

**HUNGRY RUN SECTION 319 STREAM RESTORATION &
STORMWATER MITIGATION PROJECT PHASE I
CONTRACTUAL AGREEMENT**

This Contract is entered into the _____ day of _____, by and between the Mifflin County Conservation District, 20 Windmill Hill #4, Burnham, PA, hereinafter “MCCD”, and _____, hereinafter “**Contractor**”. MCCD and **Contractor** agree as set forth:

1. **Contract.** The Contract documents consist of this Agreement, MCCD’s DEP Section 319 Grant Agreement with Attachments A1-C3, General Instructions for RFP Submitters, Proposal Sheet, Rate Schedule, Phase I Simplified Budget, Phase II Detailed Budget, and the Scope of Work as set forth on the RFP Instructions, together with any other addenda issued prior to the execution of this Agreement and Modifications or Change Orders issued after the execution of this Agreement. The aforementioned documents form the Contract and are as fully a part of the Contract as if attached to this Agreement. The Contract represents the entire integrated Agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral.
2. **“Work”.** The term Work means the construction and services required by the Contract documents and includes all other labor, equipment and services provided or to be provided by the **Contractor** to fulfill the **Contractor**’s obligations.
3. **MCCD’s Responsibility.** MCCD will assure access and provide all assessment and other information that it has about the site including, but not limited to, maps, elevations, and hazards as may be necessary for **Contractor** to complete the Work.
4. **Contractors Responsibility.** The Contractor is responsible for the project survey, design, permitting, materials, and labor.
5. **Change Order and Delays –** The **Contractor** shall establish a Rate Schedule, to include but not be limited to the categories below, to be used for the determination of costs

related to changes beyond the defined scope of the RFP document. When practicable, additional work, or changes to the work shall be made by the Contractor in writing and submitted to and approved by both MCCD and DEP. Field changes involving any aspect of the permit(s) can only be authorized by DEP. Furthermore, any project decisions made by MCCD's Project Inspector or a representative of MCCD, will be made in consultation with the DEP and the Contractor's designated representative in the field and documented in writing in order for the project to proceed without significant delay. MCCD will be bound by the changes to the work authorized by it or its authorized representative. A dollar amount of \$500 per day shall not be exceeded for changes established after to signing of the contract or any amendment. If the Contractor is delayed in commencing or completing its work due to causes within its control, then the MCCD may reduce the agreed to contract amount by the sum of \$500 per day beyond the termination date, to cover the cost of additional administration and inspection, as well as any additional expenses incurred. The Contractor is to complete the work as proposed at the Contractor's expense. If the Contractor is delayed in commencing or completing its work due to causes within the control of MCCD, then the Contractor may bill the amount or the sum of the relevant categories listed below for each day of the delay. The categories to be included in the Rate Schedule are: Laborer; Project Management; Excavator with thumb; Wheel Loader; Dozer; Per Diem; Survey Crew; Mobilization; and other anticipated categories identified by the Contractor that are to be considered in any amendment to the contract.

6. **Acts of God** - If the Project is delayed due to adverse weather or stream conditions, by an Act of God, strikes, war, riot, terrorism or other acts resulting directly or indirectly from other conditions beyond the control of MCCD or the Contractor, then the contract completion date will be adjusted by Change Order to reflect the new completion date without additional cost to either party. Adverse stream conditions, are those that exceed $\frac{3}{4}$ (three quarters) of the depth of the "stream bankfull". The Project Inspector for MCCD reserves the right to determine when weather or other unforeseen circumstances warrant a delay or suspension in work. The contractor will not be held responsible for any damage to portions of the project that have already been completed and approved by

the Project Inspector. Any significant delays which create more than a 10% (ten percent) increase or decrease in the work described in the detail design drawings will result in a written “change order” that may be used to increase or decrease the contract amount, or extend the termination date of the contract depending on the benefits or negative impact(s) of the changes.

