West Virginia IN LIEU FEE Stream and Wetland Mitigation Program

UNT #1 OF TETER CREEK STREAM & WETLAND MITIGATION PROJECT
BARBOUR COUNTY, WEST VIRGINIA
ILF PROJECT NUMBER EPWRXXXXX

PROJECT LOCATION
TABLE OF CONTENTS

ARTICLE 1 – GENERAL .......................................................................................................................... 1

1.01 Scope .................................................................................................................................................... 1

ARTICLE 2 – WVDEP’S RESPONSIBILITIES .............................................................................................. 2

2.01 General .................................................................................................................................................. 2

ARTICLE 3–TIMES FOR RENDERING SERVICES ................................................................................. 2

3.01 Commencement ................................................................................................................................... 2
3.02 Time for Completion ............................................................................................................................ 2

ARTICLE 4 – PAYMENTS TO XXXXXXX ............................................................................................... 2

4.01 Payments ................................................................................................................................................ 2
4.02 Other Provisions Concerning Payments ............................................................................................ 2

ARTICLE 5–ESTIMATES OF COST ........................................................................................................... 4

5.01 Estimate of Phase 3 Cost ...................................................................................................................... 4

ARTICLE 6–GENERAL CONSIDERATIONS .................................................................................................. 4

6.01 Standards of Performance ................................................................................................................ 4
6.02 Authorized Project Representatives .................................................................................................. 6
6.03 Use of Documents .................................................................................................................................. 6
6.04 Electronic Media ..................................................................................................................................... 6
6.05 Insurance ................................................................................................................................................ 7
6.06 Termination .............................................................................................................................................. 8
6.07 Performance and Labor and Materials Bond ...................................................................................... 9
6.08 Necessary Permits and Approvals ....................................................................................................... 10
6.09 Rights of Entry ...................................................................................................................................... 10
6.10 Additional Responsibilities .................................................................................................................. 10
6.11 Storage of Materials ............................................................................................................................ 10
6.12 Damages to Existing Work, Facilities, Powerlines, Etc. ....................................................................... 11
6.13 Maintenance of the Site ........................................................................................................................ 11
6.14 Uncovering and Correction of Work .................................................................................................. 11
6.15 Construction Warranty Period ........................................................................................................... 12
6.16 Controlling Law ..................................................................................................................................... 12
6.17 Successors, Assigns, and Beneficiaries ............................................................................................... 12
6.18 Temporary Cessation of Work ............................................................................................................. 12
6.19 Dispute Resolution ............................................................................................................................... 13
6.20 Hazardous Environmental Condition ............................................................................................... 13
6.21 Allocation of Risks – Indemnification ................................................................................................. 13
6.22 Notices .................................................................................................................................................... 13
6.23 Survival ................................................................................................................................................... 14
6.24 Severability .......................................................................................................................................... 14
6.25 Waiver ................................................................................................................................................... 14
6.26 Headings ................................................................................................................................................ 14
6.27 Final Completion and Termination of the Agreement upon Successful Completion of the Project .. 14
AGREEMENT BETWEEN
WVDEP AND XXXXXXX COMPANY
FOR
CONSTRUCTION SERVICES

This is an agreement between:

West Virginia Department of Environmental Protection (WVDEP)
XXXXXXX Company(XXXXXXX)

WVDEP intends to provide a Grant to complete Phase 3 Construction, as defined herein, which is part of the In Lieu Fee Stream and Wetland Mitigation Programs UNT #1 of Teter Creek Stream Mitigation Project: Project Number EPWR18047 (Project).

WVDEP and XXXXXXX hereby agree as follows:

ARTICLE 1 – GENERAL

1.01 Scope

PROJECT DESCRIPTION: XXXXXXX agrees to review approved design/construction plans and permits and update if applicable, provide all construction bidding, construction, construction management, reporting, permits, mobilization, labor, materials, equipment, as-built report, surveys, and drawings necessary to complete the restoration, establishment, enhancement and preservation of the stream, wetland and adjacent riparian areas of UNT #1 of Teter Creek and its tributaries located within the project boundary. The project includes approximately 15,420 linear feet (lf) of establishment, restoration, enhancement, and preservation as well as 5.37 acres of wetland establishment, enhancement, and preservation near Nestorville, West Virginia. XXXXXXX will complete these services in accordance with UNT #1 of Teter Creek Permit Plans set forth in the Nationwide Permit No. 27 Verification and Special Conditions (see Exhibit E), and Mitigation Site Plan (MSP) approved on March 9, 2021 by the United States Army Corps of Engineers (USACE) and Inter-Agency Review Team (IRT). This work shall be accomplished in accordance with USACE 33 CFR Parts 325 and 332.

PROJECT GOALS: The stream and wetland restoration, enhancement and preservation activities at the project site will compensate for fill in waters of the U.S. by expanding stream and wetland habitat and improving ecosystem function. Stream restoration will reconnect the streams to their floodplains, increase stream sinuosity and habitat, decrease sediment loads and improve conditions for benthic communities in the restored segments. The restoration and enhancement of the wetlands will provide excellent wildlife habitat, supporting a wide array of mammals, birds, reptiles, amphibians, and invertebrates that depend on wetlands for all or part of their life cycles. The site will also have value in flood mitigation, storm abatement, aquifer recharge, and water quality improvement.
PROJECT PURPOSE: WVDEP In Lieu Fee Program performs project delivery in four (4) Phases: Phase 1 – Site Acquisition; Phase 2 – Pre-Construction; Phase 3 – Construction; Phase 4 – Monitoring & Maintenance. The purpose of this agreement is to complete Phase 3.

A. XXXXXXX shall provide the services set forth in Exhibit A.

B. Monitoring at the Site will be included in XXXXXXX’s services under a separate Phase 4 Agreement.

ARTICLE 2 – WVDEP'S RESPONSIBILITIES

2.01 General

A. WVDEP shall have the responsibilities set forth herein and in Exhibit B.

ARTICLE 3–TIMES FOR RENDERING SERVICES

3.01 Commencement

A. XXXXXXX is authorized to begin rendering services as of the Effective Date of the Agreement and set forth in Exhibit A.

3.02 Time for Completion

A. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A. If such periods of time or dates are changed through no fault of XXXXXXX, then the rates and amounts of compensation provided for herein shall be subject to equitable adjustment.

B. If WVDEP authorizes changes in the scope, extent, or character of the Project, the time of performance of XXXXXXX services shall be adjusted equitably.

C. WVDEP shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the services of XXXXXXX.

D. If XXXXXXX fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then WVDEP shall be entitled to the recovery of damages for any reasonable and demonstrable loss resulting from such failure.

ARTICLE 4 – PAYMENTS TO XXXXXXX

4.01 Payments

A. WVDEP shall pay XXXXXXX for services performed or furnished under Exhibit A on the basis set forth in Exhibit C.

4.02 Other Provisions Concerning Payments

A. Preparation of Requests for Reimbursement: XXXXXXX shall prepare its Requests for Funds in
accordance with the terms of Exhibit C.

