

General Electric/Housatonic River Natural Resource Restoration

Housatonic River Watershed Natural Resource Damages Assessment Restoration Project Selection Procedure

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**FOR:
MASSACHUSETTS SUBCOUNCIL,
HOUSATONIC RIVER NATURAL RESOURCE TRUSTEES**

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Cover photo: Beaver tracks (*Castor canadensis*) in the Housatonic River watershed.
Photo by Woodlot Alternatives, Inc.

Acronyms

CD	Consent Decree
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
C.F.R.	Code of Federal Regulations
C.M.R.	Code of Massachusetts Regulations
Comm-PASS	Commonwealth's Procurement Access and Solicitation System
CTDEP	State of Connecticut Department of Environmental Protection
CWA	Clean Water Act
EA	Environmental Assessment
EIS	Environmental Impact Statement
EOEA	Commonwealth of Massachusetts Executive Office of Environmental Affairs
FACA	Federal Advisory Committee Act
FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact
GE	General Electric Company
MA SubCouncil	Massachusetts SubCouncil
MADEP	Commonwealth of Massachusetts Department of Environmental Protection
M.G.L.	Massachusetts General Laws
MEPA	Massachusetts Environmental Policy Act
MOA	Memorandum of Agreement
NCP	National Oil and Hazardous Substances Pollution Contingency Plan
NEPA	National Environmental Policy Act
NOAA	National Oceanic and Atmospheric Administration
NRD	Natural Resource Damages
NRDA	Housatonic River Natural Resource Damages Assessment
PCBs	polychlorinated biphenyls
PDF	Portable Document Format
PEA	Programmatic Environmental Assessment
PEDA	Pittsfield Economic Development Authority
RP	Restoration Plan

RPS	Restoration Planning Strategy
RPSP	Restoration Project Selection Procedure
Trustees	Housatonic River Natural Resource Trustees
Trustee Council	Housatonic River Natural Resource Trustees, non-voting advisors and appointed Ex-Officio delegates
U.S.C.	United States Code
USEPA	U.S. Environmental Protection Agency
USFWS	U.S. Fish and Wildlife Service

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1.0 INTRODUCTION

This document, the Restoration Project Selection Procedure (RPSP), provides a procedural framework for the solicitation, evaluation, and selection of compensatory restoration projects for the Massachusetts portion of the Housatonic River Natural Resource Damages Assessment (NRDA) and restoration process. Compensatory restoration projects are projects that restore, rehabilitate, replace, and/or acquire the equivalent of injured natural resources and the services provided by those resources.

NOTE: This document is not a formal solicitation for project proposals or ideas. One or more formal solicitation for projects will be published after the completion of this document.

This document is organized as follows:

- **Chapter 1** introduces the Housatonic River Natural Resource Trustees (Trustees) and the Massachusetts SubCouncil (MA SubCouncil), summarizes the natural resource injuries and damages, provides an overview of the comprehensive settlement for natural resource damages (NRD) to the Housatonic River, and introduces the integrated restoration planning process.
- **Chapter 2** provides a description of the restoration goals and priorities of the MA SubCouncil.
- **Chapter 3** describes the project solicitation process, including information on the phased approach to implementing projects, applicant eligibility, submittal of applications, and funding terms and procedures.
- **Chapter 4** details the three-stage evaluation process, including information on how projects will be evaluated, by whom, and descriptions of criteria that will be applied to proposed projects. This chapter also describes the process for compliance with the National Environmental Policy Act (NEPA) and the Massachusetts Environmental Policy Act (MEPA), and explains how the MA SubCouncil will select restoration projects for future implementation.
- The **Appendices** include several relevant resources, including conceptual application formats for proposed projects and contractual documents that will be required for disbursement of funds.

1.1 BACKGROUND

The General Electric Company (GE) owns and operates a 254-acre facility in Pittsfield, Massachusetts where polychlorinated biphenyls (PCBs) were used in the manufacture of electrical transformers from the late 1930s to the late 1970s (Roy F. Weston, 1998). During this time period, PCBs and other substances at the GE facility were released to the Housatonic River and Silver Lake in Pittsfield. In addition, a number of former oxbows along the Housatonic River were filled when the U.S. Army Corps of Engineers realigned the East Branch of the Housatonic River in Pittsfield to alleviate flooding. These areas were found to contain PCB-contaminated soils and fill.

Downstream of Pittsfield, the Housatonic River flows approximately 120 miles through western Massachusetts and Connecticut to Long Island Sound. The full extent of PCB contamination in the river, floodplain, and adjacent properties, and the risks to humans and ecological receptors is currently under investigation by the U.S. Environmental Protection Agency (USEPA)¹.

In October 2000, a settlement was formalized with GE for NRD associated with the GE facility in Pittsfield and the Housatonic River environment. NRD recoveries include \$15.5 million, plus interest, from GE as detailed in the October 2000 Consent Decree (CD). The Trustee Council for the GE-Housatonic River case consists of the Commonwealth of Massachusetts Executive Office of Environmental Affairs (EOEA), the State of Connecticut Department of Environmental Protection (CTDEP), the U.S. Department of the Interior [via the U.S. Fish and Wildlife Service (USFWS)], and the U.S. Department of Commerce [via the National Oceanic and Atmospheric Administration (NOAA)].

In addition to the Trustee Council named above, a Trustee SubCouncil for Massachusetts (MA SubCouncil) has been established to administer NRD work on the Massachusetts portion of the Housatonic River.

¹ For further details, see the USEPA GE/Housatonic River cleanup web site (www.epa.gov/region01/ge/index.html).

The MA SubCouncil currently consists of the following²:

- Dale Young, EOEA (voting member, state Trustee)
- Veronica Varela, USFWS (voting member, federal Trustee)
- Rachel Fletcher, currently of Housatonic River Restoration (ex officio member)
- Tim Gray, currently of Housatonic River Initiative (ex officio member)
- Dean Tagliaferro, USEPA (non-voting advisor)

The MA SubCouncil is responsible for disbursing \$7.75 million, plus interest, of the \$15.5 million NRD recovery to implement restoration projects in the affected geographic region of Massachusetts. As part of this work, the MA SubCouncil must develop a comprehensive Restoration Plan (RP). This RPSP is a component of the RP and has been prepared for the MA SubCouncil by a Consultant Team selected by the Trustees, currently Woodlot Alternatives, Inc., Industrial Economics, Inc., and Consensus Building Institute, Inc. (i.e., “Consultant Team”).

Guidance for the development of the RP is provided by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. § 9601 *et seq.*, the Clean Water Act (CWA), 33 U.S.C. § 1251-1376, and the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. ch. 21E, which provide a mechanism for state and federal governments to address NRD.

Pursuant to CERCLA, NRDA regulations have been promulgated by the Department of the Interior, 43 C.F.R. § 11, to supplement the procedures established under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300, by providing a procedure for determining compensation for injuries to natural resources that have not been nor are expected to be addressed by response actions conducted pursuant to the NCP.

Additional information on the project background is found in the Restoration Planning Strategy (RPS).

² NOAA has chosen to withdraw from its decision-making role on the MA SubCouncil pursuant to a Resolution #4 to the MOA (*see* RPS, Appendix 1 or www.ma-housatonicrestoration.org/library).

1.2 SUMMARY OF DAMAGES EVALUATION

CERCLA mandates that NRD monies be used to restore, rehabilitate, replace, or acquire the equivalent of injured or lost natural resources and their services. A primary responsibility of natural resource trustees under CERCLA is to assess the extent of the injury and determine appropriate ways of restoring and compensating for that injury. Two reports were prepared to detail the Housatonic River natural resource injuries and damages (Industrial Economics, Inc., 1997, Industrial Economics, Inc., 1998).

Prior to reaching settlement with GE, the Trustees developed a preliminary estimate of natural resource damages. This analysis considered a broad range of potential injuries resulting from the release of PCBs to the river and its floodplain downstream of Pittsfield, Massachusetts to Long Island Sound. The Trustees evaluated several categories of natural resource damages associated with ecological injuries, recreational use impacts, and the passive use values the public holds for the river and its environment.

Based on available data, several natural resources were determined to exhibit characteristics that satisfy the regulatory definition of injury. These included surface water and certain biological resources (including fish, frogs and turtles). In addition, levels of PCBs in sediments suggested the potential for injury to a variety of biological resources, including invertebrates, fish, reptiles, amphibians, birds, and mammals. Observed levels of PCBs in floodplain soils also suggested the potential for injury to biological resources exposed to these soils. A preliminary quantification of injury was conducted by the Trustees, which addressed a broad range of aquatic, avian, and terrestrial species.

Natural resource damages were estimated for lost recreational fishing and boating opportunities associated with posted fish consumption advisories. In addition, the Trustees considered the potential for damages associated with lost or diminished hunting and trapping opportunities, and wildlife viewing/general outdoor recreation opportunities. Specifically, the Trustees assessed the potential for fewer recreational trips being taken to the Housatonic River and the potential for a reduction in the value of those trips that are taken. The release of PCBs to the Housatonic River and its floodplain was also determined to have resulted in a reduction in the passive use value of the river's environment, including a loss in the aesthetic values held by the public for the river. Finally, the Trustees considered approaches that could be taken to assess injury and damages to groundwater, as well as the increased cost of development along the river and its floodplain due to the presence of PCBs.

1.3 COMPREHENSIVE AGREEMENT: BACKGROUND AND FRAMEWORK

On October 7, 1999, the USEPA; the U.S. Department of Justice; the Commonwealth of Massachusetts Department of Environmental Protection (MADEP), the EOEA; the CTDEP and Office of the Attorney General; the U.S. Department of the Interior; the NOAA; the City of Pittsfield; the Pittsfield Economic Development Authority (PEDA); and GE reached a comprehensive agreement concerning the cleanup of GE's Pittsfield facility, certain off-site properties, and the Housatonic River, and concerning compensation for natural resource injuries. The details of the comprehensive agreement are contained in the CD that was lodged on October 7, 1999, with the U.S. District Court of Massachusetts, Springfield, Massachusetts, and approved on October 27, 2000. The full text of the CD is available on the USEPA GE/Housatonic River cleanup web site (www.epa.gov/region01/ge/cleanupagreement.html).

Major components of the CD that are pertinent to restoration actions include the processes that will be used to:

1. clean up contaminated areas (hereafter referred to as “primary restoration”), and
2. implement NRD-related restoration projects in the Housatonic River watershed, which will compensate for natural resource injuries (hereafter referred to as “compensatory restoration”).

Primary restoration activities are currently being performed on the Housatonic River in Massachusetts under the administration of the USEPA and MADEP with oversight by the Trustee Council. Details about primary restoration actions can be found on the USEPA GE/Housatonic River cleanup web site (www.epa.gov/region01/ge/cleanup/gerrra.html [see “Part 1: Cleanup of Contaminated Areas”]).

There are several components to the compensatory restoration portion of the settlement. A summary of these components is outlined in the RPS. This document provides the method for determining the expenditure of the Massachusetts portion of the NRD recovery.

GE provided \$15.5 million in NRD funds to the Trustees to conduct compensatory restoration projects to be identified in the RP. By mutual agreement of the Trustee Council, \$7.75 million, plus earned interest, has been allocated to restoration activities in each of the geographic regions of Massachusetts and

Connecticut. These monies will be used to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and the services³ they provide in accordance with CERCLA NRDA regulations that guide the allocation and expenditure of NRD recoveries for restoration⁴ activities. 43 C.F.R. §§ 11.81–11.82 and 11.93. Decisions on the use and expenditure of these NRD funds shall be made only with the unanimous consent of the Federal Trustees and voting members of the respective state's SubCouncil.

Guidance on the allocation of these funds is provided in the Memorandum of Agreement (MOA) that was executed by the Trustees in January 2002. The MOA is available in the RPS, Appendix 1, and on the MA SubCouncil web site at www.ma-housatonicrestoration.org/library.

1.4 INTEGRATED RESTORATION PLANNING

In addition to CERCLA, the MA SubCouncil must comply with two major environmental statutes: the NEPA and the MEPA. These statutes set forth a specific process of environmental impact analysis and public review.

The NEPA, 42 U.S.C. § 4321 *et seq.* and 40 C.F.R. §§ 1500-1508, was enacted in part to ensure that federal agencies consider environmental factors along with technical and economic factors in their decision-making process. NEPA does not regulate the type of decisions that agencies make but regulates the procedures used for making those decisions. Two objectives of NEPA are that before decisions are

³ The term “services” in this document means the physical and biological functions performed by the resource including the human uses of those functions. These services are the result of the physical, chemical, or biological quality of the resource. 43 C.F.R. § 11.14(nn). “Services” includes provision of habitat, food, and other needs of biological resources, recreation, other products or services used by humans, flood control, ground water recharge, waste assimilation, and other such functions that may be provided by natural resources. 43 C.F.R. § 11.71(e).

⁴ The term “restoration” in this document encompasses all listed means of achieving benefits to injured natural resources and the services they provide (i.e., restoration, rehabilitation, replacement, and acquisition of their equivalent).

made and actions are taken, federal agencies (i.e., USFWS, in the case of the MA SubCouncil) must have available and fully-considered, detailed information regarding potential environmental effects; and agencies must make this information available to other agencies, organizations, and citizens.

NEPA requires that an Environmental Assessment (EA) be prepared to determine whether a proposed restoration action would have a significant effect on the quality of the environment. Depending on whether an impact is considered significant, an Environmental Impact Statement (EIS) or a Finding of No Significant Impact (FONSI) would be issued.

The MEPA, M.G.L. ch. 30, §§ 61-62H, and 301 C.M.R. § 11, require that state agencies (i.e., EOE, in the case of the MA SubCouncil) consider environmental consequences of their actions, including permitting and financial assistance. MEPA is not a permitting process; it requires state agencies to take all feasible measures to avoid, minimize, and mitigate damages to the environment. MEPA documentation and review may be coordinated or consolidated with other individual and programmatic environmental review processes such as those conducted under NEPA. 301 C.M.R. § 11.09(4).

The MA SubCouncil has integrated NEPA and MEPA compliance in the restoration planning for the Housatonic River, and intends to pursue a coordinated approach to NEPA and MEPA compliance. This integrated process allows the MA SubCouncil to meet the environmental impact analysis and public involvement requirements of CERCLA, NEPA, and MEPA concurrently.

Considering the number of restoration projects anticipated to be implemented in the Housatonic River watershed in the coming years, the MA SubCouncil believes that a programmatic analysis is most appropriate for NEPA compliance purposes. Therefore, the MA SubCouncil intends to develop a Programmatic Environmental Assessment (PEA). This document is distinct from, but complementary with, the RP (*see* Section 4.3).

A PEA is a NEPA document that addresses a group of similar or related actions as a whole, rather than one at a time in separate documents (i.e., separate project-specific EAs and EISs). A programmatic approach to NEPA compliance provides a means for describing and evaluating categories of restoration projects that share a strong similarity in terms of techniques and likely outcomes and are proposed to be conducted in a distinct geographic area with documented environmental characteristics (e.g., Housatonic

River watershed). Moreover, it enhances the ability to regard the ecosystem as a whole and evaluate the cumulative effects of these projects. Since the overall restoration effort for the Housatonic River watershed will consist of several project evaluation and funding rounds, the PEA will enable efficiencies in the NEPA compliance process for each funding round.

It is important to state that programmatic NEPA documents do not relieve federal agencies of their responsibility to prepare site-specific NEPA documents when a project's impacts warrant additional documentation and review (*see* Section 4.3 for more information).

After the MA SubCouncil develops the Draft PEA, they will release the document and initiate a public review and comment period. During this time, a public information meeting will be held and a presentation will be provided on the Draft PEA. The public will have the opportunity to provide oral and written comments on the document. At the conclusion of the public review and comment period, the MA SubCouncil will consider and respond to comments from the public before finalizing the PEA.

The PEA will then be submitted to the lead federal agency (i.e., USFWS) for an analysis of impacts. The USFWS will review the document and render a decision on the PEA. If the USFWS renders a FONSI, no further action, review, or documentation is required. The Final PEA would then be published along with documentation of the USFWS decision.

If the USFWS determines the PEA constitutes a major federal action with significant impacts, a Programmatic EIS will be prepared in accordance with NEPA guidelines. An EIS would evaluate potential impacts of the Housatonic River restoration process in more detail than the PEA. The Draft Programmatic EIS would undergo a public review and comment period, including a public hearing. Comments would be received and addressed on the Draft Programmatic EIS, and the Programmatic EIS would be finalized and published.

2.0 RESTORATION GOALS AND PRIORITIES

This chapter describes the restoration goals and priorities of the MA SubCouncil. These goals and priorities are based on the injuries and damages to the Housatonic River watershed. As prescribed by CERCLA, proposed projects must restore, rehabilitate, replace, or acquire the equivalent of the injured or lost natural resources and their services. Proposed projects must be designed with an awareness of the current conditions of the resources and services and the factors causing their impaired conditions, and with the intent to improve upon those conditions.

The goals and objectives of the MA SubCouncil are to utilize NRD funds to implement compensatory restoration projects that address natural resources injuries in the Housatonic River watershed. The MA SubCouncil will work to achieve these goals and objectives with a process that maximizes the effectiveness of NRD funds for the implementation of compensatory restoration projects in a manner that is consistent with CERCLA and NRDA regulations. The specific goals and objectives of the MA SubCouncil are to:

- Restore, enhance, protect, conserve, replace and/or acquire the equivalent of natural resources and services that were injured as a result of the release of hazardous substances, including PCBs, in the Housatonic River environment;
- Provide for sustainable and measurable benefits to injured natural resources and services;
- Avoid adverse impacts resulting from restoration projects;
- Integrate public participation in the restoration process;
- Implement a suite of projects that cumulatively:
 - Benefit each of the restoration priority categories;
 - Employ a variety of restoration project types;
- Conduct restoration projects in a phased manner so that projects with a potential to interact with yet-to-be-determined remedial activities are not excluded from funding until those potential interactions can be determined (i.e., the remedial actions are known).

RESTORATION PRIORITY CATEGORIES

The MA SubCouncil has identified several restoration priority categories based on the types of natural resource injuries sustained by the Housatonic River watershed. The intent of categorizing proposed restoration projects is to enable the goal of achieving a broad range of benefits to injured natural resources and services. Restoration projects must address at least one of the following restoration categories:

- **Aquatic Biological Resources and Habitat** – This includes fish, amphibians, reptiles, benthic invertebrates, and other aquatic organisms. Restoration activities under this category include, but are not limited to, projects that restore aquatic biological resources directly or enhance the habitats of these resources (e.g., enhancements in water quality).
- **Wildlife Resources and Habitat** – This includes avian and mammalian species that use the Housatonic River in some manner. Restoration activities under this category include, but are not limited to, projects that restore wildlife resources directly or enhance the habitats of these resources (e.g., riparian habitat enhancements).
- **Recreational Uses** – This includes human recreational uses of the Housatonic River environment such as, but not limited to, recreational fishing, recreational boating, and wildlife/nature viewing. Restoration activities under this category may include, but are not limited to, creation/enhancement of public access opportunities and enhancement of the natural resource aspect of the recreational experience.
- **Environmental Education and Outreach** – This includes a variety of projects that inform the public using the Housatonic River environment regarding issues that affect the health of the Housatonic River environment. The purpose of environmental education and outreach projects is to instill understanding and appreciation for the environment so that human behaviors are changed in a manner that helps to achieve the goal of a sustainable restoration of the Housatonic River, its injured natural resources, and/or the services provided by those resources.

Applicants seeking NRD funding will be asked to indicate the predominant restoration priority category addressed by their proposed project. This will assist the MA SubCouncil in determining the merit of a proposed project relative to others that could benefit the same injured natural resources and/or services. Applicants may indicate ancillary categories as well, but for the purpose of categorizing projects, applicants submitting proposed projects that address more than one restoration priority category will be

asked to specify their predominant restoration priority category. For instance, if a wetland enhancement project is proposed primarily for the purpose of providing habitat enhancement to aquatic biological resources, but will also provide some ancillary benefit to recreational resources, the project would be categorized under Aquatic Biological Resources and Habitat. However, the Evaluation Criteria, described in this document, are designed to recognize and give credit to proposed projects that provide benefits to more than one restoration priority category.

RESTORATION PROJECT TYPES

The MA SubCouncil finds value in funding a variety of approaches to addressing injured resources and/or their services. Therefore, projects will be further identified by their general approach (i.e., “project type”) that would be applied to implement the projects with the goal of benefiting the restoration priorities stated above. Consideration of the project type will assist the MA SubCouncil in selecting a group of projects that achieve a broad range of restoration needs. The project types include:

- **Resource-based projects** – These projects focus on and directly modify the natural resources of the Housatonic River. They may address habitat losses, improve the quality and/or quantity of recreational opportunities, or address other lost uses through actions focused on natural resources. Examples of such projects may include the acquisition of key habitats and sensitive environments in the Housatonic River watershed, the enhancement of river and riparian habitat, and the enhancement of fish habitat and/or fish stocks.
- **Access-based projects** – These are projects that help ensure that the public will have the ability to utilize the natural resources of the Housatonic River watershed. Examples of such projects may include constructing riverbank trails, upgrading existing river facilities, and providing additional access to the river environment.
- **Maintenance-based projects** – These are projects that ensure that the public’s use and the ecological integrity of the Housatonic River watershed will be protected into the future. Examples of such projects may include the implementation of monitoring plans, educational programs, and establishment of operations and maintenance programs for acquired lands.

