

WARREN MILL DAM

REMOVAL DESIGN, ENGINEERING, PERMITTING AND CONSTRUCTION OVERSIGHT

REQUEST FOR PROPOSALS

SEPTEMBER 15, 2022



MUSCONETCONG WATERSHED ASSOCIATION

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1. GENERAL ADMINISTRATIVE PROVISIONS

1.1. STATEMENT OF PURPOSE

It is the intention of the Musconetcong Watershed Association (MWA) to solicit Consultant Proposals to complete engineering plans, apply for and submit permit documents sufficient to obtain permits, conduct a competitive bid process for construction contractor selection, and perform construction oversight for the removal of the Warren Mill Dam on the Musconetcong River in Holland Township, Hunterdon County and Pohatcong Township, Warren County. The removal of the Warren Mill Dam is intended to achieve migratory fish passage for target species (American Shad, river herring species native to the Delaware River Basin, American Eel, and Sea Lamprey, improve public safety, and increase recreational access. Those receiving this Request for Proposals (RFP) are referred to as "Consultant."

1.2. ORGANIZATION

The Musconetcong Watershed Association (MWA) is a 501(c)3 non-profit corporation located at 10 Maple Avenue, Asbury, New Jersey. The Musconetcong Watershed Association (MWA) is an independent, non-profit organization dedicated to protecting and improving the quality of the Musconetcong River and its Watershed, including its natural and cultural resources. MWA, through the Musconetcong River Restoration Partnership has removed five dams on the Musconetcong River, including the Hughesville Dam, which after removal in 2016 returned migratory American Shad to the river segment immediately below the Warren Mill Dam.

1.3. PROJECT DESCRIPTION

The Warren Mill Dam is situated in the Musconetcong Gorge, on the Musconetcong River, New Jersey's largest tributary to the Delaware River. MWA has removed five dams to date on the Musconetcong River: near Hackettstown (Gruendyke Dam (2008), Seber Dam (2009)) and three which blocked migratory fish passage from the Delaware River (Riegelsville Dam (2011), Finesville Dam (2011), Hughesville Dam (2016)). The Warren Mill Dam be the next migratory fish barrier to be removed on the Musconetcong River. The removal of the Warren Mill Dam and the Bloomsbury Dam (underway) will mark the removal of five consecutive dams starting from the confluence with the Delaware freeing up 13.4 miles of mainstem and reconnecting many miles of tributaries. Anticipated outcomes of the Warren Mill Dam Removal include 1) fish passage for American Shad, river herring species, American Eel and Sea Lamprey, 2) improved public safety by removing a high hazard dam at risk of sunny day failure, 3) improved recreational access for kayakers and anglers, and 4) increased rural economic development opportunities by increasing the redevelopment potential of the former Warren Glen Paper Mill site. Following the dam's removal, the National Park Service can assess the restored, free flowing 2-mile river segment for addition to the Musconetcong National Wild and Scenic River.

Goal 1: Fish Passage

The Warren Mill Dam is located 5.5 miles upstream of the Delaware River. American Shad were documented at the dam base in 2017 following the removal of the downstream Hughesville Dam in 2016 and Gizzard Shad were observed in 2018 and 2020 at the same location.). American Eel are

also present, and documented below and above the dam. Targeted and priority restoration species include:

- American Shad (*Alosa sapidissima*). (anadromous; 3-5 yr. breeding cycle; Magnuson-Stevens Act species)
- American Eel (*Anguilla rostrata*). (catadromous; 20 yr. breeding cycle)
- River Herring, including Alewife (*Alosa pseudoharengus*) and Blueback Herring (*Alosa aestivalis*). (anadromous; 3-5 year breeding cycle; Magnuson-Stevens Act species)
- Sea Lamprey (*Petromyzon marinus*). (anadromous; 5-9 yr. breeding cycle)
- Eastern Brook Trout (*Salvelinus fontinalis*). (endemic freshwater species; targeted for recovery by NJDEP; catch and release only on Musconetcong River)

Removal of the Warren Mill Dam will open 2.3 new river miles to the Bloomsbury Dam (7' high, 120' across). Natural channel design methods will be used. Removal of the next upriver dam, the Bloomsbury Dam led by the US Army Corps of Engineers, is expected in 2025, and could occur during the project timeline.

Goal 2: Improved Public Safety

The NJDEP classed the 330' wide and 37.5' tall earthen dam as a high hazard based on a 2012 engineering report by French and Parrello Associates. The report indicated the dam is at risk of a Sunny Day failure, meaning it could fail under normal flow conditions. In the inundation zone are 197 buildings, including 275,000 sq. ft. of industrial structures and the County 519 bridge; 50 fatalities are estimated. Also, the dam is an "attractive nuisance" subject to trespassing for use as a water slide by children, tubers and kayakers. Deaths have occurred at the Finesville Dam and Bloomsbury Dam. Removing the Warren Mill dam removal will eliminate several public safety hazards.

Goal 3: Recreation: Adjacent to the Dam is the state-owned Musconetcong Wildlife Management Area, an undeveloped area for hunting and angling, and the Musconetcong Gorge Preserve, a unit of the Hunterdon County Park System which has an extensive trail network utilized by hikers and anglers. Dam removal will improve habitat for trout by lowering river temperatures and restoring a rocky bottom. Anglers will have improved access to the riverbanks and fly fishers will be able to wade through formerly impounded waters. Also, the Warren Mill Dam requires a portage on the Musconetcong Watershed National Water Trail and its removal will improve kayaker access by removing a steep, difficult portage. Post-removal recreational improvements could include utilization of a site access road for pedestrian use and trail development.

Goal 4: Economic Development

Warren Glenn Investments LLC, a partial dam owner and owner of the downstream former Warren Glen paper mill site, is associated with International Process Plants and Equipment (IPPE) which was the owner and active partner in the Hughesville Dam removal in 2016. The Warren Mill Dam's FERC license expired in 1997 and was not renewed. Redevelopment and resale of the properties have been stymied by the presence of the dam. Additionally, recreation tourism, from increased use of the Musconetcong Watershed National Water Trail and fish habitat improvements may benefit local economies.

The Warren Mill Dam removal and fish habitat restoration is anticipated to be a multi-year engineering and construction project due to the dam's size, limited accessibility, habitat restrictions, and availability of funding. Subsequently, this bid opportunity is offered for work that is anticipated to be conducted in three (3) phases (See Section 1.17). To be a qualifying bidder, a Consultant must bid on all three Phases, with both Tasks and Costs separated by Phase. Bidders responding to only one Phase will be disqualified.

MWA greatly values partnerships, and expects the Consulting Engineer to participate in Musconetcong River Restoration Partnership meetings (held 3-4 times a year; remote, hybrid, and in-person meetings are possible), to gather input and feedback on proposed designs and site actively from a multi-disciplinary collaborative of funders, agencies, and habitat restoration experts. MWA often directly engages with the community in riparian habitat plantings, post-removal habitat enhancement, and restoration site tours. RFP evaluation criteria include descriptions of the Consultant's past stakeholder engagement and partnership work.

1.4. PROJECT SITE LOCATION

Warren Mill Dam (NJ00765), Warren Glen Village in Pohatcong Township, Warren County and Holland Township, Hunterdon County, New Jersey; Musconetcong River, Delaware River Watershed, Lat/Long: N40.636204°, W75.120144°. The site is located between two designated National Wild and Scenic River segments of the Musconetcong River, administered by the National Park Service. Additionally, the Musconetcong Watershed National Water Trail, designated for 42 miles of the Musconetcong River, passes through this river segment, and requires a portage at the Warren Mill Dam. A Site Map, prepared by French and Parrello Associates is in Attachment 3.1.

The Dam has the following characteristics:

- Ogee weir, 330-foot-long earthen structure, with a 125' concrete spillway about 9' below the embankment
- Earthen construction, presumably located on a bedrock outcrop (see GZA 2020)
- Height of about 37.5'
- Impounded area: 2,400'; 14.3 acres
- Crest width of 20 feet and upstream and downstream slopes of 3H:1V and 1.5H:1V, respectively
- Sluice gates, three 4-foot by 7-foot wood head gates, regulate flow into mill race canal

The Warren Mill dam is jointly owned by the State of New Jersey, N.J. Department of Environmental Protection (NJDEP), Division of Fish and Wildlife, and Warren Glen Investments LLC. NJDEP owns land adjacent to the Dam and along the impoundment on river right which is part of the Musconetcong Wildlife Management Area (Pohatcong Township parcels: Block 105 Lots 1.01, 1.02, & 1.03). Warren Glen Investments owns land adjacent to the dam, the downriver mill parcels, lands along the impoundment on river left, and land with settling ponds used for dredge spoils disposal during the Hughesville Dam removal (Pohatcong Township parcel Block 105 Lot 1; Holland Township parcels: Block 1 Lots 1.01 & 1.02, Block 2 Lots 1.01 & 1.03). Hunterdon County Division of Parks and

Recreation owns parcels upriver of the dam and along the impoundment on river left, and is part of the Musconetcong Gorge Preserve (Holland Township parcels: Block 1 Lot 1; Bethlehem Township parcels: Block 1 Lots 1 & 2; 2 Lots 1 & 2; Block 201 Lot 1, Block 34 Lots 1.01, 2, & 3.01). All three entities have given their support for the project, and MWA will secure site access permissions.

The Warren Mill Dam impoundment extends to a point a few hundred feet downriver of the Norfolk Southern rail line crossing.

1.5. PRELIMINARY WORK ALREADY CONDUCTED

Bidding Consultants are expected to build upon existing work performed by others. Source data files and mapping are public documents, and will be furnished to the Consultant. An Alternatives Analysis was conducted by GZA GeoEnvironmental (2021c); Option 2C serves as the basis for the Preferred Alternative for the dam removal project, and will require further refinement in the design and sediment management approach.

For example, Princeton Hydro's Sediment Sampling and Analysis report (2018) indicates larger volumes of sediment may be present and the sediment may prove coarser than indicated in borings (as encountered at the downriver Hughesville Dam removal): "While the boring logs reveal sediment that predominantly contains fine and coarse-grained sediment, based on Princeton Hydro's experience, and within an impoundment immediately downstream of the Warren Mill Dam, there is a high probability that the sediment, throughout its aerial extent and depth, will contain larger diameter debris, including cobbles, boulders, and wood, masonry, and metal debris. The existence of this larger materials will have a material effect on the efficiency and effectiveness of the dredging methods, if such a management method is employed."

Total impounded sediment volumes were estimated at 203,000 cubic yards by Princeton Hydro (2018). Estimated volumes of sediment to be removed vary based upon the estimated slope of the restored channel. At 1:1 channel slope, 136,000 cubic yards are estimated by removal which was the volume utilized by GZA GeoEnvironmental in their Alternatives Study (2021c). However, for each decrease in slope by 1 foot, an additional 14,000 cubic yards would be removed (i.e. a 2:1 slope increase sediment removal volume to 150,000 cubic yards. NJDEP determined the sediment had very low risks, and could be disposed on site (see attached). Sediment disposal options were explored by GZA Environmental, include a range of options including partly filled the mill race canal, dewatering, disposal on vacant land on mill parcels and landfill; also settling ponds (Holland Township parcel Block 2 Lot 1.01) were used to dispose of sediment from the Hughesville dam removal in 2016.

MWA expects bidding Consultants to integrate the work conducted by others into their approach, without unnecessary replication of prior work, but with a fresh, implementation-oriented approach to advancing the project forward on budget and on time. Bidders should clearly state how prior work completed by others was evaluated, will be utilized, and any supplemental activities to fill in information gaps. Federal funding prohibits the duplication of prior work.

Date	Author	Title	Topics	Document Link	Document Link
1981	US Army Corps of Engineers	Warren Mill Dam Phase 1 Inspection Report	Dam construction description; Hazard risks	USACE 1981 Warren Mill Dam Phase 1	USACE 1981 Warren Mill Dam Phase 1 Photos
2012	French and Parrello Associates, PA	Limited Engineering Assessment Report	Breach model; Basis for High Hazard designation	French & Parrello 2012 Limited Report	
2018	Princeton Hydro	Sediment Sampling and Analysis	Bathymetric survey; Sediment boring logs; Sediment content analysis; Profile of restored channel elevations; Wetlands delineation	PH 2018 Warren Mill Dam Sediment Analysis	
2018	NJDEP	Memorandum on Sediment Disposal and Reuse	Low hazard risk; Reuse guidance	NJDEP 2018 Warren Mill Dam Sediment Memo	
2020 (2021a revision)	GZA GeoEnvironmental	Dam Safety Investigation Report	Breach Model; Damage assessments; Dam borings and logs	GZA 2020 Warren Mill Dam Safety Investigation Report	2021a GZA Warren Mill Dam HEC-RAS Revisions
2021b	GZA GeoEnvironmental	Hydraulic Model for Sunny Day Dam Failure and Inundation Mapping	HEC-RAS model outputs	2021b GZA Warren Mill Dam Sunny Day Failure	
2021c	GZA GeoEnvironmental	Alternatives Study Report	Additional soil borings and logs; Bathymetric survey; Alternatives; Dewatering and sediment removal operations; Cost Estimates;	2021c GZA Alternatives Study Report	

Documents are available for download from this online folder: https://musconetcong-my.sharepoint.com/:f:/g/personal/alan_musconetcong_org/EtcvkXiAP19KvA0sPnZk2NEBICg1_Qf01rRwriFQi6Wd0g?e=wSK7pu

1.6. PROPOSED WORKPLAN AND DESIRED TIME FRAME

MWA anticipates construction beginning in the summer of 2025. To allow sufficient time for design and permitting, MWA proposes a project start date of January 3, 2023. Phase 1 Conceptual Engineering Design is anticipated in Quarters 1 & 2 in 2023. If a submitted funding application is

awarded, Phase 2 would continue through design completion, permitting, construction firm bidding and selection, and one season of dredging/dewatering in the summer of 2025, with the site being left in a stable condition for winter. Multiple seasons of sediment removal and de-watering are anticipated. A subsequent funding application will be submitted for Phase 3, which is the completion of dam removal activities, habitat restoration, and close-out activities. Potential recreational access improvement may occur in this phase or after this phase is completed.

