hereof, with respect to the sale by Seller and the purchase by Purchaser of Wetland Credits (as defined in the Agreement) held in Seller's Bearwallow Run Stream and Wetland Mitigation Bank located in Ritchie County, West Virginia.

In consideration of the Purchase Price (as defined in the Agreement) and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Seller hereby sells, transfers, assigns, conveys, delivers, and sets over to Purchaser, its successors, or assigns \_\_\_\_\_ (\_\_\_\_\_) stream Credits and \_\_\_\_\_ (\_\_\_\_\_) wetland Credits, to have and hold all such stream mitigation Credits forever.

Witness the following authorized signature:

Bearwallow Run Mitigation Holdings LLC, a Delaware  
limited liability company

By: \_\_\_\_\_

Printed: David E. Gibbons

Its: Authorized Representative

AGREEMENT FOR PURCHASE AND SALE OF STREAM  
AND WETLAND MITIGATION CREDITS

THIS AGREEMENT FOR PURCHASE AND SALE OF STREAM CREDITS (this "Agreement") is dated this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between HAYES RUN MITIGATION HOLDINGS LLC, a Delaware limited liability company, and the operator of a stream and wetland mitigation bank commonly known as the Hayes Run Stream and Wetland Mitigation Bank ("Seller"), and the DEPARTMENT OF ENVIRONMENTAL PROTECTION – DIVISION OF WASTE AND WATER MANAGEMENT, a West Virginia State agency in the West Virginia Department of Environmental Protection ("Purchaser").

RECITALS

A. On November 25, 2015, Seller acquired from WV Bunrootis LLC a wetland and stream mitigation bank on approximately 178 acres located at the Hayes Run Stream and Wetland Mitigation Bank in Roane County, West Virginia (the "Bank");

B. WVB Holdings is a wholly owned subsidiary of LFF IV Mitigation Holdings LLC, which is registered with wvOasis as vendor account code VC0000049184;

C. Seller is a subsidiary of WVB Holdings and has been authorized by WVB Holdings to manage and operate the Bank on WVB Holdings' behalf, including the right to sell mitigation credits generated by the Bank;

D. WVB Holdings, as sponsor under the hereinafter defined UMBI, manages the Bank under United States Army Corps of Engineers (the "Corps") and the West Virginia Department of Environmental Protection ("WVDEP") Nationwide Permit No. 27 2009-150-LKR; Seller has developed the Hayes Run Stream and Wetland Mitigation Bank under the Bank Development Plan and Mitigation Banking Instrument for the Hayes Run Stream Mitigation Bank dated, April 2012, which was approved on August 7, 2012 (the "UMBI") by the Corps and the WVDEP for operation as a wetland and stream mitigation bank with stream credits available for sale;

E. The Bank received approval from the Corps and WVDEP to offer stream credits for sale in its primary watershed Little Kanawha (05030203) as compensation for the loss of stream function due to impacts from construction activity;

F. By letter dated January 6, 2014 from the Corps to Seller, the Corps approved the modification of the secondary service area for the Bank to include the following 8-digit HUC watersheds in West Virginia: Upper Ohio North (05030101), Upper Ohio South (05030106), Little

Muskingum-Middle Island (05030201) and Upper Ohio-Shade (05030202; and

E. Purchaser desires to purchase from Seller and Seller desires to sell to Purchaser stream mitigation credits pursuant to the terms and conditions set forth herein.

### AGREEMENT

In consideration of the foregoing and the mutual promises, covenants, agreements and obligations of the parties contained in this Agreement, the adequacy and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Seller and Purchaser agree as follows:

**1. Recitals.** The recitals to this Agreement are herein incorporated by reference and made an integral part hereof.

**2. Agreement to Sell and Purchase.** Seller hereby sells to Purchaser or its designee(s), and Purchaser, or its assignee(s), hereby purchases from Seller \_\_\_\_\_ (\_\_\_\_\_) stream mitigation credits (the "Stream Credits") and \_\_\_\_\_ (\_\_\_\_\_) wetland mitigation credits (the "Wetland Credits") in the Bank. Upon execution of the Agreement to purchase Credits from Seller, Seller shall provide Purchaser with an invoice for the Purchase Price (as defined in Section 3 below) and Purchaser shall remit payment within 30 days of receipt of the invoice. Purchaser shall have the right to apply the Credits for use on any enforcement issue, current project and/or future project, and Seller consents to such re-conveyances and agrees to cooperate with and assist Purchaser in the documentation of such re-conveyances, including delivery of notices of such re-conveyances to the Corps, WVDEP, United States Environmental Protection Agency ("EPA") and any other governing agency with jurisdiction over the creation and operation of wetland and stream mitigation banks.

**3. Purchase Price.** The purchase price for the \_\_\_\_\_ (\_\_\_\_\_) Stream Credits shall be **Seven Hundred Seventy Five** and 00/100 Dollars (\$**775.00**) for each Credit for a Purchase Price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and the purchase price for the \_\_\_\_\_ (\_\_\_\_\_) Wetland Credits shall be Sixty Thousand and 00/100 Dollars (\$60,000.00) for each credit for a Purchase Price of \_\_\_\_\_ (\$\_\_\_\_\_) and a total purchase price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Total Purchase Price"). Upon payment of the Total Purchase Price in full, neither Purchaser, nor its successors, assignees or designees shall be liable for the payment of any other consideration or fee in connection with the conveyance or assignment and/or re-conveyance of the Credits.

**4. Delivery of Credits.** Seller shall deliver to Purchaser, its successors, assignees or designees the following documents to evidence the conveyance of the Credits:

(a) An affidavit in the same form as Exhibit A attached hereto, with the project number filled in, if requested, and which upon the written request of Purchaser shall also be delivered by Seller to the Corps and, if appropriate, the WVDEP.

(b) A bill of sale for the Credits in the same form as Exhibit B attached hereto.

**5. Representations, Warranties and Covenants.** Seller hereby warrants and represents to, and covenants with, Purchaser as follows:

(a) Seller expressly represents, warrants, and covenants the matters set forth as Recitals A, B, C, D, and E above.

(b) Seller has a sufficient number of credits in the Bank to consummate the transactions contemplated herein.

(c) Seller shall follow and comply with all the requirements for the maintenance of the Bank as required by the Corps, WVDEP, EPA, and any other agency having jurisdiction over the Bank.

(d) Seller has full power and authority to convey the Credits to Purchaser, free and clear of any liens, security interests or other encumbrances, and to consummate the transactions contemplated herein.

(e) There is no pending or threatened action or proceeding affecting Seller before any court, governmental agency, or arbitrator that would adversely affect Seller's ability to comply with its obligations hereunder.

(f) Seller hereby covenants and agrees with Purchaser that Seller shall not sell any number of credits in the Bank that would prevent the consummation of the transactions contemplated herein.

(g) Seller shall be solely responsible, at its sole cost and expense, for compliance with the requirements of this Agreement and with all statutes, regulations, and other requirements applicable to the operation, management, and maintenance of the Bank (collectively the "Bank Regulatory Requirements"). Seller shall indemnify, defend, and hold harmless Purchaser and Purchaser's successors, assigns, and designees from and against any action, order, investigation, or proceeding initiated by any individual or entity, including, but not limited to, any governmental agency, and arising from or based on Seller's failure to comply with (i) this Agreement, including, but not limited to, a breach by Seller of any of its representations, warranties

and covenants herein, and (ii) any Bank Regulatory Requirements, such indemnification to include any and all costs and expenses, including without limitation, reasonable attorneys' fees, incurred by Purchaser or its successors assigns and designees related thereto.

(h) That the execution and delivery of this Agreement on behalf of Seller has been duly authorized and such execution and delivery shall constitute the valid and binding agreement of Seller and is enforceable in accordance with its terms.

(i) All of Seller's representations, warranties, and covenants herein shall survive the termination of this Agreement and the delivery of the bill or bills of sale pursuant to this Agreement.

## **6. Miscellaneous**

(a) Notices. Any notice, demand or request which is required or permitted hereunder shall be deemed effective when hand delivered, sent by a receipted overnight delivery service, or mailed, via certified mail, to the following addresses:

Seller: Hayes Run Mitigation Holdings LLC  
Attn: David Gibbons  
6515 Bandera Avenue, #2D  
Dallas, Texas 75225

### **With a copy to:**

The Lyme Timber Company LP  
General Counsel  
23 South Main Street, 3<sup>rd</sup> Floor  
Hanover, NH 03755

Purchaser: West Virginia Department of Environmental Protection  
Attn: Scott Settle  
601 57<sup>th</sup> Street SE  
Charleston, West Virginia 25304

Payment for the credits shall be made payable to Hayes Run Mitigation Holdings LLC and will be sent to:

The Lyme Timber Company LP  
Attn: Katherine Czaplicki  
23 South Main Street, 3<sup>rd</sup> Floor  
Hanover, NH 03755

The parties may change the address for notices by change order to this Agreement.

(b) Brokerage Commission. Seller and Purchaser each warrant to the other that no broker, agent, salesman or similar person is entitled to a commission or other fee in connection with this transaction. In the event any claims arise for commissions, fees, or other compensation in connection with this transaction, the party causing such claims or through whom such claims are made shall indemnify, defend, and hold harmless the other party for any loss or damage incurred by such party because of such claim. The foregoing indemnification shall survive the cancellation, termination or consummation of this Agreement.

(c) Governing Law. The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia, with the proper venue being Kanawha County, except to the extent that any applicable federal law or regulation shall supersede West Virginia law in relation to the matters set forth in this Agreement.

(d) Compliance with Applicable Laws. Both parties shall comply with all applicable federal, state, and local laws, rules, regulations, and orders in the conduct of their obligations hereunder.

(e) Severability. The provisions of this Agreement shall be deemed severable and, if any term herein shall be held invalid, illegal, or unenforceable, the remainder of this Agreement shall continue to be effective and binding on the parties.

(f) Additional Assurances. Both of the parties agree to execute and deliver any other document or documents that may be requested from time to time by the other party necessary to perform such party's obligations under this Agreement.

(g) Nature of Credits. The sale and conveyance of the Credits pursuant to this Agreement shall not constitute the conveyance or transfer of any right, interest, or ownership of real property or the Bank, nor shall such conveyance impose upon Purchaser any obligation, duty, or liability arising from or incident to ownership of an interest in real property.