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3.0 PROJECT SOLICITATION PROCESS

The solicitation of restoration project proposals and ideas will be conducted through a written application process and will take place in several rounds over many years. This chronologically-phased approach has three purposes:

- To allow the MA SubCouncil to provide effective oversight, conduct evaluations, and properly administer a number of restoration projects over time;
- To ensure that future restoration projects will not interfere with remedial actions; and
- To enable the MA SubCouncil to explore opportunities to enhance remedial actions by implementing complementary restoration projects. For example, a remedial action (such as riverbank excavation) and a proposed restoration (such as riverside trails for wildlife observation) may jointly benefit from integrating and coordinating the design and construction of the two projects.

At least three project solicitation rounds are expected to take place. These solicitation rounds are expected to be spaced at least two years apart. The intent of the MA SubCouncil is to provide at least one solicitation round after the finalization of the Record of Decision for remedial actions for the “Rest of River” reach of the Housatonic River. The MA SubCouncil reserves the right to adjust the timing for each funding round. The following amounts per funding round are estimated targets established by the MA SubCouncil. The MA SubCouncil is under no obligation, however, to disburse a specific sum of monies per funding round. The proposed solicitation rounds are as follows:

- **Round 1:** Scheduled posting of solicitation - 2005.
Anticipated allocation range: \$3,500,000 - \$4,000,000.
- **Round 2:** Scheduled posting of solicitation - 2007.
Anticipated allocation range: \$1,500,000 - \$2,000,000.
- **Round 3:** Posting of solicitation to be determined by the MA SubCouncil after the finalization of the Record of Decision for the Rest of River reach of the Housatonic River – solicitation estimated for approximately 2009.
Anticipated allocation range: \$1,500,000 - \$2,500,000, or the balance of the NRD funds.

The MA SubCouncil will coordinate with USEPA throughout the development and planning of remediation activities and will inform the public as to the remediation schedule so that restoration projects may be developed accordingly.

3.1 FUNDING PROCEDURES AND TERMS

Projects may be funded through either state or federal mechanisms. If the funds are disbursed from a federal agency, the process will be in accordance with applicable federal acquisition policies and regulations. If the funds are disbursed from a state agency, the process will be in accordance with procurement and grant regulations of the Commonwealth of Massachusetts.

The MA SubCouncil has a fixed amount of money to implement restoration projects⁵, and therefore has established a range of funding that will be available per funding round. The number of awards to be made in each funding round will depend on a number of variables including, but not limited to, the number of applications received, the merit and ranking of the proposed projects, the funding requested to implement selected restoration projects, and the amount of funding available for each solicitation period.

Funding will not be provided for project costs incurred prior to the start date as provided on the final contractual agreements. Terms of funding will be established by the MA SubCouncil on a project-specific basis; the options may include, but are not limited to, a lump sum payment at the beginning of the award period, a lump sum payment at project completion, or performance-based installments throughout the project award period. If performance-based criteria are not sufficiently met and/or there are insufficiencies in the work or noncompliance with contract terms, the MA SubCouncil has the option to withhold funds until the condition is rectified and/or the contract terms have been met.

The earliest date for disbursement of awards is estimated to be five months after the deadline for receipt of applications in each solicitation round. Applicants should consider this period of time when

⁵ Although the Housatonic River NRD funds reside in an interest-bearing account, it is anticipated that the earned interest will be small relative to the overall amount of available funding.

developing the timeline for proposed restoration activities. If a project is selected for funding, the MA SubCouncil is under no obligation to provide any additional funding in connection with that award in subsequent funding rounds. Awarded funds should be used to complete the proposed restoration activities within a period of 36 months (i.e., 3 years) from the approved start date of the project. Permission to extend the period of performance beyond the 36 month award period is at the discretion of the MA SubCouncil and must be requested in writing at least 60 days in advance of an award's expiration date.

The MA SubCouncil reserves the right to fund only a portion, change the scope, and/or delete tasks of any proposed project. Selected applicants may decide not to enter into a contract if the revised scope does not meet their approval.

Terms of payment for each project shall be agreed upon before any work is initiated on that project and shall be expressed in the appropriate contractual agreement(s) in accordance with applicable state and federal procedures and requirements. If funding is disbursed through EOEA, for example, three of the documents that will be required are the Commonwealth Standard Contract Form, the Commonwealth Standard Terms and Conditions, and the EOEA Supplemental Terms and Conditions. Copies of these contractual documents are presented in Appendix 4.

MULTIPLE YEAR FUNDING

In describing the proposed project, respondents should indicate whether funding would be needed on a single or multiple year basis. This information will not affect consideration of the merits of the proposal but instead will assist the MA SubCouncil in its planning efforts. However, the MA SubCouncil has the option to approve full or partial funding of multi-year projects. If a multi-year project is selected for implementation, the MA SubCouncil will consider the project to fall into one of three categories:

- A multi-year project that would be approved with the expectation that it will be funded to its completion, or at least for a certain number of years.
- A multi-year project that would be approved and funded for the completion of a specific phase of the project, such as a feasibility study, with the expectation that it will be resubmitted for further review and subject to approval in a subsequent funding round.

- A multi-year project that includes a feasibility study and the implementation of a restoration activity based on the results of the feasibility study. Funds for project implementation may be included in the award under the same funding round, but the disbursement of project implementation funds may be subject to MA SubCouncil approval of the feasibility study.

In deciding whether to apply for multiple years of funding, applicants should determine whether the project could be implemented in a phased manner and could derive significant public benefits from each phase regardless of whether subsequent phases are funded. Alternatively, some multi-year projects may need to be funded in their entirety to derive substantial benefits. The MA SubCouncil will determine whether funding commitments should be made for multiple years and whether to fund a proposed project in its entirety or to provide only a portion of the requested funding.

CONSIDERATIONS FOR LAND ACQUISITION PROJECTS

If a proposed project includes land acquisition/protection, the applicant should use an appraisal in determining the purchase price of the property, and that appraisal should be either provided with or summarized in the application. If the proposed project is selected for implementation, the MA SubCouncil will evaluate whether the land, easements, or other property interests proposed for acquisition are being offered for sale at or below market value. This evaluation will likely require an independent appraisal of the property. The MA SubCouncil may conduct a review appraisal or have an independent appraisal for such a case. Funding of the project will be contingent upon MA SubCouncil verification that the purchase price is at or below the fair market value and of the project's demonstrated consistency with EOE funding procedures specific to land acquisition/protection projects. The solicitation posting will include further detail on information to be provided in applications for proposed restoration projects that involve land acquisition/protection.

3.2 ELIGIBILITY REQUIREMENTS

The MA SubCouncil has determined that the preferable approach to restoring the Housatonic River watershed is to fund multiple restoration projects based on proposals and ideas to be submitted from a variety of entities. All private entities, local, state, federal, and tribal governments, academic institutions, and other nonprofit and commercial organizations whose projects would benefit the injured natural

resources of the Housatonic River watershed are eligible to submit proposals. MA SubCouncil members and their agencies or organizations may also submit project proposals. The proposed project must restore or replace injured natural resources in the Housatonic River watershed and/or lost services provided by those resources.

A general summary of the eligibility requirements are as follows:

1. **Eligible Applicants** – All public and private entities are eligible to apply. This includes, but is not limited to, private individuals; local, state, federal and tribal governments; academic institutions; nonprofit organizations; recreational clubs; and businesses.
2. **Eligible Projects** – Any project that would benefit injured natural resources and/or natural resource services in the Housatonic River watershed in Massachusetts.
3. **Eligible Locations** – Projects must directly benefit the injured natural resources and/or services in the Massachusetts portion of the Housatonic River watershed. However, projects may be conducted at any location.

As previously stated, private entities are eligible to submit proposals. It is recognized that some private entities have suffered as a result of injuries to the natural resources in the Housatonic River watershed. However, the NRD regulations do not authorize natural resource trustees to recover damages resulting from the private loss of real or personal property, revenues, or profits. The NRD regulations only provide for recovery of damages to public natural resources and the services they provide. Therefore, restoration proposals that aim to provide compensation for private losses of property, revenues, or profits cannot be funded with NRD funds. The MA SubCouncil can, however, fund work on private land if the principal result of such work would be to replace or restore injured public resources or lost services.

If the Trustees believe that any specific restoration needs are not being met by projects proposed by others, they can decide to develop and implement projects to meet these specific restoration needs. The funding arrangement for such projects shall be at the discretion of the Trustees (e.g., project-specific solicitation round, competitive bidding, or agency-conducted work).

3.3 METHOD OF SOLICITING PROJECTS

Solicitation postings will be widely announced through public notice, news releases, and public service announcements. The MA SubCouncil plans to post each solicitation round for a period of 60–90 days. Each solicitation will include the application form(s) and instructions for completion, an explanation of the restoration priorities, applicable evaluation criteria, and other supporting materials. All materials will be made available that are necessary to be filed for compliance with relevant procurement and grant regulations.

It is anticipated that the first solicitation round will be conducted through the EOEA. As an agency of the state, EOEA must conduct solicitations electronically via the Commonwealth's Procurement Access & Solicitation System (Comm-PASS). Applicants will be solely responsible for obtaining and completing required attachments that are identified in the solicitation and for checking Comm-PASS for any addenda or modifications that are subsequently made to the solicitation or attachments. Applicants having difficulty obtaining any required attachments electronically through Comm-PASS would seek technical assistance from the Comm-PASS "Help Desk" by calling 1-800-MA-STATE.

Hard copies of application materials will be available at the Lenox Library (the Administrative Record location) and several public libraries in the Housatonic River watershed (*see* Appendix 2). However, consistent with state requirements, the official version of all solicitation materials is the information that is provided via Comm-PASS. Applicants are solely responsible for consulting Comm-PASS for any addenda or modifications.

3.4 SUBMITTING A PROPOSED PROJECT

Prospective applicants have the choice of two application formats for their projects:

Project Proposal Form. Applicants using the Project Proposal Form are requesting funding to conduct a project. Proposals may be for the implementation of restoration projects, restoration project development, monitoring, or education projects. Proposals for restoration project development include feasibility studies, targeted planning, and design of projects. Proposals for

restoration project development will be required to present a proposed schedule through project implementation.

Project Idea Form. Applicants using the Project Idea Form are not requesting funding, although budget estimates may be provided. A Project Idea applicant is presenting a restoration project idea that they would like the MA SubCouncil to consider funding, but that the applicant would not conduct themselves. The MA SubCouncil may choose to further develop or implement Project Ideas with merit in any way the MA SubCouncil sees fit, including issuing a separate Request for Proposals specific to developing or implementing the idea, or developing the idea for submission in a subsequent solicitation round or a competitive bid process specific to implementing the idea.

Detailed instructions on how to complete each of the applications will be provided with the posting of the solicitation. Draft applications for the Project Proposal Form and Project Idea Form are provided in Appendix 3. The deadline and instructions for submitting application materials will be the same for both application formats and will be described in the solicitation. Applicants will be required to submit a to-be-determined number of hard copies of the completed application package, including supporting materials such as maps and photographs. At least one copy of the complete application package must be provided on 8.5 by 11-inch paper. Applicants are encouraged to include an electronic copy of the complete application package in Adobe® Portable Document Format (PDF) with their hard copy submission.

After the solicitation is posted, state procurement policy provides prospective applicants a period of time to submit written questions to the MA SubCouncil concerning the solicitation. The deadline, accepted methods, and contact for submission of these written questions will be specified in the solicitation. In accordance with state procurement and grant regulations, these questions will be addressed at an Applicant Conference, and all questions and answers will be posted on the Comm-PASS website. Questions may also be addressed at an Applicant Conference; if so, all such questions and answers will also be posted on Comm-PASS. The Conference will take place and written answers will be provided sufficiently in advance of the application deadline. The exact date that answers will be posted will be provided in the solicitation. Written questions received after the stated deadline will not be considered by the MA SubCouncil. Prospective applicants are responsible for confirming the actual receipt of written questions by the MA SubCouncil.

Information contained in applications will be widely distributed and made available for public review as part of the MA SubCouncil project evaluation process. Applicants should be prepared for substantial public exposure and scrutiny. All applications submitted in response to this solicitation are subject to The Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Massachusetts Public Records Law, Mass. Gen. L. ch. 66, § 10 and ch. 4, § 7(26). The information provided in applications will be considered public record, except as allowed to be withheld under FOIA or other applicable laws and regulations safeguarding private information. Applicants who are concerned about revealing proprietary interests or methods should only present enough information to provide the MA SubCouncil with a necessary understanding of the project.

3.5 COST SHARING

One way of extending the fixed amount of funds the MA SubCouncil has available to allocate is through cost sharing, or providing matching funds. This includes cash donations, donations of property, in-kind services, volunteer assistance, or other such partnering actions. There is not a strict cost sharing requirement. However, one evaluation criterion does rate proposed projects on cost sharing. Therefore, the MA SubCouncil encourages prospective applicants to seek opportunities to pursue cost sharing and to demonstrate those efforts in their project applications.

If the project includes cost sharing, the applicant must provide adequate detail on the non-NRD funds in the budget section of the application. Non-NRD funds used for project-related expenditures up to six months prior to the deadline for receipt of applications can be considered as matching funds. Matching funds must be specific to the proposed project and not include general organizational or operational costs.

3.6 RESPONSIBILITIES OF RECIPIENTS

Recipients of NRD funding will be required to obtain all necessary permits and authorizations and follow the appropriate state and/or federal contracting and procurement laws, including those regarding contracting and bidding procedures for construction projects. The MA SubCouncil may assist the

applicants of projects selected for implementation in determining what portions of their projects must be competitively bid.

Funding recipients must obtain all necessary insurance. The specific insurance coverage required will depend on the project (e.g., general liability, workers compensation, auto, professional liability, property).

Funding recipients must keep accurate financial records and documentation for audits. The MA SubCouncil will provide recipients with information about these requirements. The MA SubCouncil and its agents must be permitted to monitor project performance and visit the project site. All final design plans must be reviewed and approved by the MA SubCouncil before construction. Depending on the project scope, the MA SubCouncil may require prior approval of contracting procedures to assure compliance with applicable competitive bidding requirements.

Funding recipients will be required to provide regular progress reports—the number to be determined on a case-by-case basis—and a project completion report to the MA SubCouncil. In addition to standard Commonwealth financial reporting requirements for grants, program reporting requirements will include a narrative of the project progress and accomplishments, photographs, monitoring data and analysis, and additional project-specific information, as necessary.

Funding recipients are responsible for the performance and oversight of any subcontractors. Subcontractors are required to meet the same state and federal financial and program reporting requirements and are held to the same reimbursable cost standards as the recipient of NRD funding.

The responsibilities noted in this section are not intended to be comprehensive. Further requirements may exist depending on the particular project receiving NRD funding.

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4.0 EVALUATION AND SELECTION PROCESS

The MA SubCouncil has established a three-stage approach to evaluating and selecting proposed restoration projects for inclusion in the RP. This process is described in detail in the following sections of this document. A flow chart that illustrates the evaluation and selection process is provided on the following pages in Exhibit 4.1. A timetable that indicates tasks and involvement by entity is provided in Exhibit 4.2.

PUBLIC INVOLVEMENT

The MA SubCouncil is committed to conducting an open and transparent process for the evaluation and selection of restoration projects to the extent possible given legal constraints such as state and federal procurement requirements. As a result, the MA SubCouncil has developed a method that enables the public to review and comment on all proposed project applications as well as documents generated by the MA SubCouncil.

Public involvement in the project evaluation and selection process shall occur at the following points:

- **Evaluation of Proposed Project Applications.**

The public will have the opportunity to evaluate all proposed projects simultaneous with the MA SubCouncil's application of the Evaluation Criteria. As soon as practicable following the deadline for receipt of applications, all proposed project applications will be made available to the public. Projects will be assigned a unique identifier for tracking purposes and will be grouped by their predominant restoration priority categories as indicated by the applicants. Hard copies of applications for all proposed projects, organized by restoration priority category, will be available at several public libraries in the Housatonic River watershed (*see* Appendix 2). Electronic copies of applications will be available in PDF on the MA SubCouncil GE/Housatonic River restoration project web site at www.ma-housatonicrestoration.org.

Public comment is invited on all proposed project applications. Comments will be considered by the MA SubCouncil simultaneous with their consideration of evaluations conducted by a review team assembled by the MA SubCouncil (*see* Section 4.2).