Proposed Phases:

Phase 1: Conceptual Engineering Design

Estimated as 20% design plans, this phase of work is funded by the U.S. Fish and Wildlife Services (USFWS). Base mapping and other work completed by others will be collected and surveying will be conducted resulting in mapping of potential areas of disturbance for historic resources, wetlands, and habitats. Site access, timing restrictions, landowner requirements, stakeholder inputs, and permitting requirements will be assessed to develop detailed tasks and phasing for removal of the Warren Mill Dam. Alternatives will be identified and assessed for preferred access routes, sediment removal methods, dam lowering, and spoils disposal area in consideration of habitat, wetland, wildlife, and cultural and historic resource impacts in order to arrive at a single concept design plan. Preliminary work for National Environmental Protection Act will be collected (e.g. site characteristics, impacted resources, alternatives assessed, etc.) and drafted in consultation with federal agency partners. It is anticipated that sediment management will factor heavily into alternatives and costs. Public co-benefits, including improved public safety (e.g. lives protected, buildings protected, economic value), recreational fishery improvements, anticipated recreational benefits, and benefits to adjacent property owners will be characterized and quantified to the extent possible. Completion of this phase will define the scope, timeline, and costs for the future phases of work, and potential migratory fish passage at the site. Detailed estimated costs will be developed for construction. For this RFP Consultants should propose a fixed fee for this phase, and define the scope accordingly.

Phase 2: Design Completion, Permitting, Construction Oversight

Design plans will be completed, including a habitat restoration/planting design, and all required permitting and agency approvals will be acquired. The Engineering Consultant will conduct a public bid process to select a construction firm. Access road improvements will be made and at least one season of construction work will include hydraulic dredging, initial notching, dewatering and some mechanical dredging. Temporary soil erosion control methods to over winter the site is anticipated. Other related activities include mounting cameras to provide public information about the construction progress and installing a project sign. The Engineering Consultant will monitor construction activity, and will train MWA staff to monitor the site for erosion. Engineering Consultants must propose Engineering costs for this phase in the response to this RFP.

Phase 3: Construction Oversight, Close Out Activities

Additional seasons of dredging will be conducted and overseen by the Engineering Consultant. Anticipated historic site mitigation requirements will be installed (e.g. interpretive panels), habitat restoration and plantings completed, and any included recreational access projects will

be completed. An as-built plan will be submitted to all regulatory agencies, and include metrics for fish passage performance as needed. A narrative report of project co-benefits may be required to quantify socio-economic benefits, such as safety, fishery, and recreational impacts. Submission of a flood elevation map submission to the Federal Emergency Management Agency for river segments with reduced flooding risks due to the Warren Mill Dam removal is an Optional Task. For this RFP, Consultants must estimate costs for this phase, such as estimated anticipated oversight costs per dredging season, and close-out costs (e.g. oversight of habitat restoration/plantings, As-Built plan, closing out permits, etc.)

Proposed Overall Project Timeline:

Project Start Date: January 3, 2023
 Design & Permit Preparation: March 2023 – April 2024
 Permit Pre-Application Meetings, Submissions, & Review Period: May 2024 – November 2024
 Final Permits Received: November 2024 – February 2025
 Contractor Selection: November 2024 – February 2025
 Access Improvements: March 2025 – June 2025
 Dredging Season 1 (Hydraulic & Mechanical): July 2025 – October 2025
 Dam Notching & Dewatering: September 2025 – October 2025
 Temporary Erosion Control: October 2025
Additional sediment removal, dam removal, and habitat restoration activities as determined by Engineering, Design, and Sediment Management Plans and permit requirements.

Figure 1. Proposed Project Timeline. Year 0 represents work underway through USFWS Cooperative Agreement. Note: Proposed Tasks are in a funder proposal, and not tasks the Consultant should respond to in this RFP.

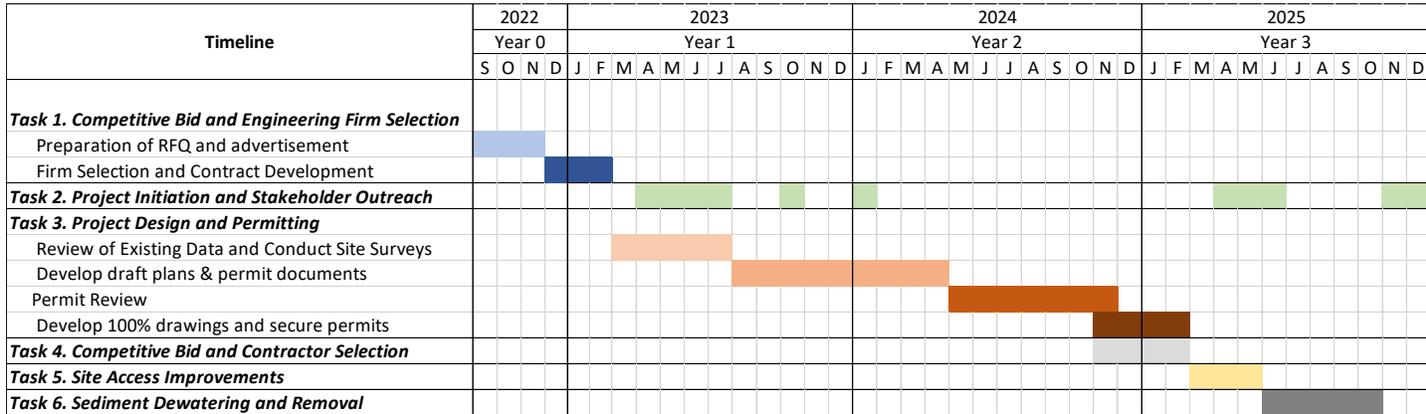


Figure 2. Anticipated Permits and Approvals.

Permits and Approvals	Status
Permit/Consultation	Status
NJDEP-HPO Project Authorization	Submit January 2024
Flood Hazard Area Applicability Determination	Submit April 2024
Highlands Council Applicability Determination	Submit April 2024
County Road Opening Permit	Submit April 2024

NJDEP Dam Safety Construction Permit	Submit April 2024
NJDEP Freshwater Wetlands General Permit 18	Submit April 2024
NJDEP Freshwater Wetlands General Permit 16	Submit April 2024
Soil Erosion and Sediment Control Certification	Submit April 2024
National Environmental Policy Act (NEPA) Review	September 2024

1.7. DELIVERABLES

1.7.1. CONCEPTUAL ENGINEERING DESIGN

Phase 1

Consultant will develop Conceptual Designs (estimated 20% Design Plan completion), which will assess alternatives for project design completion. The Consultant will identify and define design options, some of which may include: site access road entrance and configuration, phasing of dredging within regulatory constraints of aquatic and terrestrial species restrictions, sediment disposal options. The Consultant will work with a federal agency partner in the development of an environmental assessment to satisfy National Environmental Protection Act (NEPA) requirements. Costs and schedules will be developed, with input from MWA and dam owners.

- (1) Base mapping
 - a. Incorporation of site survey*, bathymetric survey*, and wetlands delineation
 - b. Alternatives
 - c. Incorporation of sediment analysis*, sediment management options*, and structural analysis*, and review of any other existing plans
- (2) Phasing and detailed costs
 - a. Habitat and timing restriction window(s)
 - b. Identification of Disposal facility(ies)
- (3) Consultations with site owners
- (4) Reports Required by Permitting Agencies (e.g. NEPA, State Historic Preservation Office, Endangered Species and Non-Game Program)

Due to federal funding sources, it is expected that federal agencies will participate in, and potentially lead on NEPA compliance with the Consultant serving a supportive role. The Consultant should explain in the bid proposal the approach and costs regarding NEPA compliance, including if federal agencies take the lead on NEPA compliance and if the Consultant takes the lead on NEPA compliance.

Items identified with * have been substantially prepared or completed by others, and should be completed in Phase 1. In Phase 2, these items would only be revised if required for permit package preparation.

Phase 2

Consultant will complete designs, as follows:

- (1) Engineering Deliverables
 - a. Hydrologic and Hydraulic Analysis
 - b. Analysis of Associated Infrastructure for Project Impacts
 - c. 60%/90% Design Plans

1.7.2.COMPLETED PERMIT PACKAGE

In Phase 2, the following are anticipated permit package deliverables:

- (1) NJDEP Wetlands Delineation
- (2) NJDEP Dam Safety Permit
- (3) NJDEP Freshwater Wetlands Permit
- (4) NJDEP Non-Game and Endangered Species Permit
 - a. Mussel Survey
- (5) USFWS Consultation/Permit
 - b. Bog Turtle Survey
- (6) National Wild and Scenic River Section 7 Submission to National Park Service
- (7) State Historic Preservation Office Project Review / Authorization; National Historic Preservation Act Section 106; Tribal Consultations
- (8) Temporary Construction Easements from Private and Public Landowners
- (9) County Soil Conservation Districts (Hunterdon County; potentially Upper Delaware)
- (10) Road Opening Permit (Up to 2; to be determined through Conceptual Design; possible Traffic Control Plan requirement if heavy truck traffic)
- (11) NJ Pollution Discharge Elimination System Permit (NJPDES) 5G3 (if needed to authorize point source discharges from construction activities) if required for hydraulic dredging)

MWA conducted a separate process to identify a preferred contractor for Cultural Resource Management (CRM) through a small purchase threshold contracting opportunity. By contracting directly with an CRM Firm, MWA wishes to ensure cultural/historical compliance requirements (Item 7 above) are met with minimal unplanned impact to the project timeline. The Consultant is expected to coordinate with the CRM Firm for the submission of documentation necessary for historical, cultural, and tribal consultations, as well as ensure site access for archeological and historical monitoring activities. The Consultant is expected to incorporate the CRM Firm's work product into required permit applications, compliance documents, and reports.

1.7.3.CONSTRUCTION BID PROCESS

1.7.3.1. Bid Document Development

The Consultant will develop a Bid document compliant with funder contracting requirements (estimated award range \$6 million - \$15 million) for MWA to select and retain a Contractor to perform construction services, including access road improvements, dam

removal, site stabilization, and ecological habitat restoration. The Consultant will develop with MWA Proposal Review Criteria to be included in the Bid document.

1.7.3.2. Sealed Bid Process including Site Visit and Answering Contractor Questions

The Consultant will advertise for and manage a bidding process that complies with 2 CFR Part 200, including 2 CFR Part 200.321 for contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. This requires the Consultant to take several affirmative steps in the bidding process:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1-5) above.

The Consultant will ensure all Federal, State, and Local bonding and insurance requirements are met through the bidding process.

The Consultant will conduct a mandatory Site Visit.

The Consultant will manage a fair process to respond to Contractor Questions, including a pre-submission review for application completeness in order to support submission from small and minority businesses and women's business organizations.

1.7.3.3. Proposal Review Meeting

The Consultant will identify Proposals which are complete and responsive to all Bid requirements. The Consultant will organize a meeting with the Selection Committee (MWA, funders, property owners) to review proposals.

1.7.3.4. Contractor RFP Process Activities

The Consultant will conduct interviews of bidding Contractors with complete submissions, and include the Selection Committee in the decision-making process. In this interview, the Selection Committee may ask the Contractor to give an oral presentation of its Proposal. The purpose of this oral presentation is to provide an in-depth explanation of any part or parts of the Proposal on which the selection committee requests clarification.

The interview and presentation, if deemed necessary by the review committee, will be held via Zoom. The Contractor will be notified of the day and time at least two days prior to the meeting.

Following interviews of bidding Contractors, proposals will be reviewed by the Selection Committee. The Committee will rank the Proposals and select the highest ranked Proposal. If two or more Proposals rank equally as the highest, then the Consultants of the highest ranked Proposals will be invited to interview with the Committee. The Committee will use the second round interview to select winning Proposal.

The Consultant will provide documentation to MWA of the Proposal review process including completed Proposal Review Criteria sheets, consultant-prepared interview notes, and other materials.

1.7.3.5. Value Engineering and Chosen Contractor

Following the selection process, the chosen Contractor will be selected to negotiate a final contract for services. The final scope of work with specified deliverables may be modified through negotiation of the final contract. The Consultant will utilize a value engineering approach as described in Federal Acquisition Regulation (FAR) Part 48, to eliminate without impairing essential functions or characteristics anything that increases acquisition, operation, or support costs. The Consultant's final project team may also be modified through negotiation of the final contract. Any expenses resulting from the interview and proposal process will be the sole responsibility of the Consultant.