(h) Duration. This Agreement shall continue in existence until the later of (a) ninety (90) days after the conveyance of all the Credits, including without limitation, any conveyance at the request of Purchaser in accordance with the provisions of Sections 2, 4, and 6(k) herein, or (b) the termination hereof pursuant to the provisions of Section 3 herein. Provided, however, that the provisions of Section 5 and 6(m) shall survive the termination of this Agreement upon the payment in full of the Purchase Price.

(i) Assignability. Purchaser may assign its rights and obligations hereunder

to any other project undertaken by Purchaser's parent company. Seller shall not assign its obligations hereunder to any third party entity without the prior written consent of Purchaser, which may be withheld in Purchaser's sole discretion.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall together constitute one and the same Agreement. Signed signature pages may be transmitted by facsimile or email and any such signature shall have the same legal effect as an original.

WITNESS the following authorized signatures:

SELLER: HAYES RUN MITIGATION HOLDINGS LLC

By: \_\_\_\_\_

Printed: David E. Gibbons

Its: Authorized Representative

PURCHASER: DEPARTMENT OF ENVIRONMENTAL PROTECTION – DIVISION  
OF WASTE AND WATER MANAGEMENT, a West Virginia State  
agency in the West Virginia Department of Environmental Protection

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_



EXHIBIT A

AFFIDAVIT OF WETLAND AND STREAM MITIGATION SALE

I, David E. Gibbons, certify that I am now, and at all times mentioned herein have been, the Authorized Representative of Hayes Run Existing Mitigation Holdings LLC, a Delaware limited liability company (the "Company"), and as such I hereby certify the following:

The Company, as of the date hereof, has granted, sold, and transferred or made available for transfer \_\_\_\_\_ (\_\_\_\_\_) stream credits and \_\_\_\_\_ (\_\_\_\_\_) wetland credits to the Department of Environmental Protection – Division of Waste Water Management, a West Virginia State agency in the West Virginia Department of Environmental Protection from the Hayes Run Stream and Wetland Mitigation Bank located in Roane County, West Virginia, established under the authority of the United States Army Corps of Engineers Nationwide Permit No. No. 27 2009-150-LKR issued on August 7, 2012.

The execution and delivery of this Affidavit has been duly authorized and is not in violation of the incorporation or organizational documents of the Company or any other agreement, document, or obligation to which the Company is bound.

IN WITNESS WHEREOF, I have duly executed this Affidavit as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Hayes Run Existing Mitigation Holdings LLC, a  
Delaware limited liability company

By: \_\_\_\_\_

Printed: David E. Gibbons

Title: Authorized Representative

STATE OF TEXAS:

COUNTY OF DALLAS:

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020 the undersigned Notary Public for and in the jurisdiction aforesaid, by David E. Gibbons, the Authorized Representative of Hayes Run Existing Mitigation Holdings LLC, a Delaware limited liability company.

\_\_\_\_\_  
Notary Public

My commission expires:\_\_\_\_\_

EXHIBIT B

BILL OF SALE

THIS BILL OF SALE is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020, by HAYES RUN MITIGATION HOLDINGS LLC, a Delaware limited liability company ("Seller"), and the DEPARTMENT OF ENVIRONMENTAL PROTECTION – DIVISION OF WASTE AND WATER MANAGEMENT, a West Virginia State agency in the West Virginia Department of Environmental Protection ("Purchaser").

Seller and Purchaser have entered into that certain Agreement for Purchase and Sale of Stream and Wetland Mitigation Credits dated \_\_\_\_\_, 2020 (the "Agreement"), the terms of which are incorporated herein by reference and made a part hereof, with respect to the sale by Seller and the purchase by Purchaser of stream Credits (as defined in the Agreement) held in Seller's Hayes Run Stream and Wetland Mitigation Bank located in Roane County, West Virginia.

In consideration of the Purchase Price (as defined in the Agreement) and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Seller hereby sells, transfers, assigns, conveys, delivers, and sets over to Purchaser, its successors, or assigns \_\_\_\_\_ (\_\_\_\_\_) stream Credits and \_\_\_\_\_ (\_\_\_\_\_) wetland Credits, to have and hold all such stream mitigation Credits forever.

Witness the following authorized signature:

HAYES RUN MITIGATION HOLDINGS LLC, a  
Delaware limited liability company

By: \_\_\_\_\_

Printed: David E. Gibbons

Its: Authorized Representative

AGREEMENT FOR PURCHASE AND SALE OF STREAM  
AND WETLAND MITIGATION CREDITS

THIS AGREEMENT FOR PURCHASE, AND SALE OF STREAM AND WETLAND CREDITS (this "Agreement") is dated this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between KINCHELOE MITIGATION HOLDINGS LLC, a Delaware limited liability company, and the operator of a stream and wetland mitigation bank commonly known as the Kincheloe Stream and Wetland Mitigation Bank ("Seller"), and the DEPARTMENT OF ENVIRONMENTAL PROTECTION – DIVISION OF WASTE AND WATER MANAGEMENT, a West Virginia State agency in the West Virginia Department of Environmental Protection ("Purchaser").

RECITALS

A. On November 25, 2015, WV Bunrootis Existing Mitigation Holdings LLC ("WVB Holdings") acquired from WV Bunrootis LLC the right to create and operate a wetland and stream mitigation bank on approximately 220 acres located at the Kincheloe Stream and Wetland Mitigation Bank in Lewis and Harrison Counties, West Virginia (the "Bank");

B. WVB Holdings is a wholly owned subsidiary of LFF IV Mitigation Holdings LLC, which is registered with wvOasis as vendor account code VC0000049184;

C. Seller is a subsidiary of WVB Holdings and has been authorized by WVB Holdings to manage and operate the Bank on WVB Holdings' behalf, including the right to sell mitigation credits generated by the Bank;

D. Seller has developed the Kincheloe Stream and Wetland Mitigation Bank under United States Army Corps of Engineers - Pittsburgh District (the "Corps") and the West Virginia Department of Environmental Protection ("WVDEP") Nationwide Permit No. 27 2014-1128, the Bank Development Plan and Mitigation Banking Instrument for the Kincheloe Stream and Wetland Mitigation Bank (the "MBI") dated January 2015 and approved on August 14, 2015 by the Corps and the WVDEP to operate as a wetland and stream mitigation bank with wetland and stream credits available for sale; and,

E. The Kincheloe Stream and Wetland Mitigation Bank is an instrument modification of the previously approved WV Bunrootis LLC Umbrella Mitigation Banking Instrument (the "UMBI") for the State of West Virginia, which operates as the Hayes Run Stream Mitigation Bank and was approved on August 7, 2012 by the Corps (file LRH-2009-150-LKR);

Commented [BLL1]: Is this right?

F. Seller has received approval from the Corps and WVDEP to offer wetland and stream credits from the Bank for sale as compensation for the loss of wetlands and streams due to impacts to such aquatic resources within the "Service Area," as defined by the MBI, which shall include the areas identified by the following eight-digit Hydrologic Unit Codes ("HUCs") as designated by the U.S. Geological Survey ("USGS"): Primary – West Fork (05050002) and Secondary – Tygart Valley (05020001), Monongalia (05020003), Middle Ohio North (05030201) and Little Kanawha (05030203); and,

E. Purchaser desires to purchase from Seller and Seller desires to sell to Purchaser stream mitigation credits pursuant to the terms and conditions set forth herein.

#### AGREEMENT

In consideration of the foregoing and the mutual promises, covenants, agreements and obligations of the parties contained in this Agreement, the adequacy and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Seller and Purchaser agree as follows:

**1. Recitals.** The recitals to this Agreement are herein incorporated by reference and made an integral part hereof.

**2. Agreement to Sell and Purchase.** Seller hereby sells to Purchaser or its designee(s), and Purchaser, or its assignee(s), hereby purchases from Seller \_\_\_\_\_ (\_\_\_\_\_) stream mitigation credits (the "Stream Credits") and \_\_\_\_\_ (\_\_\_\_\_) wetland mitigation credits (the "Wetland Credits") in the Bank. Upon execution of the Agreement to purchase Credits from Seller, Seller shall provide Purchaser with an invoice for the Purchase Price (as defined in Section 3 below) and Purchaser shall remit payment within 30 days of receipt of the invoice. Purchaser shall have the right to apply the Credits for use on any enforcement issue, current project and/or future project, and Seller consents to such re-conveyances and agrees to cooperate with and assist Purchaser in the documentation of such re-conveyances, including delivery of notices of such re-conveyances to the Corps, WVDEP, United States Environmental Protection Agency ("EPA") and any other governing agency with jurisdiction over the creation and operation of wetland and stream mitigation banks.

**3. Purchase Price.** The purchase price for the \_\_\_\_\_ (\_\_\_\_\_) Stream Credits shall be **Seven Hundred Seventy Five** and 00/100 Dollars (**\$775.00**) for each Credit for a Purchase Price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and the purchase price for the \_\_\_\_\_ (\_\_\_\_\_) Wetland Credits shall be Sixty Thousand and

00/100 Dollars (\$60,000.00) for each credit for a Purchase Price of \_\_\_\_\_ (\$\_\_\_\_\_) and a total purchase price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Total Purchase Price").

Upon payment of the Total Purchase Price in full, neither Purchaser, nor its successors, assignees or designees shall be liable for the payment of any other consideration or fee in connection with the conveyance or assignment and/or re-conveyance of the Credits.

**4. Delivery of Credits.** Seller shall deliver to Purchaser, its successors, assignees or designees the following documents to evidence the conveyance of the Credits:

(a) An affidavit in the same form as Exhibit A attached hereto, with the project number filled in, if requested, and which upon the written request of Purchaser shall also be delivered by Seller to the Corps and, if appropriate, the WVDEP.

(b) A bill of sale for the Credits in the same form as Exhibit B attached hereto.

**5. Representations, Warranties and Covenants.** Seller hereby warrants and represents to, and covenants with Purchaser as follows:

(a) Seller expressly represents, warrants, and covenants the matters set forth as Recitals A, B, C, D, and E above.

(b) Seller has a sufficient number of credits in the Bank to consummate the transactions contemplated herein.

(c) Seller shall follow and comply with all the requirements for the maintenance of the Bank as required by the Corps, WVDEP, EPA, and any other agency having jurisdiction over the Bank.

(d) Seller has full power and authority to convey the Credits to Purchaser, free and clear of any liens, security interests or other encumbrances, and to consummate the transactions contemplated herein

(e) There is no pending or threatened action or proceeding affecting Seller before any court, governmental agency, or arbitrator that would adversely affect Seller's ability to comply with its obligations hereunder.

