

Contract Number: NAT17-001-TROUT

Title: Trout Stocking Program

THIS AGREEMENT, made and executed in duplicate, shall be effective this 5th day of October 2016.

BY AND BETWEEN: Zion Grove Trout Hatchery
1 Trout Lane
Zion Grove, PA 17985

(hereinafter designated as "Contractor"), party of the first part, and the DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, DNREC, created under the laws of the State of Delaware (hereinafter designated as DNREC), party of the second part.

WITNESSETH that the "Contractor" in consideration of the covenants and agreements herein contained and made by DNREC, agrees with said DNREC as follows:

ARTICLE ONE: The "Contractor" shall provide and furnish all supplies, materiel, machinery, implements, appliances, and tools and perform the work and labor required to complete the contract requirements. The work, as set forth in the Invitation to Bid proposal (Contract No: NAT 17-001-TROUT), and specifications are identified by the signature of the "Contractor" and the Secretary of the said DNREC and become hereby a part of this contract.

ARTICLE TWO: It is understood and agreed by and between the parties hereto that all items and/or work included in this contract are to be done under the direction of the said Secretary and that the Secretary decision as to the meaning of the said proposal, and specifications shall be final.

It is understood and agreed by and between the parties hereto that such additional specifications as may be necessary to illustrate the items to be furnished or work to be done are to be submitted by said Contractor and they agree to conform to and abide by the same so far as it may be consistent with the purpose and intent of the original proposal, and specification referred to in Article One.

ARTICLE THREE: If the work to be done under this contract shall be abandoned, or if the contract, or any part thereof shall be sublet without the previous written consent of DNREC, or if the contract shall be assigned by the "Contractor" otherwise than as herein specified, or if at any time the Secretary shall be of the opinion and shall certify in writing to DNREC that the work, or any part thereof, is unnecessarily or unreasonably delayed or that the "Contractor" has violated any provision of this contract or that the "Contractor" fails to provide all supplies, materiel, machinery, implements, appliances and tools or fails to perform the work and labor as set forth in the proposal and specifications, in whole or in part, DNREC may notify the "Contractor" to discontinue all work or any part thereof; and thereupon the "Contractor" shall discontinue such work or such part thereof as DNREC may designate and DNREC may thereupon, by a contract or otherwise, as it may determine, complete the work, or such part thereof, and charge the entire expense of so completing the work or part thereof, to the "Contractor".

All costs and charges that may be incurred under this article or any damages that should be borne by the "Contractor" shall be withheld or deducted from any moneys then due, or to become due to the "Contractor" under this contract, or any part thereof; and in such accounting DNREC shall not be held to obtain the lowest cost for the work or completing the contract or any part thereof, but all sums actually paid therefore shall be charged to the "Contractor". In case the costs and charges incurred are less than the sum which would have been payable under the contract if the same had been completed by the "Contractor", the "Contractor" shall be entitled to receive the difference and in case such costs and charges shall exceed the said sum, the "Contractor" shall pay the amount of excess to DNREC for the completion of the work.

ARTICLE FOUR: It is further mutually agreed between the parties hereto that no payment made under this contract shall be conclusive evidence of the performance of this contract either wholly or in part and that no payment shall be construed to be an acceptance of defective work.

ARTICLE FIVE: It is understood and agreed by and between the parties that a federal grant is partially funding the work as set forth in the proposal. The "Contractor" shall abide by Federal Funding Terms and Conditions as presented in Appendix 1.

IN WITNESS WHEREOF: the said parties to these presents have duly executed this agreement in duplicate the day and year written below:

SIGNED, SEALED AND DELIVERED IN
the presence of

CONTRACTOR:

BY _____
(SIGNATURE)

(Seal)

Witness, _____

Zion Grove Trout Hatchery
(Contractor)

DNREC

David S. Small, Secretary
DNREC

Witness: _____

In the case of a corporation, firm, or partnership, this contract must be signed by the appropriate officials of such corporation, firm or partnership and their corporate seal must be affixed hereto.