EXHIBIT 4.1 EVALUATION AND SELECTION PROCESS: FLOW CHART

FIRST PAGE

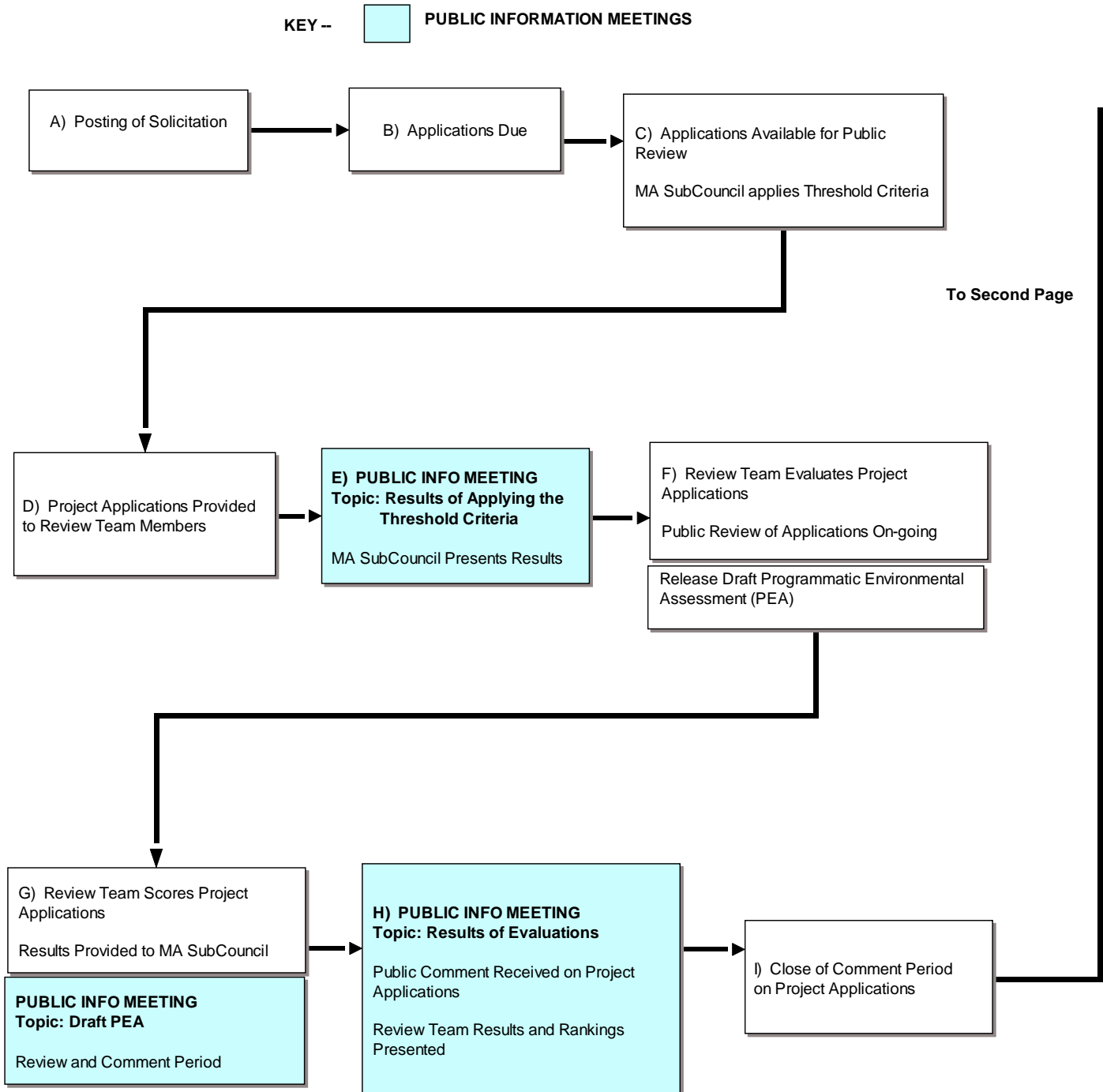


EXHIBIT 4.1 EVALUATION AND SELECTION PROCESS: FLOW CHART

SECOND PAGE

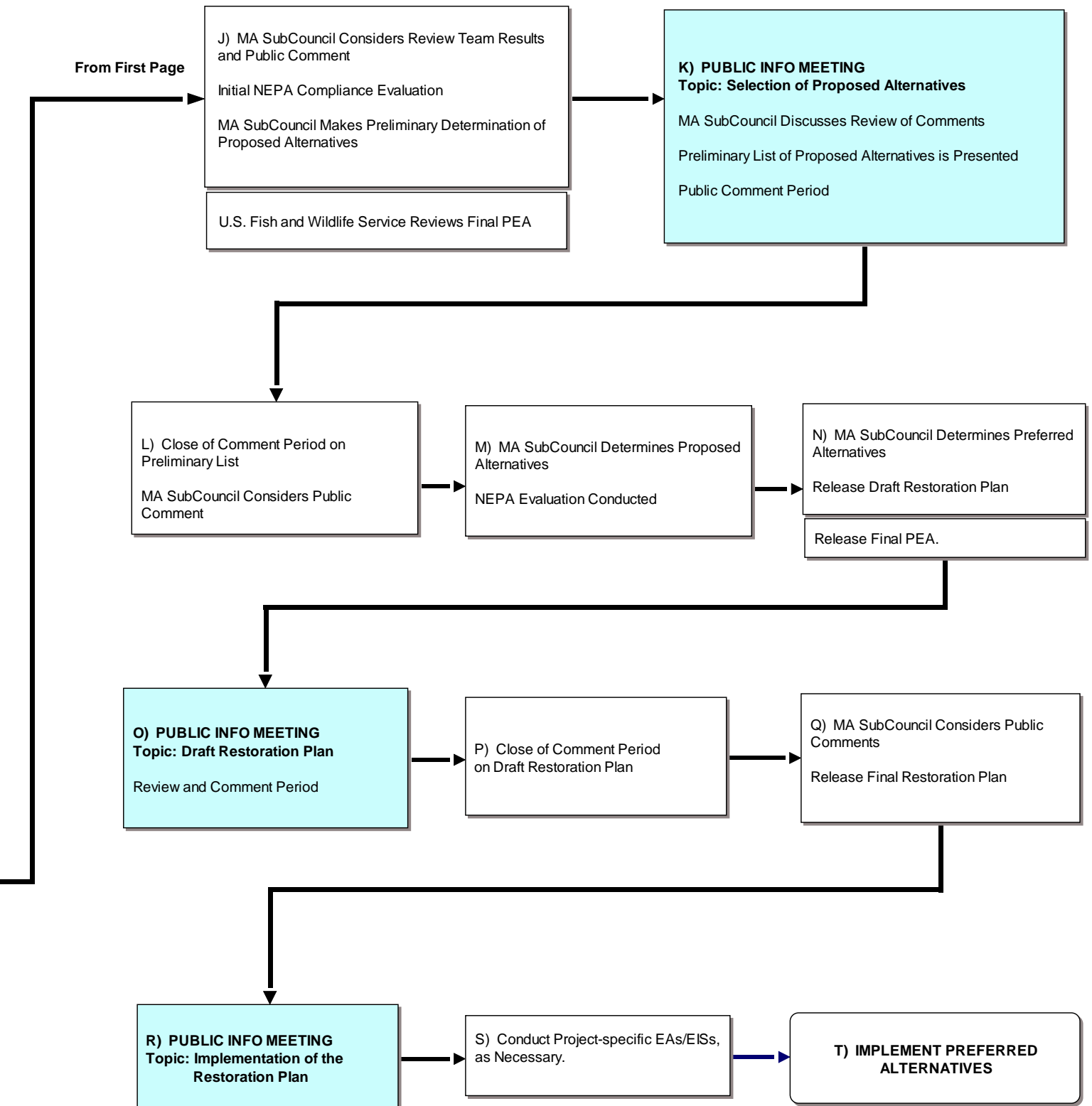


EXHIBIT 4.2 EVALUATION AND SELECTION PROCESS: Timeline of Activities by Entity

Stage One Component
Stage Two Component
Stage Three Component

Notes: This table is in chronological order, but does not represent periods of time per activity.
Table is best viewed in color.

Entities and Corresponding Activities			
Order	MA SubCouncil	General Public	Review Team
1	Posting of Solicitation		
2		Deadline for Applications	
3	Release All Applications	Review and Comment Period Begins on All Applications	
4	Apply Threshold Criteria. Determine "Project Applications."		
5	Public Info Meeting: Results of Applying Threshold Criteria		Review Team Members Receive Project Applications
	Announce Project Applications Proceeding to Stage Two	Public Comment Received	Evaluation of Project Applications Begins
6		Close of Comment Period on Threshold Criteria	
7	Release Draft PEA	Review and Comment Period Begins on Draft PEA	
8	Public Info Meeting: Draft PEA		
	Present Contents of Draft PEA	Public Comment Received	
9		Close of Comment Period on Draft PEA	Evaluation Results Provided to MA SubCouncil
10	Consider Public Comment on Draft PEA. Revise Draft PEA.		
11	Public Info Meeting: Results of Evaluations		
	Present Results of Review Team Evaluation and Ranking of Applications	Public Comment Received	
12		Close of Comment Period on Applications	
13	Consider Review Team Results and Public Comment		
14	Provide Final PEA to USFWS for Review		

EXHIBIT 4.2 EVALUATION AND SELECTION PROCESS: Timeline of Activities by Entity

Stage One Component
Stage Two Component
Stage Three Component

Notes: This table is in chronological order, but does not represent periods of time per activity.
Table is best viewed in color.

Entities and Corresponding Activities			
Order	MA SubCouncil	General Public	Review Team
15	Determine Preliminary List of Proposed Alternatives		
16	Public Info Meeting: Selection of Proposed Alternatives		
	Discuss Review of Evaluations and Public Comment. Present Preliminary List of Proposed Alternatives	Public Comment Received	
17		Close of Comment Period on Preliminary List of Proposed Alternatives	
18	Consider Public Comment		
19	Determine Proposed Alternatives		
20	Conduct NEPA Evaluations on Proposed Alternatives		
21	Determine Preferred Alternatives		
22	Release Draft RP	Review and Comment Period Begins on Draft RP	
23	Release Final PEA with USFWS Determination		
24	Public Info Meeting: Draft Restoration Plan		
	Present Contents of Draft RP	Public Comment Received	
25		Close of Comment Period on Draft RP	
26	Consider Public Comment. Revise Draft RP.		
27	Release Final RP		
28	Public Info Meeting: Implementation of Restoration Plan		
29	Conduct Project-Specific Eas/EISs, as Necessary		
30	Implement Preferred Alternatives (i.e., Restoration Projects)		

- **Selection of Proposed Alternatives.** The public will be invited to comment on the MA SubCouncil’s preliminary determination of Proposed Alternatives, based on the results of the evaluation process (*see* Section 4.2).
- **Draft PEA.** The public will be invited to comment on the overall approach of the Housatonic River restoration activities via the PEA that will be produced to satisfy NEPA requirements (*see* Section 1.4).
- **Selection of Preferred Alternatives (i.e., Restoration Plan).** The public will be invited to comment on the MA SubCouncil’s ultimate selection of Preferred Alternatives to be implemented. This is the public review and comment for the Draft RP (*see* Section 4.3).

4.1 STAGE ONE: THRESHOLD CRITERIA

MA SUBCOUNCIL EVALUATION

CERCLA and NRD regulations require that restoration activities restore, rehabilitate, replace, or acquire the equivalent of the resources and services that were injured or lost, but do not address which restoration projects are preferred. The first step in evaluating projects will be to identify projects that meet the minimum requirements for consideration as restoration projects. These “Threshold Criteria” include consistency with the goals of the MA SubCouncil, federal regulations, and other applicable federal, state, and local regulations and laws. The Trustee representatives of the MA SubCouncil are solely responsible for determining whether a proposed restoration project meets the Threshold Criteria.

The Threshold Criteria are questions that can typically be answered with a “YES” or “NO” response. Note that the Threshold Criteria are not intended to represent an exhaustive list of legal and regulatory factors that the MA SubCouncil may consider in evaluating proposed projects, and that the discussion of Threshold Criteria in this document does not constitute an official rule, regulation, or law.

When it is unclear whether a particular proposed project meets the Threshold Criteria, the MA SubCouncil may seek guidance as needed. In the event of a dispute among voting members of the MA SubCouncil, the MOA provides a method for dispute resolution (*see* Part 7, Section E). If unanimous consent cannot be reached, the matter shall be elevated to the Trustee Council for a decision or further instructions.

A project's demonstrated consistency with the Threshold Criteria does not guarantee that it will be funded, but merely establishes that the MA SubCouncil may further consider the project for possible funding. Conversely, rejection of a proposed project based on these criteria means that the MA SubCouncil will not allocate NRD funds for that project, even though the proposed project may yield a restoration benefit to an injured natural resource.

THRESHOLD CRITERIA

1. **Does the application contain the information necessary to proceed with an evaluation as described in this document?**

(A "NO" response may render the proposed project ineligible for further consideration.)

2. **Does the proposed project restore, rehabilitate, replace, and/or acquire the equivalent of natural resources or natural resource services that were injured by the release of PCBs or other hazardous substances?**

(A "NO" response renders the proposed project ineligible for further consideration.)

The MA SubCouncil will only fund a restoration project if the primary purpose of the project is to restore, rehabilitate, replace, or acquire the equivalent of natural resources and/or their services that were injured by the release of PCBs and/or other hazardous substances into the Housatonic River watershed. The MA SubCouncil will not select a proposed project for funding if the restoration benefit to the injured natural resource and/or its related services is incidental to the objective of the project. This criterion addresses the requirements of NRDA regulations 43 C.F.R. § 11.81-82 and 11.93.

3. **Is the proposed project, or any portion of the proposed project, an action that is presently required under other federal, state, or local law?**

(A "YES" response renders the proposed project ineligible for further consideration.)

The MA SubCouncil will not fund a restoration project if there is an independent legal obligation to perform the project pursuant to statute, regulation, ordinance, consent decree (excluding the CD that is the subject of this project), judgment, court order, permit condition, or contract, or if otherwise required by federal, state, or local law. Regardless of whether a governmental body or agency has elected to exercise its discretion to enforce a provision of law, if any governmental body or agency has the authority to order a party to commence certain work or activities subject

to enforcement actions, then the MA SubCouncil will consider the project “otherwise required” and not appropriate to be considered for funding. This Threshold Criterion is taken directly from the MOA, Part 7, Section D (*see* RPS, Appendix 1).

4. Is the proposed project, or any portion of the proposed project, inconsistent with any federal, state, or local law, regulation, or policy?

(A “YES” response renders the proposed project ineligible for further consideration.)

The MA SubCouncil will consider the degree to which a proposed project is consistent with applicable federal, state, and local laws, regulations, and policies (to the extent the MA SubCouncil is aware of those laws and policies and believes them to be applicable and meritorious). The MA SubCouncil will not fund a restoration project that is inconsistent with any federal, state, or local law, regulation, or policy. This criterion addresses the direction provided to the Trustees in NRDA regulations, 43 C.F.R. § 11.82(d)(9).

As a related matter, all selected projects must be implemented in compliance with applicable laws, regulations, and policies, in accordance with NRDA regulations, 43 C.F.R. § 11.82(d)(10). Applicants are required to provide a list of permits and approvals that are necessary to implement the proposed project.

5. Will the proposed project, in terms of its cost, be consistent with the stated goals of the MA SubCouncil to retain sufficient funds to 1) accomplish restoration over at least three rounds of proposal solicitations and 2) serve a wide geographic area that benefits the restoration priority categories?

(A “No” response renders the proposed project ineligible for further consideration.)

In determining whether a proposed restoration project will be funded, the MA SubCouncil will consider whether the project fits, in terms of the project’s cost, with the MA SubCouncil plan to retain sufficient funds to accomplish meaningful and necessary restoration work after USEPA’s cleanup is finished and to select a suite of projects that will accomplish restoration priorities.

The MA SubCouncil has not established an explicit funding cap for each round of solicitations; however, the MA SubCouncil has decided that it will not expend an amount of funds that would impair its ability to accomplish meaningful restoration following the completion of USEPA's remediation.

6. Will the proposed project, or any portion of the proposed project, be inconsistent with any ongoing or anticipated remedial actions (i.e., primary restoration) in the Housatonic River watershed?

(A "YES" response renders the proposed project ineligible for further consideration.)

The MA SubCouncil will not fund a restoration project that will be undone or negatively impacted by, or that will interfere with, any remediation work, including completed, ongoing, and future actions. This criterion addresses direction given to the MA SubCouncil in the MOA, Part 7, Section D (*see* RPS, Appendix 1).

Even if the MA SubCouncil's analysis of a proposed project indicates that it will yield a cost-effective restoration benefit to an injured resource, the MA SubCouncil will not fund the project if it will be undone or negatively impacted by remediation activities or if it will interfere with any remediation-related work. The MA SubCouncil will consult with the USEPA for additional information relevant to the proposed project's likelihood to adversely interact with future remediation activities.

However, the MA SubCouncil recognizes that this Threshold Criteria may be difficult to apply to some proposed projects, particularly those located in areas where remediation plans have not been completed, and therefore a phased approach to implementing restoration projects throughout the watershed has been adopted (*see* Section 3.0). The MA SubCouncil may render three decisions under this criterion when evaluating proposed projects in areas where remediation plans have not been determined and/or completed:

- a. If the project is determined by the MA SubCouncil to represent no opportunity for adverse interaction with future remediation activities and meets all other Threshold Criteria, the project will proceed to Stage Two: Evaluation Criteria. If the project is determined to have a strong likelihood of adverse interaction with future remediation activities, the project will be considered ineligible.

- b. If the MA SubCouncil is unable to definitively determine whether the project would adversely interact with potential remediation activities, and the project meets all other Threshold Criteria, the project will proceed to Stage Two: Evaluation Criteria, but will be considered a Pending Project Application. If the MA SubCouncil decides that the project would be selected as a Preferred Alternative if the details of remediation activities were known, the MA SubCouncil may grant the project Pending Preferred Alternative status. The project will then be subject to the following:
- i. Funds for the project will be earmarked from the solicitation round in which the project was proposed. The funds will be retained by the MA SubCouncil. The MA SubCouncil has the right to reserve earmarked funding for any length of time for the purpose of further evaluation and implementation of a Pending Preferred Alternative, but the MA SubCouncil is under no obligation to fund the project in the future.
 - ii. The MA SubCouncil will re-evaluate the feasibility of the Pending Preferred Alternative when additional, relevant information is available. This re-evaluation may require the applicant to update the application, as the MA SubCouncil deems necessary.
 - iii. A Pending Preferred Alternative from a previous funding round will not compete with projects proposed in subsequent funding rounds unless 1) the applicant requests an increase in funding from the original earmarked amount and/or 2) significant revisions to the proposal are necessary, at the discretion of the MA SubCouncil.
 - iv. Funds that are earmarked for the project will be retained by the MA SubCouncil until it is determined that the project is 1) ready to be implemented, 2) no longer a Preferred Alternative, or 3) revised to the extent that the project should be submitted for evaluation in another competitive funding round.
 - v. Earmarked funds for Pending Preferred Alternatives that are not selected for implementation will be divided among the remaining solicitation rounds at the discretion of the MA SubCouncil.

RESULTS OF EVALUATION: PUBLIC INFORMATION MEETING

The MA SubCouncil will develop a document summarizing the evaluation of Threshold Criteria (e.g., “Threshold Criteria Summary”) as applied to all proposed projects. It will include a brief abstract of each proposed project, as provided by the applicant. The proposed projects will be categorized by each project’s predominant restoration priority category, also as provided by the applicant. The release of the document will be announced to the public and applicants will be contacted regarding its release via Comm-PASS.

A public information meeting will be held after the release of the Threshold Criteria Summary. The MA SubCouncil will present the results of the Stage One evaluation. Proposed projects that meet all Threshold Criteria will be termed “Project Applications.” Project Applications will proceed to Stage Two of the evaluation process.

4.2 STAGE TWO: EVALUATION CRITERIA

The MA SubCouncil anticipates that a large number of Project Applications will be submitted because of the considerable public awareness and past planning processes regarding potential restoration projects. Therefore, it is necessary to have a method of identifying the most appropriate and deserving projects from this larger list of Project Applications. A series of relevant questions – the Evaluation Criteria – will be applied to each Project Application.

EVALUATION PROCESS

The MA SubCouncil has assembled a team of reviewers comprised of federal and state government agency staff possessing relevant technical knowledge and experience.

It is recognized that non-governmental entities also have significant expertise on a wide range of disciplines that are relevant to evaluating proposed restoration projects in the Housatonic River watershed. However, expanding the review team to a limited number beyond the governmental personnel would have two negative impacts. It would 1) deny equal access for the evaluation of project applications by all members of the public and 2) require compliance with the Federal Advisory Committee Act (FACA), which requires formalization of a Federal Advisory Committee and development of a charter

that must be filed with the United States Congress. This would require expenditures of additional time and resources to identify and appoint a select number of non-governmental entities to serve on a Federal Advisory Committee. The MA SubCouncil would prefer to minimize the expenditure of NRD monies on administrative process when those funds could otherwise be directed to the implementation of high-quality restoration projects.

The MA SubCouncil is instead taking special measures to design a public review process that the entire public has equal access to, and that complements the review team process to the extent allowable by law (*see* Section 4.0 “Public Involvement”).

At the completion of Stage One (i.e., Threshold Criteria), the MA SubCouncil will assign Project Applications to members of the review team for review and evaluation. At least one staff member of the Consultant Team will also serve on each Project Application’s review team. Assignments will be made based on the reviewers’ area(s) of technical expertise and relevant experience. Each Project Application will be evaluated by at least three members of the review team, representing a range of technical expertise and relevant experience. Reviewers will not evaluate Project Applications on which they are listed as the applicant or for which they have submitted letters of support. Reviewers will evaluate each Project Application in accordance with the process described in this document.

A rating system (i.e., High, Medium, Low) will be used to apply the Evaluation Criteria to each Project Application. Each rating is associated with a number of points that may vary with the question, allowing certain criteria to be weighted more heavily than others. The Evaluation Criteria will be applied to Project Applications separately. First, each reviewer will independently apply the Evaluation Criteria to their assigned Project Applications and arrive at an individual score for each project. These individual scores will be submitted to the proposal evaluation coordinator. Then, the review team assigned to each Project Application will meet to discuss their independent evaluations of the project, and each review team member will explain their rationale for arriving at their individual score. After a thorough discussion of the project’s merits, the review team members will have the opportunity to revise their individual scores for the Project Application. The review team will then arrive at a single, consensus-based score for each Project Application.

The review of each Project Application will be recorded in an evaluation summary memo. This memo will include: the consensus-based score for the project; the review teams' rationale for the consensus-based score; the final, individual score provided by each reviewer and; the affiliation of each review team member assigned to the Project Application (e.g., agency, division, office, program).

The evaluation summary memos will be provided to the MA SubCouncil. These summaries will subsequently be collated and made available to the public.

PUBLIC COMMENT

Public comment on the merits of Project Applications is of particular interest to the MA SubCouncil. All applications for proposed projects will be available for public review (*see* Section 4.0, "Public Involvement"). The MA SubCouncil will receive public comment on Project Applications at the same public meeting that includes the release of the review teams' evaluation results. This enables two important aspects of the selection process: 1) it encourages public comment to be focused on the Project Applications themselves, rather than exclusively on the results of the review teams' evaluation, and 2) it allows the MA SubCouncil to consider the public's sentiment on the merits of the projects at the same time they are considering the results of the review teams' evaluation.

EVALUATION CRITERIA

Project Applications will be evaluated and scored using the following categories of criteria:

- Relevance and Applicability of Project — 7 criteria. Maximum of 85 points.
- Technical Merit — 6 criteria. Maximum of 65 points.
- Project Budget — 6 criteria. Maximum of 60 points.
- Socioeconomic Merit — 7 criteria. Maximum of 75 points.

An explanation of each criterion is provided in the following section. Guidance on the scoring of each criterion is also provided.

RELEVANCE AND APPLICABILITY OF PROJECT

(85 point maximum) These criteria ascertain the relevance and applicability of the proposed project to the restoration of injured natural resources and the services they provide.

Natural Recovery Period

The MA SubCouncil seeks to implement projects that will provide restoration benefits to injured natural resources and/or services in advance of the “natural recovery period.” The natural recovery period is the length of time it would take for the injured resource and/or service to recover to an optimal condition in the absence of human intervention. Preferred projects will describe the natural recovery period for the resource and/or service of interest, and demonstrate that the project would provide benefits to that resource and/or service in advance of the natural recovery period. Projects will not be funded if they would require a longer period of time to implement than the natural recovery period for the natural resource and/or service that is the focus of the project. This criterion addresses direction provided to Trustees in the NRDA regulations, 43 C.F.R. § 11.82(d)(6).

- **High** (15 points): Project will clearly provide restoration benefits in advance of the natural recovery period.
- **Medium** (9 points): Project has the potential to provide restoration benefits in advance of the natural recovery period.
- **Low** (0 point): Benefits provided by the project are unlikely to result in restoration benefits in advance of the natural recovery period.

Location of Project

Priority will be given to projects that are within the Housatonic River watershed in Massachusetts. Proposed projects will only be considered if they have a positive impact on injured natural resources and/or their services located within the Housatonic River watershed.

- **High** (15 points): Project takes place within the watershed and will positively affect injured natural resources and/or their services.
- **Medium** (9 points): Project does not take place in the watershed, but will positively affect injured natural resources and/or services located within the Housatonic River watershed.
- **Low** (0 point): Project does not take place in the watershed and does not positively affect injured natural resources and/or services located within the Housatonic River watershed.