(f) Seller hereby covenants and agrees with Purchaser that Seller shall not sell any number of credits in the Bank that would prevent the consummation of the transactions contemplated herein.

(g) Seller shall be solely responsible, at its sole cost and expense, for

compliance with the requirements of this Agreement and with all statutes, regulations, and other requirements applicable to the operation, management, and maintenance of the Bank (collectively the "Bank Regulatory Requirements"). Seller shall indemnify, defend, and hold harmless Purchaser and Purchaser's successors, assigns, and designees from and against any action, order, investigation, or proceeding initiated by any individual or entity, including, but not limited to, any governmental agency, and arising from or based on Seller's failure to comply with (i) this Agreement, including, but not limited to, a breach by Seller of any of its representations, warranties and covenants herein, and (ii) any Bank Regulatory Requirements, such indemnification to include any and all costs and expenses, including without limitation, reasonable attorneys' fees, incurred by Purchaser or its successors assigns and designees related thereto.

(h) That the execution and delivery of this Agreement on behalf of Seller has been duly authorized and such execution and delivery shall constitute the valid and binding agreement of Seller and is enforceable in accordance with its terms.

(i) All of Seller's representations, warranties, and covenants herein shall survive the termination of this Agreement and the delivery of the bill or bills of sale pursuant to this Agreement

#### **6. Miscellaneous**

(a) Notices. Any notice, demand or request which is required or permitted hereunder shall be deemed effective when hand delivered, sent by a receipted overnight delivery service, or mailed, via certified mail, to the following addresses:

Seller: Kincheloe Mitigation Holdings LLC  
Attn: David Gibbons  
6515 Bandera Avenue, #2D  
Dallas, Texas 75225

#### **With a copy to:**

The Lyme Timber Company LP  
General Counsel  
23 South Main Street, 3<sup>rd</sup> Floor  
Hanover, NH 03755

Purchaser: West Virginia Department of Environmental Protection  
Attn: Scott Settle  
601 57<sup>th</sup> Street SE  
Charleston, West Virginia 25304

Payment for the credits shall be made payable to Kincheloe Mitigation Holdings LLC and will be sent to:

The Lyme Timber Company LP  
Attn: Katherine Czaplicki  
23 South Main Street, 3<sup>rd</sup> Floor  
Hanover, NH 03755

The parties may change the address for notices by change order to this Agreement.

(b) Brokerage Commission. Seller and Purchaser each warrant to the other that no broker, agent, salesman or similar person is entitled to a commission or other fee in connection with this transaction. In the event any claims arise for commissions, fees, or other compensation in connection with this transaction, the party causing such claims or through whom such claims are made shall indemnify, defend, and hold harmless the other party for any loss or damage incurred by such party because of such claim. The foregoing indemnification shall survive the cancellation, termination or consummation of this Agreement.

(c) Governing Law. The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia, with the proper venue being Kanawha County, except to the extent that any applicable federal law or regulation shall supersede West Virginia law in relation to the matters set forth in this Agreement.

(d) Compliance with Applicable Laws. Both parties shall comply with all applicable federal, state, and local laws, rules, regulations, and orders in the conduct of their obligations hereunder.

(e) Severability. The provisions of this Agreement shall be deemed severable and, if any term herein shall be held invalid, illegal, or unenforceable, the remainder of this Agreement shall continue to be effective and binding on the parties.

(f) Additional Assurances. Both of the parties agree to execute and deliver any other document or documents that may be requested from time to time by the other party necessary to perform such party's obligations under this Agreement.

(g) Nature of Credits. The sale and conveyance of the Credits pursuant to this Agreement shall not constitute the conveyance or transfer of any right, interest, or ownership of real property or the Bank, nor shall such conveyance impose upon Purchaser any obligation, duty, or liability arising from or incident to ownership of an interest in real property.

(h) Duration. This Agreement shall continue in existence until the later of (a) ninety (90) days after the conveyance of all the Credits, including without limitation, any conveyance at the request of Purchaser in accordance with the provisions of Sections 2, 4, and 6(k) herein, or (b) the termination hereof pursuant to the provisions of Section 3 herein. Provided, however, that the provisions of Section 5 and 6(m) shall survive the termination of this Agreement upon the payment in full of the Purchase Price.

(i) Assignability. Purchaser may assign its rights and obligations hereunder to any other project undertaken by any State of West Virginia agency. Seller shall not assign its obligations hereunder without the prior written consent of Purchaser, which may be withheld in Purchaser's sole discretion.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall together constitute one and the same Agreement. Signed signature pages may be transmitted by facsimile or email and any such signature shall have the same legal effect as an original

WITNESS the following authorized signatures:

SELLER: KINCHELOE MITIGATION HOLDINGS LLC, a Delaware limited liability company

By: \_\_\_\_\_

Printed: David E. Gibbons

Its: Authorized Representative

PURCHASER: DEPARTMENT OF ENVIRONMENTAL PROTECTION – DIVISION OF WASTE AND WATER MANAGEMENT, a West Virginia State agency in the West Virginia Department of Environmental Protection

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_



EXHIBIT A

AFFIDAVIT OF WETLAND AND STREAM MITIGATION SALE

I, David E. Gibbons, certify that I am now, and at all times mentioned herein have been, the Authorized Representative of Kincheloe Mitigation Holdings LLC, a Delaware limited liability company (the "Company"), and as such I hereby certify the following:

The Company, as of the date hereof, has granted, sold, and transferred or made available for transfer \_\_\_\_\_ (\_\_\_\_\_) stream credits and \_\_\_\_\_ (\_\_\_\_\_) wetland credits to the Department of Environmental Protection – Division of Waste Water Management, a West Virginia State agency in the West Virginia Department of Environmental Protection from the Kincheloe Stream and Wetland Mitigation Bank located in Lewis and Harrison Counties, West Virginia, established under the authority of the United States Army Corps of Engineers – Pittsburgh District Nationwide Permit No. No. 2014-1128 issued on August 14, 2015.

The execution and delivery of this Affidavit has been duly authorized and is not in violation of the incorporation or organizational documents of the Company or any other agreement, document, or obligation to which the Company is bound.

IN WITNESS WHEREOF, I have duly executed this Affidavit as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Kincheloe Mitigation Holdings LLC, a Delaware limited liability company

By: \_\_\_\_\_

Printed: David E. Gibbons

Title: Authorized Representative

STATE OF TEXAS:

COUNTY OF DALLAS:

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020 the undersigned Notary Public for and in the jurisdiction aforesaid, by David E. Gibbons, the Authorized Representative of the Kincheloe Mitigation Holdings LLC, a Delaware limited liability company

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

EXHIBIT B  
BILL OF SALE

THIS BILL OF SALE is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020, by KINCHELOE MITIGATION HOLDINGS LLC, a Delaware limited liability company ("Seller"), and the DEPARTMENT OF ENVIRONMENTAL PROTECTION – DIVISION OF WASTE AND WATER MANAGEMENT, a West Virginia State agency in the West Virginia Department of Environmental Protection ("Purchaser").

Seller and Purchaser have entered into that certain Agreement for Purchase and Sale of Stream and Wetland Mitigation Credits dated \_\_\_\_\_, 2020 (the "Agreement"), the terms of which are incorporated herein by reference and made a part hereof, with respect to the sale by Seller and the purchase by Purchaser of \_\_\_\_\_ (\_\_\_\_\_) stream Credits and \_\_\_\_\_ (\_\_\_\_\_) wetland credits (as defined in the Agreement) held in Seller's Kincheloe Stream and Wetland Mitigation Bank located in Lewis and Harrison Counties, West Virginia.

In consideration of the Purchase Price (as defined in the Agreement) and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Seller hereby sells, transfers, assigns, conveys, delivers, and sets over to Purchaser, its successors, or assigns \_\_\_\_\_ (\_\_\_\_\_) stream Credits and \_\_\_\_\_ (\_\_\_\_\_) wetland Credits, to have and hold all such stream mitigation Credits forever.

Witness the following authorized signature:

KINCHELOE MITIGATION HOLDINGS LLC, a  
Delaware limited liability company

By: \_\_\_\_\_

Printed:       David E. Gibbons

Its:             Authorized Representative

AGREEMENT FOR PURCHASE AND SALE OF STREAM  
AND WETLAND MITIGATION CREDITS

THIS AGREEMENT FOR PURCHASE AND SALE OF STREAM AND WETLAND CREDITS (this "Agreement") is dated this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between SPANISHBURG MITIGATION HOLDINGS LLC, a Delaware limited liability company, and the operator of a stream and wetland mitigation bank commonly known as the Spanishburg Stream and Wetland Mitigation Bank ("Seller"), and the DEPARTMENT OF ENVIRONMENTAL PROTECTION – DIVISION OF WASTE AND WATER MANAGEMENT, a West Virginia State agency in the West Virginia Department of Environmental Protection ("Purchaser").

RECITALS

A. On November 25, 2015, WV Bunrootis Existing Mitigation Holdings LLC (“WVB Holdings”) acquired from WV Bunrootis LLC the right to create and operate a wetland and stream mitigation bank on approximately 100 acres located at the Spanishburg Stream and Wetland Mitigation Bank in Mercer County, West Virginia (the “Bank”);

B. WVB Holdings is a wholly owned subsidiary of LFF IV Mitigation Holdings LLC, which is registered with wvOasis as vendor account code VC0000049184;

C. Seller is a subsidiary of WVB Holdings and has been authorized by WVB Holdings to manage and operate the Bank on WVB Holdings’ behalf, including the right to sell mitigation credits generated by the Bank.

D. Seller has developed and authorized to manage the Spanishburg Stream and Wetland Mitigation Bank under United States Army Corps of Engineers (the “Corps”) and the West Virginia Department of Environmental Protection (“WVDEP”) Nationwide Permit No. 27 2010-116-NEW, the Bank Development Plan and Mitigation Banking Instrument for the Spanishburg Stream and Wetland Mitigation Bank (the “MBI”) dated May 2013 and approved on October 1, 2013 by the Huntington District office of the Corps and the WVDEP to operate as a wetland and stream mitigation bank with wetland and stream credits available for sale.

E. The Spanishburg Stream and Wetland Mitigation Bank is an instrument modification of the previously approved WV Bunrootis LLC Umbrella Mitigation Banking Instrument (the “UMBI”) for the State of West Virginia, which operates as the Hayes Run Stream Mitigation Bank and was approved on August 7, 2012 by the Corps (file LRH-2009-150-LKR).