7. **MCCD’s right to stop the Work.** If the Contractor fails to complete the Work within the Contract time or correct Work which is not in accordance with the requirements of the Contract documents, MCCD by written order, may order the Contractor to stop the Work.
8. **MCCD’s right to carry out the Work.** If the Contractor fails or neglects to carry out the Work in accordance with the Contract documents and fails within a seven (7) day period after receipt of a written notice from MCCD to commence and continue correction of such default or neglect with diligence and promptness, MCCD may after such seven (7) day period, without prejudice to other remedies, correct such deficiencies. In such case, the appropriate Change Order shall be issued, deducting from the payments then or thereafter due the Contractor, the cost of correcting such deficiencies.
9. **Time of the Essence.** Time is of the essence in this Contract and, in particular, the completion of the Work is to be on or before June 15, 2013.
10. **Payment Terms.** MCCD shall, within ten (10) days of the date of invoice receipt, inspect the Work, if applicable, and submit a request for payment to DEP if necessary. MCCD anticipates that within (10) days of invoice receipt and Work inspection, it shall pay the Contractor for the Work, unless insufficient on-hand funds from DEP are available. If insufficient funds from DEP are unavailable, MCCD anticipates that it will receive the funds approximately 90 days after submission to DEP. MCCD agrees that within ten (10) days of receipt of the funds from DEP, it shall pay Contractor for the Work. Payment of Contractor is expressly conditioned on MCCD’s receipt of funds from

DEP and MCCD shall not be liable to Contractor or any other party for any negligence or delay on the part of DEP in releasing funds for payment.

11. **Dispute Resolution.** All claims, disputes and other matters in question arising out of, or relating to, this Agreement shall be referred to statutory arbitration under the Pennsylvania Uniform Arbitration Act, 42 Pa.C.S. Sections 7301 et seq. (the “Uniform Arbitration Act”). Such arbitration shall be by a panel of three arbitrators, with MCCD and Contractor each to choose an arbitrator, and together the first two arbitrators shall choose a third arbitrator. Costs for the arbitration shall be shared equally by the parties. The arbitration shall take place in Mifflin County, Pennsylvania. Arbitration shall occur within sixty (60) days from the date the written request for appointment of arbitrators is made by either party unless an extension is mutually agreed upon by the parties. This Agreement to arbitrate shall be specifically enforceable under the prevailing Arbitration Law. The award rendered by the arbitrators shall have the effect provided in the Uniform Arbitration Act.

12. **Indemnification.** Contractor shall be responsible for and agrees to indemnify, defend and hold harmless MCCD from and against damages to property or injuries (including death) to any persons and other losses, damages, expenses (including all attorney’s fees and expert costs), claims, demands, suits, and actions by any party against MCCD in connection with the work performed by Contractor. Said indemnity shall be insured without interruption by an acceptable insurance carrier with limits as follows:

- (a) Workers’ Compensation Employers’ Liability Insurance as required by Pennsylvania law with an aggregate limit of One Million Dollars (\$1,000,000);
- (b) General Liability Insurance on an occurrence basis in the amount of One Million Dollars (\$1,000,000) Dollars combined single limit for bodily injuries and/or property damage liability; and

(c) Automotive Liability Insurance with limits of One Million (\$1,000,000) Dollars per occurrence and One Million Dollars (\$1,000,000) combined single limit.

Contractor shall deliver to MCCD Certificates of Insurance evidencing coverage in the above-stated amounts and naming "Mifflin County Conservation District" as an additional insured.

13. Termination by the Contractor. The Contractor may terminate the Contract if the Work is stopped for a period of ten (10) days through no act or fault of the Contractor for reasons including, but not limited to:

(a.) Issuance of an Order of Court or other governmental body having jurisdiction of the Work;

(b.) An act of government; and

(c.) Repeated suspensions, delays or interruptions caused by MCCD.

14. Delays and Extensions of Time. If the Contractor is delayed at any time in progress of the Work by an act or neglect of MCCD or by changes ordered in the Work or by labor disputes, fire, unusual delays in deliveries, unavoidable casualties or other causes beyond the Contractor's control which the Project Inspector determines may justify delay, then the time for completion shall be extended by a Change Order.

15. Copyright and Patent Indemnity. The Contractor shall indemnify and hold MCCD harmless from and against any damages or suit or proceeding brought against MCCD on account of any alleged infringement of any copyright or patent arising out of performance of this Agreement, including all work, services, materials, reports, supplies, and computer programs provided by the Contractor.

16. **Governing Laws.** This Contract shall be governed in accordance with the laws of the Commonwealth of Pennsylvania. Venue and jurisdiction for any claims arising out of this Agreement shall be exclusively in Mifflin County, Pennsylvania.

17. **Binding Agreement.** This Agreement shall be binding upon the parties and their respective successors and assigns.

Mifflin County Conservation District

Signature

Date

By _____

Witness

Contractor

Signature

Date

By _____

Witness