RELEVANCE AND APPLICABILITY OF PROJECT

Sustainable Benefits

Priority will be given to projects that provide long-term sustainable benefits to injured natural resources and/or the services they provide.

- **High** (15 points): Project will clearly result in long-term, self-sustaining and comprehensive benefits. Project does not require recurring human intervention or maintenance.
- **Medium** (9 points): Long-term and sustainable benefits are likely to require periodic maintenance or management that represents a relatively small investment to provide continuing benefits.
- **Low** (0 point): Benefits provided by the project are likely to be short-term, unsustainable and/or finite. Project requires a significant investment of human intervention, management, and/or maintenance in order to provide continuing benefits.

Magnitude of Ecological Benefits

Priority will be given to projects that maximize the level of ecological benefits provided through NRD funding. For example, ecological benefits could be measured in terms of the increase in an animal population, an increase in native and/or rare plants in to the Housatonic River environment, the increase in prey species provided for another species or the number of acres of habitat to be restored, enhanced or protected. This criterion will assist the MA SubCouncil in achieving the greatest possible level of ecological restoration.

- **High** (15 points): Project will provide a high level of ecological benefits.
- **Medium** (9 points): Project will provide a moderate level of ecological benefits.
- **Low** (0 points): Project will provide no or a low level of ecological benefits.

Human Health and Safety

Proposed projects will be evaluated for their potential to have adverse effects on human health and safety. A review will focus on the human health and safety of a particular project to determine if protective measures could be added to the project to ensure safety. This criterion addresses the direction provided to Trustees in the NRDA regulations, 43 C.F.R. § 11.82(d)(8).

- **High** (10 points): Project has minimal or no potential for adverse effects on human health and safety.
- **Medium** (6 points): Project as proposed has the potential for adverse effects on human health and safety, but protective measures could be added to minimize adverse effects.
- **Low** (0 points): Potential for adverse effects to human health and safety is inherent to the proposed project.

RELEVANCE AND APPLICABILITY OF PROJECT

Benefits to Multiple Restoration Categories

Priority will be given to projects that demonstrate the ability to provide benefits to the greatest number of restoration priority categories and, by extension, the greatest number of species, natural resource types, and services.

- **High** (10 points): Project will clearly benefit more than one restoration priority category.
- **Medium** (6 points): Project will clearly benefit one restoration priority category.
- **Low** (0 point): Project does not clearly benefit a restoration priority category.

Enhancement of Remediation/Response Actions

The MA SubCouncil is interested in projects that explore opportunities to enhance remediation/response actions by concurrently or subsequently implementing restoration projects. Such projects may result in synergistic benefits. For example, a remedial action, such as riverbank excavation, and a proposed restoration project, such as riverside trails for wildlife observation, may jointly benefit by integrating and coordinating the design and construction of the two projects. This criterion addresses in part the direction provided to Trustees in the NRDA regulations, 43 C.F.R. § 11.82(d)(4).

- **High** (5 points): Project clearly complements completed, ongoing or planned remediation or response actions. A high potential for synergistic benefits is demonstrated.
- **Medium** (3 points): To a limited degree, project complements completed, ongoing or planned remediation or response actions. Synergistic benefits may be possible, but not substantiated.
- **Low** (0 points): Project has no relationship to completed, ongoing or planned remediation or response actions.

TECHNICAL MERIT

(65 point maximum) These criteria assess whether the proposed approach is technically sound and likely to succeed using appropriate methods, and whether there are clear project goals and objectives. These criteria also ascertain whether the applicant possesses the necessary experience, training, facilities, and administrative resources to accomplish the project.

Technical/Technological Feasibility

Priority will be given to projects that employ well-known and accepted techniques/technologies to achieve stated project objectives. The project will be evaluated based on the demonstrated likelihood of success of the proposed method(s) in the proposed project location in an acceptable period of time. The MA SubCouncil may approve projects that are innovative, as long as the approach is based on proven principles and concepts. “Stated project objectives” includes, but is not limited to, ecological, engineering, economic, and social objectives. This criterion addresses direction provided to Trustees in the NRDA regulations, 43 C.F.R. § 11.82(d)(1).

- **High** (15 points): Methods are widely regarded as, or based on, proven techniques/technologies for achieving stated project objectives. Likelihood of success in the proposed project location is high. Applicant clearly demonstrates technical/technological feasibility of project.
- **Medium** (9 points): Method has been moderately successful as a technique/technology for achieving stated project objectives. Likelihood of success in the proposed project location is moderate. Applicant provides an adequate demonstration of project’s technical\technological feasibility.
- **Low** (0 point): Method is considered to be technically infeasible for achieving stated project objectives. Likelihood of success is low or unknown. Applicant does not demonstrate technical/technological feasibility of project.

TECHNICAL MERIT

Technical Capacity of Applicant and Project Team

Priority will be given to projects that demonstrate applicant's capacity to conduct the scope and scale of the project, as indicated by the qualifications and past experience of the project leaders and/or partners in designing, implementing, and effectively managing and overseeing similar projects. Examples of projects similar in scope and nature that have been successfully completed by the implementation team are encouraged. Communities and/or organizations developing their first restoration projects may not be able to document past experience, and therefore will be evaluated on their potential to effectively manage and oversee all project phases, as evidenced by the explanation of characteristics such as education, training and/or experience of primary project participants.

- **High** (15 points): The applicant demonstrates considerable relevant technical qualifications, experience and capacity. The project team has an established record of success in the implementation of projects of similar technical complexity, and/or they have a record of highly effective management of projects with similar scale and scope.
- **Medium** (9 points): The applicant demonstrates adequate relevant technical qualification, experience and capacity. The project team has successfully implemented and/or managed projects on a smaller scale or with less technical complexity.
- **Low** (0 point): The applicant demonstrates minimal or no qualifications, experience or capacity to implement and/or manage the proposed project.

Adverse Environmental Impacts

The MA SubCouncil will weigh whether, and to what degree, a project will result in adverse environmental impacts. This includes a consideration of significant adverse environmental impacts which could arise from a project, short term or long term, direct or indirect, including those affecting resources that are not the focus of the project. This criterion addresses the following requirements: NRDA regulations, 43 C.F.R. § 11.82(d)(5); NEPA, 42 U.S.C. § 4321 *et seq.*; and MEPA, M.G.L. ch. 30, §§ 61-62H.

- **High** (10 points): Project has little to no potential for adverse environmental impacts.
- **Medium** (6 points): Project has potential for adverse environmental impacts, but project could be modified to reduce impacts to acceptable levels and continue to benefit injured natural resources and/or services.
- **Low** (0 points): Project has strong potential for adverse environmental impacts, and modifications to project would considerably decrease benefits to injured natural resources and/or services.

Measurable Results

Priority will be given to projects that deliver tangible, specific ecological, economic, social and/or human use results that are identifiable and measurable, and/or that may be evaluated by professionally accepted methods, so that changes to the Housatonic River watershed can be documented and evaluated. Priority projects will include clear performance criteria, measurable endpoints, and a monitoring plan.

- **High** (10 points): Project success can be and will be directly measured using quantitative endpoints or other professionally accepted methods. Project includes a clear budget for monitoring and/or evaluation.
- **Medium** (6 points): Project success can be estimated using meaningful qualitative endpoints or indirect quantitative endpoints.
- **Low** (0 point): Success of proposed project cannot be directly measured or estimated.

TECHNICAL MERIT	
<p><u>Contingency Actions</u> Priority will be given to projects that include the ability to correct problems that arise during the course of the project implementation, as well as during post-implementation, maintenance, and monitoring phases.</p>	<ul style="list-style-type: none"> ▪ High (10 points): Project demonstrates foresight for effectively and efficiently addressing potential problems throughout project life. Applicant appears well-prepared and demonstrates clearly how impacts to project goals would be minimized or eradicated, should a problem occur. ▪ Medium (6 points): Project demonstrates limited foresight for addressing potential problems throughout project life. Applicant provides limited explanation of how impacts to project goals would be minimized or eradicated. ▪ Low (0 point): Project does not appear to address potential problems throughout project life, nor does it include plans for how to address such problems.
<p><u>Administrative Capacity of Applicant and Project Team</u> Priority will be given to projects that demonstrate the necessary facilities and/or administrative resources and capabilities to support and successfully manage the restoration work, including the availability of outside technical expertise to guide the project to a successful completion.</p>	<ul style="list-style-type: none"> ▪ High (5 points): The applicant demonstrates considerable administrative resources, capacity and experience necessary to conduct a project of the proposed complexity, scale and scope. ▪ Medium (3 points): The applicant demonstrates adequate administrative resources, capacity and experience. ▪ Low (0 point): The applicant demonstrates minimal or no administrative resources, capacity and/or experience to conduct a project of the proposed complexity, scale and scope.

PROJECT BUDGET

(60 points maximum) These criteria evaluate the project budget to determine if it is desirable, realistic and commensurate with the project needs and time frame.

Relationship of Expected Costs to Expected Benefits

The MA SubCouncil will consider whether a project's costs are commensurate with the benefits it provides to injured natural resources and/or services. This will be a qualitative cost/benefit analysis that is largely based on information provided by the applicant. Costs should not solely be limited to those used for project implementation. Therefore, applicants should demonstrate economic, social, and environmental costs and benefits. Application of this criterion is not a straight cost/benefit analysis, nor will it lead to the establishment of a specific cost/benefit ratio that is considered to be unacceptable. Priority will be given to projects that demonstrate that a significant benefit will be generated for a reasonable cost. This criterion addresses direction provided to Trustees in NRDA regulations 43 C.F.R. § 11.82(d)(2).

- **High** (15 points): The project's qualitative cost-benefit relationship demonstrates high net benefits.
- **Medium** (9 points): The project's qualitative cost-benefit relationship demonstrates net benefits.
- **Low** (0 point): The project's qualitative cost-benefit relationship demonstrates a net cost.

Implementation-oriented

Preferred projects will have a high ratio of NRD funding allocated to implementing the proposed project (e.g., on-the-ground habitat restoration, science-based monitoring, conducting an environmental educational course) compared to general program support and operation (e.g., administration, overhead, travel). Proposed projects that would result in comparatively high implementation costs will be taken into account.

- **High** (15 points): Project has a high ratio of NRD funding dedicated to implementation relative to general program support.
- **Medium** (9 points): Project shows an approximately equal ratio of NRD funding dedicated to project implementation and general program support.
- **Low** (0 point): Project shows a high ratio of NRD funding dedicated to expanding an existing organization's day-to-day activities.

PROJECT BUDGET

Budget Justification and Understanding

Priority will be given to projects that demonstrate strong budget justifications and understanding, including complete descriptions and detailed breakdown of costs for all elements of the project (e.g., design, engineering, permitting, implementation, construction, post-implementation monitoring, etc.). For land acquisition projects, the MA SubCouncil will evaluate whether the land, easements, or other property interests proposed to be acquired are being offered for sale at fair market value. Consideration of this criterion will likely require the MA SubCouncil to conduct an independent appraisal of the property.

- **High** (15 points): Budget is highly detailed, reasonable, realistic, and strongly justified for the proposed project.
- **Medium** (9 points): Budget provides adequate detail to determine whether budget is realistic or justified for the project.
- **Low** (0 points): Project does not provide adequate detail to determine whether budget is realistic or justified for project, and/or budget provided demonstrates an unrealistic understanding of project costs.

Leveraging of Additional Resources

Priority will be given to projects that demonstrate a strong commitment of matching funds, in-kind services, volunteer assistance, or other such partnering actions. This leveraging of non-NRD funds is preferred by the MA SubCouncil because it extends the availability of restoration funds and therefore increases the resource benefits provided by the funds. The MA SubCouncil will calculate the ratio of matching funds by comparing the total amount of matching funds, as indicated by the applicant in the project budget, with the amount of NRD funds that are requested in the project budget.

Non-NRD funds used for project-related expenditures up to six months prior to the deadline for receipt of applications will be considered. Matching funds should be specific to the proposed project and not include general organizational or operational costs.

- **High** (10 points): Project budget demonstrates an average of \$1.50 or greater in non-NRD funding for every \$1.00 requested.
- **Medium** (6 points): Project budget demonstrates an average of \$1.00 - \$1.49 in non-NRD funding for every \$1.00 requested.
- **Low** (3 points): Project budget demonstrates an average of \$0.10 - \$0.99 in non-NRD funding for every \$1.00 requested.

PROJECT BUDGET

Coordination and Integration

This criterion considers whether, how, and to what extent a project is coordinated or integrated with other ongoing or planned actions in the Housatonic River watershed. Restoration projects that can be efficiently coordinated with other actions may achieve cost savings. The MA SubCouncil is particularly interested in projects that enable synergistic benefits to injured natural resources and their services (i.e., a combination of activities that produces benefits greater than the sum of the individual activities).

NOTE: This criterion is different than coordination with USEPA response actions that is addressed under the “Results of Response Actions” criterion.

- **High** (5 points): Project is clearly coordinated and integrated with other ongoing or planned restoration activities. A high potential for synergistic benefits is demonstrated.
- **Medium** (3 points): Project neither complements nor detracts from other restoration or conservation activities. Synergistic benefits may be possible, but are not substantiated.
- **Low** (0 points): Project detracts from or negates other restoration activities. Synergistic benefits are very unlikely.

Comparative Cost-effectiveness

If two or more proposed projects provide the same or a similar level of benefits (including the “no action - natural recovery” alternative), the least costly action may be preferred. This criterion addresses direction provided to Trustees in the NRDA regulations, 43 C.F.R. § 11.14(j); § 11.82(d)(3), and (7).

NOTE: This criterion will only be applied if it is determined that two or more projects would provide the same or similar level of benefits. Points are not applicable to this criterion.

No points are associated with this criterion.

- **Preferred:** Project provides same or similar restoration benefit at a lesser cost than another proposed project.
- **Non-preferred:** Project provides same or similar restoration benefit at a greater cost than another proposed project.

SOCIOECONOMIC MERIT

(75 points maximum) These criteria assess the degree to which the project addresses social and economic issues relevant to the restoration of injured natural resources and the services they provide.

Enhancement of Public's Relationship with Natural Resources

Priority will be given to projects that enhance the public's ability to use, enjoy, or benefit from the Housatonic River watershed. This may include, but is not limited to enhancements to aesthetic surroundings and overall beauty of the Housatonic River watershed, place-based education programs, and public access to restoration project locations.

- **High** (15 points): Project will significantly enhance the public's relationship with, and their ability to utilize, the Housatonic River watershed. Project would result in aesthetic enhancements that are highly likely to be viewed favorably by the public at large.
- **Medium** (9 points): Project will provide some enhancements that would be viewed favorably by some, and not favorably by others.
- **Low** (0 point): Project will provide minimal or no enhancement of the public's relationship with the watershed. Project proposes aesthetic enhancements that are generally not viewed favorably.

Fostering Future Restoration and Stewardship

Priority will be given to projects that are likely to result in an "informed citizenry" that will help ensure ongoing environmental stewardship of restored natural resources and their services. This includes projects that serve as "building blocks" for future restoration activities that benefit injured natural resources and their services.

- **High** (15 points): Project will encourage, develop, or influence a specific behavior that has a direct and long-lasting and positive effect on the injured natural resources and their services. Project provides a critical foundation for future restoration activities.
- **Medium** (9 points): Project may provide a positive effect on natural resource stewardship, but for a short period of time. Project provides a limited foundation for future restoration activities.
- **Low** (0 points): Project does not demonstrate an ability to affect public stewardship of natural resources. Project does not provide a foundation for future restoration activities and/or provides a disincentive to future restoration activities.

SOCIOECONOMIC MERIT

Community Involvement

Priority will be given to projects that provide an opportunity for community involvement. Projects should demonstrate how the public would be involved, such as through hands-on habitat restoration, science-based monitoring, and/or training. Projects that sustain public involvement after their completion are of particular interest to the MA SubCouncil.

- **High** (15 points): Project includes significant and meaningful community involvement opportunities throughout the life of the project (e.g., planning, implementing, monitoring, maintaining).
- **Medium** (9 points): Project includes community involvement opportunities in some stages of the project's life. It is not clear whether these opportunities would have a significant effect on the project itself.
- **Low** (0 point): Project includes minimal or no community involvement.

Adverse Socioeconomic Impacts

The MA SubCouncil will weigh whether, and to what degree, a project will result in adverse socioeconomic impacts. This includes a consideration of significant adverse socioeconomic impacts that could arise from a project, short term or long term, direct or indirect, including those that involve resources that are not the focus of the project. This criterion addresses NEPA compliance requirements, 42 U.S.C. § 4321 *et seq.*

- **High** (10 points): Project has little to no potential for adverse socioeconomic impacts.
- **Medium** (6 points): Project has potential for adverse socioeconomic impacts, but project could be modified to reduce impacts to acceptable levels and continue to benefit injured natural resources and/or services.
- **Low** (0 points): Project has strong potential for adverse socioeconomic impacts, and modifications to project would considerably decrease benefits to injured natural resources and/or services.

Complementary with Community Goals

Projects will be assessed for their ability to complement goals, needs and/or recommendations in existing plans that incorporated public input and involvement in their development (e.g., restoration plans, watershed plans, land use plans, town master plans, BioMaps, etc.). This may include project proposals that are specifically included in plans, as well as new projects that address needs, goals and recommendations stated in existing plans. Applicants are responsible for citing the specific plans, goals, needs and/or recommendations that the project would complement.

- **High** (10 points): Project will complement one or more community goals, needs and/or recommendations as expressed in existing plans.
- **Medium** (6 points): Project has the potential to complement aspects of community goals, needs and/or recommendations as expressed in existing plans.
- **Low** (0 point): Project does not appear to complement community goals, needs and/or recommendation as expressed in existing plans.

SOCIOECONOMIC MERIT

Public Outreach

Priority will be given to projects that include plans to disseminate information on project goals, results, project partners and their roles, sources of funding, and other support provided.

- **High** (5 points): Project includes clear plans for conducting public outreach and demonstrates that a transparent and open process will enable the public to learn the details of the project.
- **Medium** (3 points): Project includes general mention of public outreach, but it is unclear whether this will provide sufficient information to the public on the details of the project.
- **Low** (0 point): Project does not include a public outreach component, and provides minimal or no opportunity for the public to learn the details of the project.

Diverse Partnerships

Priority will be given to projects that reflect a diversity of contributing project partners and resources. Partner contributions should be reflected in the budget, including donations of cash, equipment and materials, and in-kind services (e.g., volunteer time, technical assistance, materials, etc.).

- **High** (5 points): Project demonstrates a considerable diversity of partners contributing directly the project. The partners represent a broad range of community resources (e.g., individuals, municipalities, state and federal agencies, private foundations, conservation organizations, community groups, academia, etc.).
- **Medium** (3 points): Project partnership demonstrates some diversity in direct contributions.
- **Low** (0 point): Project partnership represents a narrow segment of community resources.

RESULTS OF EVALUATION: PUBLIC INFORMATION MEETING

Following completion of the review teams' evaluation process, the evaluation summary memos will be collated into a single document called the "evaluation summary report." The evaluation summary report will include:

- A ranking of Project Applications by restoration priority category. The ranking will be determined by the consensus-based scores provided by each project's review team.
- A brief summary of each Project Application (such as the abstract provided by the applicant).
- A rationale for the consensus-based score for each Project Application.
- The individual scores from review team members for each Project Application. The scores will be identified by the affiliation of the reviewer (e.g., agency, division, office, bureau).

An overview of the review teams' evaluation results will be provided at a public information meeting, and the evaluation summary report will be available to the public. It is emphasized that the evaluation summary report and the content of the oral presentation to be given at the public information meeting will solely reflect the results of the evaluation conducted by the review team and will not represent any decision on the part of the MA SubCouncil.

During this meeting, the public will be invited to provide comments on the Project Applications. Written comments will be due by a specified deadline after the public information meeting.

SELECTION OF PROPOSED ALTERNATIVES: PUBLIC INFORMATION MEETING

The ranking, score, and public comment for a Project Application will provide valuable guidance to the MA SubCouncil as to the merits of Project Applications relative to other Project Applications within the same restoration priority category. However, a Project Application's ranking, score, and/or public comments received may not be the sole or final criterion used by the MA SubCouncil in selecting the projects to be implemented.

The MA SubCouncil will consider the results of the review teams' evaluations and the public comments received on the Project Applications. This information will assist the MA SubCouncil in selecting the Project Applications that will undergo further consideration. These projects are termed "Proposed

Alternatives.” The MA SubCouncil will first arrive at a Preliminary Determination of Proposed Alternatives.

A public information meeting will be held to discuss the MA SubCouncil’s consideration of the review teams’ evaluations and public comments received. A list of the Preliminary Determination of Proposed Alternatives will be presented. Oral public comments will be received at the meeting. Written public comments will be accepted by a specified deadline. After consideration of public comments on the preliminary list, the MA SubCouncil will determine the Proposed Alternatives.