E. The Bank has been approved by the Corps and WVDEP to offer wetland and stream

credits from the Bank for sale as compensation for the loss of wetlands and streams due to impacts to such aquatic resources within the "Service Area," that was modified by the Corps in a letter dated September 12, 2017 to include the areas identified by the following eight-digit Hydrologic Unit Codes ("HUCs") as designated by the U.S. Geological Survey ("USGS"): Primary – Upper New (05050002) and Secondary – Lower New River (05050004), Greenbrier River (05050003), Coal River (05050009), Gauley River (05050005), Lower Kanawha River (05050003), Upper Kanawha River (05050006) and Elk River (05050007).

F. Purchaser desires to purchase from Seller and Seller desires to sell to Purchaser stream and wetland mitigation credits pursuant to the terms and conditions set forth herein.

#### AGREEMENT

In consideration of the foregoing and the mutual promises, covenants, agreements and obligations of the parties contained in this Agreement, the adequacy and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Seller and Purchaser agree as follows:

**1. Recitals.** The recitals to this Agreement are herein incorporated by reference and made an integral part hereof.

**1. Agreement to Sell and Purchase.** Seller hereby sells to Purchaser or its designee(s), and Purchaser, or its assignee(s), hereby purchases from Seller \_\_\_\_\_ (\_\_\_\_\_) stream mitigation credits (the "Stream Credits") and \_\_\_\_\_ (\_\_\_\_\_) wetland mitigation credits (the "Wetland Credits") in the Bank. Upon execution of the Agreement to purchase Credits from Seller, Seller shall provide Purchaser with an invoice for the Purchase Price (as defined in Section 3 below) and Purchaser shall remit payment within 30 days of receipt of the invoice. Purchaser shall have the right to apply the Credits for use on any enforcement issue, current project and/or future project, and Seller consents to such re-conveyances and agrees to cooperate with and assist Purchaser in the documentation of such re-conveyances, including delivery of notices of such re-conveyances to the Corps, WVDEP, United States Environmental Protection Agency ("EPA") and any other governing agency with jurisdiction over the creation and operation of wetland and stream mitigation banks.

**3. Purchase Price.** The purchase price for the \_\_\_\_\_ (\_\_\_\_\_) Stream Credits shall be **Seven Hundred Seventy Five** and 00/100 Dollars (**\$775.00**) for each Credit for a Purchase Price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and the purchase price for the \_\_\_\_\_ (\_\_\_\_\_) Wetland Credits shall be Sixty Thousand and

00/100 Dollars (\$60,000.00) for each credit for a Purchase Price of \_\_\_\_\_ (\$\_\_\_\_\_) and a total purchase price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Total Purchase Price").

Upon payment of the Total Purchase Price in full, neither Purchaser, nor its successors, assignees or designees shall be liable for the payment of any other consideration or fee in connection with the conveyance or assignment and/or re-conveyance of the Credits.

**4. Delivery of Credits.** Upon receipt of the Purchase Price, Seller shall deliver to Purchaser, its successors, assignees or designees the following documents to evidence the conveyance of the Credits:

(a) An affidavit in substantially the same form as Exhibit A attached hereto, with the project number filled in, if requested, and which upon the written request of Purchaser shall also be delivered by Seller to the Corps and, if appropriate, the WVDEP.

(b) A bill of sale for the Credits in substantially the same form as Exhibit B attached hereto.

**5. Representations, Warranties and Covenants.** Seller hereby warrants and represents to, and covenants with, Purchaser as follows:

(a) Seller expressly represents, warrants, and covenants the matters set forth as Recitals A, B, C, D, E, and F above.

(b) Seller has a sufficient number of credits in the Bank to consummate the transactions contemplated herein.

(c) Seller shall follow and comply with all the requirements for the maintenance of the Bank as required by the Corps, WVDEP, EPA, and any other agency having jurisdiction over the Bank.

(d) Seller has full power and authority to convey the Credits to Purchaser and to consummate the transactions contemplated herein.

(e) Seller shall deliver the Credits to Purchaser free and clear of any liens, security interests or other encumbrances.

(f) There is no pending or threatened action or proceeding affecting Seller before any court, governmental agency, or arbitrator that would adversely affect Seller's ability to comply with its obligations hereunder.

(g) Seller hereby covenants and agrees with Purchaser that Seller shall not sell any number of credits in the Bank that would prevent the consummation of the transactions contemplated herein.

(h) Seller shall be solely responsible, at its sole cost and expense, for compliance with the requirements of this Agreement and with all statutes, regulations, and other requirements applicable to the operation, management, and maintenance of the Bank (collectively the "Bank Regulatory Requirements"). Seller shall indemnify, defend, and hold harmless Purchaser and Purchaser's successors, assigns, and designees from and against any action, order, investigation, or proceeding initiated by any individual or entity, including, but not limited to, any governmental agency, and arising from or based on Seller's failure to comply with (i) this Agreement, including, but not limited to, a breach by Seller of any of its representations, warranties and covenants herein, and (ii) any Bank Regulatory Requirements, such indemnification to include any and all costs and expenses, including without limitation, reasonable attorneys' fees, incurred by Purchaser or its successors assigns and designees related thereto.

(i) That the execution and delivery of this Agreement on behalf of Seller has been duly authorized and such execution and delivery shall constitute the valid and binding agreement of Seller and is enforceable in accordance with its terms.

(j) All of Seller's representations, warranties, and covenants herein shall survive the termination of this Agreement and the delivery of the bill or bills of sale pursuant to this Agreement.

## **6. Miscellaneous**

(a) Notices. Any notice, demand or request which is required or permitted hereunder shall be deemed effective when hand delivered, sent by a receipted overnight delivery service, or mailed, via certified mail, to the following addresses:

Seller: Spanishburg Mitigation Holdings LLC  
Attn: David Gibbons  
6515 Bandera Avenue, #2D  
Dallas, Texas 75225

### **With a copy to:**

The Lyme Timber Company LP  
General Counsel  
23 South Main Street, 3<sup>rd</sup> Floor  
Hanover, NH 03755

Purchaser: West Virginia Department of Environmental Protection  
Attn: Scott Settle  
601 57<sup>th</sup> Street SE  
Charleston, West Virginia 25304

Payment for the credits shall be made payable to Spanishburg Mitigation Holdings LLC and will be sent to:

The Lyme Timber Company LP  
Attn: Katherine Czaplicki  
23 South Main Street, 3<sup>rd</sup> Floor  
Hanover, NH 03755

The parties may change the address for notices by change order to this Agreement.

(b) Brokerage Commission. Seller and Purchaser each warrant to the other that no broker, agent, salesman or similar person is entitled to a commission or other fee in connection with this transaction. In the event any claims arise for commissions, fees, or other compensation in connection with this transaction, the party causing such claims or through whom such claims are made shall indemnify, defend, and hold harmless the other party for any loss or damage incurred by such party because of such claim. The foregoing indemnification shall survive the cancellation, termination or consummation of this Agreement.

(c) Governing Law. The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia, with the proper venue being Kanawha County, except to the extent that any applicable federal law or regulation shall supersede West Virginia law in relation to the matters set forth in this Agreement.

(d) Compliance with Applicable Laws. Both parties shall comply with all applicable federal, state, and local laws, rules, regulations, and orders in the conduct of their obligations hereunder.

(e) Severability. The provisions of this Agreement shall be deemed severable and, if any term herein shall be held invalid, illegal, or unenforceable, the remainder of this Agreement shall continue to be effective and binding on the parties.

(f) Additional Assurances. Both of the parties agree to execute and deliver any other document or documents that may be requested from time to time by the other party necessary to perform such party's obligations under this Agreement.

(g) Nature of Credits. The sale and conveyance of the Credits pursuant to this Agreement shall not constitute the conveyance or transfer of any right, interest, or ownership of real property or the Bank, nor shall such conveyance impose upon Purchaser any obligation, duty, or liability arising from or incident to ownership of an interest in real property.

(h) Duration. This Agreement shall continue in existence until ninety (90)

days after the conveyance of all of the Credits, including without limitation, any conveyance at the request of Purchaser in accordance with the provision of Sections 3 and 6(k) herein; provided, however, that the provisions of Section 5 and 6(m) shall survive the termination of this Agreement upon the payment in full of the Purchase Price.

(i) Assignability. Purchaser may assign its rights and obligations hereunder to any other project undertaken by Purchaser's parent company or by any affiliate or subsidiary of Purchaser's parent company. Seller shall not assign its rights and obligations hereunder to any third party entity without the prior written consent of Purchaser, which may be withheld in Purchaser's sole discretion.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall together constitute one and the same Agreement. Signed signature pages may be transmitted by facsimile or email and any such signature or electronic signature shall have the same legal effect as an original.

WITNESS the following authorized signatures:

SELLER: SPANISHBURG MITIGATION HOLDINGS LLC

By: \_\_\_\_\_

Printed: David E. Gibbons

Its: Authorized Representative

PURCHASER: DEPARTMENT OF ENVIRONMENTAL PROTECTION – DIVISION  
OF WASTE AND WATER MANAGEMENT, a West Virginia State  
agency in the West Virginia Department of Environmental Protection

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_



EXHIBIT A

AFFIDAVIT OF WETLAND AND STREAM MITIGATION SALE

I, David E. Gibbons, certify that I am now, and at all times mentioned herein have been, the Authorized Representative of Spanishburg Mitigation Holdings LLC, a Delaware limited liability company (the "Company"), and as such I hereby certify the following:

The Company, as of the date hereof, has granted, sold, and transferred or made available for transfer \_\_\_\_\_ (\_\_\_\_\_) stream credits and \_\_\_\_\_ (\_\_\_\_\_) wetland credits to the Department of Environmental Protection – Division of Waste Water Management, a West Virginia State agency in the West Virginia Department of Environmental Protection from the Spanishburg Stream and Mitigation Bank located in Mercer County, West Virginia, established under the authority of the United States Army Corps of Engineers – Huntington District Nationwide Permit No. 27 2010-116-NEW issued on October 1, 2013. The execution and delivery of this Affidavit has been duly authorized and is not in violation of the incorporation or organizational documents of the Company or any other agreement, document, or obligation to which the Company is bound.