B. **Payment of Requests for Reimbursement:** Requests for Funds are due and payable within a reasonable period of time for WVDEP to review, approve, and process properly completed Requests for Funds, as specified herein.

C. **Late Payment:** If WVDEP fails to make any payment due XXXXXXXX for services and expenses within 45 days after receipt of XXXXXXXX Requests for Reimbursement, then:

1. XXXXXXXX may, after giving seven days written notice to WVDEP, suspend services under this Agreement until WVDEP has paid XXXXXXXX in full all amounts due for services, expenses, and other related charges.

D. **Disputed Requests for Reimbursement:** If WVDEP contests a Request for Funds, WVDEP shall promptly, and in no event longer than fourteen (14) days after receipt of the Request for Funds, advise XXXXXXXX of the specific basis for doing so, may withhold from payment only that portion so contested, and must pay the undisputed portion. Any payment withheld under this section shall be released promptly after the grounds for contesting the Request for Funds, or relevant portion thereof, has been cured or removed.

E. **Payments Upon Termination**

1. In the event of any termination under Paragraph 6.06, XXXXXXXX will be entitled to submit a Request for Funds to WVDEP and to receive full payment for all services performed and expenses incurred through the effective date of termination, subject to the provisions of Paragraph 6.06.F.

2. In the event of termination by WVDEP for convenience or by XXXXXXXX for cause, XXXXXXXX, in addition to its entitlement under Paragraph 4.02.E.1, shall be entitled to submit a Request for Funds to WVDEP and to payment of a reasonable sum for services and expenses directly attributable to termination, using methods and rates for Additional Services set forth in Exhibit C.

F. **Records of XXXXXXXX Costs:** XXXXXXXX shall keep records of its costs pertinent to compensation under this Agreement in accordance with generally accepted accounting practices. To the extent necessary to verify XXXXXXXX charges and upon WVDEP's timely request, XXXXXXXX shall make copies of such records available to WVDEP. Records shall be kept for a minimum of three (3) years after the close of this Project. If any legal action, audit, or other investigation regarding the records of the sub-grant begins before the three (3) year period expires, all records are to be retained until the action is completed and a resolution is made. Grantees are to require that contractors and sub-contractors retain their records for three (3) years after the final payment or any other pending matters are resolved.

G. **Prevailing Wage Payment:** The contractor must pay wage rates based on current state wage requirements established during the time the bids are submitted.
5.01 Estimate of Phase 3 Cost

A. Phase 3 Cost is the cost to WVDEP to construct the project. Phase 3 Cost is limited to Construction Management Professional Services and Construction (reviewing approved design/construction plans and permits, construction bidding, permitting, mobilization, labor, equipment, materials, and as-built plans, miscellaneous construction, etc.), to be furnished by XXXXXXX, and does not include costs of items not provided by XXXXXXX including but not limited to cost of land and rights of way.

ARTICLE 6–GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all Design and Construction Professional Services will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

B. WVDEP shall not be responsible for discovering deficiencies in the technical accuracy of XXXXXXX Design Professional Services. XXXXXXX shall correct deficiencies in technical accuracy of Design Professional Services without additional compensation and compensate WVDEP for any losses or damages resulting from such deficiencies, except to the extent such action is directly attributable to deficiencies in WVDEP-furnished information.

C. Any person, firm or other party to whom XXXXXXX proposes to award a contract pursuant to this Agreement must be acceptable to, and approved by, WVDEP prior to when that person, firm or other party begins work on this project and pursuant to this Agreement.

D. This Agreement is based on requirements of applicable Laws or Regulations. XXXXXXX shall also comply with WVDEP-mandated standards provided to XXXXXXXX in writing. Changes to these requirements or to WVDEP-mandated standards after the Effective Date of the Agreement may be the basis for modifications to WVDEP’s responsibilities or to the scope, schedule, and compensation for XXXXXXX services.

E. WVDEP shall be responsible for, and XXXXXXX may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by WVDEP pursuant to this Agreement. XXXXXXX may use such requirements, reports, data, and information in performing services under this Agreement.

F. At the request of the WVDEP, XXXXXXX shall safeguard the proprietary nature of WVDEP-provided data.

G. XXXXXXX shall give all notices and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority that bear on the safety of persons or property or their protection from damage, injury, or loss. In particular, XXXXXXX shall obey all Occupational Safety and Health Administration (OSHA) requirements and operate in accordance with standard specifications for public convenience and safety.
H. WVDEP shall not be responsible for XXXXXXX's operations. XXXXXXX shall be liable to WVDEP for any infractions, committed by XXXXXXX in violation of the requirements and provisions of this Agreement which cause WVDEP to receive a citation and/or fine from any local, State or Federal agency. Costs that WVDEP has to bear as a result of having to defend against such citations and/or fines shall be borne by XXXXXXX to the satisfaction of WVDEP. Nothing herein, however, shall prevent XXXXXXX from challenging in any appropriate forum the validity of any such citation or fine that may be issued.

I. XXXXXXX shall be responsible to WVDEP for the acts and omissions of its employees, agents, contractors, and their agents or employees, and any other persons performing work under this Agreement.

J. Publicity – All press releases and statements for the media prepared by XXXXXXX for the purpose of promoting or describing the work governed by this agreement shall be approved by the WVDEP prior to release. This section shall not be interpreted to prevent any of the parties from responding to inquiries from the media or the public, nor from representing the work in public forums, so long as any such response or representation conforms to the terms of this agreement.

6.02 Authorized Project Representatives

A. Contemporaneous with the execution of this Agreement, XXXXXXX and WVDEP shall designate specific individuals to act as their respective representatives with respect to this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project.

B. WVDEP shall not transmit instructions, receive information, and render decisions relative to the Project to the Contractor or XXXXXXX subcontractors without a member of XXXXXXX present or immediately notifying XXXXXXX of instructions transmitted or decisions rendered.

C. Any changes relative to the Project rendered by XXXXXXX will be conveyed to the WVDEP representative in writing in the form of the weekly Status Progress Report and be consistent with Section A1.01 7 (f).

6.03 Use of Documents

A. All Documents are instruments of service in respect to this Project and WVDEP shall retain the ownership and property interest therein (including the right of reuse at the discretion of WVDEP) whether or not the Project is completed.

B. XXXXXXX will be entitled to further compensation at rates to be agreed upon by WVDEP and XXXXXXX for any verification or adaptation of the Documents for extensions of the Project or any other project.

6.04 Electronic Media

A. Copies of data furnished by WVDEP to XXXXXXX or by XXXXXXX to WVDEP that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, or graphics or of other types are furnished only for the convenience of the
other party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored on electronic media can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving data in an electronic format agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. XXXXXXX and/or WVDEP reserves the right to remove all indicia of Ownership or involvement, including title blocks and seals, from each electronic drawing.

D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of data resulting from the use of software application packages, operating systems, or computer hardware differing from those used by data's creator.