If appropriate, given the results of the evaluation process, the MA SubCouncil intends to advance at least one Proposed Alternative in each restoration priority category. The MA SubCouncil also intends to select Proposed Alternatives that represent a diversity of project types (resource-based, access-based, and maintenance-based). The Proposed Alternatives will proceed to Stage Three of the evaluation process.

4.3 STAGE THREE: NEPA AND MEPA COMPLIANCE

A comprehensive and coordinated NEPA and MEPA compliance evaluation will be conducted on all Proposed Alternatives. As previously stated, the MA SubCouncil intends to develop a PEA as part of NEPA compliance (*see* Section 1.4). The PEA does not relieve the USFWS of its responsibility to prepare site-specific NEPA documents when a Proposed Alternative’s impacts warrant additional documentation and review. The NEPA compliance evaluation will be documented in the RP for each funding round, as well as in project-specific EAs or EISs, when necessary.

All Proposed Alternatives will be evaluated with respect to their potential environmental and socioeconomic impacts, including direct and indirect impacts; beneficial and adverse impacts; and potential cumulative impacts. A number of factors will be considered by the MA SubCouncil. This evaluation will be largely based on information provided by applicants. Therefore, addressing these factors is a significant component of completing project applications. A detailed listing of issues that will be among those considered by the MA SubCouncil is provided in the draft applications for Housatonic River NRD funds (*see* Appendix 3).

SELECTION OF PREFERRED ALTERNATIVES

After completing the NEPA compliance evaluation for the Proposed Alternatives, the MA SubCouncil will select the restoration projects to be implemented. These projects are termed “Preferred Alternatives.” The MA SubCouncil may justifiably select Preferred Alternatives out of the rank order determined by the application of the Evaluation Criteria due to factors including, but not limited to:

1. The availability of funds.
2. The balance and distribution of funds
 - a. Geographically;
 - b. By applicant type;
 - c. By type of partners;
 - d. By restoration priority category;
 - e. By project approach; and
 - f. By project type.
3. The total cost of the highest ranked projects.
4. Public comment regarding the projects.
5. The potential impact of primary restoration activities of the project.
6. The applicant’s prior award performance.
7. Adequacy of information necessary for the MA SubCouncil to make a NEPA determination and draft the required documentation on a particular project.
8. Concerns resulting from the NEPA and MEPA analysis conducted for a project.
9. Concerns about the applicant’s ability to obtain required permits, approvals, authorizations, easements, rights-of-way, or any other necessary documents to conduct the project.
10. If the proposed project would acquire land that would be managed by the federal government and other proposed projects could feasibly restore, rehabilitate, replace, or acquire relevant natural resources and/or services. In accordance with NRDA regulations, 43 C.F.R. § 11.82(e), acquisition of land for federal management may not be chosen as a Preferred Alternative unless no other options for restoration, rehabilitation, replacement, or acquisition of relevant natural resources or services are feasible.

RESTORATION PLAN

The CERCLA requires that an RP is developed before Trustees can allocate funds for the purpose of restoration, rehabilitation, replacement, or acquisition of the equivalent of injured or lost natural resources and the services they provide. The Trustees must develop the RP to document and guide future restoration actions and insure that decisions on restoration projects are made after consideration of all reasonable alternatives and public comment.

The RP provides the rationale for selection of the Preferred Alternatives, including information such as project descriptions, restoration objectives, NEPA/MEPA compliance, environmental impacts, socioeconomic impacts, regulatory and permitting compliance, and monitoring and evaluation activities. Information will be provided on all proposed projects, including those not meeting the Threshold Criteria.

The MA SubCouncil will develop the Draft RP and release the document for public comment. During this time a public information meeting will be held, including a presentation on the contents of the Draft RP. The public will have the opportunity to comment on any aspect of the process including, but not limited to, the selection of the Preferred Alternatives, the impacts of the Preferred Alternatives, and projects that were not selected for implementation.

The MA SubCouncil will consider comments from the public before making a final determination of the Preferred Alternatives and finalizing the RP. Upon the finalization of both the RP and the PEA, Preferred Alternatives that do not require project-specific EAs or EISs will be implemented as soon as practicable.

ADDITIONAL NEPA COMPLIANCE: EA/EIS

If it is determined that the impact of a Preferred Alternative is within the scope of the PEA, no additional NEPA compliance documentation or review is necessary.

If a particular Preferred Alternative is ultimately selected for implementation, and it is determined that the impact of the Preferred Alternative is beyond the scope of the PEA, the following steps will take place:

- A project-specific EA or EIS will be prepared, which will be tiered from the PEA. If the MA SubCouncil determines that the development of a project-specific EA or EIS will affect the overall project costs, the MA SubCouncil reserves the opportunity to reevaluate the cost effectiveness of the associated Proposed Alternative and choose not to fund the project.

- The project-specific Draft EA will be released and a public review and comment period initiated. During this time, a public information meeting would be held and a presentation would be provided on the Draft EA. The public would have the opportunity to provide oral and written comment on the document. At the conclusion of the public review and comment period, the MA SubCouncil would consider and respond to comments from the public before finalizing the project-specific EA.
- The project's EA would then be submitted to the USFWS Regional NEPA Coordinator for an analysis of impacts. The USFWS would review the document and render a decision on the EA. If the USFWS renders a FONSI, no further action, review, or documentation is required. The EA would then be released to the public along with documentation of the USFWS decision.
- If the USFWS determines the project constitutes a major federal action with significant impacts, a project-specific EIS would be prepared in accordance with NEPA guidelines. An EIS would evaluate potential impacts of the specific project in more detail than the EA. The Draft EIS would undergo a public review and comment period, including a public hearing. Comments would be received and addressed on the Draft EIS, and the EIS would be finalized and published.

5.0 LITERATURE CITED

Industrial Economics, Inc. 1997. Housatonic River Preliminary Natural Resource Damages Assessment, <http://www.epa.gov/region01/ge/cleanup/exhibit9.pdf>. Prepared for the Housatonic River Natural Resource Trustees, Cambridge, MA.

Industrial Economics, Inc. 1998. Housatonic River Evaluation of Natural Resource Damages, <http://www.epa.gov/region01/ge/cleanup/exhibit10.pdf>. Prepared for the Housatonic River Natural Resource Trustees, Cambridge, MA.

Roy F. Weston, Inc. 1998. Upper Reach-Housatonic River Ecological Risk Assessment. Prepared under EPA Contract No. 68-W5-0009. Roy F. Weston, Inc., West Chester, PA.

USEPA. 2004. GE/Housatonic River Site in New England, Site History. <http://www.epa.gov/region01/ge/sitehistory.html>.

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6.0 DEFINITIONS

Acquisition of Equivalent Resources: The substitution for an injured resource with a resource that provides the same or substantially similar services, when such substitutions are in addition to any substitutions made or anticipated as part of the response actions and when such substitutions exceed the level of response actions determined appropriate to the site. 43 C.F.R. § 11.14(a).

Injury: The measurable adverse change, either long- or short-term, in the chemical, physical, or biological quality or the viability of a natural resource resulting from exposure to a release of a hazardous substance. 43 C.F.R. § 11.14(v).

Natural Resource Services: The physical and biological functions performed by the resource including the human uses of those functions. These services are the result of the physical, chemical, or biological quality of the resource. 43 C.F.R. § 11.14(nn). Natural resource services include provision of habitat, food and other needs of biological resources, recreation, other products or services used by humans, flood control, ground water recharge, waste assimilation, and other such functions that may be provided by natural resources. 43 C.F.R. § 11.71(e).

Natural Recovery Period: For the purposes of this document, the natural recovery period is the length of time it would take for the injured natural resource and/or service to recover to a healthy and sustainable condition in the absence of human intervention.

Rehabilitation: *see* **Restoration**

Replacement: *see* **Acquisition of Equivalent Resources**

Response Actions: The remediation or “cleanup” actions taken to address the release of hazardous materials. These commonly include the removal of waste materials, the “in-situ” treatment of contaminants, and/or the isolation or control of contaminants to reduce or prevent future impacts on the natural environment.

Restoration: Actions undertaken to return an injured resource to its baseline condition, as measured in terms of the injured resource's physical, chemical, or biological properties or services it previously provided, when such actions are in addition to response actions completed or anticipated, and when such actions exceed the level of response actions determined appropriate to the site pursuant to the NCP. 43 C.F.R. § 11.71(II).

APPENDICES

APPENDIX 1 CONTACT INFORMATION

APPENDIX 2 PUBLIC OUTREACH – LIBRARIES

APPENDIX 3 DRAFT APPLICATIONS FOR HOUSATONIC RIVER NATURAL RESOURCE DAMAGES FUND

APPENDIX 4 CONTRACTUAL AGREEMENTS REQUIRED FOR FUNDING DISBURSEMENT

APPENDIX 5 PUBLIC COMMENTS RECEIVED AND MA SUBCOUNCIL RESPONSE

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Appendix 1
Contact Information for Massachusetts SubCouncil,
Natural Resource Trustees, and Project Personnel

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Restoration Project Selection Procedure – Appendix 1

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Fax: (413) 442-9404
Email: slindloff@woodlotalt.com

Appendix 2

Public Outreach

Public libraries where documents can be accessed

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Restoration Project Selection Procedure – Appendix 2

Great Barrington Mason Library
231 Main Street
Great Barrington, MA 01230-1604
(413) 528-2403

Lee Public Library
100 Main Street
Lee, MA 01238
(413) 243-0385

Lenox Public Library
18 Main Street
Lenox, MA 01240
(413) 637-0197

Berkshire Athenaeum
One Wendell Avenue
Pittsfield, MA 01201-6385
(413) 499-9488

Bushell-Sage Library
48 Main Street
Sheffield, MA 01257-0487
(413) 229-7004

Stockbridge Library
Main Street
P.O. Box 119
Stockbridge, MA 01262-0119
(413) 298-5501

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Appendix 3

Draft Applications for Housatonic River Natural Resource Damages Fund

Note: This appendix does not constitute a formal solicitation for restoration project proposals.

Project Proposal Form

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**HOUSATONIC RIVER
NATURAL RESOURCE RESTORATION
Massachusetts SubCouncil**

Project Proposal Form**PART A. APPLICANT AND PROJECT INFORMATION.****TYPE OR PRINT RESPONSES IN BLACK INK.**

Applicant Name

Type of Entity Check the box that best describes the applicant.

- | | | |
|--|--|--|
| <input type="checkbox"/> Private individual | <input type="checkbox"/> Federal government | <input type="checkbox"/> County government |
| <input type="checkbox"/> Non-profit organization | <input type="checkbox"/> Tribal government | <input type="checkbox"/> Academic Institution |
| <input type="checkbox"/> State government | <input type="checkbox"/> Municipal government | <input type="checkbox"/> Other (explain) _____ |
| | <input type="checkbox"/> Corporation or Business | |

Authorized Representative of Applicant

Contact Person (if different)

Name _____

Name _____

Title _____

Title _____

Address _____

Address _____

Address _____

Address _____

City _____ State _____ Zip _____

City _____ State _____ Zip _____

Phone: () _____

Phone: () _____

Email: _____

Email: _____

Project Name Provide a brief working name:

Project Location See directions for additional materials to provide (maps, aerial photographs).

Municipality/ies: _____

Longitude for approximate center of project area: _____

Latitude for approximate center of project area: _____

Restoration Priority Category See instructions for category descriptions.**Primary Category.** Check one box.**Secondary Categories.** Check all relevant boxes.

- ☐ Aquatic Biological Resources and Habitat
- ☐ Wildlife Resources and Habitat
- ☐ Recreational Uses
- ☐ Environmental Education and Outreach

- ☐ Aquatic Biological Resources and Habitat
- ☐ Wildlife Resources and Habitat
- ☐ Recreational Uses
- ☐ Environmental Education and Outreach

List Specific Injured Natural Resources and/or Impaired Natural Resource Services to Benefit from Project

Project Type See instructions for project type descriptions. Check all relevant boxes.

☐ Resource-based

☐ Access-based

☐ Maintenance-based

Project Budget Summary

Complete the table below to summarize the budget information that is detailed in Part E: Project Budget. **The dollar figure in the outlined box represents the Housatonic River NRD Funds requested in this proposal.** Enter the source and amount of all funding that may be used for this project. This should include funds for which the applicant has not yet applied, and/or has not yet received a decision from the funding source. Indicate whether funds are cash or in-kind. Add rows as needed.

Funding Source	Total Amounts				
	Grant (\$)	Loan (\$)	Other Funds (\$)	Total (\$)	Committed source?
Housatonic River NRD Funds Requested					
TOTAL PROJECT COST ESTIMATE					

PART B. PROJECT ABSTRACT

The Project Abstract should not exceed 250 words.

Provide a clear and concise description of the proposal and its benefits to the injured natural resources and/or natural resource services as a result of releases of hazardous substances into the Housatonic River watershed. Include general information on costs, schedule, tasks involved in the project, and project partners. This proposal abstract *as submitted* will be widely distributed to inform reviewers and the public about the proposal.

PART C. PROJECT NARRATIVE

The Project Narrative should be no more than 15 pages.

Provide sufficient detail to verify that the project is technically feasible and will achieve its objectives. This information would be the basis of the scope of work for a funding agreement if the project is selected for implementation. Assume no prior knowledge on the part of the reviewers and the MA SubCouncil as to the relative merits of the project described in your application.

1. Identify Project Need
2. List Project Goals and Objectives
3. Project Implementation Plan. Provide a specific description of the project implementation plan. This section of the proposal should describe the tasks proposed to move from current condition to desired future condition.
 - a. Describe the overall approach to project implementation.
 - b. Discuss each phase of the project, the specific tasks comprising each phase, including any planning or design activities that must be completed before implementing the project. Relate these activities to the project goals and objectives, as appropriate.
 - c. Identify the project staff for particular tasks and quantify the staffing time necessary to complete the project. This should be consistent with the answer provided for Question 8: Qualification of Applicant and Project Team, and be reflected in Part E: Project Budget.
 - d. Identify any contracted services necessary to complete the project.

- e. Provide a list of any permits or regulatory approvals that will be needed to complete the project. Include the name of the permit or approval and the name of the entity with authority to grant or deny the permit or approval.
 - f. Identify any property access agreements, easements, rights-of-way, or other access agreements that will be needed to complete the project. Outline how they will be obtained as part of project implementation.
 - g. Describe the measures that will be undertaken to ensure long-term effectiveness and sustainability. If the work will occur on private land, explain what measures will be used to assure that future land management activities will not disrupt areas that will be restored and/or diminish the projects benefits. Include documentation of the current landowner's commitment to conduct these measures.
4. Project Schedule. The project schedule may be presented as a list of activities, a table, a flow chart or another clear format. The schedule should provide a time frame for the project from the starting date through completion of the project. Milestone tasks or activities should be indicated. If desired, include the schedule with the Project Implementation Plan (*see* Question 3). If particular tasks must be completed prior to others, this should be indicated. Note that costs incurred prior to the completion of necessary funding agreements cannot be reimbursed with Housatonic River NRD Funds. If the applicant intends to apply for multiple-year funding for a specific project, the schedule should reflect the entire project schedule. The schedule should also describe work to be performed as part of each phase of the project, until the project is completed.
5. Technical/Technological Feasibility. Preferred projects will employ well-known and accepted techniques/technologies to achieve stated project objectives. The project will be evaluated based on the demonstrated likelihood of success of the proposed method(s) in an acceptable period of time. The MA SubCouncil may approve projects that are innovative, as long as the approach is based upon proven principles and concepts. "Stated project objectives" include, but are not limited to, ecological, engineering, economic, and social objectives.
- a. Provide a description of the methods to be used to conduct specific tasks.
 - b. Describe how this approach has been used successfully to address similar problems in the Housatonic River watershed and/or elsewhere, if it has.
 - c. What are the certainties and uncertainties associated with any innovative approaches to the proposed project?

- d. Are there any uncertainties in the proposal that require further resolution? Discuss these unknowns.
 - e. Are there any data gaps? If so, how do you propose to address them?
 - f. Describe any potential complications and how they may affect the implementation time schedule.
6. Monitoring/Evaluation Plan. Preferred projects will deliver tangible, specific ecological, economic, social and/or human use results that are identifiable and measurable, and/or that may be evaluated by professionally accepted methods, so that changes to the Housatonic River watershed can be documented and evaluated. Priority projects will include clear performance criteria, measurable endpoints, and a monitoring plan.

Note: All funded projects will be required to submit progress reports—the number to be determined on a case-by-case basis—and a final completion report. In addition to a standard financial report, reporting requirements will include a narrative of the project progress and accomplishments, photographs, monitoring data and analysis, and additional project-specific information, as necessary.

To ensure a basic level of assessment of project success, implementation of restoration projects must have both clearly identified goals that are broad in scope and specific, measurable objectives. Proposals should describe the evaluation of these objectives by indicating at least two parameters that will be monitored during the project period.

- Projects in the Aquatic Biological Resources and Habitat or Wildlife Resources and Habitat categories must provide at least one structural and one functional parameter to monitor during the project period.
- Projects in the Recreational Uses or Environmental Education and Outreach categories must provide at least two parameters generally-accepted in the applicable discipline.

For each selected parameter (minimum of two) the existing conditions should be quantified and a target value (i.e., a realistic value that signifies success for the project objectives) must be proposed. Projects that include at least one reference site for purposes of comparing the project's progress should identify a reference value (i.e., a realistic value that represents optimal conditions).

- a. Describe proposed monitoring/evaluation activities.
- b. Describe what monitoring/evaluation data will be collected, why, how, and by whom.
- c. Describe how problems will be addressed if monitoring/evaluation activities indicate that objectives are not being met.

- d. How does this monitoring/evaluation effort consider or coordinate with other monitoring activities being conducted in the Housatonic River watershed?
- 7. Contingency Plan. Projects will be evaluated on the ability to correct any problems that arise during the course of the project implementation, as well as during post-implementation, maintenance, and monitoring phases. Describe how impacts to project goals would be minimized should a problem occur.
- 8. Qualifications of Applicant and Project Team.
 - a. Technical capacity.
 - i. Describe the project team's capacity to conduct the scope and scale of the project. Demonstrate this capacity by the qualifications and past experience of the project leaders and/or partners in designing, implementing, and effectively managing and overseeing similar projects.
 - ii. Applicants with little experience should demonstrate their potential to effectively manage and oversee all project phases, as evidenced by the explanation of characteristics such as education, training and/or experience of primary project participants.
 - iii. Provide curriculum vitae or resumes of primary project personnel, no more than two pages per individual. This does not count toward the overall page limit.
 - b. Administrative capacity.
 - i. Demonstrate the necessary facilities and/or administrative resources and capabilities that will support and manage the restoration work, including the availability of outside technical expertise.
- 9. Criteria Statements.

In order to provide a fair and thorough evaluation of proposed projects based on the stated Evaluation Criteria, **the MA SubCouncil requests that applicants provide a brief statement addressing each Evaluation Criteria.** For each criterion listed in the solicitation please provide sufficient but concise information about the proposed project to allow for the evaluation of your proposal as it relates to that specific criterion. Applicants are encouraged to cross-reference or summarize other sections of their application, where appropriate, to avoid duplication of effort. Please provide Criteria Statements in the same order as they are listed in the solicitation.

10. Supporting Technical Documentation

Relevant supporting technical documentation provided by the applicant can be included in the application. These materials should be no more than an additional 5 pages.

PART D. ENVIRONMENTAL AND SOCIOECONOMIC IMPACTS

All applicants must address the proposed project's potential impacts on the biological and human environment. The MA SubCouncil will use this information, along with any necessary supplemental information, to assure that all adverse environmental, social, and economic impacts have been adequately characterized and that reasonable alternatives have been considered by the applicant. This process will help the SubCouncil satisfy requirements under the National Environmental Policy Act and Massachusetts Environmental Policy Act, both of which require consideration of project impacts and alternatives. In addition, analysis of environmental, social, and economic impacts can alert applicants to location, design, or construction issues that can be refined to improve project performance or reduce mitigation and/or construction costs.

Applicants should respond to this requirement in two steps:

1. Complete the **Impact Checklist** on the following pages. This will serve as a guide in identifying environmental, social, and economic impacts. While the checklist is not exhaustive, it provides an extensive cross section of possible impacts; additional impacts can be noted in the spaces provided. For each impact category, five possibilities are listed on the form:

- No Impact or Not Applicable to Project
- Potential Adverse Impact
- Potential Beneficial Impact
- Agency Approval or Permit(s) Required
- Mitigation Action(s) Required

Check the box that characterizes possible impacts. Definitions of each impact are provided in the pages following the table. In some cases, it may be appropriate to check more than one box within a row. For example, a proposed dam removal project may have an adverse impact to surface water quality (e.g., a short-term increase in turbidity during construction), a positive impact to surface water quality (e.g., a decrease in water temperature for the long-term) and require one or more permits or approvals because of the surface water quality impacts (e.g., state

water quality certification).

2. Provide an **Impact Narrative** to explain checkmarks appearing in any of the following columns: potential adverse impact, potential beneficial impact, and/or mitigation required.