IN WITNESS WHEREOF, I have duly executed this Affidavit as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

SPANISHBURG MITIGATION HOLDINGS LLC, a  
Delaware limited liability company

By: \_\_\_\_\_

Printed: David E. Gibbons

Title: Authorized Representative

STATE OF TEXAS:

COUNTY OF DALLAS:

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020 the undersigned Notary Public for and in the jurisdiction aforesaid, by David E. Gibbons, the Authorized Representative of the Spanishburg Mitigation Holdings LLC, a Delaware limited liability company.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

EXHIBIT B

BILL OF SALE

THIS BILL OF SALE is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020, by SPANISHBURG MITIGATION HOLDINGS LLC, a Delaware limited liability company ("Seller"), and the DEPARTMENT OF ENVIRONMENTAL PROTECTION – DIVISION OF WASTE AND WATER MANAGEMENT, a West Virginia State agency in the West Virginia Department of Environmental Protection ("Purchaser").

Seller and Purchaser have entered into that certain Agreement for Purchase and Sale of Stream and Wetland Mitigation Credits dated \_\_\_\_\_, 2020 (the "Agreement"), the terms of which are incorporated herein by reference and made a part hereof, with respect to the sale by Seller and the purchase by Purchaser of \_\_\_\_\_ (\_\_\_\_\_) stream Credits and \_\_\_\_\_ (\_\_\_\_\_) wetland credits (as defined in the Agreement) held in Seller's Spanishburg Stream and Wetland Mitigation Bank located in Mercer County, West Virginia.

In consideration of the Purchase Price (as defined in the Agreement) and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Seller hereby sells, transfers, assigns, conveys, delivers, and sets over to Purchaser, its successors, or assigns \_\_\_\_\_ (\_\_\_\_\_) stream Credits and \_\_\_\_\_ (\_\_\_\_\_) wetland Credits, to have and hold all such stream mitigation Credits forever.

Witness the following authorized signature:

SPANISHBURG MITIGATION HOLDINGS LLC, a  
Delaware limited liability company

By: \_\_\_\_\_

Printed: David E. Gibbons

Its: Authorized Representative

**EXHIBIT A****PURCHASE OF STREAM AND/OR WETLAND MITIGATION CREDITS  
PRICING PAGE**

<b>Item</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extended Price</b>
1	Stream credits in ILF SSA 1	1	\$700	\$700
2	Wetland credits in ILF SSA 1	1	\$60,000	\$60,000
3	Stream credit in ILF SSA 2	1		
4	Wetland credits in ILF SSA 2	1		
5	Stream credits in ILF SSA 4	1		
6	Wetland credits in ILF SSA 4	1		
7	Stream credits in ILF SSA 5	1		
8	Wetland credits in ILF SSA 5	1		
	<b>Total</b>			

**Mitigation Bank Information**

The following is required as part of the bid.

Bank Name: Bear Wallow Mitigation Holdings LLC

Physical Address: Ritchie County - see attached map

Bank Owner Name: LFF IV Mitigation Holdings LLC

Bank Owner Address: 23 S Main Street, Suite 3 Hanover, New Hampshire 03755

Contact Name: David Gibbons

Contact Email: davgibb@swbell.net

Service Area (HUCs): 0503203 (Primary), 05030202, 05030201, 05050008, 05050007, 05020002 and 05020001

Required Items: Return the following with your bid.

Bank geographic service area map or equivalent  
Bank's Agreement for Credit Purchase and Sale

**EXHIBIT A****PURCHASE OF STREAM AND/OR WETLAND MITIGATION CREDITS  
PRICING PAGE**

<b>Item</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extended Price</b>
1	Stream credits in ILF SSA 1	1	\$750	\$750
2	Wetland credits in ILF SSA 1	1	\$60,000	\$60,000
3	Stream credit in ILF SSA 2	1		
4	Wetland credits in ILF SSA 2	1		
5	Stream credits in ILF SSA 4	1		
6	Wetland credits in ILF SSA 4	1		
7	Stream credits in ILF SSA 5	1		
8	Wetland credits in ILF SSA 5	1		
	<b>Total</b>			

**Mitigation Bank Information**

The following is required as part of the bid.

Bank Name: Hays Run Mitigation Holdings LLC

Physical Address: Ritchie County - see attached map

Bank Owner Name: LFF IV Mitigation Holdings LLC

Bank Owner Address: 23 S Main Street, Suite 3 Hanover, New Hampshire 03755

Contact Name: David Gibbons

Contact Email: davgibb@swbell.net

Service Area (HUCs): 05030203 (Primary), 05030202, 05030201, 05030106, 05030106 and 05030101

Required Items: Return the following with your bid.

Bank geographic service area map or equivalent  
Bank's Agreement for Credit Purchase and Sale

**EXHIBIT A****PURCHASE OF STREAM AND/OR WETLAND MITIGATION CREDITS  
PRICING PAGE**

<b>Item</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extended Price</b>
1	Stream credits in ILF SSA 1	1	\$700	\$700
2	Wetland credits in ILF SSA 1	1	\$60,000	\$60,000
3	Stream credit in ILF SSA 2	1		
4	Wetland credits in ILF SSA 2	1		
5	Stream credits in ILF SSA 4	1		
6	Wetland credits in ILF SSA 4	1		
7	Stream credits in ILF SSA 5	1		
8	Wetland credits in ILF SSA 5	1		
	<b>Total</b>			

**Mitigation Bank Information**

The following is required as part of the bid.

Bank Name: Hayes Run II Mitigation Holdings LLC

Physical Address: Ritchie County - see attached map

Bank Owner Name: LFF IV Mitigation Holdings LLC

Bank Owner Address: 23 S Main Street, Suite 3 Hanover, New Hampshire 03755

Contact Name: David Gibbons

Contact Email: davgibb@swbell.net

Service Area (HUCs): 05030203 (Primary), 05030202, 05030201, 05050008, 05050007, 05020002 and 05020001

Required Items: Return the following with your bid.

Bank geographic service area map or equivalent  
Bank's Agreement for Credit Purchase and Sale

**EXHIBIT A****PURCHASE OF STREAM AND/OR WETLAND MITIGATION CREDITS  
PRICING PAGE**

<b>Item</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extended Price</b>
1	Stream credits in ILF SSA 1	1	\$750	\$750
2	Wetland credits in ILF SSA 1	1	\$60,000	\$60,000
3	Stream credit in ILF SSA 2	1		
4	Wetland credits in ILF SSA 2	1		
5	Stream credits in ILF SSA 4	1		
6	Wetland credits in ILF SSA 4	1		
7	Stream credits in ILF SSA 5	1		
8	Wetland credits in ILF SSA 5	1		
	<b>Total</b>			

**Mitigation Bank Information**

The following is required as part of the bid.

Bank Name: Kincheloe Mitigation Holdings LLC

Physical Address: Harrison and Lewis Counties - see attached map

Bank Owner Name: LFF IV Mitigation Holdings LLC

Bank Owner Address: 23 S Main Street, Suite 3 Hanover, New Hampshire 03755

Contact Name: David Gibbons

Contact Email: davgibb@swbell.net

Service Area (HUCs): 05020002 (Primary), 05020005, 05020004, 05020003 and 05020001

Required Items: Return the following with your bid.

Bank geographic service area map or equivalent  
Bank's Agreement for Credit Purchase and Sale

**EXHIBIT A****PURCHASE OF STREAM AND/OR WETLAND MITIGATION CREDITS  
PRICING PAGE**

<b>Item</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extended Price</b>
1	Stream credits in ILF SSA 1	1	\$725	\$725
2	Wetland credits in ILF SSA 1	1	\$60,000	\$60,000
3	Stream credit in ILF SSA 2	1		
4	Wetland credits in ILF SSA 2	1		
5	Stream credits in ILF SSA 4	1		
6	Wetland credits in ILF SSA 4	1		
7	Stream credits in ILF SSA 5	1		
8	Wetland credits in ILF SSA 5	1		
	<b>Total</b>			

**Mitigation Bank Information**

The following is required as part of the bid.

Bank Name: Spanishburg Mitigation Holdings LLC

Physical Address: Mercer County - see attached map

Bank Owner Name: LFF IV Mitigation Holdings LLC

Bank Owner Address: 23 S Main Street, Suite 3 Hanover, New Hampshire 03755

Contact Name: David Gibbons

Contact Email: davgibb@swbell.net

Service Area (HUCs): 05050003 (Primary), 05050003, 05050004, 05050009, 05050006, 05050007 and 05050008

Required Items: Return the following with your bid.

Bank geographic service area map or equivalent  
Bank's Agreement for Credit Purchase and Sale

**WVB Stream Credit Availability  
October 12, 2020**

**Hayes Run - Roane County**

Permitted:	August 7, 2012
Total Stream Credits Permitted:	7,121.67 stream credits
Total Wetland Credits Permitted:	0.97 wetland credits
Available Stream Credits – October 9, 2020*	0.09 stream credits
Available Wetland Credits – October 9, 2020*	0.01 wetland credits
Next Stream Credit Release – December 2020	356.02 stream credits
Next Wetland Credit Release – December 2020	0.24 wetland credits
Primary Watershed:	05030203 - Little Kanawha
Secondary Watersheds:	05030202 - Middle Ohio South 05030201 - Middle Ohio North 05030106 - Upper Ohio South 05030101 - Upper Ohio North

**Spanishburg - Mercer County**

Permitted:	October 1, 2013
Total Stream Credits Permitted:	10,058.22 stream credits
Total Wetland Credits Permitted:	9.810 wetland credits
Available Stream Credits – October 9, 2020*	846.10 stream credits
Available Wetland Credits – October 9, 2020*	1.319 wetland credits
Next Stream Credit Release - November 2020	944.996 stream credits
Next Wetland Credit Release – November 2020	0.981 wetland credits
Primary Watershed:	05050002 - Upper New
Secondary Watersheds:	05050003 - Greenbrier 05050004 - Lower New 05050009 - Coal 05050005 - Gauley 05050006 - Upper Kanawha 05050007 - Elk 05050008 - Lower Kanawha

\* Totals reflect net of proposed and /or under contract



**Kincheloe - Harrison and Lewis Counties**

Permitted:	August 14, 2015
Total Stream Credits Permitted:	14,942 stream credits
Total Wetland Credits Permitted:	5.585 wetland credits
Available Stream Credits – October 9, 2020*	0.0 stream credits
Available Wetland Credits – October 9, 2020*	0.891 wetland credits
Expansion Stream Credits – October 2020	989.00 stream credits
Next Stream Credit Release - February 2022	1,109.294 stream credits
Next Wetland Credit Release - February 2022	0.5585 wetland credits
Primary Watershed:	05020002 - West Fork
Secondary Watersheds:	05020001 - Tygart Valley 05020003 – Monogahela 05020005 – Dunkard 05020004 – Cheat 05020006 - Youghiogheny