6.05 Insurance

A. XXXXXXX shall procure and maintain insurance as set forth in Exhibit D, "Insurance."

B. XXXXXXX shall each deliver to WVDEP certificates of insurance evidencing the coverages indicated in Exhibit D. Such certificates shall be furnished prior to commencement of XXXXXXX services and at renewal thereafter during the term of the Agreement.

C. All policies of property insurance shall contain provisions to the effect that XXXXXXX and XXXXXXX Subcontractors' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds, loss payees, or additional insureds thereunder.

D. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to WVDEP and XXXXXXX and to each other additional insured (if any) to which a certificate of insurance has been issued.

E. The insurance provider must be a company (or companies) licensed to do business in West Virginia at the time the policy is issued.

F. A statement is to be affixed to the certificate of insurance affirming that the insurer will promptly notify WVDEP of any substantive change in policy including cancellations, termination, or failure to renew.

G. In the event XXXXXXX's liability insurer becomes insolvent, the company is placed in the hands of a receiver, or receiver or has its right to do business in West Virginia revoked, XXXXXXX shall fully replace the insurance offered by that insurer within 30 days following the insurer's insolvency, placement into receivership, or revocation of license.

H. XXXXXXX shall take all reasonable precautions for the safety of, and shall provide all reasonable
protection, preventing damage, injury, or loss to: (a) all employees on the job, and all other persons who may be affected by project activities and (b) property adjacent to the project area, including, but not limited to, paving, roadways, structures, utilities, and permanent property boundaries, monuments or markers not designated for removal, or relocation, or replacement in the course of construction.

I. XXXXXXX shall either: (1) require each of its contractors to procure and to maintain, during the life of this project Public Liability and Property Damage Insurance of the type and in the same amounts as specified in this Agreement or (2) insure the activities of its contractors in its own insurance policy.

J. All employees of XXXXXXXX and XXXXXXXX's contractor engaged in the performance of this Work shall be covered by West Virginia's Workers Compensation Insurance.

K. Appropriate certificates shall be provided to WVDEP by XXXXXXXX and its contractors showing those entities' compliance with the Workers Compensation laws of West Virginia.

6.06 Termination

A. The obligation to provide further services under this Agreement may be terminated for cause:

1. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party.

2. by XXXXXXX upon seven days written notice if the XXXXXXXX performance of services has been delayed or suspended for more than 90 days for reasons beyond XXXXXXX's control.

B. WVDEP may terminate this Agreement for its convenience effective upon XXXXXXX receipt of notice from WVDEP.

C. In the case of termination by XXXXXXXX, XXXXXXXX shall have no liability to WVDEP on account of such termination.

D. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure to perform as set forth in Paragraph 6.06.A.1 and 2 if the party receiving notice begins, within seven days of receipt, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot reasonably be cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

E. The terminating party under Paragraph 6.06.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow XXXXXXXX to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project documents in orderly files.
F. In the event of termination of XXXXXXX for cause by WVDEP, WVDEP may complete the services to be provided by XXXXXXX as WVDEP deems expedient. In such case, XXXXXXX will not be entitled to receive any payment until these services are complete. If the unpaid balance due XXXXXXX under Paragraph 4.02.E.1 exceeds all costs, losses, and damages sustained by WVDEP in completing the XXXXXXX services (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs), such excess will be paid to XXXXXXX. If such costs, losses, and damages exceed such unpaid balance, XXXXXXX shall pay the difference to WVDEP.

G. Upon XXXXXXX’s breach of the Agreement, WVDEP may without delay declare this Agreement to be terminated in accordance with Paragraph 4.02.E, and may cause bond forfeiture to be declared and collected. These actions shall not operate to prejudice any other right or remedy WVDEP may have against XXXXXXX or its Contractors. WVDEP may also, as a third-party beneficiary of contracts entered into between XXXXXXX and its contractors, seek appropriate remedies from XXXXXXX, contractors, or other third parties.

H. This Agreement may be terminated in whole or in part in writing by WVDEP without prejudice to any other right or remedy it may have in the event that XXXXXXX is declared bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of XXXXXXX's insolvency.

I. Upon receipt of notice of whole or partial Agreement termination, XXXXXXX shall promptly discontinue all affected work (unless the notice of termination directs otherwise), and shall deliver or otherwise make available to WVDEP all data, drawings, specifications, reports, estimates, summaries, and other such information and materials as may have been accumulated by XXXXXXX in performing the project under this Agreement regardless of whether the records containing such information are complete or in progress.

6.07 Performance and Labor and Materials Bond

A. Prior to performing any work under this Agreement, XXXXXXX shall deliver to WVDEP proof of a satisfactory bond in the amount equivalent to the contractor's bid for the project. Such bond shall be in the form of a surety, letter of credit, cash, CD or other form of acceptable Bond Instrument as specified in West Virginia Code of State Rules §38-2-11.3. The bond shall include a Performance Bond, and a Labor and Materials Payment Bond and shall ensure faithful fulfillment of all work specified herein. The bond shall save and hold harmless WVDEP from all liens and claims arising out of the work. XXXXXXX or its Contractor shall pay for the bond.

B. Attorneys-in-Fact who execute a surety bond satisfying the requirements of this Section must provide with each surety bond a certified and properly executed Power of Attorney.

C. In the event that the surety on any letter of credit or bond given by XXXXXXX or the Contractor becomes insolvent, is placed in the hands of a receiver, or has its right to do business in West Virginia revoked, XXXXXXX shall fully replace the bond issued by that surety within 30 days following the surety's insolvency, placement into receivership, or the revocation of his license to do business in West Virginia or any other state. The failure of XXXXXXX or the Contractor to replace a bond it holds with an incapacitated surety company within this 30-day period shall constitute a breach of this Agreement.
D. The bond shall be effective for the time it takes to successfully complete this Work plus one year following that time period. For XXXXXXX's or the Contractor’s bond to be released, WVDEP must give XXXXXXX a written, final release of its bonding obligations which WVDEP will promptly provide upon XXXXXXX's fulfillment of the one-year warranty.

6.08 Necessary Permits and Approvals

A. XXXXXXX agrees to pay for and obtain all necessary permits, licenses, and other such approvals required by law that it may need to perform the work under this Agreement except those permits, licenses, and other such approvals which the project specifications require XXXXXXX's contractor to obtain. XXXXXXX further agrees that all permits, authorizations and other necessary approvals will be obtained to satisfy federal laws and regulations and that it shall furnish copies of the same to WVDEP.

B. XXXXXXX is also responsible for providing all notice that may need to be made to any appropriate State or Federal Agency.

C. XXXXXXX shall comply with all laws, ordinances, rules, orders and regulations relating to the performance of the work, the protection of adjacent property, the maintaining of passageways, guard fences or other protective devices. All applicable Federal and State laws and regulations, municipal ordinances, and the rules and regulations of all public authorities having jurisdiction over the project shall apply to the Agreement throughout and are incorporated herein by reference.