1.7.3.6. Consultation Obligation

MWA incurs no obligation or liability whatsoever by reason of issuance of this RFP or action by anyone relative thereto. The Consultant is solely responsible for conducting a compliant bidding process and is responsible for any and all costs for re-advertising, reissuance of the Contractor RFP, or other modification of the RFP process required by funding agency. The Consultant will provide to MWA all required documentation of the fair and competitive bidding process, and will remain the record custodian.

1.7.4.OVERSIGHT OF CONSTRUCTION

1.7.4.1. Construction Oversight

The Consultant shall propose a construction oversight schedule and activities to ensure regulatory compliance, site safety, and adherence to fish passage design standards. MWA anticipates that its personnel will be on site at least once daily or every other day during construction activities. MWA can furnish site photographs to Consultant for convenience, but not in substitution of Consultant responsibilities.

1.7.4.2. Field Reporting

The Consultant shall provide to MWA Field Reports and Minutes of Contractor Field Meetings. The Consultant shall provide to MWA photographs of site conditions as directed.

1.7.4.3. Fish Passage Assessment

The Consultant shall supply to MWA pre and post-removal data required for MWA to conduct a [NOAA Fish Passage Tier 1 Assessment](#), including channel width, channel slope, jump height of gradient control structures, estimates of pre and post removal operation and maintenance costs, and reduced safety hazard. The Consultant will ensure the Contractor meets fish passage standards required by NOAA and/or USFWS, and will conduct field verification(s) prior to the Contractor demobilizing from the site, so as to ensure any adjustments do not incur remobilization costs.

1.7.4.4. As-Built Plan

The Consultant will ensure the Contractor meets all permit requirements and fish passage standards required by NOAA and/or USFWS and document these conditions in an As-Built Plan. The Consultant will submit an As-Built Plan to be accepted by permitting and funding agencies. The Plan will document existing conditions, including channel widths, channel slope, channel depth, jump height of gradient control structures, erosion control measures, planted vegetation and vegetation protection, and other required details. Final payment to the Consultant will be made only after this As-Built Plan is accepted by permitting and funding agencies.

1.7.4.5. Training for MWA Staff in Post-Removal Site Monitoring

MWA regularly utilizes staff and volunteers to implement and maintain riparian buffer installations, and desires the additional skills required to perform site monitoring responsibilities for riparian buffer sites, including this project site. The Consultant shall conduct a single day (or two half day) classroom and field training for MWA staff and volunteers which will allow them to fulfill post-removal monitoring permit requirements. This will include the furnishing of a simple field manual and reporting sheets to conduct quarterly assessments for site stability, evaluate performance of soil erosion control methods, and document survival of vegetative material. This manual will also include guidance (e.g. FAQ, table, flow chart, etc.) for corrective actions that MWA can undertake, and actions which require professional or agency consultation.

2. PROCUREMENT PROCESS

Procurement activities will be conducted in a nondiscriminatory manner with fair treatment given to all Consultants, in accordance with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. MWA reserves the right to reject any and all offers, and waive technicalities, in compliance within applicable contracting requirements. The procurement process utilizes a Sealed Bid and includes a written Proposal, mandatory Site Visit, optional pre-application completeness review, Selection Committee review, and possible interviews. MWA reserves the right to re-bid this opportunity if it determines there were not suitable Proposals due to cost, qualifications, technical approach, or other factors. MWA encourages applications from qualified small and minority owned businesses and women's business enterprises.

2.1. SELECTION PROCESS

Proposals will be reviewed by a Selection Committee which may be comprised of representatives from MWA, funding agencies, property owners, and The Nature Conservancy or other qualified reviewers. MWA will identify Proposals which are complete and responsive to all Bid requirements. MWA will develop and utilize an Evaluation Criteria Form. MWA will organize a meeting with the Selection Committee to review and rank proposals. MWA will conduct Consultant interviews with at least the top two ranked Proposals. In this interview, the Selection Committee may ask the Consultant to give an oral presentation of its Proposal. The purpose of this oral presentation is to provide an in-depth explanation of any part or parts of the Proposal on which the Selection Committee requests clarification.

2.2. PROPOSAL EVALUATION

Consultants will be evaluated according to the following factors:

(A) Consultant Proposal and Outline (60%)

1. Technical Approach. (utilization of natural channel design, achievement of fish passage, management of co-benefits, bid development and management, and construction oversight)
2. Costs. (costs, clarity of cost proposal, non-duplication with prior work, value)
3. Schedule. (staffing availability, ability to meet timeline)
4. Prior Experience. (similar projects including non-profit client work and engagement with Federal and State recognized Tribes, compliance with regulations and funder requirements, ability to complete work on time and on budget, effective use of adaptive management approaches)
5. Proposed Team. (technical competency, multi-disciplinary, management approach that demonstrates the ability to work with project manager(s), dam owners, agencies, municipalities, and stakeholders)

(B) Mandatory Requirements (20%)

1. Experience with dam removal and river restoration design and construction that achieves migratory fish passage, improves public safety, and enhances recreational access.
2. In-house aquatic fish passage expertise, and demonstrated success designing grade control and fish passage structures that fit in with the natural aesthetic (i.e. natural channel design principles).
3. In-house expertise or existing relationship with a subcontractor able to produce each of the Deliverables listed above.
4. Experience satisfying requirements of the NJDEP, Bureau of Dam Safety, NJDEP State Historic Preservation Office, and the Endangered Nongame Species on aquatic restoration projects.
5. Prior experience conducting construction bid processes in compliance with federal and state agency requirements.
6. Sufficient staffing and ability to adhere to an aggressive timeline. The timeline on this project is tightly controlled by funder and permitting requirements.

7. Availability to begin work by January 3, 2023 or sooner upon acceptance of proposal and execution of a contract.
8. Proven ability to communicate with clients effectively, work with state and federal agencies, and conduct public meetings.
9. Geographic location of staff/local office that allows for cost-effective in-person project and site meetings, construction field oversight, and timely emergency call-outs (if necessary).
10. Availability of a vehicle suitable to access the Dam site via an unmaintained and/or construction access approximately +/-1 mile from pavement to the site.

(C) Desired (10%)

1. Prior experience with U.S. Fish and Wildlife Service and/or NOAA funded fish passage projects.
2. Prior experience with a non-profit organization client and community outreach.
3. Prior experience preparing materials to the satisfaction of federal and state funders (e.g. materials for reports, field reports, construction certification reports, invoices).
4. Prior experience on the Musconetcong River, Delaware River Basin, or similar inland river systems with the same target migratory fish species.
5. Experience working with the Warren County Engineering and Hunterdon County Engineering Departments.

(D) Quality, Completeness and Clarity of Submission (10%)

1. Responsiveness to the Bid document requirements.
2. Organization of the Proposal.
3. Succinctness of the Proposal and prior work qualifications submitted.
4. Listing of all personnel and/or subcontractors that will be working on the project.

2.3. INTERVIEW FRAMEWORK

Consultants selected for interviews will be offered the choice of either a Zoom or in-person interview (at the Consultant's expense). The Consultant will be notified of the day and time at least two (2) days prior to the interview. Following interviews of bidding Consultants, proposals will be reviewed by the Selection Committee. The Committee will rank the Proposals and select the highest ranked Proposal.

2.4. FINAL CONSULTANT SELECTION

If two or more Proposals rank equally as the highest, then the Consultants of the highest ranked Proposals will be invited to re-interview with the Committee. The Committee will use the second round interview to select winning Proposal.

Following the selection process, the chosen Consultant will be selected to negotiate a final contract for services. The final scope of work with specified deliverables may be modified through negotiation of the final contract. MWA will utilize a value engineering approach as described in Federal Acquisition Regulation (FAR) Part 48, to eliminate without impairing essential functions or characteristics anything that increases acquisition, operation, or support costs. The Consultant's

final project team may also be modified through negotiation of the final contract. Any expenses resulting from the interview and proposal process will be the sole responsibility of the Consultant.

2.5. MWA's OBLIGATIONS

MWA incurs no obligation or liability whatsoever by reason of issuance of this RFP or action by anyone relative thereto.

2.6. CONSULTANT'S OBLIGATIONS

Consultant must analyze and respond to all sections of this RFP providing sufficient information to allow MWA to evaluate the Proposal. Consultant, by submitting its Proposal, agrees that any costs incurred by the Consultant in responding to this RFP, are to be borne by Consultant and may not be billed to MWA. Additionally, by submitting materials to MWA in response to this RFP, the Consultant agrees to the requirements indicated in the Confidentiality section (2.13).

Consultant's Proposal must match the requirements in the order in which they are listed in the RFP or clearly state where the information resides. If MWA has any confusion or difficulty in retrieving the required information from a Consultant's Proposal, it may result in disqualification of the Consultant in the selection process. Consultant may not have the ability to resubmit their Proposal to MWA.

MWA will request a fixed fee per task basis for the Proposal. If a particular Consultant is chosen and awarded the contract and any additional costs are presented at the time of agreement negotiations or implementation, MWA has the right to reject that Consultant as the contract winner.

Consultant shall not use the names, logos, images or any data or results arising from the anticipated contract for advertising without MWA's prior written consent.

2.7. CONSULTANT SUBMISSION REQUIREMENTS

2.7.1. QUESTIONS REGARDING THE RFP

If you have any questions about this project or the RFP, please address them in writing via email to the Project Manager, Annie Polkowski, annie@musconetcong.org. All questions must be submitted to the Project Manager by October 14, 2022, as indicated in the Critical Dates Section 2.8. Both the question and response will be compiled and shared publicly on MWA's Website on or before October 28, 2022.

The Consultant understands and agrees that it has a duty to inquire about and clarify any RFP questions that the Consultant does not fully understand or believes may be interpreted in more than one way. MWA, however, is not required to answer all questions that are not pertinent to the RFP or are considered to be MWA's proprietary information. The Consultant is strongly encouraged to review documentation on the Warren Mill Dam that has been prepared by others (listed in Section 1.5).

2.7.2. SUBMISSION REQUIREMENTS FOR PROPOSAL

The Consultant shall submit a Proposal that responds to the technical requirements of the dam removal project that achieves fish passage, construction bid management, construction oversight, demonstrates compliance with Federal, State, and local government agencies, and responds to the Evaluation Criteria in Section 2.2. All responses to the RFP shall include the following information:

(A) Cover Letter – A letter of interest for the project, indicating the primary point of contact for the proposal, names and contact information for personnel who would be invited to the Site Visit, and any limitations regarding the interview dates, which does not exceed two pages.

(B) Technical Proposal that Reflects the Scope of Work

Please utilize the Headings below for the outline of the RFP Narrative

(1) Technical Approach.

Utilization of natural channel design, achievement of fish passage, management of co-benefits, bid development and management, and construction oversight, etc.

(2) Costs.

For the purposes of this Proposal please itemize costs first by Phase, and then by Tasks within each Phase. All items are fixed fee, not to exceed pricing. Time and materials pricing is not allowed.

(3) Schedule.

This should be based upon the timeline provided by MWA with explanation for any revisions to the proposed timeline. A contract with the chosen Consultant may be amended at some future time should the construction contractor's schedule indicate a different time period.

(4) Prior Experience.

Describe relevant experience or similar projects and list the work experience of the individuals expected to be involved in the project. Include a minimum of three (3) professional references for whom a similar project has been completed within the last ten (10) years. At least one reference should be for a project which required permitting in New Jersey; New Jersey is one of three states which assumed Clean Water Act Section 404 responsibilities.

(5) Proposed Team.

Include proposed project staff, staff roles in the project, technical qualifications, prior relevant experience. If subcontractors, consultants, or other non-employees will be part of the Project Team, please clearly indicate their role, their firm of independent consultant status, and how they will be subcontracted through the Consultant.

(6) Attachments.

(A) Completed and Signed Conflict Inquiry and Mandatory Disclosures Form (Attachment 3.2) - *Please include all documents requested with this form as part of Attachment A.*

(B) Completed Consultant Questionnaire (Attachment 3.3) - *Please include all documents requested with this form as part of Attachment B, except as indicated below.*

(C) Certificate of Good Standing - *dated not later than September 1, 2022 (from the State government in which of business headquarters location)*

(D) Certificate of Insurance - *See MWA Standard Contract for terms in Attachment 3.4*

(E) Pricing Rate Sheet

Page Limit. The Proposal, encompassing items (1-5) above, shall not exceed 25 double-sided pages (50 total pages) including project lists, and contacts. The Page limit excludes the Cover Letter, Pricing Rate Sheet, completed Conflict Inquiry and Mandatory Disclosures Form, completed Consultant Questionnaire, and Certificate of Insurance.

All information submitted becomes the property of MWA upon submission. MWA reserves the right to issue supplemental information or guidelines relating to the RFP as well as make modifications to the RFP or withdraw the RFP.

MWA reserves the right to reject Proposals which exceed the page limits above, use hyperlinks to required documents to avoid the page limit, do not adhere to the Proposal headings and structure indicated above, and/or do not provide costs itemized by Phase and Task.