**Bear Wallow- Ritchie County**

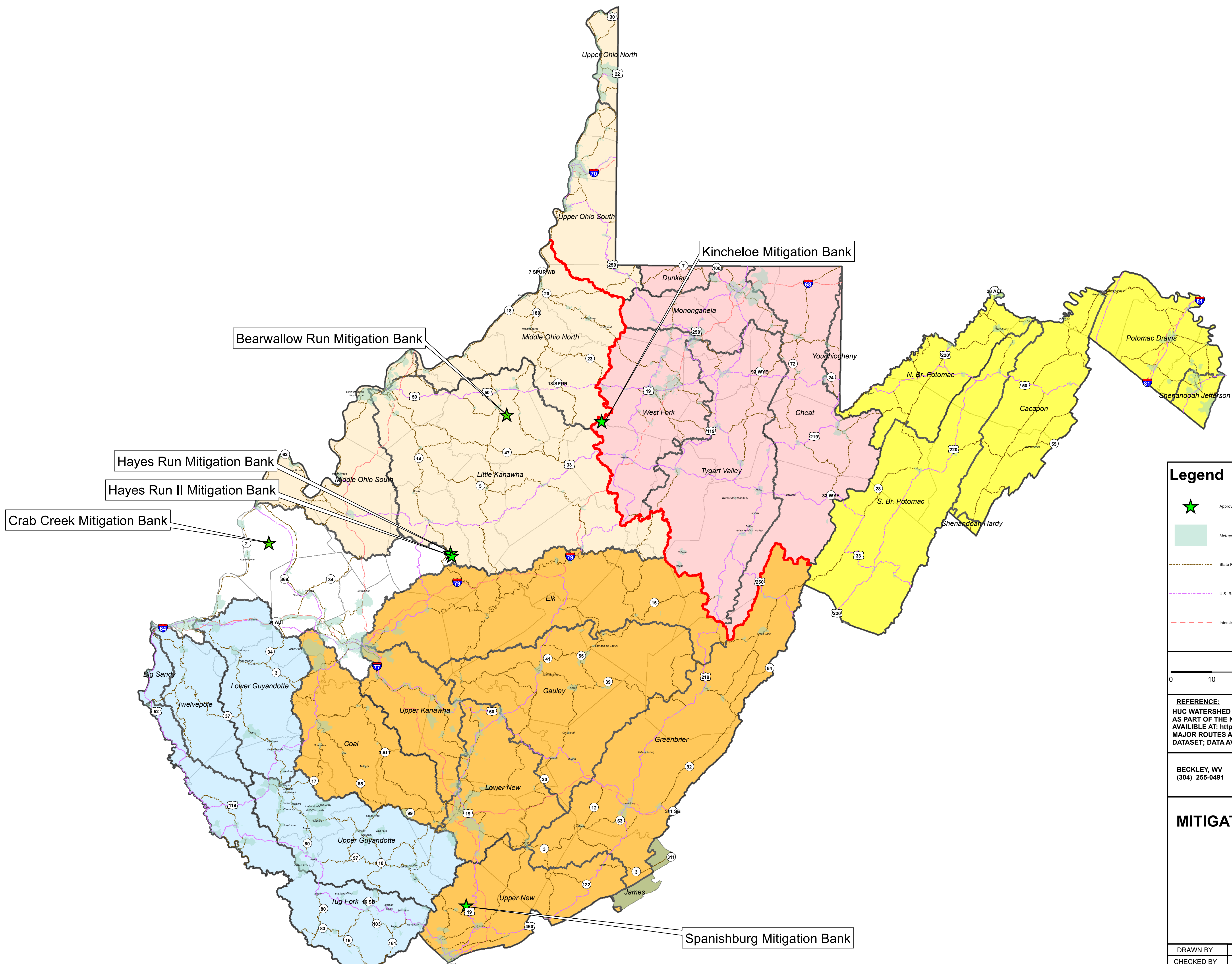
Permitted:	August 8, 2018
Total Stream Credits Permitted:	12,631.91 stream credits
Total Wetland Credits Permitted:	4.99 wetland credits
Available Stream Credits – October 9, 2020*	1,212.33 stream credits
Available Wetland Credits – October 9, 2020*	0.686 wetland credits
Next Stream Credit Release - March, 2022	1,766 stream credits
Next Wetland Credit Release - March, 2022	0.49 wetland credits
Primary Watershed:	05030203 - Little Kanawha
Secondary Watersheds:	05030202 - Middle Ohio South 05030201 - Middle Ohio North 05050008 - Lower Kanawha 05050007 - Elk 05020002 - West Fork 05020001 - Tygart Valley

\* Totals reflect net of proposed and /or under contract

**Hayes Run II - Ritchie County**

Permitted:	July 17, 2020
Total Stream Credits Permitted:	13,776.38 stream credits
Total Wetland Credits Permitted:	2.06 wetland credits
Available Stream Credits – October 9, 2020*	3,151.34 stream credits
Available Wetland Credits – October 9, 2020*	0.206 wetland credits
Next Stream Credit Release – September, 2021	3,444.10 stream credits
Next Wetland Credit Release – September, 2021	0.515 wetland credits
Primary Watershed:	05030203 - Little Kanawha
Secondary Watersheds:	05030202 - Middle Ohio South 05030201 - Middle Ohio North 05050008 - Lower Kanawha 05050007 - Elk 05020002 - West Fork 05020001 - Tygart Valley

\* Totals reflect net of proposed and /or under contract



### Legend

Approved Mitigation Banks

USACE District Boundary

Metropolitan Areas

Counties

State Routes

U.S. Routes

Interstates

#### WV DEP Geographic Service Areas

1	4
2	5
3	

**REFERENCE:**  
HUC WATERSHED BOUNDARIES DOWNLOADED  
AS PART OF THE NATIONAL HYDROGRAPHY DATASET (NHD).  
AVAILABLE AT: <http://nhd.usgs.gov/>  
MAJOR ROUTES AND URBAN AREAS TAKEN FROM THE 2011 AND 2010 TIGER  
DATASET; DATA AVAILABLE AT <http://www.census.gov/>

BECKLEY, WV  
(304) 255-0491

**Alliance Consulting, Inc.**  
*Engineers · Constructors · Scientists*

CANONSBURG, PA  
(724) 745-3630

## MITIGATION BANK LOCATION MAP

**Prepared For**

LFF VI Mitigation Holdings LLC  
23 S. Main Street, Suite 3  
Hanover, NH 03755

DAVID GIBBONS  
Cell: (214) 616-0652

DRAWN BY	RG	10/12/2020	PROJECT NO. B14-001-1760
CHECKED BY	BAH	10/12/2020	
APPROVED BY			
			DRAWING NO. B14-001-D2R1

## State of West Virginia Bid Opportunity

**Solicitation Type** CRFQ  
**Solicitation No.** DEP2100000012  
**Description:** Mitigation Bank Credits

### EXHIBIT A

ILF SSA Zone	Mitigation Bank	Wetland Credits			Stream Credits		
		Currently Available	Available by Jan 1-2021	Unit Price	Currently Available	Available by Jan -2021	Unit Price
1	Bearwallow Run	0.686	0.686	\$60,000 / credit	1,212.33	1,212.33	\$ 700 / credit
1	Hayes Run	0.01	0.24	\$60,000 / credit	0.09	356.0	\$ 725 / credit
1	Hayes Run II	0.206	0.515	\$60,000/ credit	3,151.34	3,444.10	\$ 700 /credit

## State of West Virginia Bid Opportunity

**Solicitation Type** CRFQ  
**Solicitation No.** DEP2100000012  
**Description:** Mitigation Bank Credits

### EXHIBIT A

ILF SSA Zone	Mitigation Bank	Wetland Credits			Stream Credits		
		Currently Available	Available by June 30-2020	Unit Price	Currently Available	Available by Nov 15-2020	Unit Price
2	Kincheloe	0.891	0.891	\$60,000 / credit	0.0	750.0	\$ 750 / credit

**Note:**

Kincheloe - Projected release date for stream credits for the Kincheloe Mitigation Bank is November 15, 2020. The anticipated release will be 750 stream credits.

## State of West Virginia Bid Opportunity

**Solicitation Type** CRFQ  
**Solicitation No.** DEP2100000012  
**Description:** Mitigation Bank Credits

### EXHIBIT A

ILF SSA Zone	Mitigation Bank	Wetland Credits			Stream Credits		
		Currently Available	Available by Dec 15-2020	Unit Price	Currently Available	Available by Dec 15-2020	Unit Price
4	Spanishburg	1.570	2.55	\$60,000 / credit	1,491.75	2,436.75	\$ 725 / credit

**Note:** Next credit release is anticipated to be in December 2020.



# West Virginia Ethics Commission

## Disclosure of Interested Parties to Contracts

(Required by W. Va. Code § 6D-1-2)

Name of Contracting Business Entity: LFF IV Mitigation Holdings LLC Address: 23 S Main Street, Suite 3  
Hanover, NH 03755

Name of Authorized Agent: David Gibbons Address: Same

Contract Number: Open Ended Contract Description: Mitigation Credits

Governmental agency awarding contract: WV Department of Environmental Protections

☐ Check here if this is a Supplemental Disclosure

List the Names of Interested Parties to the contract which are known or reasonably anticipated by the contracting business entity for each category below (attach additional pages if necessary):

**1. Subcontractors or other entities performing work or service under the Contract**

☒ Check here if none, otherwise list entity/individual names below.

**2. Any person or entity who owns 25% or more of contracting entity (not applicable to publicly traded entities)**

☒ Check here if none, otherwise list entity/individual names below.

**3. Any person or entity that facilitated, or negotiated the terms of, the applicable contract (excluding legal services related to the negotiation or drafting of the applicable contract)**

☒ Check here if none, otherwise list entity/individual names below.

Signature: David E. Ish

Date Signed: OCTOBER 9, 2020

### Notary Verification

State of Texas, County of Dallas:

I, David Gibbons, the authorized agent of the contracting business entity listed above, being duly sworn, acknowledge that the Disclosure herein is being made under oath and under the penalty of perjury.

Taken, sworn to and subscribed before me this 9TH day of OCTOBER, 2020.