6.09 Rights of Entry

A. In order to access the project area, XXXXXXX may need to obtain one or more rights of entry, temporary easements, or permanent easements from appropriate landowners. XXXXXXX is responsible for obtaining, paying for, and, if necessary, recording such agreements in accordance with procedures established by federal, state and local laws. XXXXXXX or Contractor will provide a copy of the terms of all rights of entry and easements, or a statement from XXXXXXX's engineer that no such easements or rights-of-way are necessary, to WVDEP prior to Contractor's commencement of project work.

6.10 Additional Responsibilities

A. XXXXXXX shall at all times supply sufficiently skilled labor and the amount of equipment and labor necessary to adequately fulfill the requirements of this Agreement and the plans and specifications associated with and incorporated into this Agreement.

B. XXXXXXX shall at all times provide for the expeditious and commercially practicable execution of the Project to the Project’s completion.

C. Except as noted elsewhere in the Agreement, XXXXXXX shall pay all charges, fees, and taxes, and procure all general notices necessary and incidental to the due and lawful prosecution of the work.

6.11 Storage of Materials
A. All flammable, toxic, and explosive materials shall be safely stored in conformity with applicable safety requirements of State and Federal regulations and safety standards of the National Fire Protection Association.

B. If XXXXXXX is unable to complete the project performance, then all materials stored on site shall become the property of WVDEP and shall be used for the completion of the project.

6.12 Damages to Existing Work, Facilities, Powerlines, Etc.

A. All utilities and drainage lines on or in the vicinity of the site shall be located and marked for position by XXXXXXX or Contractor and shall remain adequately protected throughout the duration of the work. XXXXXXX or the Contractor shall be responsible for the protection and maintenance of these lines at all times. If during the duration of the project or the warranty period thereafter any existing overhead or underground lines are damaged by construction equipment or subjected to damage caused by the proximity of such equipment, XXXXXXX or the Contractor shall bear the expense of replacing or repairing the damaged lines.

6.13 Maintenance of the Site

A. All water that emanates from the project site shall meet effluent limits and shall not violate state water quality standards. If necessary, XXXXXXX or the Contractor shall install and maintain treatment systems, at its own cost, that ensure that all water emanating from the site meets state water quality standards. All water quality standards must be met through the terms of this Agreement, although nothing in this Agreement shall be deemed to make XXXXXXX or the Contractor responsible for or to treat beyond the term of this Agreement.

B. XXXXXXX shall be responsible for the operation and maintenance of any required diversion or pumping facilities for removing ground water or impounded water from work areas during progress of the work under this Agreement.

C. XXXXXXX or the Contractor at all times shall keep the construction site free of accumulated waste materials and rubbish caused by its operations. Periodically during the progress of the work, and also when directed to do so by WVDEP, XXXXXXX shall remove, or cause to be removed, accumulated waste materials, rubbish, and debris. XXXXXXX shall leave the site in good order upon its completion of the project.

D. XXXXXXX or the Contractor shall provide and pay for adequate temporary toilet facilities for personnel during the project construction period. Toilets shall be of types approved by the State Department of Health and shall be situated only in approved locations. Toilets should be sanitarily maintained and must be removed upon project completion.

6.14 Uncovering and Correction of Work

A. XXXXXXX or the Contractor shall promptly correct and bear all costs of correcting work rejected by WVDEP as defective or as failing to conform to the project’s plans, specifications, and permit requirements, whether observed before or during the warranty period and whether or not that work has been installed or completed. All such defective or non-conforming work shall be remedied and/or removed from the site.
6.15 Construction Warranty Period

A. XXXXXXX shall warrant at its sole cost and expense all aspects of the project, including materials, and workmanship, for a period of twelve (12) months following completion of the project. During this one-year warranty period, XXXXXXX shall maintain the project to the conditions existing at the date of the acceptance of the work.

B. Any defect in material or workmanship shall be promptly repaired upon receipt of written notice from WVDEP, provided that XXXXXXX shall have the right to challenge in good faith the validity of any alleged defect in any appropriate forum. Defects appearing within the warranty period, or before, shall be remedied at the expense of XXXXXXX, not WVDEP.

C. WVDEP's final acceptance of XXXXXXX's performance shall not relieve XXXXXXX of responsibility for negligence or faulty materials.

D. The one year warranty period referred to above shall not be construed as being an extension of the one (1) year performance time allotted for work under the Agreement.

6.16 Controlling Law

A. This Agreement is to be governed by the laws of the state of West Virginia. If any disputes arise concerning this Agreement, this Agreement shall be deemed to have been entered into in Kanawha County, West Virginia. Legal disputes concerning the Agreement shall be brought in the circuit court of Kanawha County.

6.17 Successors, Assigns, and Beneficiaries

A. WVDEP and XXXXXXX are hereby bound and the successors, executors, administrators, and legal representatives of WVDEP and XXXXXXX (and to the extent permitted by Paragraph 6.08.B the assigns of WVDEP and XXXXXXX) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither WVDEP nor XXXXXXX may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

6.18 Temporary Cessation of Work

A. WVDEP may call to the attention of XXXXXXX failure to comply with the terms of the Agreement, including the project's plans and specifications that have been incorporated into the Agreement by reference. By written order, WVDEP may suspend overall project work until full compliance with the terms of the Agreement exists. No suspension of work occurring pursuant to this subsection shall extend the time for Agreement performance.
6.19 Dispute Resolution

A. WVDEP and XXXXXXX agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under law.

6.20 Hazardous Environmental Condition

A. WVDEP acknowledges that XXXXXXX is performing professional services for WVDEP and that XXXXXXX is not and shall not be required to become an "owner," "operator," "generator," or "transporter" of Hazardous Materials which are or may be encountered at or near the Site in connection with XXXXXXX activities under this Agreement.

B. XXXXXXX represents to the best of its knowledge that a Hazardous Environmental Condition does not exist at the Site except as expressly disclosed to XXXXXXX in writing, and that it has disclosed to WVDEP the existence of all known Hazardous Materials located at or near the Site, including type, quantity, and location.

C. If XXXXXXX learns of or encounters any Hazardous Environmental Condition at the Site, then XXXXXXX shall notify (1) WVDEP and (2) appropriate governmental officials, if XXXXXXX reasonably concludes that doing so is required by applicable Laws and Regulations.

D. Except as required by Exhibit A, it is acknowledged by both parties that the XXXXXXX scope of services does not include any services related to a Hazardous Environmental Condition. If XXXXXXX or any other party encounters a Hazardous Environmental Condition at the Site, or should it become known in any way that Hazardous Materials may be present at the Site or any adjacent areas in such a manner as to affect the performance of XXXXXXX services, XXXXXXX shall suspend performance of services on the Project and make Notice to WVDEP.

E. If the XXXXXXX services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify XXXXXXX terminating this Agreement for cause pursuant to Paragraph 6.06.

6.21 Allocation of Risks – Indemnification

A. To the fullest extent permitted by law, XXXXXXX shall assume all risk and liability for any reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Construction itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of XXXXXXX or XXXXXXX officers, directors, members, partners, employees, or Subcontractors.