2.7.3. INSTRUCTIONS FOR SUBMITTING PROPOSAL

Proposals should be submitted via one (1) digital PDF copy by 5:00pm (US Eastern time zone) November 15, 2022 and three (3) printed copies postmarked not later than November 15, 2022, to Project Manager, Annie Polkowski. MWA's email server may reject attachments at or over 25 MB. Please note that U.S. Postal Service will not deliver mail to MWA's street address.

2.7.4. ADDRESS AND EMAIL FOR SUBMISSION OF CONSULTANT'S PROPOSAL

Email: annie@musconetcong.org

U.S Postal Service Address:

Annie Polkowski
Musconetcong Watershed Association
PO Box 113
Asbury NJ 08802-0113

Courier Delivery Address (e.g. UPS and Fedex):

Annie Polkowski
Musconetcong Watershed Association
10 Maple Ave

Asbury NJ 08802

2.7.5. RECEIPT FOR PROPOSAL SUBMISSION

Please expect a receipt of submission via email by November 17, 2022.

2.8. CRITICAL DATES

September 15, 2022: RFP Opens

September 29, 2022: Mandatory Site Visit 11:00am

September 30, 2022: Mandatory Site Visit Rain Date 11:00am

October 14, 2022: All Consultant Questions due to MWA Project Manager by 5:00pm

November 15, 2022: RFP Submissions Due by 5:00pm via email PDF and postmark

December 2, 5, 6 2022: Potential Consultant Interview Dates

December 9, 2022: Consultant Selection

December 30, 2022: Contract Completion

January 3, 2023: Project Start Date

2.9. RESTRICTED COMMUNICATIONS

It is the policy of MWA to avoid situations which (1) place it in a position where its judgment may be biased; (2) create an appearance of conflict of interest with respect to rendering an impartial, fair, technically sound, and objective decision prior to selection; or (3) give an unfair competitive advantage to competing Consultants. Therefore, to ensure an ethical evaluation process, all inquiries or other communications regarding this RFP shall be exclusively directed to MWA's Project Manager specified in Section 2.7.1 of this RFP. Consultants are hereby expressly instructed not to otherwise communicate with MWA's employees or Board of Trustees regarding this RFP. This prohibition is also applicable to Consultant's affiliates, officers, employees, agents, consultants, and subcontractors.

2.10. DISPOSITION OF PROPOSAL

All material submitted in response to this RFP will become the property of MWA and may be returned only at the option of MWA and at the expense of the Consultant. Consultants will be notified of MWA's decision via email. MWA shall not be obligated to detail any of the results of the evaluation.

2.11. CONTRACTUAL COMMITMENT OF PROPOSAL

The contents of the submitted Proposal will be considered obligations of the selected Consultant. No information should be submitted that is not intended to be incorporated into the Proposal and any Contract which may result from such Proposal. If there is any inconsistency between the terms herein and any of the other contract documents, the terms in the other contract documents shall prevail.

2.12. CONTRACT

The selected Consultant must comply with the terms and conditions of MWA's Standard Contract for Services (Attachment 3.4).

2.13. CONFIDENTIALITY

Project funding will include Federal funds, and may include State and local governmental funding, and, as a result, the Consultant may be required to retain and make available submitted documents to external parties. These policies are meant to demonstrate the competitive and fair award of contracts and make available to the public work products paid for by taxpayer funds, without compromising trade secrets, commercial information, and patented information.

Accordingly, MWA will retain all proposal submission documents and evaluation materials, as required by applicable Federal, State, and local government regulations in order to demonstrate a fair and competitive bid process (2 CFR 200.325) and hold in trust intangible property that are acquired or improved with a Federal award (2 CFR 200.316). MWA will not distribute submitted documents unless requested properly in accordance with applicable Federal, State, and local government regulations. MWA is obligated to comply with applicable Freedom of Information Act, Open Public Records Act, and other legal requests for bid documents, as well as post-award documents, including contracts, designs, data, and other intellectual property (e.g. 2 CFR 200.315 Intangible Property).

The Consultant retains authorship of all documents and intellectual property. The Federal awarding agency (or agencies) reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Consultant's work for Federal purposes, and to authorize others to do so. (As such, MWA also retains a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Consultant's work.) This does not include trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

2.14. CONFLICT OF INTEREST AND MANDATORY DISCLOSURES

MWA maintains a conflict of interest policy. It is the policy of MWA to identify actual, potential or perceived conflicts of interest in any situation in which MWA has a significant business interest. To assist in complying with this policy, MWA requires that all individuals and/or organizations that will be involved in a proposed transaction with MWA complete a Conflict Inquiry Form (Attachment 3.3). This relates to individuals or organizations who will be working, directly or indirectly, to respond to this RFP, as well as for the duration of the contract award.

By applying to this RFP, the Consultant consents to disclosing to MWA any above information as described above during the contract award period on a semi-annual basis.

3. ATTACHMENTS

- 3.1. PROJECT MAP**
- 3.2. CONFLICT OF INTEREST INQUIRY FORM**
- 3.3. CONSULTANT QUESTIONNAIRE**
- 3.4. MWA STANDARD CONTRACT FOR SERVICES**

ATTACHMENT 3.1 PROJECT MAP



French and Parrello Associates, 2012. Note Dam 2, Hughesville Dam, was removed in 2016.

ATTACHMENT 3.2 CONFLICT OF INTEREST INQUIRY FORM

4. Please list any employee of the proposed project team for this Request for Proposals with relationship (by blood, marriage, domestic partnership or shared living quarters) with personnel of the U.S. Fish and Wildlife Service, U.S. Department of Agriculture Natural Resources Conservation Service, National Park Services, National Oceanic and Atmospheric Administration, N.J. Division of Fish and Wildlife, N.J. Department of Treasury, and Warren Glenn Investments LLC:

5. List any other relationships, arrangements, transactions, or matters which could create a conflict of interest or the appearance of a conflict:

6. It is anticipated that the total award of Federal funds for this project may exceed \$10 million, and consequently the all award sub-recipients must make these additional disclosures required by 2 CFR Part 200 Appendix XII(A)(1-5). The Consultant must disclose all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting a Federal award of funds, as well as, for example, fines, settlements, or insurance payments made due to the performance of the company's professional services. *Please read the statement below and respond accordingly:*

In the prior 5-year period, based upon the date of submission for this RFP, the Consultant must disclose:

- (1) Debarment, suspension, or other exclusions by any Federal, State, or Local governmental agency that would make the Consultant ineligible to receive funds originating from Federal, State, or Local governmental agencies;
- (2) A Federal, State, or Local civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- (3) Any Federal, State, or Local administrative proceeding (including arbitration), that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- (4) Any other Federal, State, or Local criminal, civil, or administrative proceeding if:
 - i. It could have led to an outcome described in paragraph (1), (2), or (3) of the above;
 - ii. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

- iii. Disclosure of information about the proceeding does not conflict with applicable laws and regulations.

Please state which if any of the above provisions apply; attach additional information if needed:

- 7. Are there any pending judgement, suits, or claims pending against your company? If yes please explain:

Subsequent to a contract award, I consent to disclosing to MWA any information as described above during the contract award period on a semi-annual basis. I affirm that I have read and understand the MWA Conflict of Interest policy. I certify that I have accurately disclosed any known or potential conflicts of interest. I will make known to the MWA any conflicts that arise.

Signature

Title/Position

Printed Name

Date

ATTACHMENT 3.3 CONSULTANT QUESTIONNAIRE

CONSULTANT QUESTIONNAIRE

Please utilize the space below to answer questions; use additional space if necessary.

Company Information:

- Company Name:
- Company Address:
- Contact Name:
- Phone (Office/Mobile):
- Email:
- Company Website:
- Federal ID, TIN, or SSN:
- Dun and Bradstreet Number:
- Central Contractor Registration Number:
- Year Company Registered and State of Registration:

Prior MWA Work:

Please indicate if you or your company has done work with MWA in the past, the project name, year of work, and name of contact person.

Legal Information:

- Does your company utilize a dba or Doing Business as Name?

- Is the company a subsidiary? If yes, please provide the name and headquarters address of the parent company:

- Has your company ever operated under a different name? If yes, please provide:

Small Business, and Minority and Women Owned Enterprise Information:

- Indicate annual sale for the past three calendar years:
- 2019:
- 2020:
- 2021:

Number of Employees:

2021

2022:

Is your company a minority-owned or Native American-owned business, comprising of at least 51% ownership and control and operation by U.S. minority or Native American citizens, classified as a small business, and located in the U.S.?

Identify the % of minority or Native American ownership.

Is your company a women-owned business comprising at least 51% ownership and control and operation by women who are U.S. citizens, classified as a small business, and located in the U.S.?

Identify the % of women ownership.

Is your firm a Certified "Small Woman-Owned Small Business"? If yes, please Attach Certification Documentation

Other Information:

Is your company located in a Labor Surplus Area (<https://www.dol.gov/agencies/eta/lsa>)? If yes, please indicate the Area(s):

Are there any other qualifications or certifications MWA should know about your company (e.g. Service Disabled, Veteran, Program 8(a) participant, rural business, Certified B Corporation, etc.)?

Required Attachments:

- *Certificate of Standing, issued since at least September 1, 2022*
- Certificate of Insurance (as described in MWA's Standard Contract for Services, in Attachment 3.4
- If applicable: Certified Women-Owned Small Business document

ATTACHMENT 3.4 MWA STANDARD CONTRACT FOR SERVICES

GENERAL SERVICES AGREEMENT

THIS GENERAL SERVICES AGREEMENT (the "Agreement" and "Contract") is entered into and effective on the date of execution by the Musconetcong Watershed Association (MWA), a New Jersey corporation, with an office at and represented by the following person:

Entity:	Musconetcong Watershed Association
Contact:	
Address:	
Telephone:	
Email Address:	

and the following person or entity ("**Contractor**"):

Name of Contractor: (Include DBA, if any)	
Address:	
Telephone:	
Email Address:	
<i>For Entities Only (individuals leave blank):</i>	
Name of Representative:	
Type of Entity:	
State of Incorporation:	

MWA and Contractor may be referred herein each individually as "Party" and collectively as the "Parties."

WHEREAS

MWA is a not-for-profit corporation with a mission of protecting and improving the Musconetcong River and Watershed; and the Contractor is engaged in providing the services (as defined below) and has the necessary skill and expertise and qualified peoplepower for providing these services, and

MWA and Contractor now wish to contract for the provision of Services on the terms of this Agreement; In consideration of the premises and mutual promises contained herein, the Parties hereby agree as follows:

NOW, THEREFORE, in consideration of the foregoing premises, and of the mutual covenants and promises herein contained, the parties agree as follows:

1) Definitions

In this Agreement, the following terms have the following meanings unless the context otherwise expressly requires:

"Applicable Law" means all applicable provisions of any and all statutes, laws, instruments, rules, regulations, administrative codes, ordinances, decrees, orders, decisions, injunctions, awards, judgments, permits and licenses of or from any federal, national, state, provincial or local governmental or non-governmental authority, agency, undertaking or body (whether present or future and in any territory) which has any jurisdiction in respect of or relevance to the applicable Party (or its Affiliates) and its business and/or the relevant provisions of this Agreement.

“Change Order” means a written order to the Contractor signed by the MWA and the Consultant issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Consultant indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time. A Proposed Change Order (PCO) is a written request submitted to the MWA by the Consultant requesting a change to the contract price and / or schedule. Payment for changes in the Work will only be made after a Change Order is signed by the Consultant and executed by the MWA.

“Deliverables” means all deliverable items associated with the Services (including but not limited to plans, engineering drawings, reports, software, data, tables, manuscripts, reports, abstracts, printed matter, slide decks, online tools, pictures, audio, video, artistic works, works fixed in a tangible medium, processes or procedures, literary works or other works of authorship) delivered to MWA by Contractor under this Agreement and described in a Statement of Work or a Change Order.

“Dispute” means all disputes arising out of or relating to this Agreement or a Statement of Work, including the breach, termination or validity thereof.

“Effective Date” means the date set out at the beginning of this Agreement.

“Expiry Date” means **[INSERT DATE]**.

“Force Majeure Event” means acts of God, fire, natural disaster, war, riot, civil disorder, act of terrorism or revolution, disease, disaster, strikes, civil disorder, government regulation, legislation, or statement of policy which limits, prohibits or suggests curtailment of transportation, government issued health and safety orders, orders by a national, state, city, or local government or multilateral organization, or any other events or circumstances not within the reasonable control of the party affected.

“Government Official” (where ‘government’ means all levels and subdivisions of governments, i.e. local, regional, national, administrative, legislative, executive, or judicial, and royal or ruling families) means: (a) any officer or employee of a government or any department, agency or instrumentality of a government (which includes public enterprises, and entities owned or controlled by the state); (b) any officer or employee of a public international organisation such as the World Bank or United Nations; (c) any officer or employee of a political party, or any candidate for public office; (d) any person defined as a government or public official under applicable Law (including anti-bribery and corruption laws) and not already covered by any of the above; and/or; (e) any person acting in an official capacity for or on behalf of any of the above. “Government Official” shall include any person with close family members who are Government Officials (as defined above) with the capacity, actual or perceived, to influence or take official decisions affecting MWA business.