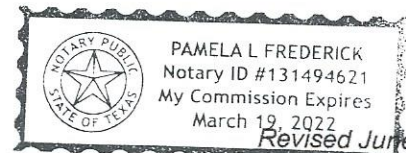
Pamela L. Frederick  
Notary Public's Signature

**To be completed by State Agency:**

Date Received by State Agency: \_\_\_\_\_

Date submitted to Ethics Commission: \_\_\_\_\_

Governmental agency submitting Disclosure: \_\_\_\_\_



Revised June 8, 2018

STATE OF WEST VIRGINIA  
Purchasing Division

# PURCHASING AFFIDAVIT

**CONSTRUCTION CONTRACTS:** Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

**ALL CONTRACTS:** Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

**EXCEPTION:** The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

**DEFINITIONS:**

**"Debt"** means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

**"Employer default"** means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

**"Related party"** means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

**AFFIRMATION:** By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) 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, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

**WITNESS THE FOLLOWING SIGNATURE:**

Vendor's Name: LFF IV Mitigation Holdings LLC

Authorized Signature: *David E. T. [Signature]* Date: 10-9-2020

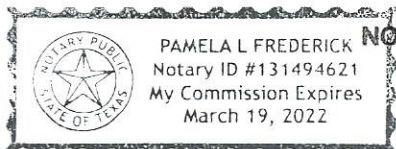
State of Texas

County of Dallas, to-wit:

Taken, subscribed, and sworn to before me this 9<sup>TH</sup> day of OCTOBER, 2020.

My Commission expires 3/19, 2022.

**AFFIX SEAL HERE**



**NOTARY PUBLIC**

*Pamela L. Frederick*





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

State of West Virginia  
Centralized Request for Quote  
Miscellaneous

<b>Proc Folder:</b> 782104			<b>Reason for Modification:</b> Request for Quotation - Open End Contract
<b>Doc Description:</b> Mitigation Credits			
<b>Proc Type:</b> Central Master Agreement			
<b>Date Issued</b>	<b>Solicitation Closes</b>	<b>Solicitation No</b>	<b>Version</b>
2020-09-22	2020-10-13 13:30	CRFQ 0313 DEP2100000012	1

**BID RECEIVING LOCATION**

BID CLERK  
DEPARTMENT OF ADMINISTRATION  
PURCHASING DIVISION  
2019 WASHINGTON ST E  
CHARLESTON WV 25305  
US

**VENDOR**

**Vendor Customer Code:**

**Vendor Name :** LFF IV Mitigation Holdings LLC

**Address :** 23 S Main Street, Suite 3

**Street :**

**City :** Hanover

**State :** New Hampshire

**Country :** USA

**Zip :** 03755

**Principal Contact :** David Gibbons

**Vendor Contact Phone:** 214-616-0652

**Extension:**

**FOR INFORMATION CONTACT THE BUYER**

Joseph E Hager III  
(304) 558-2306  
joseph.e.hageriii@wv.gov

**Vendor  
Signature X**

DocuSigned by:  
*David Gibbons*  
F0133DB493154F2...

**FEIN#**

47-2798169

**DATE**

10/9/2020

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

**ADDITIONAL INFORMATION**

Request for quotation - Open End Contract

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, per the attached specifications and terms and conditions.

**INVOICE TO**

ENVIRONMENTAL PROTECTION  
DIV OF WASTE AND WATER MGT  
601 57TH ST SE  
CHARLESTON WV 25304  
US

**SHIP TO**

ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MGT  
601 57TH ST SE  
CHARLESTON WV 25304  
US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Stream credits in ILF SSA 1	1.00000	EA	\$700	\$700

Comm Code	Manufacturer	Specification	Model #
94131501			

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

**INVOICE TO**

ENVIRONMENTAL PROTECTION  
DIV OF WASTE AND WATER MGT  
601 57TH ST SE  
CHARLESTON WV 25304  
US

**SHIP TO**

ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MGT  
601 57TH ST SE  
CHARLESTON WV 25304  
US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	Wetland credits in ILF SSA 1	1.00000	EA	\$60,000	\$60,000

Comm Code	Manufacturer	Specification	Model #
94131501			

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
3	Stream credit in ILF SSA 2	1.00000	EA	\$750	\$750

Comm Code	Manufacturer	Specification	Model #
94131501			

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
4	Wetland credits in ILF SSA 2	1.00000	EA	\$60,000	\$60,000

Comm Code	Manufacturer	Specification	Model #
94131501			

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications



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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
5	Stream credits in ILF SSA 3	1.00000	EA	NA	NA

Comm Code	Manufacturer	Specification	Model #
94131501			

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
6	Wetland credits in ILF SSA 3	1.00000	EA	NA	NA

Comm Code	Manufacturer	Specification	Model #
94131501			

**Extended Description:**

Mitigation Credits/ DWWM as outlined on the attached specifications

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
7	Stream credits in ILF SSA 4	1.00000	EA	\$750	\$750

Comm Code	Manufacturer	Specification	Model #
94131501			

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
8	Wetland credits in ILF SSA 4	1.00000	EA	\$60,000	\$60,000

Comm Code	Manufacturer	Specification	Model #
94131501			

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
9	Stream credits in ILF SSA 5	1.00000	EA	NA	NA

Comm Code	Manufacturer	Specification	Model #
94131501			

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
10	Wetland credits in ILF SSA 5	1.00000	EA	NA	NA

Comm Code	Manufacturer	Specification	Model #
94131501			

**Extended Description:**

Mitigation Credits / DWWM as outlined on the attached specifications

**SCHEDULE OF EVENTS**

<u>Line</u>	<u>Event</u>	<u>Event Date</u>
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## INSTRUCTIONS TO VENDORS SUBMITTING BIDS

**1. REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.

**2. MANDATORY TERMS:** The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.

**3. PREBID MEETING:** The item identified below shall apply to this Solicitation.

☒ A pre-bid meeting will not be held prior to bid opening

☐ A **MANDATORY PRE-BID** meeting will be held at the following place and time:

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one individual is permitted to represent more than one vendor at the pre-bid meeting. Any individual that does attempt to represent two or more vendors will be required to select one vendor to which the individual's attendance will be attributed. The vendors not selected will be deemed to have not attended the pre-bid meeting unless another individual attended on their behalf.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing.

Additionally, the person attending the pre-bid meeting should include the Vendor's E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

All Vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in but are charged with knowing all matters discussed at the pre-bid.

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting  
Revised 01/09/2020

are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

**4. VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this Solicitation to the Purchasing Division. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below in order to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are nonbinding.

Submitted e-mails should have solicitation number in the subject line.

Question Submission Deadline: 10/1/2020 @ 9:00 am EST

Submit Questions to: Joseph Hager  
2019 Washington Street, East  
Charleston, WV 25305  
Fax: (304) 558-4115 (Vendors should not use this fax number for bid submission)  
Email: Joseph.E.HagerIII

**5. VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State personnel is not binding, including verbal communication at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Purchasing Division is binding.

**6. BID SUBMISSION:** All bids must be submitted electronically through wvOASIS or signed and delivered by the Vendor to the Purchasing Division at the address listed below on or before the date and time of the bid opening. Any bid received by the Purchasing Division staff is considered to be in the possession of the Purchasing Division and will not be returned for any reason. The Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include electronic submission via wvOASIS, hand delivery, delivery by courier, or facsimile.

The bid delivery address is:  
Department of Administration, Purchasing Division  
2019 Washington Street East  
Charleston, WV 25305-0130

A bid that is not submitted electronically through wvOASIS should contain the information listed below on the face of the envelope or the bid may be rejected by the Purchasing Division.:

SEALED BID:  
BUYER:  
SOLICITATION NO.:  
BID OPENING DATE:  
BID OPENING TIME: 1:30 PM EST  
FAX NUMBER: 304-558-3970



The Purchasing Division may prohibit the submission of bids electronically through wvOASIS at its sole discretion. Such a prohibition will be contained and communicated in the wvOASIS system resulting in the Vendor's inability to submit bids through wvOASIS. Submission of a response to an Expression of Interest or Request for Proposal is not permitted in wvOASIS.

**For Request For Proposal ("RFP") Responses Only:** In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal plus \_\_\_\_\_ convenience copies of each to the Purchasing Division at the address shown above. Additionally, the Vendor should identify the bid type as either a technical or cost proposal on the face of each bid envelope submitted in response to a request for proposal as follows:

**BID TYPE:** (This only applies to CRFP)

☐ Technical

☒ Cost

**7. BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when confirmation of delivery is provided by wvOASIS (in the case of electronic submission) or when the bid is time stamped by the official Purchasing Division time clock (in the case of hand delivery).

**Bid Opening Date and Time:** 10/13/2020 @ 1:30 pm EST

**Bid Opening Location:** Department of Administration, Purchasing Division  
2019 Washington Street East  
Charleston, WV 25305-0130

**8. ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this Solicitation will be made by an official written addendum issued by the Purchasing Division. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

**9. BID FORMATTING:** Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

**10. ALTERNATE MODEL OR BRAND:** Unless the box below is checked, any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the

equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.

☐ This Solicitation is based upon a standardized commodity established under W. Va. Code § 5A-3-61. Vendors are expected to bid the standardized commodity identified. Failure to bid the standardized commodity will result in your firm's bid being rejected.

**11. EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

**12. COMMUNICATION LIMITATIONS:** In accordance with West Virginia Code of State Rules §148-1-6.6, communication with the State of West Virginia or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited without prior Purchasing Division approval. Purchasing Division approval for such communication is implied for all agency delegated and exempt purchases.

**13. REGISTRATION:** Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee, if applicable.

**14. UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.

**15. PREFERENCE:** Vendor Preference may be requested in purchases of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects. Any request for preference must be submitted in writing with the bid, must specifically identify the preference requested with reference to the applicable subsection of West Virginia Code § 5A-3-37, and must include with the bid any information necessary to evaluate and confirm the applicability of the requested preference. A request form to help facilitate the request can be found at:

<http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>.

**15A. RECIPROCAL PREFERENCE:** The State of West Virginia applies a reciprocal preference to all solicitations for commodities and printing in accordance with W. Va. Code § 5A-3-37(b). In effect, non-resident vendors receiving a preference in their home states, will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia. Any request for reciprocal preference must include with the bid any information necessary to evaluate and confirm the applicability of the preference. A request form to help facilitate the request can be found at: <http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>.

**16. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or

minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.