B. If a third party sues or makes a claim against WVDEP for injuries resulting from the project activities or omissions of XXXXXXX or its contractors, the party whose alleged or actual activities precipitated the lawsuit shall indemnify and hold harmless WVDEP from such claim or lawsuit and shall pay all costs and expenses, including attorney's fees, incurred by WVDEP as result of the suit. If WVDEP so requests at the time of the lawsuit, that same responsible party shall also assume the defense of any action brought by a third party against WVDEP to recover
damages for such project activities or omissions.

C. To the fullest extent permitted by law, WVDEP shall assume all risk and liability for any reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Construction itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission by WVDEP, with respect to this Agreement or to the Project.

6.22 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party identified on the signature page and sent by electronic mail, given personally, by registered or certified mail (return receipt requested), by facsimile, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.23 Survival

A. All express representations, indemnifications, or limitations of liability made in or given in this Agreement will survive its completion or termination for any reason.

6.24 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon WVDEP and XXXXXXX, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.25 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.26 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

6.27 Final Completion and Termination of the Agreement upon Successful Completion of the Project

A. No later than one (1) year following the effective date of this Agreement, or the end of the initial performance period if extended beyond one (1) year as provided for herein, WVDEP shall inspect the site to determine the completion of all tasks contemplated by this Agreement. WVDEP shall provide XXXXXXX with written notice of any deficiency or defect in material or workmanship. Upon failure to repair said deficiency or defect within thirty (30) days of the date upon which WVDEP notifies of the deficiency or defect in materials or workmanship, WVDEP may declare breach of this Agreement and proceed immediately with Agreement termination and bond
forfeiture.

B. Should XXXXXXX allege that it has completed work under this Agreement prior to the end of the initial performance period; written notice shall be provided to WVDEP and WVDEP shall promptly inspect the project. If WVDEP finds uncompleted tasks contemplated by the Agreement, WVDEP shall provide written notice of any deficiency or defect in material or workmanship. Deficiency or defect must be remedied prior to the expiration of the initial performance period or within 60 days after being notified of the deficiency or defect, whichever event occurs last.

C. WVDEP agrees that it shall cause any inspection required under this Section of the Agreement to be promptly undertaken and shall within thirty (30) days of the date of the required inspection provide either certification of completion or written notice of any deficiency or defect.

D. Upon WVDEP's certification that all construction and planting tasks of the Agreement are completed, XXXXXXX shall proceed to monitor (1.01B), maintain, and warrant the site for an additional one-year time period from the date of WVDEP's certification. If changes occurred during the construction and planting that were not in accordance with the Mitigation Permit Plans approved by the United States Army Corps of Engineers (USACE) and Inter-Agency Review Team (IRT), then WVDEP may request USACE/IRT approval of such changes and issue the certification of completion once the changes have been accepted.

E. When XXXXXXX successfully and appropriately monitors (1.01B), maintains, and warrants the site for 12 months following the completion of duties under this Agreement, then WVDEP shall inspect the project at that time to determine if all of Agreement obligations have been met, WVDEP shall release XXXXXXX from the Agreement at that time.

F. If XXXXXXX fails to properly monitor, maintain, and warrant the site for the aforementioned 12 month period, WVDEP may declare breach of the Agreement and may pursue remedies as outlined above.

G. If all contractual obligations established under this Agreement are met, then WVDEP shall promptly grant a final, written release from this Agreement and shall also terminate the Agreement without prejudice. Upon Agreement termination in this fashion, XXXXXXX shall be released from bonding obligations.

H. All certificates of compliance as required, requested, and/or specified, shall be delivered to WVDEP upon delivery or completion of the work covered by the certificates.

I. The acceptance of WVDEP's notice that work under this Agreement is complete and all warranty periods have expired shall constitute a waiver of all claims by WVDEP against XXXXXXX and by XXXXXXX against WVDEP.

ARTICLE 7– DEFINITIONS

7.01 Defined Terms

A. Terms used or printed in this Agreement (including the Exhibits) with initial capital letters have the meanings indicated which are applicable to both the singular and plural thereof:
1. **Agreement** – This "Agreement Between WVDEP and XXXXXXX" including those Exhibits listed in Article 8.

2. **Documents** – The documents, including data, reports, Technical Exhibits, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by XXXXXXX to WVDEP pursuant to this Agreement.

3. **Effective Date of the Agreement** – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

4. **Reimbursable Expenses** – The expenses incurred directly by XXXXXXX or its Subconsultants for transportation and subsistence.

5. **Technical Exhibits** – Documents prepared by XXXXXXX which set forth XXXXXXX plan for meeting the WVDEP's requirements.

6. **Contractor** - the firm, person, or organization to whom the consultant has contracted, by solicitation of bids or quotes and WVDEP’s approval, the construction of the project work covered by its obligation to the WVDEP under the Agreement.

7. **Subcontractor/Subconsultant** – A subconsultant is any firm, person, or organization to whom the consultant has transferred, by consultant’s request and WVDEP’s approval, any portion of the work covered by its obligation to the WVDEP under the Agreement. A subcontractor is any additional contractor other than the Contractor to whom the consultant has transferred, by solicitation of bids or quotes and WVDEP’s approval, any portion of the work covered by its obligation to the WVDEP under the Agreement.

8. **Designer Final Inspection** - is the inspection performed by XXXXXXX to determine the completeness of the project in accordance with approved plans and specifications.

9. **Notice of Change** - a written order to XXXXXXX, properly executed as to form, issued after the execution of the Grant Agreement, authorizing a change in the work or an adjustment in the Grant amount or Grant performance period.

10. **Status Progress Report** - a report of work accomplished during a specified time period.

11. **Construction Inspection** – the inspection of the contractors compliance with plans and specifications.

12. **Final Inspection** – the inspection performed by XXXXXXX to determine the completeness of the project in accordance with approved plans and specifications.

13. **Site** – the restoration, enhancement and preservation areas of stream and adjacent riparian areas of the Kahawha State Forest Mitigation Area, located near Loudendale West Virginia within the Davis Creek watershed, which drains directly into the Kanawha River in Kanawha County, West Virginia.

14. **Change Order** – an amendment to this Agreement as a result of quantity over-runs, quantity
under-runs, approved field changes, weather delays, and required additional days of work.
ARTICLE 8–EXHIBITS

8.01 Exhibits Included

Exhibit A, XXXXXXX Services.
Exhibit B, WVDEP's Responsibilities.
Exhibit C, Payments to XXXXXXX for Services and Reimbursable Expenses
Exhibit D, Insurance.
Exhibit E, Special Provisions.
8.02 Total Agreement

A. This Agreement (consisting of pages 1 to ___ inclusive, together with the Exhibits identified above) constitutes the entire agreement between WVDEP and DS and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which has an Effective Date of __________.