DOC. #0031M

Appendix 1. Federal Funding Terms and Conditions:

A. General:

- 1) "CONTRACTOR" shall comply with all applicable State and Federal laws and regulations. If applicable State and Federal laws and regulations conflict with the Federal Funding Terms and Conditions, then applicable laws and regulations supersede the Federal Funding Terms and Conditions. The Federal Funding Terms and Conditions shall apply to the work to be performed under this Contract and such provisions shall supersede any conflicting provisions of this Contract.
- 2) This Contract is funded by the Sport Fish Restoration grant from the U.S. Fish and Wildlife Service (USFWS) under award number F16AF01114, and Catalog of Federal Domestic Assistance (CFDA) number 15.605. Neither the United States nor any of its Departments, agencies, or employees is a party to this Contract.
- 3) The cover of the title page of all reports, studies, or other documents supported in whole or in part by this sub-award shall acknowledge the financial assistance provided by the USFWS by including the following statement: *"This project was funded, in part, through a grant(s) from the U.S. Fish and Wildlife Service under award number(s) F16AF01114.*
- 4) The rights and remedies of Delaware provided for in these clauses are in addition to any other rights and remedies provided by law or under this Contract.

B. Remedies: Except as may be otherwise provided in this Contract all claims, counterclaims, disputes and other matters in question between Delaware and "CONTRACTOR" arising out of or relating to this Contract or the breach thereof will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the State of Delaware.

C. Audit; Access to Records: "CONTRACTOR" shall maintain books, records, documents and other evidence directly pertinent to performance on Federal grant work under this Contract in accordance with generally accepted accounting principles and practices. "CONTRACTOR" shall also maintain the financial information and data used by "CONTRACTOR" in the preparation or support of the cost submission, and a copy of the cost summary submitted to Delaware. The United States Department of Labor, Delaware or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. "CONTRACTOR" will provide proper facilities for such access and inspection.

D. Subcontracts: Any sub-contractors and outside associates or consultants required by "CONTRACTOR" in connection with the services covered by this Contract will be limited to such individuals or firms as were specifically identified and agreed to in writing during negotiations, or as are specifically authorized in writing by Delaware during the performance of this Contract. Any substitutions in or additions to such sub-contractors, associates, or consultants will be subject to the prior written approval of Delaware.

E. Whistleblower Protection: 41 United States Code (U.S.C.) 4712, Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection: This requirement applies to all awards issued after July 1, 2013 and shall be in effect until January 1, 2017.

- 1) This award and related subawards and contracts over the simplified acquisition threshold and all employees working on this award and related subawards and contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013

(P.L. 112-239).

- 2) Recipients, and their subrecipients and 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.
 - 3) The recipient shall insert this clause, including this paragraph (c), in all subawards and contracts over the simplified acquisition threshold related to this award.
- F. Equal Employment Opportunity: "CONTRACTOR" agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The "CONTRACTOR" will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The "CONTRACTOR" agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- G. Utilization of Small and Minority Business: "CONTRACTOR" agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Federal grant-assisted contracts and subcontracts.
- H. Covenant against Contingent Fees: "CONTRACTOR" warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty, Delaware shall have the right to annul this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- I. Patents: If this Contract involves research, developmental, experimental, or demonstration work and any discovery or invention arises or is developed in the course of or under this Contract, such invention or discovery shall be subject to the reporting and rights provisions of the Code of Federal Regulations for the USFWS, in effect on the date of execution of this Contract. In such case, "CONTRACTOR" shall report the discovery or invention to USFWS directly or through Delaware and shall otherwise comply with Delaware's responsibilities in accordance with the Code of Federal Regulations. "CONTRACTOR" hereby agrees that the disposition of rights to inventions made under this Contract shall be in accordance with the terms and conditions of the Code of Federal Regulations. "CONTRACTOR" shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts involving research, developmental, experimental, or demonstration work.
- J. Debarment, Suspension, Ineligibility and Voluntary Exclusion: The "CONTRACTOR" certifies, by submission of this proposal, that neither it nor any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor is presently, or has within the past five years, been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State, or Local government department or agency.
- K. Clean Air Act: for Federal grant-assisted contract and subcontracts exceeding \$150,000, "CONTRACTOR" agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as

amended (33 U.S.C. 1251-1387).

- L. **Lobbying:** Federal grant-assisted contracts and subcontracts exceeding \$100,000 in Federal funds are subject to Section 319 of Public Law 101-121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented at the part entitled "New Restrictions on Lobbying" in the Code of Federal Regulations for USFWS, in which case the "CONTRACTOR" must submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted to Delaware.
- M. **Cost and Compensation:** It is agreed that the total cost for the services provided under this Contract shall not exceed \$78,946. Notwithstanding other terms and conditions of this Contract, it is understood and agreed that the total cost and compensation under this Contract shall not exceed the funds made available to Delaware by the USFWS for this project.
- N. **Obligations:** The obligations of Delaware under this Contract shall be subject to the receipt of sufficient funds appropriated by the USFWS and the obligations of Delaware are limited to the amount of such appropriation.