The description of impacts and/or mitigation for each type of impact (e.g., air quality impacts) should be no longer than one page per impact. This narrative should characterize the nature and significance of the impact (e.g., minor, moderate, major). For adverse impacts, the description should discuss any reasonable alternatives that would avoid the impact (if any); justify the selected alternative; and describe appropriate measures to mitigate the adverse impact (known mitigation requirements for potential adverse impacts should be explained, including the name of the entity with authority to require mitigation). The discussion should address direct and secondary adverse impacts that could arise from the project in the short-term or long-term, including those that involve non-project resources.⁶ When potential impacts are related and/or interdependent, the applicant is encouraged to provide a single, integrated discussion of impacts. However, the Impact Narrative should clearly address each potential impact.

The following Hypothetical Sample Impact Narrative has been provided as an example.

HYPOTHETICAL SAMPLE IMPACT NARRATIVE

***Note to Applicants:** As noted in the instructions, a narrative is required for NEPA-related impacts that you anticipate will be non-negligible in nature. We provide this sample impact narrative to clarify the content and level of detail expected. The example project, associated impacts, towns, citations, and other elements described below are hypothetical and are not meant to reflect preferred restoration approaches or project locations.*

The proposed boat launch would be a full-service facility, with a paved ramp suitable for trailer-towed boats and a gravel parking lot large enough to accommodate roughly 12 vehicles. As noted, the launch would be located on Route 33 in Smithville, just south of the intersection of Routes 33 and 57.

⁶ Direct impacts are those that occur at the same time and place as the action that triggers the event. Secondary impacts are those that occur at a different location and/or time than the action that triggers the event.

This narrative discusses the six key issues highlighted in our checklist of potential environmental and socioeconomic impacts. First, we focus on the potential negative environmental impacts. As with any paved boat launch, localized **water quality impacts** are likely. Vehicular traffic and surface runoff from the proposed parking area may contribute to sedimentation in the river. Likewise, launching activity and boat use near the launch may disturb bottom sediments and aquatic plants, decreasing water clarity in roughly a one-acre area surrounding the facility. We anticipate that these impacts will be minimal, however. The parking lot design will include large rock gravel and erosion control structures in the area nearest the riverbank. Likewise, the ramp will be built to a sufficient depth to avoid propeller churning from most vessels. It is noteworthy that a comparable ramp in Townsville (10 miles south of the Smithville border) was built in 1988 and has had limited water quality impacts.⁷ Finally, any negative water quality impacts may be offset by reduced bank erosion in the immediate area. Boaters currently use this location as a makeshift put-in for canoes, kayaks, and other small boats. Foot traffic has caused significant erosion along the riverside trails. Focusing this activity at a more formal access point may help reduce erosion.

Second, construction of the boat launch will require filling of approximately one half acre of **wetlands**. The location for the proposed launch was selected after a detailed review of potential alternative sites. The objective of this review was to satisfy access and convenience goals while minimizing the environmental impact of the launch. The site search focused on the 15-mile river stretch from Smithville to Jonestown, currently the largest river reach not served by a paved boat launch. The wetland segment at the chosen site represents a shrub swamp community, typical of those found in this reach of the Housatonic where farming was common in the past. The flora is dominated by short woody plants and the area lacks a closed canopy. Field surveys (see Johnson, 1992) in this area have found no species of special concern. In contrast, other available land parcels in this stretch of the river feature less abundant and/or ecologically sensitive habitats, including red maple swamp and deep emergent marsh. Furthermore, the design of the proposed facility would minimize wetland filling by setting the parking area 20 feet back from the river bank.⁸

⁷ Average suspended sediment concentrations of 90 mg/L were recorded at the Townsville launch in 1998, but concentrations dropped to an average of 8 mg/L 100 meters downstream from the ramp (USGS, 1998).

⁸ Note that the project will require approval under Section 404 of the Clean Water Act. We have received preliminary project approval from the Army Corps of Engineers, and are coordinating with the Smithville Conservation Commission regarding additional local, state and federal review requirements (see list of permits and approvals under Project Implementation Plan, page 3).

A final potential negative impact involves the **value of adjacent residential properties**. While the proposed launch site is bordered on one side by town land, two private residences occupy a three-acre lot north of the site. One home is situated near the riverbank, roughly 100 feet upstream of the boat ramp; the other is located closer to Route 33, roughly 50 feet from the proposed parking lot. The homeowners have expressed concern that the boat launch would create noise, traffic, litter, and other aesthetic impacts that would reduce the value of their properties. The proposed facility design would seek to minimize these disturbances. First, the parking lot would be fenced to discourage trespassing on adjacent private land. Second, the forested area between the parking lot and the houses would be left intact, creating a visual barrier. Third, buoys would be used to mark departure and approach routes to the ramp, limiting boat traffic in the immediate area of the shoreline home. Likewise, signage regulating boat speed would seek to limit noise and wake disturbance in the area immediately surrounding the ramp. It is noteworthy that other sites considered in our search raised more significant property value issues, with more densely populated residential areas and more organized neighborhood opposition.

The proposed boat launch also will offer a variety of beneficial impacts. First, the boat launch will provide much needed **recreational access** in the Smithville and Jonestown area. As noted, this river reach currently has no paved boat ramp access. Recreational surveys (e.g., Anderson, 1995) conducted at the Townsville boat ramp suggest that the majority of users travel from Smithville and Jonestown, and would prefer a more convenient location. Likewise, surveys of recreational anglers on the Housatonic suggest that most use the Townsville boat launch, despite the relatively long boat trip back upriver to preferred fishing locations near the confluence of the Housatonic and the Green River. Finally, overcrowding at the Townsville launch has been a problem in summer months. The proposed launch would ease this congestion and likely would allow an overall increase in river use by boaters, anglers, and other recreationalists.

Second, we believe that the project may provide **public safety benefits** by reducing traffic hazards currently experienced on Route 33. Currently, boaters access the river at a variety of makeshift put-ins along Route 33. In summer, this can result in frequent u-turns, shoulder parking, and roadside foot traffic. Police records suggest that several serious accidents have occurred in this location in the last five years. The proposed launch will provide a more focused access point and ample parking, curtailing these public safety risks.

Finally, we believe that the boat launch may offer modest **economic benefits** for local retailers. Rusty's Gas and Go, located directly across from the proposed site, has expressed enthusiasm for the project. The launch would likely increase sales of gas, bait, food, and other supplies. Rusty Jones, the store owner, also indicates that he would use an adjacent vacant lot to establish a small canoe and motor boat rental operation.

The MA SubCouncil will review the information provided and determine whether further information is required.

CHECKLIST: POTENTIAL ENVIRONMENTAL AND SOCIOECONOMIC IMPACTS

Project Name: _____

Applicant: _____

Impact Category	Impact	No Impact, or Negligible Impact	Potentially Significant Adverse Impact*	Potentially Significant Beneficial Impact*	Mitigation Required*	Permit or Approval Required **
Environmental	Air quality impacts					
	Instream flow impacts					
	Surface water quality impacts					
	Sediment quality impacts					
	Soil quality impacts					
	Groundwater quality impacts					
	Wetlands quality and services (e.g., flood control)					
	Diversity and abundance of aquatic species					
	Diversity and abundance of terrestrial wildlife species					
	Diversity of plant communities					
	Other:					
	Other:					
Social	Impacts on minority or low income populations					
	Impacts on local sense of community and well being					
	Impacts on aesthetics					
	Impacts on public health or safety					
	Impacts on recreational activity					
	Impacts to Native American Trust Resources					
	Impacts on non-Tribal cultural sites (e.g., sites listed or eligible for listing to the National Register of Historic Places)					
	Impacts on education (e.g., naturalist curricula)					

The MA SubCouncil will review the information provided and determine whether further information is required.

CHECKLIST: POTENTIAL ENVIRONMENTAL AND SOCIOECONOMIC IMPACTS

Project Name: _____

Applicant: _____

Impact Category	Impact	No Impact, or Negligible Impact	Potentially Significant Adverse Impact*	Potentially Significant Beneficial Impact*	Mitigation Required*	Permit or Approval Required**
	Impacts on local partnerships and collaborative efforts					
	Impacts on availability and quality of drinking water					
	Impact on subsistence activity (e.g., subsistence hunting)					
	Nuisance impacts (e.g., noise, dust, glare, odor)					
	Other:					
	Other:					
Economic	Short-term commercial economic impact of restoration action (e.g., construction jobs)					
	Impacts on property values					
	Impacts on recreational expenditures and related businesses					
	Impacts on existing resource-based industries (e.g., forestry, agriculture)					
	Impacts on commercial water users					
	Impacts on river-based commercial navigation					
	Impact on wastewater dischargers					
	Other:					
	Other:					

* Requires narrative discussion; see instructions in text.

** List and description of permits required; see instructions in text.

Examples of Environmental Impacts (not a comprehensive list):

- **Air quality impacts:** Project may increase the potential for release of pollutants to ambient air, via direct emissions or re-suspension of soil and/or dust, including short-term releases from construction vehicles, etc.
- **Instream flow impacts:** Project may increase or decrease river flow, either intermittently or over long periods of time, thereby affecting aquatic life.
- **Surface water quality impacts:** Pollutants may be released to surface water via point or non-point sources. Includes conventional pollutants (e.g., nutrients), sediments (e.g., turbidity), and toxic pollutants (e.g., metals). Beneficial impacts may occur if project reduces pollutant loadings (e.g., wetland filtration of runoff).
- **Sediment quality impacts:** Project may affect concentrations of pollutants found in riverbed and bank sediments.
- **Soil quality impacts:** Project may affect the concentration of pollutants in soils or the potential for soils to erode.
- **Groundwater quality impacts:** Project may affect the quantity or quality of groundwater resources (e.g., leaching of pollutants to groundwater).
- **Wetlands quality and services:** Project may influence the ability of wetlands to provide key functions and services, including habitat for wildlife, nutrient removal, flood control, and erosion control.
- **Diversity and abundance of aquatic species:** Project may influence the population and diversity of fish, shellfish, amphibians, and other aquatic wildlife. If relevant, discussion should highlight beneficial or adverse effects on rare, threatened, or endangered species.
- **Diversity and abundance of birds and terrestrial wildlife species:** Project may influence the population and diversity of wildlife (mammals, reptiles, invertebrates, birds) dependent upon rivers and riparian areas. For instance, a land acquisition project may conserve streamside habitat used by mink and river otter. If relevant, discussion should highlight beneficial or adverse effects on rare, threatened, or endangered species.
- **Diversity of plant communities:** Project influences the number of aquatic or terrestrial plant species. Discussion should highlight beneficial or adverse effects on rare, threatened, or endangered species.

Examples of Social Impacts (not a comprehensive list):

- **Impacts on minority or low income populations:** Project may affect the quality of life (e.g., health, income) of minority or low income populations living near the project site.
- **Impacts on local sense of community and well being:** Project may influence relationships between social groups in the community and affect the harmony and security enjoyed by residents. For example, a project may adversely affect the local sense of community if it raises property-rights issues and creates conflict between longtime residents and new residents.
- **Impacts on public health or safety:** Project may influence the safety of individuals who access the site. For instance, trail improvements may improve safety in a popular hiking area.
- **Impacts on recreational activity:** Project may influence the types, amount, and quality of recreational activity that the site can accommodate. For example, a land acquisition may include construction of a boating ramp, improving access for boaters and anglers. Likewise, a wetland restoration may attract species of interest to birders.
- **Impacts on aesthetics:** Project may influence residents' and visitors' general enjoyment of the site, separate from recreational use. For instance, a land conservation effort may preserve scenic vistas or similar viewsheds.
- **Impacts to Native American Trust Resources:** Project may affect the existence, quality, or accessibility of Native American resources such as fishing resources, burial grounds, and other sacred sites.
- **Impacts on non-Tribal cultural sites:** Project may affect the existence, quality, or accessibility of culturally significant sites such as National Historic Sites or state historic sites.
- **Impacts on education:** Project may affect the general public's understanding of the natural world such as the installation of interpretive signs at the site of a restored wetland or a place-based river curriculum instituted in schools.
- **Impacts on local partnerships and collaborative efforts:** Project may affect the degree of coordination between individuals and organizations, potentially influencing the efficiency of community-based environmental protection efforts. For instance, two watershed associations may collaborate on a regional project and share data and staff resources.
- **Impacts on availability and quality of drinking water:** Project may influence surface and groundwater resource quality, affecting whether the resources are suitable for private or public drinking water supplies.
- **Impact on subsistence activity:** Project may influence local individuals or families who rely on hunting or fishing activity for sustenance.

- **Nuisance impacts:** Project may affect the quality of the human environment in the short and/or long term by influencing dust and noise levels, odors, glare, etc.

Examples of Economic Impacts (not a comprehensive list):

- **Short-term commercial economic impact of restoration action:** Project may affect employment or income of individuals and businesses during the construction stages. For instance, a trail building project may provide work for local landscaping or construction firms.
- **Impacts on recreational expenditures and related businesses:** Through impacts on recreation and tourism, project may increase or decrease spending at local businesses. Affected businesses potentially include guide services, bait and tackle shops, sporting goods stores, hotels, grocery stores, and gas stations.
- **Impacts on existing resource-based industries:** Project may influence revenue and employment in resource-based industries such as agriculture and forestry. For instance, a conservation effort may introduce sustainable forestry practices in combination with recreational enhancements.
- **Impacts on commercial water users:** Project may affect local businesses' ability to use river water for production. For instance, a flow-enhancement project may limit the amount of cooling water that can be withdrawn by an up-stream power plant.
- **Impacts on property values:** Project may influence the market price of land or structures located near the project site, affecting the wealth of property owners. For example, a land conservation effort may enhance the value of abutting residences.
- **Impacts on river-based commercial navigation:** Project may affect the ability of cargo or ferry vessels to navigate safely. For example, a dam removal project may eliminate a small ferry crossing on a river.
- **Impacts on wastewater dischargers:** Project may affect the cost of treating and discharging wastewater. For example, improved water quality may decrease the cost of phosphorous removal for industrial and municipal treatment facilities.

PART E. PROJECT BUDGET

Complete the **Project Budget Summary Forms** and provide a **Budget Narrative**. Budgets should estimate costs as completely and accurately as possible. The MA SubCouncil will only reimburse costs that relate directly to the proposed project and only those that would be incurred if the project were to be implemented. The information contained in this section will be used to negotiate a contract between the applicable state or federal agency and the applicant, should the project be selected for implementation. An inflation contingency may be included as a project cost and must be identified as such on the budget forms. Account for any time lapses between project approval and funding so that an inflation contingency may ensure that funds are sufficient to complete the project activity.

Applicants should respond to this requirement in two steps:

1. Complete the **Project Budget Summary Forms** on the following pages (Table 1, Table 2a, and Table 2b). If you require additional space to complete the forms, please replicate the forms to your best ability. A description of each expense category follows the forms. Note that the Project Budget Summary By Funding Source must include all project funding sources in addition to the Housatonic River NRD Funds. Multi-year projects must break down budget categories by the fiscal year used by the fund disbursement entity (i.e., July 1 – June 30 for EOEA disbursements and October 1 – September 30 for federal disbursements). If the applicant is applying for multiple-year funding to implement a phased project, the Budget Narrative should describe work to be performed in each phase of the project, until the project is completed.
2. Provide a **Budget Narrative**.
 - A. Demonstrate that the project can be completed within the proposed budget.
 - i. Provide a general discussion of the spending plan, and explain each budget item in relation to the total budget.
 - ii. Clearly state any assumptions used to develop the proposed budget.
 - iii. Indicate the sources of all cost estimates.
 - iv. Fully justify project expenditures reported in the Budget Summary.
 - B. Describe what contingencies exist for cost-overruns, such as construction contingencies.
 - C. Indicate what mechanisms of financial assurance have been or will be obtained (e.g., letters of credit, performance bonds).
 - D. Discuss project income other than the Housatonic River NRD Funds.
 - i. Identify all other sources of funding.

- ii. Describe your efforts toward securing those funding commitments.
 - (1) If you have not yet applied to the indicated funding sources, provide the date of your expected application.
 - (2) If you have applied to other funding entities, give the date of your application, the date a decision is expected, and whether you requested a grant or a loan.
 - (3) If you have received a commitment of funds provide verification, such as an award letter.
- iii. Specify which, if any, of these other contributions should be considered as matching funds to the Housatonic River NRD Funds. Note the following:
 - (a) Housatonic River NRD Funds are considered to be non-federal funds when disbursed from the Commonwealth of Massachusetts.
 - (b) Funds are not to be used as match for more than one other funding source.
 - (c) Funds used for project-related expenditures up to six months prior to the deadline for receipt of applications may be considered as match. Matching funds should be specific to the proposed project and not include general organizational or operational costs.
- iv. Indicate whether other contributions are cash or in-kind contributions. Cash is project-specific funding provided by the applicant or another entity. In-kind contributions are project-specific, non-dollar contributions that have an associated monetary value. Example in-kind expenses include donated labor and equipment.
- E. Identify any loans to be used to fund the project and indicate the planned mechanism to pay back the loans.
- F. Include any other information that would help assess the applicant's financial commitment to project completion.
- G. If the project will require funding beyond the period for which funds are requested, include a plan describing how subsequent funds will be obtained.

TABLE 1. PROJECT BUDGET SUMMARY BY FUNDING SOURCE

PROJECT TITLE:				
APPLICANT NAME:				
EXPENSE CATEGORY	HOUSATONIC RIVER NRD FUNDS	OTHER CONTRIBUTIONS⁹		TOTALS
		CASH	IN-KIND	
A. SALARIES				
B. EMPLOYEE BENEFITS				
C. CONTRACTED SERVICES				
D. SUPPLIES AND MATERIALS				
E. TRAVEL				
F. EQUIPMENT				
G. OTHER (LIST)				
TOTALS				

⁹ The accompanying **Budget Narrative** must clearly indicate the sources of other contributions and which sources are cash or in-kind contributions.

TABLE 2a. PROJECT BUDGET SUMMARY BY PROJECT YEARS ¹⁰

PROJECT TITLE:				
APPLICANT NAME:				
EXPENSE CATEGORY	PROJECT YEAR 1		PROJECT YEAR 2	
	Housatonic River NRD Funds	Other Contributions	Housatonic River NRD Funds	Other Contributions
A. SALARIES				
B. EMPLOYEE BENEFITS				
C. CONTRACTED SERVICES				
D. SUPPLIES AND MATERIALS				
E. TRAVEL				
F. EQUIPMENT				
G. OTHER (LIST)				
TOTALS BY PROJECT YEAR				

¹⁰ If the proposed project will be completed in one year, fill in only the column titled "Project Year 1."

TABLE 2b. PROJECT BUDGET SUMMARY BY PROJECT YEAR¹¹

PROJECT TITLE:				
APPLICANT NAME:				
EXPENSE CATEGORY	PROJECT YEAR 3		PROJECT YEAR 4	
	Housatonic River NRD Funds	Other Contributions	Housatonic River NRD Funds	Other Contributions
A. SALARIES				
B. EMPLOYEE BENEFITS				
C. CONTRACTED SERVICES				
D. SUPPLIES AND MATERIALS				
E. TRAVEL				
F. EQUIPMENT				
G. OTHER (LIST)				
TOTALS BY PROJECT YEAR				

¹¹ If more than four Project Year columns are required, replicate the form to the best of your ability.

Definitions of Expense Categories

- A. Salaries – Identify each employee required to complete the project. List all participants by name and position, or by position only if not yet hired. List the estimated number of hours each employee will work and the hourly wage rate. Include in this category clerical, bookkeeping, and other support staff services that would be reimbursed by Housatonic River NRD funds. For salary-related overhead and indirect costs, include an explanation for how these costs are charged on a project-specific basis.
- B. Employee Benefits – Enter the employee benefits to be paid and the rate or method by which they were calculated.
- C. Contracted Services – Identify any services to be provided by others hired under contract for professional services or construction. This category includes, but is not limited to, consultant and construction services, materials, equipment, data processing, printing, and laboratory testing. List each specific service to be performed and the wage rate associated with it. Construction service contracts should include at least a 10 percent contingency to cover unexpected expenses.
- D. Supplies and Materials – List major supplies and materials necessary to prepare, conduct, or construct this project. These items are generally consumable commodities purchased for inventory or immediate use by the applicant and cost less than \$250. List the costs of all major items.
- E. Travel – List only costs for travel that is essential to conduct the project. Detail the expected travel destination, the purpose of the travel, the number of people traveling, and the number of trips to be made. Travel rates may not exceed the current state or federal employee rates for meals, lodging, and mileage.
- F. Equipment – Include in this category articles rented, leased or purchased for use on the project by the applicant. These items generally are of a non-consumable nature, have an estimated life of more than one year, and cost greater than \$500. List all necessary items and their costs.
- G. Other – Identify any other costs required to complete the project. List any other project costs, such as repairs or maintenance, that have not been addressed in other budget categories. For non-salary related indirect costs, include an explanation for how these costs are charged on a project-specific basis. Housatonic River NRD Funds cannot be used to pay interest on loans taken out to cover project expenses.