WVDEP:

By: ________________
Katheryn Emery, P.E.
Title: ________________
Director, DWWM
License or Certificate No. and State: ________
WV:

Address for giving notices:

WVDEP Division of Water & Waste Management – Attn: Dallas Scott Settle
601 57th Street SE
Charleston, WV 25304

Authorized Project Representative:
Kristy Rodrigue - Kristy.L.Rodrigue@wv.gov
Title: ________________
In Lieu Fee Project Coordinator
Phone Number: ________304-574-4465_______
Facsimile Number: ________304-574-4480_______

XXXxxxx:

By: ________________
Title: ________________
License or Certificate No. and State: ________
WV:

Address for giving notices:

Authorized Project Representative:
Title: ________________
Phone Number: ______________________________
Facsimile Number: ______________________________
This is EXHIBIT A, consisting of 3 pages, referred to in and part of the Standard Form of Agreement between WVDEP and XXXXXXX for Construction Services dated, _________.

XXXXXXXX Services

ARTICLE 1 – BASIC SERVICES

A1.01 Construction Bidding Phase

A. XXXXXXX shall:

1. Consult with WVDEP to define and clarify WVDEP’s requirements for the Project.

2. Review and update current/approved design/construction plans, permits, and bidding documents.

3. Prepare Bidding Documents (plans, specifications & estimates):
   - Deliverables: a complete packet of construction drawings, specifications, & estimates to competitively bid the project.
   - Time for completion: 1 month from the date of authorization to proceed with this task.
   - project specifications manual
   - plan cover sheet
   - plan general notes and schedule
   - summary of quantities
   - plan typical details and sections
   - site plan and profile
   - erosion and sediment control plan
   - planting plan
   - existing utilities
   - estimate of costs

4. Submit revised construction, planting, and permit bidding package to the WVDEP for review.

5. After acceptance by WVDEP of the revised construction and planting bidding package and upon written authorization by WVDEP to proceed, XXXXXXX shall submit a bidding proposal for the completion of the work by Contractors out to competitive bid.

6. The Construction Bidding Phase will be considered complete upon providing WVDEP a selected contractor bid for the construction and planting of the project per the approved bidding proposal.

A1.02 Construction Phase
A.  **XXXXXXX shall:**

1.  Consult with WVDEP to define and clarify WVDEP's requirements for the Project including WVDEP’s budgetary limitations, XXXXXXX’s construction contract, construction specification, and design drawings.

2.  Deliver a satisfactory progress schedule or critical path schedule to the WVDEP prior to the initiation of work. The schedule shall show the proposed construction oversight schedule, sequence of work, and how XXXXXXX proposes to complete various items of work. The schedule shall be used as a basis for checking the progress of the work.

3.  Request that WVDEP obtain data or services of the types described in Exhibit B which are not part of XXXXXXX Basic Services and are reasonably required to enable XXXXXXX to complete its Basic Services and Additional Services, if any.

4.  Contract a reputable stream and wetland restoration contractor, licensed in the State of West Virginia, for the performance of all earthwork to construct all base and surface courses, structures, and such additional, extra, and incidental construction as may be necessary to complete the work to the finished lines, grades, and cross sections of the design drawings and construction specifications in an acceptable manner. The subcontractor shall furnish all required materials, equipment, tools, labor, and incidentals, unless otherwise provided in the contract, and shall document the cost of these items in a manner approved by the WVDEP.

5.  Contract a reputable planting contractor if different than the stream and wetland restoration contractor for performance of all planting related activities and installations. The subcontractor shall follow any planting specifications provided and furnish all required materials, equipment, tools, labor, and incidentals, unless otherwise provided in the contract, and shall document the cost of these items in a manner approved by the WVDEP.

6.  Copies of all Contract Documents, Performance Reports, Construction Drawings, Plans and Specifications, CAD files, GIS files, as well as other such construction related documents shall be provided in a timely fashion to WVDEP upon WVDEP's request. Progress Reports shall be electronic in Microsoft Word and/or Excel format. These reports should be received by the WVDEP weekly and should show detail of quantities used and work performed. Requests for construction cost reimbursement shall be on forms approved by WVDEP.

7.  Provide management and oversight of all construction activities by a qualified employee of XXXXXXX.
   a.  XXXXXXX shall verify the project is being constructed per the construction documents and within the tolerances specified. At a minimum the designer shall inspect:
      i.  Products and materials, project grading elevation(s),
      ii.  alignment, and structure(s) elevation(s), tolerance (s), slope (s) and angle (s),
      iii. vegetation quality, health, and vigor
      iv.  erosion and sediment control measures
   b.  XXXXXXX shall determine and utilize means and data necessary to conduct the routine Construction Inspection.
   c.  XXXXXXX shall identify problem areas and concerns with project construction.
   d.  XXXXXXX shall notify the Contractor, verbally and in writing, of said concerns and
identify corrective actions required.
e. All Construction Inspections including correspondence related to construction shall be included in a weekly Status Progress Report.
f. XXXXXXXX shall have the authority to review and approve the implementation of minor field changes in the work to the extent that such field changes do not constitute a change in the scope of work and/or construction costs or the time for performance allowed under this Agreement. All field changes must be noted and provided in the weekly Status Progress Report. Before implementation of changes in the project’s scope of work, XXXXXXXX must obtain from WVDEP its approval of such changes by submitting a written request to the ILF Program Coordinator to initiate a formal Notice of Change.

8. Prior to issuance of final acceptance of the work, XXXXXXXX shall have an authorized representative visit the project site and conduct a Final Inspection of the work performed by the Contractor in conjunction with the WVDEP.

9. Upon WVDEP and XXXXXXXX acceptance of the construction work and plantings XXXXXXXX shall forward its contractor’s final application for payment to WVDEP along with respective Final Inspection.

10. XXXXXXXX is required to provide an As-built Survey and Report as specified by the guidelines provided by the WVDEP and IRT. As-built surveys must include finished grades, longitudinal profiles, cross-sections, structure elevations and locations, utilities and/or infrastructure locations, and any design changes and justifications that occurred during construction to incorporate into the As-built submittal to the IRT. As-built Surveys of the Project shall be submitted upon the Final Inspections of each work area as it is completed, or after the Project construction has been completed and final site walk-thru has been performed. If Planting is completed in a different season than construction and can not be included in the As-built submittal, a Planting completion report will be submitted which shall include baseline stem counts and photos. The As-built Survey and Report will demonstrate or include at a minimum the following elements in order to provide baseline data for future monitoring to satisfy the requirements of the Mitigation Plan:

    a. Stream geomorphology measurements,
    b. Hydrologic monitoring well and/or stream gauge locations,
    c. Photographic documentation of the work demonstrating before and after conditions,
    d. Planting locations/boundaries documentation.
    e. Vegetation monitoring plot locations, baseline stem counts and photos.
    f. Any monitoring locations and baseline data required by the Approved Final Mitigation Plan.