“Intellectual Property” shall mean patents, utility models, trademarks, service marks, rights in designs, copyrights, rights in databases and rights in know-how (whether or not any of these is registered or capable of registration and including applications for registration of any such thing) and all other similar rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

“MWA Confidential Information” means MWA Data that (a) is marked or otherwise identified as “confidential” or with a similar designation, or (b) even if it is not marked or identified as “confidential,” a reasonable person would recognize as information that ought to be treated as confidential information, including information relating to MWA business and financial affairs; MWA Personal Information; project and computer-related technical matters; and any other material, non-public information furnished to Contractor and Contractor Personnel by or on behalf of MWA under the Agreement.

“MWA Content” means the internal process designs and workflows, content, materials, formats, logos, trademarks or service marks, or any documents containing such, provided by MWA to Contractor for incorporation into any Deliverable, or for use in connection with this Agreement, and all associated Intellectual Property Rights.

“Regulatory Authority” means anybody (regional, national or supranational) whether regulatory, supervisory and or governmental authority enforceable by law over all or any part of the Services or all or part of MWA’s or the Contractor’s respective business, assets, resources, employees or members.

“Services” means the engineering services to be provided by Contractor and as set out in the Statement of Work.

“Statement of Work” means the statement of work outlining the Services to be provided attached as an Exhibit A.

“Subcontracting” means the delegation by Contractor of any function(s) constituting a part of the Services.

“Subcontractor” means any third party, including subrecipients of federal funds, and including agents and Contractor Affiliates to whom Contractor has delegated any function(s) constituting a part of the Services, including a third party to whom a Subcontractor further delegates any part of the Services

“Term” means the period from the Effective Date to the Expiry Date.

2) Interpretation

(a) Unless a contrary indication appears, in this Agreement:

- (1) headings are for ease of reference only;
- (2) a “person” includes any individual, legal entity, association, or other entity (whether or not having separate legal personality);
- (3) a reference to a gender includes each other gender;
- (4) words in the singular include the plural and vice versa; and
- (5) A reference to any Agreement (including this Agreement) or instrument is a reference to that Agreement or instrument as amended, novated, supplemented, extended or restated.

3) Order of precedence

The appendices, exhibits and schedules form part of the Agreement and shall have the same force and effect as if expressly set out in the body of the Agreement, and any reference to the Agreement shall include the appendices, exhibits and schedules. In the event of a conflict between or among such documents, the documents shall govern in this order:

- (a) this Agreement;
- (b) the appendices, exhibits and schedules and;
- (c) a properly executed Statement of Work.

4) Services

This Agreement sets out the terms and conditions under which Contractor shall provide the Deliverables, and perform the Services.

5) Contractor Performance

Contractor shall ensure that all Services performed and Deliverables are provided with all due professional diligence skill and care to standards of current practice, including adherence to professional licensure requirements, certifications, and trainings received, that would reasonably be expected in the relevant industry for the same or similar services. That it shall carry out and perform Services at all times in strict compliance with the Statement of Work and any established timelines and Applicable Laws.

6) **Services**

MWA engages Contractor to provide the services, goods and/or deliverables (collectively, the “Services”) described in Exhibit A (“Description of Services”) in accordance with the terms and conditions of this Contract. The parties acknowledge that none of the Services are to be performed or delivered outside of the United States or its territories.

7) **Payment.**

MWA will compensate Contractor for the Services as follows:

- (a) Contract Fee. **[INSERT]**
- (b) Invoices and Payments. Requests for payment of the Contract Fee must be submitted to MWA in the form of an invoice itemizing the Services performed or delivered during the invoice period. Invoices will be subject to review and approval by MWA, and MWA may deny payment of requests received more than sixty (60) days after the final deadline for the completion of Services. MWA will make all payments, subject to MWA’s receipt from Contractor of a properly completed IRS Form W-9, either (i) by check, or (ii) via Vendor ACH, subject to Contractor’s completion of MWA’s Vendor ACH Enrollment Form.
- (c) No Expense Reimbursement. Contractor will not be reimbursed for any expenses Contractor incurs in performing the Services which are not covered in the budget in this contract.
- (d) Remedies. In the event MWA reasonably considers that any invoice submitted by Contractor is defective or relates to Deliverables provided or Services performed otherwise than in accordance with Contractor’s obligations under this Agreement, MWA shall be entitled to withhold payment of the disputed amount (without prejudice to any other rights or remedies it may have) pending resolution of the dispute between the Parties (each acting in good faith). MWA reserves the right to set-off any sums in respect of which Contractor may be in default to MWA and any overpayments made by MWA. Disputes unresolved by these procedures shall be addressed as indicated in Clause 26(d).
- (e) Fair market value compensation. The Parties agree that the amounts paid under this Agreement are bona fide fair market value compensation for the Services conducted and Deliverables provided under this Agreement.

8) **Term**

This Contract shall become effective upon the last signature date below and expires on (the “Contract Term”). Any deadlines set forth herein may be extended only with MWA’s prior written consent, which may be provided by email. Time is of the essence in the performance of this Contract.

9) **Termination**

(a) Termination by either Party.

- (1) Either Party may terminate this Agreement immediately upon written notice if:

- i) the other Party becomes insolvent;
 - ii) if proceedings are instituted against the other Party for winding up or reorganization or other relief under any insolvency law; or
 - iii) if any substantial part of the other Party's assets come under the jurisdiction of a receiver, administrator, liquidator, trustee or similar officer in an insolvency proceeding authorised by law.
- (2) In the event of a material breach of this Agreement including, but not limited to, a material breach of any terms described or appearing as warranties, by either Party, the other Party may, in addition to any other remedies available to it, terminate this Agreement in its entirety. Such termination shall be in writing upon 30 days' prior notice, specifying the nature of the breach. The Party in breach shall have the opportunity to cure such breach during such 30-day period, provided such breach is, in the reasonable opinion of the non-breaching Party, capable of being remedied within such period. If the breach has been cured by the end of such period, this Agreement will not terminate.

(b) Termination by MWA only.

- (1) MWA may terminate this Agreement, in whole or in part, at any time with or without cause upon thirty (30) days' written notice to Contractor.
- (2) MWA may terminate this Agreement without payment of compensation or other damages caused to Contractor solely by such termination immediately upon written notice to Contractor if:
 - i) there is a change in control of Contractor by the acquisition by any person or entity, directly or indirectly, of more than fifty (50) percent of the voting stock of Contractor;
 - ii) there is any sale, lease, exchange or other disposition by Contractor of all or substantially all of its assets;
 - iii) Contractor, any Contractor Personnel or Subcontractor is or is proposed to be debarred, disqualified or suspended by a regulatory authority;
 - iv) Contractor violates any Applicable Law; or
 - v) If funding is terminated, MWA may also terminate contracts made based upon the funding awards.

(c) Notwithstanding the preceding paragraphs, MWA shall be entitled to terminate this Agreement immediately on written notice to Contractor, if Contractor fails to perform its obligations in accordance with Clause 25 (Anti-Bribery and Corruption). Contractor shall have no claim against MWA for compensation for any loss of whatever nature by virtue of the termination of this Agreement.

(d) Effect of Termination.

- (1) Upon termination of this Agreement by MWA, Contractor shall immediately cease work as provided in the notice of termination, and shall, if so instructed by MWA, cease to represent itself as providing services to MWA and deliver to MWA:

- (2) a report describing the current state of the Services and Deliverables to be provided by Contractor under this Agreement, or each Statement of Work affected by the termination, outstanding as of the date of termination;
 - (3) all MWA Confidential Information in its possession; and
 - (4) all Deliverables and all work in progress, in whatever state of development they may exist on the date of termination, in each case at no charge to MWA.
- (e) Upon receipt and delivery of all Deliverables, or other work in progress and all MWA Confidential Information or other materials delivered under paragraph (i) above to MWA, MWA shall pay Contractor, as expeditiously as is practicable (but in any event in accordance with the payment terms for all Services performed to the reasonable satisfaction of, and accepted by, MWA, up until the termination date, at the applicable rates, and shall reimburse expenses incurred in connection therewith which are reimbursable under the terms of this Agreement.
- (f) The obligation to pay for Services performed shall remain subject, for any Services performed in relation to Deliverables that would otherwise have been subject to testing or acceptance prior to payment, to such testing and acceptance before any payment shall be due under Clause 13(a)(i-v).
- (g) Termination of the Agreement by MWA will be without prejudice to any other rights and remedies available to MWA.

10) Conflict of Interest Determination

Contractor represents and warrants that, to the best of Contractor's knowledge, the information Contractor has provided on MWA's Conflict Inquiry Form (Exhibit B) is true and correct. If any of the information Contractor has provided changes during the term of this Contract, Contractor agrees to promptly notify MWA in writing of such change. Contractor will complete a Conflict of Inquiry Form on a semi-annual basis beginning at the date of contract execution.

11) Independent Contractor Status

The parties intend this Contract to create an independent contractor-client relationship and not an employee-employer relationship. Contractor is solely responsible for the conduct and control of the Services and fulfilling Contractor's duties and obligations under this Contract. Contractor is not an agent or employee of MWA, and no partnership, joint venture, or principal-agent relationship exists. Neither party will have any right, power, or authority by virtue of this Contract to create any obligation, express or implied, on behalf of the other party.

12) Taxes

Contractor is responsible for filing and paying its own taxes and for complying with the requirements of any applicable tax laws. MWA will not withhold or pay on behalf of Contractor or any of Contractor's employees any U.S. Federal, state, or local income tax, payroll tax, or any excise, sales, or use tax of any kind. MWA will report to the IRS on Form 1099 all fees paid to Contractor, as and to the extent required by Applicable Laws.

13) Performance of Work

Contractor represents and warrants that Contractor is qualified and will perform the Services in accordance with the highest standards of Contractor's profession or craft. Contractor is responsible for the complete performance of the Services notwithstanding the use of any subcontractors or work performed

by anyone else under Contractor's direction or control. Contractor will not be paid for any Services found by MWA to be unsatisfactory, as described below—

- (a) Upon receipt of the Deliverables, MWA shall review and/or test the Deliverables to determine whether they meet the applicable specifications and any requirements set forth in the Statement of Work (the "Specifications").
- (b) If unsatisfactory, MWA will notify Contractor, in writing, that it is rejecting the Deliverables within thirty (30) days after receipt. Any notice of rejection shall set forth the grounds for rejection. Contractor shall remedy any failures of the Deliverables to meet the Specification and shall thereafter promptly deliver corrected Deliverables, at no additional cost, to MWA.
- (c) Upon receipt of corrected Deliverables, MWA shall have thirty (30) days within which to test them and inform Contractor of its acceptance or rejection. This procedure may be repeated any number of times; provided, however, that if MWA determines that the Deliverables fail to meet the Specifications after it has tested them twice, MWA shall have, unless it elects to accept the Deliverables as delivered, the right to terminate this Agreement or the applicable Statement of Work in accordance with the provisions of the Clause.
- (d) If MWA determines that the Deliverables meet the Specifications after testing as set forth above, MWA shall accept the Deliverables by issuing a written confirmation of acceptance to Contractor.
- (e) Contractor's failure to deliver conforming Services or Deliverables shall be in addition to, and not in lieu of, any other remedies that MWA may have in law or equity, including, with respect to failures that constitute a material breach of the applicable Statement of Work or this Agreement, MWA's right to terminate for cause such Statement of Work or this Agreement pursuant to this Clause 9(b).

14) Representations Warranties

Contractor represents and warrants:

- (a) Power and authority. It has the requisite power, capacity and authority to enter this Agreement and to carry out its obligations under the Agreement.
- (b) Due execution. This Agreement will be executed by its duly authorized representative(s) and, once executed, shall constitute its legal, valid and binding obligations.
- (c) No conflicts. It has no outstanding Agreements or obligations which conflict with any of the provisions of this Agreement, or would preclude Contractor or Contractor Personnel from complying with the provisions of this Agreement and undertakes that it will not enter into any such conflicting Agreement during the Term.
- (d) Authorship. The Contractor is and will be the sole author of all works developed and/or used by Contractor and Contractor personnel, in preparing any and all Deliverables. If any, provided material provided by MWA (including MWA Content), is utilized in Contractor's works or deliverables, then MWA shall be credited for its contributions (e.g. photo credit), and, if significant contributions are made by MWA, MWA will retain joint authorship with the Contractor.
- (e) Assignment rights. The Contractor has and will have full and sufficient right to assign or grant the rights granted to MWA pursuant to this Agreement free and clear of any liens, claims or encumbrances.

- (f) Approvals and licenses and permits. As at the Effective Date and throughout the term of the Agreement the Contractor shall remain properly licensed and permitted and qualified to do business in all jurisdictions in which the Services are to be performed, and agrees that it will maintain such licenses and qualifications and acquire any additional licenses and qualifications as may be thereafter required by Applicable Law or otherwise. If any licenses required by Applicable Law are revoked or altered, Contractor shall immediately notify MWA.
- (g) No infringement of third-party rights. Providing, receiving or using the Services or Deliverables does not, and will not, and has not been alleged to, infringe the rights of any third Parties.
- (h) Contractor shall notify MWA in writing immediately on becoming aware of a breach (or circumstances that could give rise to a breach) of any of the warranties and representations in this Agreement.