PROJECT IDEA FORM: CONCEPTUAL PROJECT IDEA, No Specific Funding Request

1. Project Idea Cover Sheet (see following page)
2. Project Abstract should not exceed two (2) pages. Include the following:
 - a. Statement of project need and problem.
 - b. Statement of project goals and objectives.
 - c. Injured natural resources and/or services that would benefit from project.
 - d. How natural resources and/or services would benefit from project.
 - e. General tasks involved in project, if known.
 - f. Justification for project cost estimate, if one has been provided.
3. Project Location, if a particular location is proposed. Attach 8.5 by 11 inch map or copy of aerial photograph showing project location and extent. Include pertinent topographic and geographic information, scale and north arrow.
4. Additional documentation that may further assist in evaluating the merits of the project idea, such as, but not limited to, information about similar projects conducted elsewhere and technical references describing the implementation of the project.

**HOUSATONIC RIVER
NATURAL RESOURCE RESTORATION
Massachusetts SubCouncil**

PROJECT IDEA FORM**Conceptual Project Idea: No Specific Funding Request.** Type or print responses in black ink.

Project Name Provide a brief working name.

Project Type See instructions for project type descriptions. Check all relevant boxes.☐ Resource-based ☐ Access-based ☐ Maintenance-based

Restoration Priority Category See instructions for category descriptions.**Primary Category.** Check one box.

- ☐ Aquatic Biological Resources and Habitat
- ☐ Wildlife Resources and Habitat
- ☐ Recreational Uses
- ☐ Environmental Education and Outreach

Secondary Categories. Check all relevant boxes.

- ☐ Aquatic Biological Resources and Habitat
- ☐ Wildlife Resources and Habitat
- ☐ Recreational Uses
- ☐ Environmental Education and Outreach

Applicant

Name _____

Title _____

Address _____

Address _____

City _____ State _____ Zip _____

Phone: (_____) _____

Email: _____

Type of Entity

Check the box that best describes the applicant.

- ☐ Private individual
- ☐ Non-profit organization
- ☐ Municipal government
- ☐ State government
- ☐ County government
- ☐ Federal government
- ☐ Tribal government
- ☐ Corporation or Business
- ☐ Academic Institution
- ☐ Other (explain) _____

Project Location (if known) See directions for additional materials to provide (maps, aerial photographs).

Municipality/ies: _____

Longitude for approximate center of project area: _____

Latitude for approximate center of project area: _____

Project Budget Estimate (if known)

Total Project Cost Estimate: \$ _____

Housatonic River NRD Funds Estimate: \$ _____

APPENDIX 4
CONTRACTUAL AGREEMENTS REQUIRED FOR
FUNDING DISBURSEMENT

NOTE: This is not a comprehensive listing of contractual agreements

- Commonwealth of Massachusetts Standard Contract Form
- Commonwealth of Massachusetts Terms and Conditions
- EOEA Supplemental Terms and Conditions
- Authorized Signature Verification Form

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COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT FORM AND INSTRUCTIONS

This form is jointly issued and published by the [Executive Office for Administration and Finance \(ANF\)](#), the [Office of the Comptroller \(CTR\)](#) and the [Operational Services Division \(OSD\)](#) for use by all Commonwealth Departments. **Any changes to the official printed language of this form shall be void. This shall not prohibit the addition of non-conflicting Contract terms.** By executing this Contract, the Contractor under the pains and penalties of perjury, makes all certifications required by law and certifies that it shall comply with the following requirements: that the Contractor is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards, including obtaining requisite licenses, permits and resources for performance; that the Contractor and its subcontractors are not currently debarred; that the Contractor is responsible for reviewing the Standard Contract Form Instructions available at www.comm-pass.com/comm-pass/forms.asp; that the terms of this Contract shall survive its termination for the purpose of resolving any claim, dispute or other Contract action, or for effectuating any negotiated representations and warranties; and that the Contractor agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached to this Contract or incorporated by reference herein, including the following requirements: all relevant Massachusetts state and federal laws, regulations, Executive Orders, treaties, [requirements for access to Contractor records](#), the terms of the applicable [Commonwealth Terms and Conditions](#), the terms of this Standard Contract Form and Instructions including the [Contractor Certifications and Legal References](#), the Request for Response (RFR) or solicitation (if applicable), the Contractor's response to the RFR or solicitation (if applicable), and any additional negotiated provisions.

[THE CONTRACTOR MUST COMPLETE ONLY THOSE SECTIONS PRECEDED BY AN "→".]

→VENDOR CODE:	MMARS DOCUMENT ID: _____ CONTRACT ID: _____
→CONTRACTOR NAME:	DEPARTMENT NAME:
→CONTRACT MANAGER:	CONTRACT MANAGER:
→PHONE: →FAX: →E-MAIL ADDRESS:	PHONE: FAX: E-MAIL ADDRESS:
→BUSINESS MAILING ADDRESS:	BUSINESS MAILING ADDRESS:
THE FOLLOWING COMMONWEALTH TERMS AND CONDITIONS FOR THIS CONTRACT HAS BEEN EXECUTED AND FILED WITH CTR: (Check only one) <input type="checkbox"/> COMMONWEALTH TERMS AND CONDITIONS <input type="checkbox"/> COMMONWEALTH TERMS AND CONDITIONS FOR HUMAN AND SOCIAL SERVICES	
COMPENSATION: (Check one option only) <input type="checkbox"/> Maximum Obligation of this Contract: \$ _____ <input type="checkbox"/> No Maximum Obligation has been set for this Contract: (Check one) <input type="checkbox"/> Rate Contract with a Rate of: \$ _____ Per: _____ <input type="checkbox"/> Rate Contract with Multiple/Negotiated Rates: (Attach listing of multiple rates or description of negotiation process)	PAYMENT TYPE: (Check one option only) <input type="checkbox"/> Payment Voucher (PV) <input type="checkbox"/> Ready Payment (RP) (Schedule: _____ Initial Base Amt:\$ _____) <input type="checkbox"/> Contractor Payroll (CP) (Required for Contract Employees) <input type="checkbox"/> Recurring Payment (Required for Leases and TELPs)
→PAYMENT METHOD: The Contractor agrees to be paid by Electronic Funds Transfer (EFT is the Commonwealth's Preferred Payment Method): <input type="checkbox"/> Yes <input type="checkbox"/> No	
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE: (Reference to attachments without a narrative description of performance is insufficient.) PROCUREMENT OR EXCEPTION TYPE: (Check one option only) <input type="checkbox"/> Single Department Procurement/Single Department User Contract; <input type="checkbox"/> Single Department Procurement/Multiple Department User Contract; <input type="checkbox"/> Multiple Department Procurement/Limited Department User Contract; <input type="checkbox"/> Statewide Contract (Only for use by OSD or an OSD-designated Department); <input type="checkbox"/> Grant (as defined by 815 CMR 2.00); <input type="checkbox"/> Emergency Contract (attach justification); <input type="checkbox"/> Interim Contract (attach justification); <input type="checkbox"/> Contract Employee; <input type="checkbox"/> Collective Purchase (attach OSD approval) <input type="checkbox"/> Legislative/Legal Exemption (attach proof); <input type="checkbox"/> Other (Specify): _____ RFR REFERENCE NUMBER: (or "N/A" if not applicable)	
ANTICIPATED CONTRACT EFFECTIVE START DATE: Performance shall begin on _____, which shall be no earlier than the latest date this Contract is signed by authorized signatories of the Department and Contractor and approved under Section 1 of the applicable Commonwealth Terms and Conditions.	
TERMINATION DATE OF THIS CONTRACT: This Contract shall terminate on _____ unless terminated or amended by mutual written agreement by the parties prior to this date under Section 4 of the applicable Commonwealth Terms and Conditions.	
→AUTHORIZING SIGNATURE FOR THE CONTRACTOR: →X: _____ (Signature of Contractor's Authorized Signatory) →DATE: _____ (Date must be handwritten at time of signature) →NAME: _____ →TITLE: _____	AUTHORIZING SIGNATURE FOR THE DEPARTMENT: X: _____ (Signature of Department's Authorized Signatory) DATE: _____ (Date must be handwritten at time of signature) NAME: _____ TITLE: _____

COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT FORM INSTRUCTIONS



INTRODUCTION

The Standard Contract Form Instructions are provided to assist both Contractors and Commonwealth Departments with the interpretation and completion of the Standard Contract Form. These Instructions, including policies, procedures and legal references, are incorporated by reference into the Standard Contract Form. The Standard Contract Form is the boilerplate contract used by the Commonwealth for commodity and service Contracts, Grants and any other agreements for which another standard boilerplate is not already prescribed by statute, regulation or policy.

The Standard Contract Form is not a stand alone contract document but is used as the key document that incorporates the various documents that make up a Commonwealth Contract, which include: (1) the applicable [Commonwealth Terms and Conditions](#) or the [Commonwealth Terms and Conditions for Human and Social Services](#), (2) a Request for Response (RFR), other procurement solicitation document, or non-procurement supporting documentation, (3) the Contractor's response to the RFR or other solicitation, or scope of services and budget for non-procured Contracts, and (4) any other negotiated terms and conditions and attachments. The applicable Commonwealth Terms and Conditions is signed only once by the Contractor and filed by the initial contracting Department with the [Office of the Comptroller \(CTR\)](#). The signed and filed Commonwealth Terms and Conditions will be incorporated by reference and apply to any contract, Grant or other agreement entered into by the Contractor and any Commonwealth Department. Therefore, Contractors do not have to re-sign this document for subsequent procurements.

LINKS TO POLICIES, PROCEDURES AND LEGAL REFERENCES. Text that appears underlined in the Standard Contract Form and Instructions indicates a "hyperlink" that will link you to an Internet or bookmarked site for the particular reference being cited. Pressing the "Alt" and "F9" keys while in the Microsoft® Word version of this document will display the full text of hyperlinks which can be copied and pasted or typed into your Internet browser address field if you can not connect directly to the Internet by clicking on a hyperlink. Hyperlinks to legal requirements such as statutes and regulations are links to unofficial versions of these documents. While reasonable efforts have been made to assure the accuracy of the data provided, Departments and Contractors should consult with their legal counsel to ensure compliance with all legal requirements. **PLEASE NOTE THAT NOT ALL APPLICABLE LAWS HAVE BEEN CITED IN THIS DOCUMENT. INSTRUCTIONS AND HYPERLINKS MAY BE ADDED OR CHANGED WITHOUT NOTICE, SO CHECK THIS DOCUMENT AT www.comm-pass.com/comm-pass/forms.asp FOR UPDATES.**

A Department is not responsible for providing a paper copy of the Standard Contract Form Instructions to Bidders or Contractors. The Standard Contract Form Instructions are incorporated by reference into the Standard Contract Form and do not have to be filed with the completed Contract documents. **Departments and Contractors are responsible for reviewing the Standard Contract Form and Instructions, including hyperlinks.** See www.comm-pass.com/comm-pass/forms.asp for an electronic copy of the Standard Contract Form with Instructions and access to the Internet hyperlinks.

CONTRACTOR INFORMATION - TO BE COMPLETED BY THE CONTRACTOR

VENDOR CODE: Enter the state accounting system [Vendor Code](#) assigned previously from the Commonwealth. If a [Vendor Code](#) has not been assigned, leave this space blank and the Department will complete this section when a [Vendor Code](#) has been assigned. If the Contractor has a [Vendor Code](#) with multiple payment remittance addresses, the Contractor must verify the correct Vendor Code to ensure timely payments to the correct address. The Contractor's failure to verify the correct Vendor Code will waive the Department's liability for late payment interest for payments sent to the incorrect remittance address.

CONTRACTOR NAME: Enter the full legal name of the Contractor's business as it appears on the Contractor's [W-9](#) Form. If Contractor also has a "doing business as" name, both the legal name and the "d/b/a" name must appear in this section.

CONTRACT MANAGER: Identify the authorized Contract Manager who will be responsible for managing the Contract.

PHONE/FAX/E-MAIL ADDRESS: Identify the phone, fax number(s) and electronic mail (e-mail) address of the Contract Manager.

BUSINESS MAILING ADDRESS: Enter the address where all correspondence to the Contract Manager must be sent. Unless otherwise specified in the Contract, legal notice sent or received by the Contractor's Contract Manager (with confirmation of actual receipt) through the listed fax number(s) or electronic mail address will meet any requirements for written notice under the Contract.

PAYMENT METHOD: This section is for informational purposes only, but must be completed by either the Contractor or the Department. Enter whether or not the Contractor agrees to be paid using [Electronic Funds Transfer \(EFT\)](#). [EFT](#) is the preferred and fastest method of payment for all Commonwealth payments. It is the Commonwealth's policy to pay bills within 30 days via [EFT](#). (See Commonwealth [Bill Paying Policy](#)). If the Contractor does not yet receive payments electronically, the Contractor should complete the [Authorization for EFT Payments Form](#). In addition to sending the remittance information to the Contractor's financial institution with the payment, CTR's [MassFinance/Vendor Web site](#) allows Contractors access to their remittance information, payment history and pending payments via their account number (the Vendor Code listed on the Standard Contract Form).

AUTHORIZING SIGNATURE FOR CONTRACTOR/DATE: The Authorized Contractor Signatory must, in their own handwriting and in ink, sign AND enter the date the Contract is signed. See section below under "[ANTICIPATED CONTRACT EFFECTIVE START DATE](#)".

COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT FORM INSTRUCTIONS



Rubber stamps, typed or other images are not acceptable. Proof of Contractor signature authorization may be required by the Department. See "[REQUIRED STANDARD CONTRACT FORM CONTENTS](#)" section below. See also CTR [Department Head Signature Authorization Policy](#) for the policy requiring live signatures and signature dates and Contractor signature authorization verification.

NAME /TITLE: The Contractor Authorized Signatory's name and title must appear legibly.

DEPARTMENT INFORMATION - TO BE COMPLETED BY THE DEPARTMENT

MMARS DOCUMENT ID: Enter the state accounting system ([MMARS](#)) transaction (encumbrance) number associated with this Contract. This sixteen position number consists of: 2 position transaction code, 3 position Department MMARS code, 4 position Organization Code, 7 position Department-defined identification number. (Example: "SC OSC 1010 1AUDIT2"; Note: the first character of the 7 position identification number typically represents the fiscal year for which the transaction is being created. For example, "FY2002" would appear as "2".) The **MMARS DOCUMENT ID** should be used as a reference number on all transactions, documentation or other correspondence related to the Contract.

CONTRACT ID: This number is used for Department internal purposes only, if the Department needs an identifying number in addition to the **MMARS DOCUMENT ID**.

VENDOR CODE: The Department will complete this field only if not already completed by the Contractor (such as when the Contractor is set up as a new Vendor on the MMARS Vendor File or when Vendor File changes are made). The Department must ensure that the Contractor's [Vendor Code](#) matches the [Vendor Code](#) created on the state accounting system [MMARS](#) Vendor File. If the Contractor has a Vendor Code with multiple payment remittance addresses (see the MMARS VEND file), the Department must verify the correct Vendor Code with the Contractor to ensure timely and properly directed payments.

DEPARTMENT NAME: Enter the full legal Department name.

CONTRACT MANAGER: Identify the authorized Contract Manager who will be responsible for managing the Contract.

PHONE/FAX/E-MAIL ADDRESS: Identify the phone, fax number(s) and electronic mail (e-mail) address for the Contract Manager.

BUSINESS MAILING ADDRESS: Enter the address where all correspondence to the Contract Manager must be sent. Unless otherwise specified in the Contract, legal notice sent or received by the Department's Contract Manager (with confirmation of actual receipt) through the listed fax number(s) or electronic mail address for the Contract Manager will meet any requirements for written notice under the Contract.

COMMONWEALTH TERMS AND CONDITIONS THAT APPLY TO THIS CONTRACT: Check either "[Commonwealth Terms and Conditions](#)" or "[Commonwealth Terms and Conditions for Human and Social Services](#)", whichever is applicable to the Contract performance. (See [Expenditure Classification Handbook](#) for assistance in determining applicable Commonwealth Terms and Conditions.) The checked document must be on file at CTR PRIOR to submitting this Contract for encumbrance processing at either CTR or the [Operational Services Division \(OSD\)](#), or if the Department has transaction delegation, prior to processing the encumbrance in [MMARS](#). The Department must check the [MMARS](#) VEND table to determine if the Contractor has already signed the applicable Commonwealth Terms and Conditions.

If the Contractor has the applicable Commonwealth Terms and Conditions already on file and submits additional signed copies of this form, these signed copies must be sent by a Department to the Office of the Comptroller Payee Unit to be maintained on file.

If the Contractor does not have the applicable Commonwealth Terms and Conditions on file and recorded on the [MMARS](#) VEND table, the Department must complete a Vendor Update Form (VU) on [MMARS](#) and then mail the VU with a completed [W-9](#) and Commonwealth Terms and Conditions to CTR's Payee Unit. Changes to the Contractor's identity during the period of the Contract require an updated [W-9](#) and execution of another Commonwealth Terms and Conditions reflecting the new information. See [Guidelines for Material Changes in Contractor Identity](#). For more information on Vendor Code requirements see [Section 4 "Payee Administration and Tax Reporting Administration and Tax Reporting Clearinghouse"](#) in the CTR annual [Fiscal Year Closing and Opening Instructions](#).

COMPENSATION: The Department must select from one of two categories for Contract compensation: (See Chapter 4, under section "RFR Section 6" of the [Commonwealth Procurement Policies and Procedures Handbook](#) for more information.)

- **Maximum Obligation.** A maximum obligation is used for either unit-based or project-based compensation when performance (commodity or service) is predictable and measurable and a maximum amount of funds has been set for the Contract. The amount entered in this space must be fully encumbered by the Department for the duration of the Contract according to the **ANTICIPATED CONTRACT EFFECTIVE START DATE** and the **TERMINATION DATE** listed in the Contract, including out year obligations.
- **No Maximum Obligation.** A Rate Contract is used when the rate per unit of performance (e.g., commodity or service) is known but the number of units that will be needed during the Contract period is unknown. Rate Contracts are also used when there are multiple Contractors available to provide performance and it is unknown which Contractors will be selected at any given time to provide performance. The Department must encumber sufficient funds to support the anticipated use of

COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT FORM INSTRUCTIONS



the Contract. The Department is also responsible for monitoring its requests for performance to ensure that performance by the Contractor does not exceed the amounts encumbered for the Contract. Select either:

- **A Rate Contract With A Single Rate**, and indicate the rate and type of unit (per hour, day, week, item, etc.).
- **A Rate Contract With Multiple/Negotiated Rates**, and attach listing of multiple rates (including any supporting documentation for rates), or if rates are to be negotiated, attach a description of the process that will be used to negotiate the rates. Rate Contracts with negotiated rates may not be used for open-ended arrangements but are appropriate for lists of pre-qualified contractors and certain Statewide Contracts for which rates are negotiated on a per project, program, task or work order basis depending upon the performance required.

PAYMENT TYPE: This section is for informational purposes only, but must be completed by the Department. This section should identify which of the following types of payment the Department will be using to pay the Contractor. See Commonwealth [Bill Paying Policy](#).

- **Payment Voucher (PV).** The standard payment mechanism for most Contracts.
- **Ready Payment.** An alternative payment mechanism (authorized by [G.L. c. 29, s. 23A](#) and 815 CMR 3.00) that enables recurring automated payment estimates (weekly, bi-weekly, semi-monthly) with monthly reconciliation for social, educational and rehabilitative service contracts with predictable, recurrent and regular service delivery schedules.
- **Contractor Payroll (CP).** This payment mechanism is required for all Contract Employees (determined to be Contract Employees through the IRS SS-8 test) and is made through the statewide payroll system ([HR/CMS](#)).
- **Recurring Payments.** This payment mechanism establishes a recurring schedule of automated payments (monthly, quarterly, semi-annually or annually) for all Commonwealth leases. TELP (Tax Exempt Lease Purchase) Contracts must use established [MMARS "REST" tables](#) (and not Contractor set schedules). See [Acquisition of Durable Commodities](#) (part of the [Commonwealth Procurement Policies and Procedures Handbook](#)) for more information about leases and TELPs.

PAYMENT METHOD: This section is for informational purposes only, but must be completed by either the Contractor or the Department. Enter whether or not the Contractor agrees to be paid using [EFT](#). (See [PAYMENT METHOD](#) section above for additional information.) Departments are strongly encouraged to promote the use of EFT for Contract payments and should encourage the Contractor to complete the [Authorization for EFT Payments Form](#) at any time.

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE: Enter a brief description of the Contract performance, project name or other identifying information. The description is used to specifically identify the Contract performance, match the Contract with attachments and determine if the appropriate expenditure code (as listed in the [Expenditure Classification Handbook](#)) has been selected. Merely stating "see attached" or referencing attachments without a narrative description of performance is insufficient.

PROCUREMENT OR EXCEPTION TYPE: Check the appropriate type of procurement or exception for this Contract. Only one option can be selected.