ARTICLE 2 – ADDITIONAL SERVICES

A2.01 WVDEP’s Authorization in Advance Required

A. If authorized in writing by WVDEP, XXXXXXXX shall furnish or obtain from others Additional Services not described in Article 1 under Basic Services. These services will be paid for by WVDEP as indicated in Article 4 of the Agreement.
This is EXHIBIT B, consisting of 2 pages, referred to in and part of the Agreement between WVDEP and XXXXXXX for Construction Services dated, August 1, 2021

WVDEP's Responsibilities

ARTICLE 1 – FURTHER RESPONSIBILITIES OF WVDEP

B1.01 In addition to other responsibilities of WVDEP as set forth in this Agreement, WVDEP shall:

B. Provide XXXXXXX with all criteria and full information as to WVDEP's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.

C. Furnish copies of all reporting standards which WVDEP will require.

D. Furnish to XXXXXXX any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

E. Give prompt written notice to XXXXXXX whenever WVDEP observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of XXXXXXX services, or any defect or nonconformance in XXXXXXX services.

F. Furnish, as appropriate, other services or provide written authorization to XXXXXXX to provide required Additional Services as set forth in Article A2.

G. Examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by XXXXXXX (including obtaining advice of an attorney, insurance counselor, and other consultants as WVDEP deems appropriate with respect to such examination) and render in writing decisions pertaining thereto within a reasonable time after receipt of documents.

H. Advise XXXXXXX of the identity and scope of services of any independent consultants employed by WVDEP to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

I. WVDEP shall have the right to inspect the project area at any time WVDEP deem necessary, with or without giving prior notice to XXXXXXX.

J. Additional WVDEP responsibilities: Control of Work & Evaluation of Work.

Control of Work. - After notification to proceed is given to a consultant in writing, the responsible WVDEP representative will meet regularly with the consultant to discuss progress and problems as they may occur with notes of the meetings recorded in the project files. These meetings are usually held every month. At these meetings, a complete review of the progress to date is made with emphasis on acceptability of costs billed, as well as the next phases of the work to be performed. Periodic submission of data is made in accordance
with the applicable type of project involved. All phases of contract work are reviewed by
the WVDEP representative concerned with that particular type of work and that
representative’s opinion of the consultant’s performance and expertise in their field is
considered in the evaluation of the consultant for future work. If deemed necessary by
WVDEP’s representative, visitation of the consultant’s office shall be made. For those
tasks of short duration, the need for regular meetings may be waived. The responsible
WVDEP representative shall discuss problems as they occur and follow up with the
consultant in writing. Documentation of the discussions shall be kept in the WVDEP
representative’s file.

**Evaluation of Work.** - Upon completion or performance termination of the consultant’s work, the
responsible WVDEP representative will prepare a report recording its evaluation of the
consultant’s efforts. A copy shall be sent to the consultant for review and comment and
any written comments received shall be attached to the final report.
Payments to XXXXXXX for Services

Article 4 of the Agreement is supplemented as follows:

ARTICLE 4 – PAYMENTS TO XXXXXXX – DIRECT WAGE EXPENSE (DWE) TIMES A FACTOR

C4.01 For Basic Services Having a Determined Scope and Additional Services

A. WVDEP shall pay XXXXXXX for Basic Services and Additional Services as follows:

1. An amount equal to XXXXXXX Direct Wage Expense (DWE) times a factor of 2.99 for all Basic Services and Additional Services by principals and employees engaged directly in providing such services, plus XXXXXXX's Subcontractors' charges, if any, all for an estimated total compensation for services of $___________ based on the following assumed distribution of compensation:

<table>
<thead>
<tr>
<th>Construction Bidding</th>
<th>Construction Management</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Labor, Mobilization, Materials</td>
</tr>
<tr>
<td></td>
<td>Construction Contingency</td>
</tr>
<tr>
<td></td>
<td>Planting</td>
</tr>
<tr>
<td></td>
<td>As-Built Plans</td>
</tr>
</tbody>
</table>

2. XXXXXXX may request in writing to WVDEP the re-distribution of compensation between individual tasks and Additional Services, noted herein, to be consistent with services actually rendered, but shall not exceed the tasks compensation amount unless approved in writing by WVDEP.

3. Budget transfers between construction and non-construction activities require prior written approval of WVDEP.

C4.02 Direct Wage Expense (DWE)

A. Direct Wage Expense (DWE) means salaries and wages paid to personnel but does not include payroll related costs or benefits. Actual Hourly rates by Employee Classification and Employee ID Number have been established for this agreement and are shown in Table C2. XXXXXXX may request in writing to WVDEP increases in the Actual Hourly rates, during the term of the Agreement, up to the NTE maximum DWE.
B. The Direct Wage Expense (DWE) factor of 2.99 includes the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto; the cost of general and administrative overhead which includes salaries and wages of principals and employees engaged in business operations not directly chargeable to projects, plus non-Project operating costs, including but not limited to, business taxes, legal, rent, utilities, office supplies, insurance and other operating costs, including operating margin or profit.

C. Table C2 – Direct Wage Expense Worksheet

<table>
<thead>
<tr>
<th>DWE WORKSHEET</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROJECT NAME</td>
</tr>
<tr>
<td>DATE</td>
</tr>
</tbody>
</table>

Direct Wage Expense (DWE) is defined as the actual straight time hourly wages paid to employees, exclusive of statutory and fringe benefits, including personal and/or corporate performance/profit bonuses. The DWE rate of any A/E employee or employee of its consultant(s) shall be subject to audit by WVDEP. Evidence of DWE may be provided through certified payroll register, check stubs, or similar method that clearly indicates actual straight time wages.

<table>
<thead>
<tr>
<th>DWE</th>
<th>1.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overhead Rate</td>
<td>1.60</td>
</tr>
<tr>
<td>Profit Markup 15%</td>
<td>0.39</td>
</tr>
<tr>
<td>Multiplier Rate</td>
<td>2.99</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employee Class</th>
<th>Employee ID</th>
<th>DWE</th>
<th>Billable Hourly Rate (DWE x Multiplier)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

This table is provided as a guideline for purposes of determining an audited overhead rate and to indicate items and/or services normally included as overhead for professional/technical service businesses. An audited overhead rate which is obtained by dividing the total allowable overhead by DLD shall be in accordance with the guidelines established herein in order to be acceptable to WVDEP.

C4.03 For Reimbursable Expenses

A. This Agreement contains Reimbursable Expenses for Travel: Lodging, Mileage and Subsistence only, and shall be submitted in accordance with the Title 148. Department of Administration,
State of West Virginia Travel Rules. Mileage will be reimbursed at the GSA rate in effect at the time of travel.

B. XXXXXXX will be reimbursed for all permit fees.

C4.04 For XXXXXXX’s Construction Contractor’s Charges

A. Whenever compensation to XXXXXXX herein is stated to include charges of XXXXXXX’s contractor’s construction charges, those charges to WVDEP shall be the amounts billed to XXXXXXX.

B. XXXXXXX may change contractors following negotiations; however, no increase in the contract cost is permitted unless through a Change Order between XXXXXXX and the contractor that is approved by WVDEP. Written approval must be obtained from WVDEP prior to engaging any contractor not previously presented in the original proposal.