15) Personnel

- (a) Contractor agrees that only appropriately trained, qualified and experienced Contractor personnel shall perform Services.
- (b) Contractor shall ensure that there shall at all times be a sufficient number of Contractor personnel employed or engaged in, and adequate resources made available for, the performance of the Services under this Agreement.
- (c) If MWA requests in writing the removal of any Contractor personnel due to reasonable concerns regarding significant misconduct, including but not limited to, a violation of Applicable Law, or threat to workplace or information security, discrimination, harassment, or unsafe work practices, Contractor shall immediately remove that person from providing the Services and assign an appropriately trained, qualified and experienced replacement reasonably acceptable to MWA, at no additional cost to MWA and without relieving Contractor of any of its obligations under this Agreement or the applicable Statement of Work. Contractor acknowledges that all employment-related decisions impacting Contractor personnel, such as re-deployment, re-assignment, discipline, or separation of employment, remains its sole responsibility as the employer.
- (d) In the event of such request, Contractor shall provide such replacement personnel within one (1) week of the request or, within such additional period of time as the Parties may mutually agree upon in writing, with personnel having appropriate training, skill and experience to perform the Services.
- (e) Contractor shall provide such replacement personnel and any extension in the timing of Services equal to the time lost due to said replacement, at no additional expense to MWA. This applies to both fixed price projects and time and material projects.
- (f) It is expressly understood and agreed that as between the Parties, Contractor Personnel performing Contractor's obligations under this Agreement shall be employed or engaged solely and exclusively by Contractor and all MWA personnel performing MWA's obligations under this Agreement shall be employed or engaged solely and exclusively by MWA. Contractor and MWA shall not be considered joint employers of any Contractor Personnel providing Services hereunder. Contractor agrees that, with respect to the Services provided hereunder, it shall be responsible and liable for all issues relating to the employment or engagement, training, management, removal and termination of Contractor Personnel, and that no Contractor Personnel are employees of MWA for any purpose, including, without limitation: (i) for country, regional or local tax, employment, withholding or reporting purposes; or (ii) for eligibility or entitlement to any benefit under any MWA employee benefit plan, incentive, compensation or other employee programs or policies ("MWA Benefit Plans"). Contractor agrees that such Contractor Personnel shall be informed that they are employees or, if applicable, Subcontractors, solely of Contractor, and not

eligible or entitled to participate in any MWA Benefit Plans. Neither party shall knowingly take any action or give any direction contravening the intent of this Paragraph.

- (g) In the event that any governmental or administrative agency, or other regulatory entity, or any court, determines that any Contractor personnel acted as an employee of MWA in performing Services (hereinafter referred to as the "Determination"), Contractor (i) waives any and all claims that Contractor may have as a result of any such Determination and acknowledges that Contractor agreed to render Services under this Agreement with the understanding that no employee of Contractor or Subcontractor of Contractor has any right or entitlement under any MWA Benefit Plans; and (ii) agrees to indemnify and hold MWA harmless from and against any and all liabilities, costs and expenses including, but not limited to, reasonable attorney's fees incurred by MWA as a result of, or related to, such Determination.
- (h) Further, Contractor acknowledges and agrees that it is liable and responsible for all Contractor's failure to comply with its responsibility for payment of all employee-related taxes and contributions due on money received from MWA and filing all appropriate tax returns and other forms with respect thereto; and all deductions required to be made by any Regulatory Authority.

16) Subcontractors of Contractor

Contractor shall not delegate or Subcontract the Services to be provided pursuant to this Agreement other than those included in the original proposal, without MWA's prior written approval and consent. In the event MWA elects to approve Contractor's proposed use of a Subcontractor to perform Services hereunder, Contractor shall be solely responsible to (i) supervise all Subcontractors that it engages with respect to Contractor's obligations; and (i) ensure that all Subcontractors it engages complies with all requirements contained in this Agreement. Upon MWA's request, Contractor shall supply MWA with a list of all Subcontractors used by Contractor. Contractor shall be and remain liable for the acts and omissions of Subcontractors.

17) Liability; Indemnification; Warranty

- (a) Contractor agrees that it is entering into this Contract and performing the Services entirely at Contractor's own risk.
- (b) Contractor shall indemnify, defend and hold MWA, its Affiliates, and each of their respective agents, officers, directors, employees, sub-contractors and agents (together "MWA Indemnitees") harmless from and against all liability, damage, loss, cost or expense (including reasonable attorneys' fees) in respect of all claims, judgments, settlements, demands, actions or suits arising from any claim (a "MWA Claim" and any MWA Claim or Contractor Claim is a "Claim"):
 - (1) any injury (including death) to any persons or loss or damage to any real or tangible property which may arise out of the negligent or intentional acts or omissions of Contractor, its employees, Subcontractors or agents in the performance of the Services being provided under this Agreement and any approved Statement of Work or in connection with the Deliverables, provided that Contractor shall not be liable for, nor be required to indemnify MWA in regard to, any injury, loss or damage to the extent that such loss or damage is caused by any negligent or intentional acts or omissions on the part of MWA or its employees, other suppliers, or agents;
 - (2) by a third party that any Deliverable, or the provision of the Services infringes the Intellectual Property Rights or misappropriates the trade secrets of that third party, except where any such MWA Claim arises solely from MWA's own written directions provided to Contractor in the course of Contractor's performance under this Agreement and any approved Statement of Work;

- (3) arising from Contractor's, its employees', Subcontractors' and agents':
- i) breach of any representation, warranty or undertaking set out under this Agreement, or failure to perform their obligations under this Agreement;
 - ii) violation of Applicable Law;
 - iii) failure to comply with the confidentiality obligations set out under this Agreement; or
 - iv) wilful abandonment of performance of the Services or provision of the Deliverables required by this Agreement and any approved Statement of Work; or
 - v) any acts of fraud, embezzlement or dishonesty committed by Contractor, its contractors, employees or agents, acting alone or in collusion with another party, in the performance of the Services. In such circumstances, the absence of insurance shall not diminish Contractor's responsibility to indemnify MWA.

(c) Indemnification Procedure

- (1) MWA shall provide prompt written notice to Contractor of any MWA Claim giving rise to indemnification.
- (2) With respect to Claims asserted by a third party ("Third Party Claim"), Contractor shall have the right to assume responsibility for, and control of the defense, including selection of counsel; provided however, that Contractor may not compromise or settle any claim or suit in a manner which admits fault or negligence on the part of MWA without the prior written consent of MWA (which shall not be unreasonably withheld). Contractor agrees to consult with MWA on all material issues which arise during negotiation, defense and/or settlement of a Third-Party Claim. MWA shall provide reasonable assistance necessary for defense at Contractor's expense.

(d) The Contractor agrees to the Warranty of Services in Exhibit A.

18) Limitation of Liability

Except as otherwise expressly provided in this Agreement and with the exception of liabilities for Third Party Claims arising under the Indemnification Clause, neither Party, nor its Affiliates nor any of their respective, directors, officers, employees, or agents shall be liable to the other Party for any special, incidental, consequential loss or damages, or punitive damages, including but not limited to the loss of opportunity, loss of use, or loss of revenue or profit in connection with or arising out of this Agreement, even if advised of the possibility of such damages.

Nothing in this Agreement shall exclude or limit the Contractor's liability for death or personal injury caused by the Contractor's negligence, fraud, or any matter which cannot be limited or excluded as a matter of law.

19) Insurance

Prior to commencing the Services and during the Contract Term, Contractor must have and maintain the following insurance policies:

- (a) Workers' Compensation Insurance for all of Contractor's employees employed for the work. In the event any work is subcontracted, Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of its employees, unless such employees are covered by the protection afforded by Contractor.

- (b) Commercial General Liability Insurance. Contractor shall maintain during the term of the Contract such Commercial General Liability Insurance which shall protect it, MWA, any other additional insured, and any subcontractor during the performance of work covered by the Contract from claims or damages for personal injury, including accidental death, as well as for claims for property damages, which may arise from work under the Contract, whether such work be by itself or by a subcontractor, or by anyone directly or indirectly employed by either of them, or in such a manner as to impose liability to MWA or any other additional insured. In the absence of specific regulations/provisions, the amount of coverage shall be as follows: Commercial General Liability Insurance, including bodily injury, property damage and contractual liability, with combined single limits of no less than \$1,000,000 per occurrence and annual aggregate.
- (c) Licensed and Non-Licensed Motor Vehicles and Watercraft. Contractor shall maintain during the term of the Contract, Automobile Liability Insurance in an amount not less than combined single limits of \$1,000,000 per occurrence for bodily injury/property damage. Such insurance shall cover the use of any licensed and non-licensed motor vehicles engaged in the work, unless such coverage is included in insurance elsewhere specified. If watercraft is engaged and/or utilized in any work under the Contract, Contractor shall maintain Watercraft Liability Insurance in an amount not less than combined single limits of \$1,000,000 per occurrence for bodily injury/property damage.
- (1) Such insurance shall be maintained during the term of the Contract, and cover the use of any licensed and non-licensed watercraft engaged in the work, unless such coverage is included in insurance elsewhere specified. If the watercraft engaged and/or utilized in such work is not owned and/or operated by Contractor, then Contractor shall require that any and all such subcontractors take and maintain the Watercraft Liability Insurance as prescribed and required by this Paragraph.
- (d) Professional Liability Insurance. Contractor shall maintain during the term of the Contract such Professional Liability Insurance, including Errors and Omissions coverage, for claims or damages to the extent caused by negligent engineering errors or omissions under the Contract, whether such work be by itself or by a subcontractor or by anyone directly or indirectly employed by either of them. Such professional liability insurance shall be in an amount of the total project, including engineering and construction costs, \$[CURRENTLY ESTIMATED AT \$15,000,000] per claim and in the aggregate. Contractor shall provide proof of continuing Professional Liability Insurance coverage during the course of the work and for one (1) year after completion of the work. If during performance of the Contract, it shall appear that the Professional Liability Insurance policy provided by Contractor is scheduled to expire, Contractor shall provide proof of continuing coverage no later than ten (10) days prior to the scheduled expiration of any such professional liability policy.
- (e) Excess/Umbrella Coverage. Contractor shall maintain during the life of the Contract, excess or umbrella liability insurance specific to the work under the Contract in an amount not less than \$[CURRENTLY ESTIMATED AT \$5,000,000] per occurrence and in the aggregate, which shall be in excess of the Commercial General Liability and Automobile Liability requirements.
- (f) Subcontractor's Insurance: Contractor shall require that any and all subcontractors, which are not protected under the Contractor's own insurance policies, take and maintain insurance of the same nature and in the same amounts as required for of Contractor in this section, except that the Comprehensive General Liability coverage shall have minimum limits of \$1,000,000 and no Professional Liability or Excess/Umbrellas coverage shall be required.
- (g) Endorsements: The insurance coverage required hereunder under include the following policy endorsements: Waiver of Subrogation, 30 Day Notice of Cancellation, and Waiver of Transfer of Recovery Against Others.

- (h) Contractor's and subcontractor's insurance policies must be primary to MWA's insurance policies. Before any of the Services commence, the foregoing requirements must be evidenced by one or more Certificates of Insurance, showing MWA as an additional named insured and requiring at least 30 days advance written notice to MWA of any cancellation, renewal, reduction in limits, or coverage or other material change of the policies. MWA reserves the right to request additional documentation, such as one or more policy endorsements, deemed reasonably necessary to ensure such requirements have been met. Funders, regulatory agencies, and property owners may request additional named insured certificates of insurance.
- (i) All insurance coverage shall be placed with insurers with an A.M. Best's rating of no less than A-; provided, however, this rating may be waived at MWA's discretion for Worker's Compensation coverage.

20) Compliance with Laws; Authorizations

Contractor represents, warrants, and agrees that Contractor; (i) can lawfully work in the United States; (ii) has or will obtain at Contractor's expense (except to the extent otherwise explicitly stated in this Contract) any permits, licenses, or authorizations, including without limitation, a property owner's prior permission before entering upon any private property, that are required to perform the Services, and; (ii) will comply with all statutes, laws, ordinances, executive orders, rules, regulations, court orders, and other governmental requirements for the jurisdiction(s) in which the Services are performed, the state in which MWA's Business Unit set forth on the first page of this Contract is located, and any other jurisdiction(s) in which Contractor is organized or authorized to do business (collectively, "Applicable Laws"). Contractor must not take any actions that might cause MWA to be in violation of any Applicable Laws. This provision must be included in all permitted subcontracts, as are flow-through provisions of applicable law listed in Exhibit C.1 and Exhibit C.2.