**17. WAIVER OF MINOR IRREGULARITIES:** The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.6.

**18. ELECTRONIC FILE ACCESS RESTRICTIONS:** Vendor must ensure that its submission in wvOASIS can be accessed and viewed by the Purchasing Division staff immediately upon bid opening. The Purchasing Division will consider any file that cannot be immediately accessed and viewed at the time of the bid opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires, and are therefore unacceptable. A vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening to make a file viewable if those documents are required with the bid. A Vendor may be required to provide document passwords or remove access restrictions to allow the Purchasing Division to print or electronically save documents provided that those documents are viewable by the Purchasing Division prior to obtaining the password or removing the access restriction.

**19. NON-RESPONSIBLE:** The Purchasing Division Director reserves the right to reject the bid of any vendor as Non-Responsible in accordance with W. Va. Code of State Rules § 148-1-5.3, when the Director determines that the vendor submitting the bid does not have the capability to fully perform, or lacks the integrity and reliability to assure good-faith performance.”

**20. ACCEPTANCE/REJECTION:** The State may accept or reject any bid in whole, or in part in accordance with W. Va. Code of State Rules § 148-1-4.5. and § 148-1-6.4.b.”

**21. 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.

**22. INTERESTED PARTY DISCLOSURE:** West Virginia Code § 6D-1-2 requires that the vendor submit to the Purchasing Division a disclosure of interested parties to the contract for all contracts with an actual or estimated value of at least \$1 Million. That disclosure must occur on the form prescribed and approved by the WV Ethics Commission prior to contract award. 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.

**23. WITH THE BID REQUIREMENTS:** In instances where these specifications require documentation or other information with the bid, and a vendor fails to provide it with the bid, the Director of the Purchasing Division reserves the right to request those items after bid opening and prior to contract award pursuant to the authority to waive minor irregularities in bids or specifications under W. Va. CSR § 148-1-4.6. This authority does not apply to instances where state law mandates receipt with the bid.



## **GENERAL TERMS AND CONDITIONS:**

**1. CONTRACTUAL AGREEMENT:** Issuance of a Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid 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.

**3. CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☒ **Term Contract**

**Initial Contract Term:** This Contract becomes effective on upon award and extends for a period of one (1) year(s).

**Renewal Term:** This Contract may be renewed upon the 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 request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to zero (0) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. 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)

☐ **Alternate Renewal Term** – This 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)

**Delivery Order Limitations:** In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within \_\_\_\_\_ days.

☐ **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 maintenance, monitoring, or warranty services will be provided for \_\_\_\_\_ year(s) thereafter.

☐ **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.

☐ **Other:** See attached.

**4. NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.

**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 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.

**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 of 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 below must be provided to the Purchasing Division by the Vendor as specified below.

☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Purchasing Division prior to Contract award.

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☐ **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.

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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 and must include the State as an additional insured on each policy 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 or not that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: 1,000,000.00 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.

☐☐☐☐

Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

**9. WORKERS' COMPENSATION INSURANCE:** The apparent successful 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. [Reserved]**

**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

**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:** Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears.

**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 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.

**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 with regard to 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 <http://www.state.wv.us/admin/purchase/privacy/default.html>.

**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 CERTIFICATIONS:** By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) 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; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall 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. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

**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. PURCHASING AFFIDAVIT:** 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, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

**38. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE:** This Contract may be utilized by other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"), provided that both the Other Government Entity and the Vendor agree. Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

**39. 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.

**40. 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.requisitions@wv.gov](mailto:purchasing.requisitions@wv.gov).

**41. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. 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.

Revised 01/09/2020

Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

**42. 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. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. 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
- d. 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.

**43. 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.

**44. 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 supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-award 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.

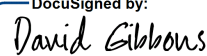
**45. PROHIBITION AGAINST USED OR REFURBISHED:** Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

**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.

DocuSigned by:  
 Authorized Representative  
 (Name, Title)  
 David Gibbons - Authorized Representative  
 (Printed Name and Title)  
 23 S Main Street, Suite 3 Hanover, New Hampshire 03755  
 (Address)  
 214-616-0652  
 (Phone Number) / (Fax Number)  
 davgibb@swbell.net  
 (email address)

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation 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 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 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.

LFF IV Mitigation Holdings LLC

(Company) DocuSigned by:  
 Authorized Representative  
 F0133DB493154F2...  
 (Authorized Signature) (Representative Name, Title)  
 David Gibbons  
 (Printed Name and Title of Authorized Representative)  
 10/9/2020  
 (Date)  
 214-616-0652  
 (Phone Number) (Fax Number)

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)*

- ☒ 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.

LFF IV Mitigation Holdings LLC

Company

DocuSigned by:  
*David Gibbons*  
F0133DB493154F2...

Authorized Signature

10/9/2020

Date

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

REQUEST FOR QUOTATION  
Mitigation Credits

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

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Mitigation Credits

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- 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 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 1 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)
- 3.1.4 Released Credits from a U.S. Army Corps of Engineers approved mitigation bank SSA 4 (Estimated Quantities 1 stream credit 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. Vendor's MINIMUM QUALIFICATIONS**

- 4.1 **VENDOR'S 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



## REQUEST FOR QUOTATION

### Mitigation Credits

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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 should be provided with the bid submission but may be requested prior to award.
- 4.3 The mitigation bank should include with its bid submission the Bank's typical Agreement for Credit Purchase and Sale but may be requested prior to award.
- 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 bid amount as shown on the Pricing Page.
- 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 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 Page 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

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Mitigation Credits

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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** 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:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

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

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Mitigation Credits

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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.

**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.



REQUEST FOR QUOTATION  
Mitigation Credits

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**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.
- 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:** David Gibbons

**Telephone Number:** 214-616-0652

**Fax Number:** \_\_\_\_\_

**Email Address:** davgibb@swbell.net  
Hays Run, Hays Run II, Kincheloe, Spanishburg, Bear Wallow Run

**Bank Name:** \_\_\_\_\_

**Bank Physical Address:** See attached map

**Service Area (HUC's)** ILF SSA #1, ILF SSA #2 and ILF SSA #4

**EXHIBIT A****PURCHASE OF STREAM AND/OR WETLAND MITIGATION CREDITS  
PRICING PAGE**

<b>Item</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extended Price</b>
1	Stream credits in ILF SSA 1	1		
2	Wetland credits in ILF SSA 1	1		
3	Stream credit in ILF SSA 2	1		
4	Wetland credits in ILF SSA 2	1		
5	Stream credits in ILF SSA 4	1		
6	Wetland credits in ILF SSA 4	1		
7	Stream credits in ILF SSA 5	1		
8	Wetland credits in ILF SSA 5	1		
	<b>Total</b>			

**Mitigation Bank Information**

The following is required as part of the bid.

Bank Name: See attached pages

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

STATE OF WEST VIRGINIA  
Purchasing Division

## PURCHASING AFFIDAVIT

**CONSTRUCTION CONTRACTS:** Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

**ALL CONTRACTS:** Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

**EXCEPTION:** The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

**DEFINITIONS:**

**"Debt"** means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

**"Employer default"** means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

**"Related party"** means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

**AFFIRMATION:** By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) 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, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

**WITNESS THE FOLLOWING SIGNATURE:**

Vendor's Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_, to-wit:

Taken, subscribed, and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission expires \_\_\_\_\_, 20\_\_.

**AFFIX SEAL HERE**

**NOTARY PUBLIC** \_\_\_\_\_

## West Virginia Ethics Commission



## Disclosure of Interested Parties to Contracts

Pursuant to W. Va. Code § 6D-1-2, a state agency may not enter into a contract, or a series of related contracts, that has/have an actual or estimated value of \$1 million or more until the business entity submits to the contracting state agency a Disclosure of Interested Parties to the applicable contract. In addition, the business entity awarded a contract is obligated to submit a supplemental Disclosure of Interested Parties reflecting any new or differing interested parties to the contract within 30 days following the completion or termination of the applicable contract.

For purposes of complying with these requirements, the following definitions apply:

*"Business entity"* means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation, but does not include publicly traded companies listed on a national or international stock exchange.

*"Interested party" or "Interested parties"* means:

- (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors;
- (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract. (This subdivision does not apply to a publicly traded company); and
- (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency. (This subdivision does not apply to persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.)

*"State agency"* means a board, commission, office, department or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: Provided, that for purposes of W. Va. Code § 6D-1-2, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of that provision.

The contracting business entity must complete this form and submit it to the contracting state agency prior to contract award and to complete another form within 30 days of contract completion or termination.

*This form was created by the State of West Virginia Ethics Commission, 210 Brooks Street, Suite 300, Charleston, WV 25301-1804. Telephone: (304)558-0664; fax: (304)558-2169; e-mail: [ethics@wv.gov](mailto:ethics@wv.gov); website: [www.ethics.wv.gov](http://www.ethics.wv.gov).*



# West Virginia Ethics Commission

## Disclosure of Interested Parties to Contracts

(Required by W. Va. Code § 6D-1-2)

Name of Contracting Business Entity: \_\_\_\_\_ Address: \_\_\_\_\_

Name of Authorized Agent: \_\_\_\_\_ Address: \_\_\_\_\_

Contract Number: \_\_\_\_\_ Contract Description: \_\_\_\_\_

Governmental agency awarding contract: \_\_\_\_\_

☐ Check here if this is a Supplemental Disclosure

List the Names of Interested Parties to the contract which are known or reasonably anticipated by the contracting business entity for each category below (*attach additional pages if necessary*):

**1. Subcontractors or other entities performing work or service under the Contract**

☐ Check here if none, otherwise list entity/individual names below.

**2. Any person or entity who owns 25% or more of contracting entity (not applicable to publicly traded entities)**

☐ Check here if none, otherwise list entity/individual names below.

**3. Any person or entity that facilitated, or negotiated the terms of, the applicable contract (excluding legal services related to the negotiation or drafting of the applicable contract)**

☐ Check here if none, otherwise list entity/individual names below.

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

### ***Notary Verification***

State of \_\_\_\_\_, County of \_\_\_\_\_:

I, \_\_\_\_\_, the authorized agent of the contracting business entity listed above, being duly sworn, acknowledge that the Disclosure herein is being made under oath and under the penalty of perjury.

Taken, sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public's Signature

***To be completed by State Agency:***

Date Received by State Agency: \_\_\_\_\_

Date submitted to Ethics Commission: \_\_\_\_\_

Governmental agency submitting Disclosure: \_\_\_\_\_