C. Contractor costs used in fulfilling the terms of the contract must include all costs and show all supporting data in a fashion acceptable to WVDEP.

D. Change Orders must be authorized by the WVDEP prior to an Amendment to XXXXXXX’s contract with the contractor. Change Orders will be authorized as follows:
   1. Change Orders are processed for quantity over-runs, quantity under-runs, approved field changes (Field Order), weather delays, and additional days.
   2. XXXXXXX shall provide the following information
      1. Designer summary of the circumstances requiring the change order.
      2. Separate breakdowns for each bid item adjusted or any new work not included in the original bid. The breakdown shall adequately describe:
         a. the item
         b. the reason for the change
         c. the cost
         d. the additional days required as a result of the change
   3. XXXXXXX will provide the total cost adjustments and contract days necessary based upon data provided above. It is imperative that XXXXXXX verify the completeness and accuracy of the information entered into the breakdowns prior to submitting a Change Order for review by WVDEP.
   4. Supporting documentation that may be required includes, but is not limited to;
      a. Quantity calculations
      b. New details or technical specifications

C4.05 For XXXXXXX’s Subcontractor’s/Subconsultant’s Charges

A. Whenever compensation to XXXXXXX herein is stated to include charges of XXXXXXX’s Subcontractors/Subconsultants for work and/or materials not associated with Construction as defined in Exhibit A, Article 1 under A4 (A1.01.A4), those charges to WVDEP shall be the amounts billed to XXXXXXX times a factor of not to exceed 1.15.

B. All proposed Subcontractors/Subconsultants are subject to the approval of WVDEP prior to when that person, firm or other party begins work on this project.
C. Nothing contained in contract documents between XXXXXXX and its contractor(s) shall create any contractual relationship between that contractor and WVDEP.

D. XXXXXXX may change Subcontractors/Subconsultants following negotiations; however, no increase in the contract cost is permitted. Written approval must be obtained prior to engaging any Subcontractor not previously presented in the original proposal.

E. Subcontractor/Subconsultant costs used in fulfilling the terms of the contract must include all costs and show all supporting data using:
   a. Subconsultants: the same Direct Wage Expense criteria as required of the prime consultant.
   b. Subcontractors: by solicitation of three (3) bids or quotes.

C4.06 Other Provisions Concerning Payment

A. Progress Payments: The portion of the amounts requested for reimbursement for XXXXXXX’s services which are on account of services rendered on the basis of the Direct Wage Expense (DWE) Times a Factor Method of Payment will be billed based on the Direct Wage Expense (DWE) of the cumulative hours devoted to the services by all of XXXXXXX’s employees, times the Direct Wage Expense (DWE) factor, and XXXXXXX’s Subcontractors/Subconsultants charges incurred during the billing period.

B. Estimated Compensation Amounts

1. XXXXXXX’s estimate of the amounts that will become payable for Basic Services and Additional Services are estimates based upon construction bids provided by experienced stream and wetland contractors, XXXXXXX’s level of effort needed for construction oversight and/or design changes to ensure the contractor is implementing the construction plans correctly for a successful mitigation project and per required permits and submittal of As-built reporting. XXXXXXX shall receive appropriate compensation based on the Direct Wage Expense (DWE) Times a Factor Method of Payment for all Basic Services and Additional Services furnished or performed under this Agreement, in accordance with the provisions as set forth in this Exhibit C.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to XXXXXXX that a compensation amount thus estimated will be exceeded, XXXXXXX shall give WVDEP written notice thereof. Promptly thereafter WVDEP and XXXXXXX shall review the matter of services remaining to be performed and compensation for such services. WVDEP shall either agree to such compensation exceeding said estimated amount or WVDEP and XXXXXXX shall agree to a reduction in the remaining services to be rendered by XXXXXXX, so that total compensation for such services will not exceed said estimated amount when such services are completed.

C. Payments Related to Construction

1. Payments related to construction activities will be made based on project completion and line item bid amounts. The final payment will be made after the WVDEP has inspected the work performed and is in acceptance of quality of said work. The final payment will be comprised of no less than 10 percent of the total construction budget minus mobilization costs.
C4.07 Request for Funds

A. A Request for Funds submission shall be made up of the standard Request for Funds form as provided by WVDEP.

B. Unless otherwise permitted by an agreement, separate Requests for Funds are required for each project; supplemental agreements are to be shown as separate phases or billing breakdowns on the Request for Funds.

C. The WVDEP will not honor any Request for Funds for work performed prior to Notice to Proceed. A copy of the Notice to Proceed letter must be submitted with the first Request for Reimbursement unless documented in the agreement.

D. Request for Funds shall have two attachments:

1. Consultant Voucher as provided by WVDEP.

2. A tabulation of Direct Payroll Costs and Progress Report as provided by WVDEP

E. The consultant is advised that all Subconsultants and Subcontractors shall be paid within 10 days of receiving payment from the WVDEP. Subsequent Request for Funds shall contain the following certification indicating that all Subconsultants and Subcontractors have been paid.

I hereby certify that on ______ (date) ______, ______ (Prime) ______ received payment for Request for Reimbursement #_______, dated _______________, in the amount of $____________, and the following contractor, subconsultants and subcontractors included in the subject Request for Reimbursement have been paid:

(List subs and amounts paid here)

Signed ____________________________

(Authorized Company Officer)
Insurance

Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties:

D6.05 **Insurance**

The limits of liability for the insurance required by Paragraph 6.05 of the Agreement are as follows:

A. **By XXXXXXX:**

   1. **Commercial Liability and Comprehensive Vehicle Liability Insurance**
      The contractor shall maintain commercial general liability (CGL) coverage with limits not less than two million dollars ($2,000,000) for bodily injury and property damage for each occurrence and not less than two million dollars (2,000,000) aggregate.

   2. **Workers Compensation and Employers Liability Insurance**
      The contractor shall also give evidence of Workers Compensation insurance coverage and Employers Liability Insurance coverage, with a 30-day notice of cancelation. The benefits provided under Workers Compensation coverage shall be benefits prescribed by State law.

      The Employers Liability policy must include coverage to protect the contractor for claims brought pursuant the “deliberate intention” provisions of W.Va. Code 23-4-2(d)(2). The limits of insurance under this section shall be one million dollars ($1,000,000) for each of the following: Each Accident, Each Disease, and Each Disease / Employee.

   3. **Proof of Insurance**
      Before work commences, the contractor shall provide to the Department certificates provided by the insurance company or companies issuing the insurance policies required by this section. The certificates shall show the type, amount, class of operations covered, effective dates, and dates of expiration of such policies. The certifications shall provide the written notice shall be given to the Department prior to expiration, cancelation, or modification of any such policy and shall contain substantially the following representation: “The insurance covered by this certificate will not be canceled or materially modified or altered, except after ten (10) days written notice has been verified as received by the Department of Environmental Protection.” All certificates of insurance used to verify the policies issued must be endorsed by an agent licensed in West Virginia. The endorsement must include the printed name, street address, city, zip code, and West Virginia license number of the agent.