- (a) Counterterrorism, Anti-Money Laundering and Economic Sanctions Laws. Contractor represents and warrants that, to the best of Contractor's knowledge, Contractor and Contractor's subsidiaries, principals, and beneficial owners, if any (collectively, the "Contractor Parties"):
 - (1) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any government agency;
 - (2) are not included on the Specially Designated Nationals and Blocked Persons lists maintained by the U.S. Treasury's Office of Foreign Assets Control, the United Nations Security Council Consolidated List, or similar lists of proscribed entities identified as associated with terrorism; and (ii) will not engage in transactions with, or provide resources or support to, any such individuals or organizations or anyone else associated with terrorism;
 - (3) are not a person or entity with whom transacting is prohibited by any trade embargo, economic sanction, or other prohibition of law or regulation; and
 - (4) have not conducted, and will not conduct, their operations in violation of applicable money laundering laws, including but not limited to, the U.S. Bank Secrecy Act and the money laundering statutes of any and all jurisdictions to which the Contractor Parties, or any one of them, is subject, and no action or inquiry concerning money laundering by or before any authority involving any of the Contractor Parties is pending.
 - (5) Should Contractor become aware that Contractor or any other of the Contractor Parties is subject to any of the above conditions of this Clause during the term of this Contract, Contractor must immediately notify MWA in writing. If MWA determines that the Contractor or any of the Contractor Parties is subject to any of the above conditions of this Clause, MWA may terminate this Contract effective immediately upon written notice to Contractor, with no further obligation

by MWA under this Contract, including payment, and MWA may pursue all available remedies under Applicable Laws (Termination for Cause). The terms of this Section must be included in all permitted subcontracts.

21) Use of Third-Party Names

- (a) Use of MWA Name and Logo. Unless expressly authorized in writing in this Contract or in a separate written Agreement, Contractor may not use MWA's name, logo, or other intellectual property in any manner, whether in conjunction with the Services or otherwise, except (i) to deliver invoices or other notices to MWA and (ii) within acknowledgements of MWA funding, as authorized in writing by MWA.
- (b) Neither Party shall make or release or have made or released on its behalf any statement, information advertisement or publicity in connection with this Agreement or any related document.
- (c) Neither Party may use the other Party's name, trademarks or in any other way identify the other Party unless it has obtained that other Party's prior written consent.
- (d) Contractor shall follow procedures in Exhibit C.3 for disclosure of private funders.

22) Confidential Information

- (a) In performing the Services, Contractor might have access to information, whether verbal, in writing, in electronic format, or in any other tangible form, disclosed by MWA, directly or indirectly, to Contractor that is (i) identified as confidential, or (ii) disclosed in a manner in which MWA reasonably communicates, or that Contractor should reasonably have understood, should be treated as confidential, whether or not designated as "confidential" (collectively, "Confidential Information"). Confidential Information includes, without limitation, data sets, donor data, marketing plans, salaries, research, products, technologies, software source code, software object code, data collection functionalities, trade secrets, pre-publication patent applications, research and development, know-how, and other information relating to MWA and its operations, programs, or systems. Contractor may not, without MWA's prior written consent, use, publish, or divulge any Confidential Information, and agrees to use Confidential Information solely in furtherance of the Services and for no other reason. Contractor must use appropriate security procedures to safeguard Confidential Information, such as maintaining information on password protected computers or locked file cabinets. Contractor acknowledges and agrees that in the event Contractor receives any personal identifying information (i.e., information that identifies or can be used to identify an individual or that relates to an identified individual), Contractor (i) will be subject to an MWA IT Security review prior to such transfer or exchange and (ii) Contractor will comply with all Applicable Laws relating to the protection of personal identifying information. In addition, Contractor must comply with any additional requirements relating to protection of data as set forth in this Contract, Exhibits, or other attachments.
- (b) The Contractor must not require their employees, subrecipients, or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality Agreements or statements prohibiting or otherwise restricting such employees, subrecipients, or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information. The Contractor must notify their employees, subrecipients, or contractors that existing internal confidentiality Agreements covered by this condition are no longer in effect. The Contractor must furnish upon request communication of the above policy to its employees, subrecipients, or contractors upon request by MWA and/or federal agencies.
- (c) This Contract is subject to federal Whistleblower protections as indicated in Exhibit C.1.
- (d) This Contract, and deliverables and work products deriving from it, are subject to public information requests and documentation retention policies as indicated in Exhibit C.1.

23) Work Product; Intellectual Property

- (a) Contractor retains all right, title, and interest in works, inventions, and other intellectual property original to or owned by Contractor prior to the execution of this Contract or created outside the scope of this Contract. Contractor retains sole authorship of works developed through this Agreement, as indicated in Clause 14(d) , including but not limited to inventions, concepts, processes, reports, derivative works, studies, photographs, software (including in both object code and source code form), drawings, designs, writings, related drafts, supporting materials, or data (collectively, the “Works”).
- (b) Contractor assigns MWA a non-exclusive, royalty free, irrevocable perpetual worldwide license for the right to use, publish, distribute, copy, summarize, or excerpt the Contractor’s intellectual property produced through this Contract for non-commercial purposes only, including through use on the funder’s website. This provision does not allow a MWA or third-party to materially alter, distort, or factually misrepresent the Contractor’s Intellectual Property, and shall not make the Contractor liable for the result of any public harm from the willful or inadvertent alteration, distortion, or misrepresentation of Contractor work products, including but not limited to engineering drawings, reports, or memorandum prepared by professionally-licensed personnel or subcontractors. This section shall survive termination of the Agreement.
- (c) Additional Intellectual Property provisions are indicated in Exhibit C.1 and C.3, including the federal government’s rights.

24) Ethical Standards and Human Rights

Contractor represents and warrants, to the best of its knowledge, that in connection with this Agreement, it respects the human rights of its staff and does not employ child labor, forced labor, unsafe working conditions, discrimination of protected characteristics or groups, or cruel or abusive disciplinary practices in the workplace; and that it pays each employee at least the minimum wage, provides each employee with all legally mandated benefits, and complies with the laws on working hours and employment rights in the State(s) in which it operates.

25) Anti-bribery and Corruption

The Contractor agrees to comply fully at all times with all applicable laws and regulations, including but not limited to anti-corruption laws, and that the Contractor has not, and covenants that it will not, in connection with the performance of this Agreement, directly or indirectly, make, promise, authorize, ratify or offer to make, or take any act in furtherance of any payment or transfer of anything of value for the purpose of influencing, inducing or rewarding any act, omission or decision to secure an improper advantage; or improperly assisting the Contractor or MWA in obtaining or retaining business, or in any way with the purpose or effect of public or commercial bribery, and warrants that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so. For the avoidance of doubt this includes facilitating payments, which are unofficial, improper, small payments or gifts offered or made to government officials to secure or expedite a routine or necessary action to which the Contractor and/or MWA are legally entitled.

26) Miscellaneous Terms and Conditions.

- (a) Further Assurances. The Parties shall, and shall ensure that their agents, employees and approved sub-contractors shall, do all things reasonably necessary, including executing any additional documents and instruments, to give full effect to the terms and conditions of this Agreement.
- (b) Notices. Any notice, request, or demand made by either party to this Contract must be in writing and must be delivered: (i) in person; (ii) by mail, postage prepaid, certified (return receipt requested); (iii) by a

nationally recognized, next-day delivery service with tracking information and requesting next-business day delivery; or (iv) email. Notices must be addressed to the other party at that party's address first stated above and will be deemed delivered: (i) immediately if delivered in person; (ii) three business days after deposit in the mail if sent as described above; (iii) the next business day if sent by an overnight service and sent as required above; or (iv) on the first business day after sending by email.

- (c) **Governing Law; Forum.** This Agreement shall be governed by and construed in accordance with the Laws of the State of New Jersey without reference to conflict of law principles.
- (d) **Dispute Resolution.** In the event of a dispute, controversy, or claim arising out of or relating to this Agreement ("Dispute"), the Parties agree that such Dispute shall be referred first to senior management with appropriate authority for good faith discussion and resolution. If such Dispute cannot be resolved within thirty (30) days, MWA shall have the right to terminate this Agreement as described under Clause 9(b).
- (e) **Assignment.** Contractor may not assign this Contract or subcontract any portion of the Services without MWA's prior written consent, which may be granted via email. MWA's consent may be granted or withheld in MWA's sole discretion.
- (f) **Severability; No Waiver.** If any provision(s) of this Agreement should be illegal or unenforceable in any respect, the legality and enforceability of the remaining provisions contained in it shall not be affected and the Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be maintained.
- (g) **Joint and Several Liability.** If two or more persons or entities are identified as Contractor in this Contract, their obligations under this Contract are and will be joint and several.
- (h) **Counterparts.** This Contract may be executed in one or more counterparts, each of which will be deemed an original and all of which will constitute the complete Contract.
- (i) **Consent to electronic signatures.** Facsimile or scanned signatures on this Contract may be used for Change Orders, where digital or electronic signatures where authorized under Applicable Laws, will be fully binding for all purposes under this Contract. The Contract requires an inked signature.
- (j) **Authorization to Sign.** Contractor represents and warrants that the person signing this Contract on behalf of Contractor is duly authorized to sign this Contract on Contractor's behalf.
- (k) **Amendment and Variation.** An amendment or variation of this Agreement by Change Order shall be in writing and signed by each Party's authorized representatives.
- (l) **Survival.** The "Liability; Indemnification; Warranty," "Confidential Information," and "Work Product; Intellectual Property" Sections of this Contract will survive the expiration or earlier termination of the Contract.

27) Additional Terms and Conditions

This Contract is further subject to the additional terms and conditions set forth in the following Exhibit C (and subsequent exhibits, in the event more than one option is selected):

- (a) Additional Service Terms and Conditions Attachment: Exhibits A & B
- (b) U.S. Government Laws and Regulations Attachment: Exhibit: C.1

Exhibit C.2: State Requirements
Exhibit C.3: Private Funder Requirements

EXHIBIT A
Description of Services

General

MWA is retaining Contractor to conduct professional engineering services related to design, permitting, bid management, and construction oversight to facilitate the removal of the Warren Mill Dam located in Holland Township and Pohatcong Township, New Jersey. Services will be performed in a compliance will all applicable laws and in a professional manner, consistent with the required professional licensures, certifications, and trainings required to perform engineering services.

Statement of Work

[Insert Text based upon Funding Award(s)]

Engineering and Design Warranty

The Contractor is solely responsible for performance of its professional engineering services. The Contractor warrants and represents that each of its employees, Subcontractors, or agents assigned to perform any services under the terms of this Agreement shall have the skills, training, and background reasonably commensurate with his or her level of performance or responsibility, so as to be able to perform in a competent and professional manner. The Contractor further warrants that the services provided hereunder will conform to the requirements of this Agreement.

Contractor warrants it will perform its engineering and design services (“Engineering Services”) in accordance with the current standards of care and diligence normally practiced by recognized engineering firms in performing services of a similar nature. If during the two (2) year period following acceptance of the Services it is shown that there is an error or omission in the Engineering Services as a result of Contractor failure to meet those standards and Buyer (MWA) has notified Contractor in writing of any such error within that period, Contractor shall reperform such Engineering Services within the original scope of Services as may be necessary to remedy such error. All costs incurred by Contractor in performing such corrective engineering and design services shall be to the account of Contractor. It is understood and agreed that time is of the essence with respect to the correction of any such error or omission. Nothing herein shall remove or limit the Buyer’s right to make a claim for damages as otherwise provided in the terms and conditions of this document.

The Contractor holds harmless MWA of any and all claims against the Contractor due to fault of the Engineering Services performed. Contractor shall retain all insurance coverages as specified in Contract, and will maintain professional liability and errors and omissions insurance coverage for the value of the total project, including engineering and construction; and, if total project costs increases above the coverages specified in the Contract, the Contractor will increase its insurance coverage levels inclusive of the increased costs.

EXHIBIT B
Conflict Inquiry Form

**CONFLICT OF INTEREST POLICY
AND MANDATORY DISCLOSURES
FOR THE
MUSCONETCONG WATERSHED ASSOCIATION (MWA)**

Purpose

Ensure the real or perceived conflict of interest between MWA, its Contractors, funders, site owners, and regulatory agencies does not undermine project outcomes. The policy requires documentation to substantiate this goal and ensure federal compliance requirements are met.

Definitions

Conflict of Interest -- a conflict, or the appearance of a conflict, between the private interests and official responsibilities of a person in a position of trust. Persons in a position of trust include staff members, officers, and trustees of the MWA. Conflicts include, but are not limited to the following:

- d. A MWA trustee that is related to Contractor or Potential Contractor by blood, marriage, domestic partnership or shared living quarters.
- e. A MWA staff member in a that is related by blood, marriage, domestic partnership or shared living quarters with a Contractor or Potential Contractor.
- f. A Contractor or Potential Contractor relationship by blood, marriage, domestic partnership or shared living quarters with current or potential funder or site owner.

NOTE: MWA Trustees and Staff or listed on www.musconetcong.org.

8. Please list the Names of employees who are part of the Project Team:

9. Are you or your employees related to another trustee or staff member by blood, marriage, domestic partnership or shared living quarters? If Yes, describe:

10. List any current or proposed business dealings between your firm and the MWA (as an organization or with specific individuals):

11. Please list any employee of the proposed Project Team with relationship (by blood, marriage, domestic partnership or shared living quarters) with personnel of the U.S. Fish and Wildlife Service, U.S. Department of Agriculture Natural Resources Conservation Service, National Park Services, National Oceanic and Atmospheric Administration, N.J. Division of Fish and Wildlife, N.J. Department of Treasury, and Warren Glenn Investments LLC:

12. List any other relationships, arrangements, transactions, or matters which could create a conflict of interest or the appearance of a conflict:

13. It is anticipated that the total award of Federal funds for this project may exceed \$10 million, and consequently the all award sub-recipients must make these additional disclosures required by 2 CFR Part 200 Appendix XII(A)(1-5). The Consultant must disclose all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting a Federal award of funds, as well as, for example, fines, settlements, or insurance payments made due to the performance of the company's professional services. *Please read the statement below and respond accordingly:*

In the prior 5-year period, based upon the date of submission for this RFP, the Consultant must disclose:

- 18)** Debarment, suspension, or other exclusions by any Federal, State, or Local governmental agency that would make the Consultant ineligible to receive funds originating from Federal, State, or Local governmental agencies;
- 19)** A Federal, State, or Local civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- 20)** Any Federal, State, or Local administrative proceeding (including arbitration), that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- 21)** Any other Federal, State, or Local criminal, civil, or administrative proceeding if:
 - iv. It could have led to an outcome described in paragraph (1), (2), or (3) of the above;
 - v. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - vi. Disclosure of information about the proceeding does not conflict with applicable laws and regulations.

Please state which if any of the above provisions apply; attach additional information if needed:

14. Are there any pending judgement, suits, or claims pending against your company? If yes please explain:

Subsequent to a contract award, I consent to disclosing to MWA any above information as described above during the contract award period on a semi-annual basis. I affirm that I have read and understand the MWA Conflict of Interest policy. I certify that I have accurately disclosed any known or potential conflicts of interest. I will make known to the MWA any conflicts that arise.

Signature

Title/Position

Printed Name

Date

EXHIBIT C.1
Federal Requirements

Compliance with Federal Laws and Regulations

All applicable federal, state and local requirements are flowed down to the Contractor, including but not limited to the provisions of the OMB Uniform Guidance, Compliance with Anticorruption, Anti-Money Laundering, Terrorist Financing, and Trafficking in Persons Statutes and Other Restrictions. The Contractor shall also include in any subaward or subcontract a similar provision to include a subsequent flow down of federal, state and local requirements to lower-tiered contractors, sub-contractors, consultants, or other parties. Terms referring to "Award" are interchangeable with "Contract" and "Subrecipient" is interchangeable with any lower-tiered contractor, sub-contractor, consultant, or other third party deriving payment via activities governed in this Contract which are in whole or in part originating from federal funding sources. For the purposes of this Agreement, the Contractor should assume that all payments, in part or whole, derive from federal funds or funds matching federal funds as part of a federal grant award, unless otherwise explicitly told by MWA in writing that the funding source for an activity does not have a federal origin.

1. CONTRACTING PROVISIONS

1.1 Conflicts of Interest

By execution of this Contract, the Contractor acknowledges that it is prohibited from using any Project funds received under this Agreement in a manner which may give rise to an apparent or actual conflict of interest, including organizational conflicts of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of MWA may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. An organizational conflict of interest is defined as a relationship that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. The Contractor represents and certifies that it will adhere to these requirements and MWA's Conflict of Interest policy. If the Contractor becomes aware of any actual or potential conflict of interest or organizational conflict of interest, during the course of performance of this Contract, the Contractor will immediately notify MWA in writing of such actual or potential conflict of interest, whether organizational or otherwise.

1.2 Prohibition on Issuing Financial Assistance Awards to Entities that Require Certain Internal Confidentiality Agreements

The Contractor must not require their employees, subrecipients, or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality Agreements or statements prohibiting or otherwise restricting such employees, subrecipients, or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information. The Contractor must notify their employees, subrecipients, or contractors that existing internal confidentiality Agreements covered by this condition are no longer in effect. The Contractor must furnish upon request communication of the above policy to its employees, subrecipients, or contractors upon request by MWA and/or federal agencies.

1.3 Prohibition on Members of Congress Making Contracts with Federal Government.

In compliance with 41 U.S.C. §6306, no member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public's general benefit. This provision shall flow

down in all subawards and contracts, including a requirement that subrecipients similarly flow down this provision in all lower-tiered subawards and subcontracts.

2.0 PURCHASING PROVISIONS

2.1 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

As required by 2 C.F.R. § 200.216, the Contractor is prohibited from expending funds awarded under this Agreement to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services from Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company, or any other company, including affiliates and subsidiaries, owned or controlled by the People's Republic of China, which are a substantial or essential component of any system, or as critical technology as part of any system. By and through the execution of this Agreement, the Contractor warrants and represents that the Contractor will not expend funds awarded under this Agreement for “covered telecommunications equipment or services” (as this term is defined and this restriction is imposed under 2 C.F.R § 200.216).

2.2 Buy America Provisions - Domestic Preference for Procurements

Under this Agreement and in accordance with 2 C.F.R. § 200.322 the Contractor shall provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). As required by Section 70914 of the Infrastructure and Jobs Act (Public Law 117-58), the Contractor may not be awarded any funds unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

For purposes of this Agreement, the following definitions apply:

- (a) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (b) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; lumber; and drywall. This means the cost of the components of the manufactured product are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product unless another standard for determine the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
- (c) “All construction materials are manufactured in the United States” – means that all manufacturing processes for the construction materials occurred in the United States.

This Buy America provision only applies to the articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies brought to the construction site or removed at or before the completion of the infrastructure project. Nor does a Buy America provision apply to equipment and furnishings such as office furniture and computer equipment not used at a fixed location or permanently affixed with the infrastructure project.

Under certain circumstances, these requirements may be subject to a waiver, which requires submission to the federal awarding agency(ies).

2.2 Biobased Products

Government policy on the use of products containing recovered materials and biobased products considers cost, availability of competition, and performance. Contracts should specify that these products are composed of the highest percent of recovered material or biobased content practicable, or at least meet, but may exceed, the minimum recovered materials or biobased content of an EPA- or USDA- designated product. For purchases in excess of \$10,000, purchases of these products should be the maximum extent practicable without jeopardizing the intended use of the product while maintaining a satisfactory level of competition at a reasonable price.

Information for qualifying materials is available at:

- (a) Recovered Materials. Contracting officers should refer to EPA’s list of EPA-designated items (available via the Internet at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products>) and to their agencies’ affirmative procurement program when purchasing products that contain recovered material, or services that could include the use of products that contain recovered material.
- (b) Biobased products. Contracting officers should refer to USDA’s list of USDA-designated items (available through the Internet at <http://www.biopreferred.gov>) and to their agencies affirmative procurement program when purchasing supplies that contain biobased material or when purchasing services that could include supplies that contain biobased material.

3.0 ADDITIONAL COMPLIANCE REQUIREMENTS

3.1 Trafficking in Persons

Pursuant to section 106(a) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104(g)) (codified at 2 CFR Part 175), the Contractor shall comply with the below provisions. Further, the Contractor shall flow down these provisions to lower-tiered contractors, sub-contractors, consultants, or other parties. The provision is cited herein:

I. Trafficking in persons.

a. Provisions applicable to a recipient that is a private entity.

- 1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
- 2. We as the federal awarding agency’s pass-through entity may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),”.

b. Provision applicable to a recipient other than a private entity. We as the federal awarding agency’s pass-through entity may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity –

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),”.
- c. Provisions applicable to any recipient.
1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- d. Definitions. For purposes of this award term:
1. “Employee” means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 3. “Private entity”:
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
 4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

3.2 Restrictions on Lobbying

The Contractor agrees to comply with 43 C.F.R. § 18, New Restrictions on Lobbying, including the following certification:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (c) The Contractor shall require that the language of this certification be included in the award documents for all contracts at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Agreements) and that all Subrecipients shall certify accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3.3 Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving.

Contractors are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in section 3(a) of the order. The Contractor shall flow down this provision in all subawards and contracts, including a requirement that subrecipients similarly flow down this provision in all lower-tiered subawards and subcontracts.

3.4 Geospatial Data

The Geospatial Data Act of 2018 (Public Law 115-254) (codified at 43 U.S.C. 2801-2811) requires recipients of federal funds to conduct a due diligence search at the GeoPlatform.gov list of datasets to discover whether the needed geospatial-related data, products, or services already exist. If the required data set already exists, the recipient must use it. If the required data is not readily available, the recipient must produce the proposed geospatial data, products, or services in compliance with applicable proposed guidance standards established by the Federal Geospatial Data Committee posted at www.fgdc.gov.

3.5 Whistleblower Protections

This Contract is subject to 41 U.S.C. 43 C.F.R. § 4712, Enhancement of Recipient and Subrecipient Employee Whistleblower Protection:

- (a) This award, related subawards, and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards, and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies established at 41 U.S.C. § 4712.
- (b) Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. § 4712, including the contact information for the Whistleblower offices of each funding agency.
- (c) The recipient shall insert this clause, including this paragraph (c), in all subawards and contracts over the simplified acquisition threshold related to this award.

3.6 Intellectual Property & Document Retention Requirements

Federal government intellectual property rights and document retention policies in effect for this Agreement include those stated below:

1. Intangible Property.
 - (a) Title to intangible property (see definition for Intangible property in 2 CFR § 200.1) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in § 200.313(e).
 - (b) The Non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.
 - (c) The Non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements."
 - (d) The Federal Government has the right to:
 - (1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and
 - (2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
 - (3) In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the Federal awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the Federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).
 - (4) Published research findings means when:
 - (i) Research findings are published in a peer-reviewed scientific or technical journal; or
 - (ii) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. "Used by the Federal Government in developing an agency action that has the force and effect of law" is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.
 - (5) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:
 - (i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and
 - (ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.
2. Property trust relationship (2 CFR § 200.316).
 - (a) Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

3. Restrictions on public access to records (2 CFR § 200.338).
 - (a) No Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under § 200.315. Unless required by Federal, state, local, and tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.
4. Document Retention.
 - (a) The Contractor shall retain all documents connected with this Agreement for a period of at least three (3) years following the receipt of the Contractor's final payment, inclusive of work products, correspondence, pay stubs, subcontract documents, invoices, etc.. If any litigation, claims, or audit is started prior to the expiration of the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit finding or pending matters involving the records have been resolved and final action taken. MWA shall notify the Contractor is any such litigation, claim, or audit takes place which would require an extension of the document retention period.
 - (b) MWA and/or funding agencies shall have access to such records and financial statements upon request, as shall Inspectors General, the Comptroller General of the United States or any of their representatives is the Funding Source or any funding entity (i.e. secondary funding source) is a federal agency and/or any portion of the Contract is paid with federal funds. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.

3.7 Additional Requirements

Subsequent federal funding awards for this Contract may require revisions, updates, or new flow down requirements, which the Contractor is expected to comply or provide notice to MWA of contract termination due to inability to comply.

Additional compliance with federal laws and regulations includes, but is not limited to:

- Clean Water Act
- Migratory Bird Treaty Act
- Native American Graves Protection and Repatriation Act
- National Endangered Species Act
- National Environmental Protection Act
- National Historic Preservation Act
- National Wild and Scenic Rivers Act

**Exhibit C.2
State Requirements**

Compliance

All bid contracts shall require that all facilities must be constructed in accordance with all applicable State and local construction codes.

Disbarment

Under N.J.A.C. 7:1-5 vendors currently suspended, debarred, or disqualified are excluded from participation on this project.

Financial Records

All financial records related to this project may be requested by state awarding agencies.

Exhibit C.3 Private Funder Requirements

Definition

Private funders include philanthropic foundations recognized by the IRS, individual donors, and re-granting entities (e.g. National Fish and Wildlife Foundation, National Park Foundation) which pass through both private and public funds.

Use of Third-Party Names

MWA is often required to utilize stipulated text in public communications about private funders subject to pre-approval requirements for proposed usage(s). Contact MWA prior to use of any funder's name, logo, or other branded content not less than fourteen (14) days prior to the intended use in any and all public acknowledgement. This includes public communications such as but not limited to: press releases, contract award notices, social media postings, website postings, video, and media interviews.

Contractor agrees to provide content to describe its role in this project for public communications, such as website content, blogs, interviews, or video interviews, if requested by MWA and/or in response to a funder request.

Equity

Contractor agrees that it will not unlawfully discriminate in its employment practices and conduct of deliverables based upon any characteristic, class, or group that is protected by law during the Contract duration.

Participation in Evaluation Activities

Contractor will participate in reasonable requests to evaluate funding award program performance. Typically, this may include interviews of key personnel and completion of questionnaires. Evaluation activities may be timed prior to project start, during the project, and/or after project completion.

Intellectual Property Rights

Contractor retains authorship of its work and assigns a non-exclusive, royalty free, irrevocable perpetual worldwide license for the right to use, publish, distribute, copy, summarize, or excerpt the Contractor's intellectual property produced through this Contract for non-commercial purposes only, including through use on the private funder's website. This provision does not allow a private funder to materially alter, distort, or factually misrepresent the Contractor's Intellectual Property, and shall not make the Contractor liable for the result of any public harm from the willful or inadvertent alteration, distortion, or misrepresentation of Contractor work products, including but not limited to engineering drawings, reports, or memorandum prepared by professionally-licensed personnel or subcontractors. This section shall survive termination of the Agreement.