- **Commodity or Service Contracts.** If the Contract is for the procurement of commodities or services, the Department must indicate if the Contract was procured as a "Single Department Procurement/Single Department User Contract"; "Multiple Department Procurement/Limited Department User Contract"; "Single Department Procurement/Multiple Department User Contract" or a "Statewide Contract (Only for use by OSD or an OSD-designated Department)". See [Commonwealth Procurement Policies and Procedures Handbook](#) and Appendix [Use of Procurement by Single or Multiple Departments](#) for more information and documentation requirements for these options.
- **Grants.** If the Contract is being used for the award of a Grant, the Department must check "Grant". Grants are governed by 815 CMR 2.00 and [Grants and Subsidies Policy](#). See "[REQUIRED STANDARD CONTRACT FORM CONTENTS](#)" below for additional information.
- **Competitive Procurement Exception.** If the Contract did not result from a competitive procurement, the Department must check off the appropriate exception: "Emergency Contract"; "Interim Contract"; "Contract Employee"; "Collective Purchase approved by OSD"; a "Legislative/Legal Exemption" or "Other" (and specify procurement exception). Documentation proving the exception must be attached. See "[REQUIRED STANDARD CONTRACT FORM CONTENTS](#)" below for additional information.
- **REQUEST FOR RESPONSE REFERENCE NUMBER.** Enter the reference number of the RFR for this Contract (even if you are using an RFR that was issued by another Department). If the RFR was posted on Comm-PASS, use RFR Reference Number as posted. If an RFR was not used, indicate "N/A".

ANTICIPATED CONTRACT EFFECTIVE START DATE: The Department must enter the "anticipated" start date of the Contract. However, the legal effective start date of the Contract is determined by the execution dates of the Contract and any required approvals as outlined in Section 1 of the applicable Commonwealth Terms and Conditions.

COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT FORM INSTRUCTIONS



- **NOTE:** In the event the Department enters an incorrect date, *the legally enforceable Contract Effective Start Date of performance will be interpreted according to the language identified in Section 1 of the applicable Commonwealth Terms and Conditions.* CTR and OSD may correct the dates in the state accounting system ([MMARS](#)) to reflect the legal Contract Effective Start Date.
- **Unauthorized performance prior to legal contract effective start date.** Contractors are not authorized to provide performance prior to the legal Contract Effective Start Date of a Contract. **Departments and Contractors are on notice that, despite an incorrect date in the Standard Contract Form or any communications made by the Department to the contrary, the Contractor can not be compensated under the Contract for any performance made prior to the legal effective start date of the Contract as follows:**
 - **For Commodity and Service Contracts using the [Commonwealth Terms and Conditions](#),** *"the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the Department, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later."*
 - **For Human and Social Service Contracts using the [Commonwealth Terms and Conditions for Human and Social Services](#),** *"the effective start date of a Contract shall be the later of: the date the Contract was executed by an authorized signatory of the Contractor; the date the Contract was executed by an authorized signatory of the Department; the date specified in the Contract; or the date of Secretariat authorization pursuant to [G.L. c. 29, §29B](#)."*

TERMINATION DATE OF THIS CONTRACT: The Department must enter the date the Contract will terminate. A Contract must be signed for at least the initial duration listed in the RFR, or other solicitation document (if applicable). Amendments to extend the termination date, such as exercising an option to renew, must be made using the [Standard Contract Amendment Form](#) and must be signed by the Contractor and the Department PRIOR to the termination date (or as previously amended) in accordance with Section 4 of the applicable Commonwealth Terms and Conditions. The Contractor is not legally entitled to payment under this Contract for any performance provided after the Termination Date of a Contract (even if requested by the Department) and the Department may not amend the Contract to include such performance or payments since the performance was not made under this Contract. See Section on "[CONTRACT AMENDMENTS](#)" below. See also [Request for Response/Contract Duration Appendix](#).

AUTHORIZING SIGNATURE FOR DEPARTMENT/DATE: The Authorized Department Signatory must, in their own handwriting and in ink, sign AND enter the date the Contract is signed. See section above under "[ANTICIPATED CONTRACT EFFECTIVE START DATE](#)". **Rubber stamps, typed or other images are not accepted.** See also CTR [Department Head Signature Authorization Policy](#).

NAME /TITLE: The Department Authorized Signatory's name and title must appear legibly.

REQUIRED STANDARD CONTRACT FORM CONTENTS

ORIGINALS OR TRUE ATTEST COPIES OF CONTRACTS. Massachusetts [G.L. c. 7A, s. 5](#), requires that either the original or a certified copy of all Contracts be filed as directed by the Comptroller. The "record copy" contents of a Contract (as listed below) must be filed either at CTR, OSD (commodity contracts) or at the Department if so delegated, whenever a Standard Contract Form is used. **The Standard Contract Form Instructions are incorporated by reference and are not required to be filed as part of the original or true attest copy of the Standard Contract Form.** A Department official who has seen the original of a document can attest that a copy submitted is a "true attest" or "true copy" of the original. This certification can be done on the top page of the copy or by attachment. See also [Department Head Signature Authorization Policy](#).

- **COMMODITY AND SERVICE CONTRACTS.** (1) the applicable Commonwealth Terms and Conditions (on file at CTR); (2) an original or true attest copy of the Standard Contract Form; (3) a copy of the RFR, or a Comm-PASS close-out Contract Summary screen print (provided the RFR has been properly closed out and the close-out Summary posted on Comm-PASS verifies the location of the RFR and RFR Reference Number on Comm-PASS), or copy of other solicitation (if applicable); (4) an original or true attest copy of the Contractor's RFR Response (or a copy if the RFR was conducted by another procuring Department), or response to other solicitation (if applicable); (5) any negotiated additional terms; (6) Verification of Contractor signature authority if the Contract value exceeds \$50,000 (see [below](#)); and (7) for Consultant Contracts (HH or NN (N01-N14) subsidiaries in the [Expenditure Classification Handbook](#)) (a) Executive Departments must also attach a [Consultant Contractor Mandatory Submission Form](#) completed by the Contractor (pursuant to [G.L. c. 29, s. 29A](#) and [G.L. c. 7A, s. 6](#)); and (b) Non-Executive Departments must attach a statement of financial interest from consultant Contractors pursuant to [G.L. c. 7A, s. 6](#) and may use the [Consultant Contractor Mandatory Submission Form](#) or other appropriate format.

Note: See Chapter 5 "Contract Execution" and "RFR Attachments/Other" of the [Commonwealth Procurement Policies and Procedures Handbook](#) for additional information and any required RFR attachments.

COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT FORM INSTRUCTIONS



- **GRANTS.** (See [Grants and Subsidies Policy](#), 815 CMR 2.00 and [How to Determine if a Grant or Contract?](#)) (1) the applicable Commonwealth Terms and Conditions (on file at CTR); (2) an original or true attest copy of the Standard Contract Form; (3) a copy of the Grant application, RFR or Comm-PASS close-out Contract Summary screen print (provided that the RFR must have been properly closed out and the close-out Summary posted on Comm-PASS which verifies the location of the RFR and RFR Reference Number on Comm-PASS), or other solicitation document. If a Grant application process, RFR or other competitive selection was not used, attach a description of the Grant selection process, why a competitive selection was not performed and a justification for the Grantee selection; (4) the original or true attest copy of the Grantee's response to the Grant application, RFR or solicitation document. If a Grant application process, RFR or other competitive selection was not used, attach a detailed scope of performance and budget; (5) a copy of any additional negotiated terms; (6) if the Grant is being made to a non-public entity, and the Department is using appropriated Type 01 (operating) or Type 02 (capital) funds, attach a copy of the specific legislative authorization for a Grant to a non-public entity as required under 815 CMR 2.00, and (7) Verification of Contractor signatory authority if Grant value exceeds \$50,000 (see [below](#)).
- **COMPETITIVE PROCUREMENT EXCEPTIONS.** (1) the applicable Commonwealth Terms and Conditions (on file at CTR); (2) an original or true attest copy of the Standard Contract Form; (3) documentation justifying the competitive procurement exception (for Emergency and Interim Contracts); copies of legislative language or other legal exemption (for Contracts with legislative/legal exemption from procurement); approval from OSD (Collective Purchase Contract with federal or other public entity); or copy of posting/hiring documentation and resume (for Contract Employees); (4) an explanation of how the Contractor was selected; (5) documentation outlining performance responsibilities and costs (also known as scope of services and budget); (6) any additional negotiated terms, and (7) Verification of Contractor signature authority if Contract value exceeds \$50,000 (see [below](#)). See also [801 CMR 21.05](#) and Chapter 2 under "Competitive Procurement Exceptions" and Chapter 4 under "Contract Filing" of the [Commonwealth Procurement Policies and Procedures Handbook](#).

CONTRACTOR SIGNATURE VERIFICATION FOR ALL CONTRACTS, GRANTS OR OTHER AGREEMENTS. All Contracts exceeding \$50,000 in value must attach verification of signature authorization for the Contractor as outlined below. The [Contractor Authorized Signature Verification Form](#), or any other alternate format, may be used for this purpose. Departments are responsible for verifying that a Contract (regardless of amount) is signed by an authorized signatory for the Contractor. Verification includes: (a) proof of the authority to sign contracts and (b) an official sample of the signatory's signature that the Department can use to verify the signature on the Standard Contract Form, amendments and other documents related to the Contract. For Individual Contractors, such as a Contract Employee or Independent Contractor, only an official sample or notarized signature is required. See also [Department Head Signature Authorization Policy](#).

CONTRACT AMENDMENTS

The [Standard Contract Amendment Form](#) must be used to document all amendments to a Contract including exercising an option to renew, extending the period of performance, changing the scope of performance, changing costs, etc. A [Standard Contract Amendment Form](#) **MUST** be signed by the Department and the Contractor **PRIOR** to the termination date listed in the Contract (or as amended). Departments must attach all relevant documentation to support the amendment.

Options to Renew Amendments. Although options to renew are made at the discretion of a Department, the exercise of an option(s) to renew is considered a Contract amendment which will not be effective until documented by the execution of a [Standard Contract Amendment Form](#) by the Department and Contractor prior to the termination date of the Contract. A Department may exercise more than one option to renew at a time, if multiple options are still available under the procurement. If a Contract terminates prior to using the time left under a procurement, any remaining time available may still be used by the Department with the following restrictions: (1) the lapse in time between the original Contract termination date and the execution of a new Standard Contract Form will be lost and must be deducted from the total available time left under the Contract procurement, and (2) any newly signed Standard Contract Form will require copies of all the required documents filed with the original Standard Contract Form, plus any additional negotiated terms (as specified under "[REQUIRED STANDARD CONTRACT FORM CONTENTS](#)" above).

Terminated Contracts May Not Be Amended. A Contract which is not amended prior to its termination date terminates by operation of law and can not be amended. A Contractor is not authorized to continue performance after the termination date of a Contract even if the Department has notified the Contractor that it has exercised an option to renew or plans to amend the Contract. **Performance made during any lapse in time between the original Contract termination date and the execution of a new Standard Contract Form can not be compensated under either the original or the new Contract.** See "[ANTICIPATED CONTRACT EFFECTIVE START DATE](#)" above. See the [Commonwealth Procurement Policies and Procedures Handbook](#) Chapter 3 under "Contract Negotiations", Chapter 5 under "Amendments" and the [Request for Response/Contract Duration](#) Appendix for the scope of what can be negotiated by amendment under the Standard Contract Form.

COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT FORM INSTRUCTIONS



CONTRACTOR CERTIFICATIONS AND LEGAL REFERENCES

The following is a listing of legal references which may apply to Contract performance or to the Contractor's doing business in Massachusetts and which are incorporated by reference into the Contract. By signing the Standard Contract Form the Contractor certifies, under the pains and penalties of perjury, that it is in compliance with, and shall remain in compliance with, all legal requirements governing performance of this Contract and the Contractor's doing business in Massachusetts. This information is provided to assist Contractors with accessing their responsibilities. Hyperlinks to legal citations are to unofficial versions of these citations. While reasonable efforts have been made to assure the accuracy of the data provided, Contractors should consult with their legal counsel to ensure compliance with any legal requirements. **PLEASE NOTE THAT NOT ALL LAWS OR REQUIREMENTS HAVE BEEN CITED. INSTRUCTIONS AND HYPERLINKS MAY BE ADDED OR CHANGED WITHOUT NOTICE, SO CHECK THE ELECTRONIC COPY OF THIS DOCUMENT AT www.comm-pass.com/comm-pass/forms.asp FOR UPDATES.**

- [Massachusetts General Laws](#); [Code of Massachusetts Regulations](#); ([Partial CMR Listing](#) and [Commonwealth Website partial CMR listing](#)); [801 CMR 21.00](#) (Procurement of Commodity and Service Procurements, Including Human and Social Services); [815 CMR 2.00](#) (Grants and Subsidies); [808 CMR 1.00](#) (Compliance, Reporting and Auditing for Human And Social Services) and [AICPA Standards](#); confidentiality of Department records under [G.L. c. 66A](#);
- Providing access to Contractor records to state officials (e.g. State Auditor) under Executive Order 195 and [G.L. c. 11, s.12](#);
- [Federal tax laws](#); State tax laws including [G.L. c. 62C](#), the Contractor's certification under [G.L. c. 62C, s. 49A](#); reporting of employees and contractors under [G.L. c. 62E](#), withholding and remitting [child support](#) including [G.L. c. 119A, s. 12](#);
- If the Contractor is a [foreign corporation](#), compliance with [G.L. c. 181](#) including all requirements for certification, reporting, filing of documents and service of process;
- Employer requirements: compliance with applicable state and federal employment laws or regulations, including [minimum wages](#) and [prevailing wage programs and payments](#); [unemployment insurance](#) and [contributions](#); [workers' compensation and insurance](#), [child labor laws](#), [AGO fair labor practices](#); [G.L. c. 149](#) (Labor and Industries); [G.L. c. 150A](#) (Labor Relations); [G.L. c. 151](#) and [455 CMR 2.00 \(Minimum Fair Wages\)](#); [G.L. c. 5, s. 1](#) (Prevailing Wages for Printing and Distribution of Public Documents); [G.L. c. 151A](#) (Employment and Training); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); [G.L. c. 152](#) (Workers' Compensation); [G.L. c.153](#) (Liability for Injuries); certification of meeting dependant care assistance requirements under the Acts of 1990, c. 521, §7 as amended by the Acts of 1991, c. 329, and 102 CMR 12.00; [29 USC c. 8](#) (Federal Fair Labor Standards); [29 USC c. 28](#) (Federal Family and Medical Leave Act; [AGO Consumer Protection Guidelines, including Charities](#);
- Federal and state laws and regulations prohibiting discrimination including the Americans with Disabilities Act, [42 U.S.C. Chapter 126](#); the Rehabilitation Act, [29 USC c. 16 s. 794](#); [29 USC c. 16, s. 701](#); [29 USC c. 14, 623](#); the [42 USC c. 45](#); (Federal Fair Housing Act); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); the Public Accommodations Law [G.L. c. 272, s. 92A](#); [G.L. c. 272, s. 98](#) and [G.L. c. 272 s. 98A](#); the [Massachusetts Constitution Article CXIV](#) and [G.L. c. 93, s. 103](#); [47 USC c. 5, sc. II, Part II, s. 255](#) (Telecommunication Act); [AGO protection of elders](#);
- Filing of required certificates and reports with the [Secretary of the Commonwealth](#) and [Office of the Attorney General](#) or other departments as related to its conduct of business in the Commonwealth;
- Certification that the Contractor and any of its subcontractors are not currently debarred or suspended by federal or state government under any law or regulation including [G.L. c. 29, §29F](#) and [G.L. c. 152, s. 25C](#);
- [Massachusetts Executive Orders](#), including Executive Order 130 and Executive Order 346;
- Compliance with federal anti-lobbying requirements of [31 USC 1352](#); [other federal requirements when receiving federal funds](#); [Executive Order 11246](#); [Air Pollution Act](#); [Federal Water Pollution Control Act](#);
- [RFR – Required Specifications](#) which are incorporated by reference herein if not already included as part of the Request for Response for Contracts under [801 CMR 21.00](#); and
- The terms of the Request for Response (RFR) or solicitation for this Contract, if applicable; and any additional negotiated provisions for this Contract.

HELPFUL INFORMATION LINKS FOR DEPARTMENTS

[Overview of State Accounting](#); [State Finance Law](#); [Expenditure Classification Handbook](#); [Fiscal Year Closing/Opening Instructions](#); [Comptroller Policy Memos](#); [CTR Fiscal Year Memos](#); [Statewide Contract Listing](#); [OSD Memos](#); [OSD Discussions\(News\)](#); [Federal Debarment List](#); [OSD Purchased Services Homepage](#); [Guidelines for Material Changes in Contractor Identity](#); [Incidental Purchasing Quick Reference](#); [Use of Procurement by Single or Multiple Departments](#); [Contract Duration Appendix](#); [CTR Payroll Memos](#); [Security Officer Information](#); [Department Key Contacts](#); [Financial Reporting Responsibilities](#); [CTR Contract Review Form](#); [Commonwealth of Massachusetts Website](#); [Fixed Asset Subsystem User Guide](#); [Internal Control Information](#); [ADA Compliance for Government Facilities Training Guide](#); [Affirmative Market Program](#); [Administrative Bulletins](#); [Required Transaction Certification Language](#); [G.L. c. 7, c. 22](#); [G.L. c. 30, s. 51](#); [G.L. c. 30, s. 52](#); [G.L. c. 7A](#); [G.L. c. 29, s. 29A](#); [G.L. c. 29, s. 29B](#); [Legislative Home Page with FY GAA and Bills](#).

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COMMONWEALTH TERMS AND CONDITIONS

This Commonwealth Terms and Conditions form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth of Massachusetts ("State") Departments and Contractors. ***Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.*** Upon execution of these Commonwealth Terms and Conditions by the Contractor and filing as prescribed by the Office of the Comptroller, these Commonwealth Terms and Conditions will be incorporated by reference into any Contract for Commodities and Services executed by the Contractor and any State Department, in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.

1. Contract Effective Start Date. Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the Department, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

2. Payments And Compensation. The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to M.G.L. C. 29, §26, or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to M.G.L. C. 7A, §3 and 815 CMR 9.00. Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a Contract.

3. Contractor Payment Mechanism. All Contractors will be paid using the Payment Voucher System unless a different payment mechanism is required. The Contractor shall timely submit invoices (Payment Vouchers - Form PV) and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System, shall be used only for "Individual Contractors" who have been determined to be "Contract Employees" as a result of the Department's completion of an Internal Revenue Service SS-8 form in accordance with the Omnibus Budget Reconciliation Act (OBRA) 1990, and shall automatically process all state and federal mandated payroll, tax and retirement deductions.

4. Contract Termination Or Suspension. A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

5. Written Notice. Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

6. Confidentiality. The Contractor shall comply with M.G.L. C. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to the Department's public records, documents, files, software, equipment or systems.

7. Record-keeping And Retention, Inspection Of Records. The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

8. Assignment. The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.

9. Subcontracting By Contractor. Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

10. Affirmative Action, Non-Discrimination In Hiring And Employment. The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

11. Indemnification. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, including the Department, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State may sustain which arise out of or in connection with the Contractor's performance of a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law.



COMMONWEALTH TERMS AND CONDITIONS

subsequent default or breach.

13. Risk Of Loss. The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, Department personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Department.

14. Forum, Choice of Law And Mediation. Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The Department, with the approval of the Attorney General's Office, and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

15. Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration. Any amendment or attachment to any Contract which contains conflicting language or has the affect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be

superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 1. of these Commonwealth Terms and Conditions and filed with the original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and OSD, which incorporates by reference these Commonwealth Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

IN WITNESS WHEREOF, The Contractor certify under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by their authorized signatory below:

CONTRACTOR AUTHORIZED SIGNATORY: _____
(signature)

Print Name: _____

Title: _____

Date: _____

(Check One): _____ Organization _____ Individual

Full Legal Organization or Individual Name: _____

Doing Business As: Name (If Different): _____

Tax Identification Number: _____

Address: _____

Telephone: _____ FAX: _____

INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS

A "Request for Verification of Taxation Reporting Information" form (Massachusetts Substitute W-9 Format), that contains the Contractor's correct TIN, name and legal address information, must be on file with the Office of the Comptroller. If the Contractor has not previously filed this form with the Comptroller, or if the information contained on a previously filed form has changed, please fill out a W-9 form and return it attached to the executed COMMONWEALTH TERMS AND CONDITIONS.

If the Contractor is responding to a Request for Response (RFR), the COMMONWEALTH TERMS AND CONDITIONS must be submitted with the Response to RFR or as specified in the RFR. Otherwise, Departments or Contractors must timely submit the completed and properly executed COMMONWEALTH TERMS AND CONDITIONS (and the W-9 form if applicable) to the: ***Payee and Payments Unit, Office of the Comptroller, 9th Floor, One Ashburton Place, Boston, MA 02108*** in order to record the filing of this form on the MMARS Vendor File. Contractors are required to execute and file this form only once.

REQUEST FOR RESPONSES (RFR)
EOEA SUPPLEMENTAL TERMS AND CONDITIONS

1. For the purposes of these *Supplemental Terms and Conditions*, Department shall mean the Executive Office of Environmental Affairs (EOEA) and the office requesting Responses as identified within this RFR.
2. These *Supplemental Terms and Conditions* are incorporated by reference into this RFR. If any amendment, attachment [not including the Commonwealth's *Standard Terms and Conditions*, *Standard Form Contract*, or any other form jointly published by the Executive Office for Administration and Finance (EOAF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD), or any provision or form required by State or Federal law] or other part of this RFR deletes, modifies, replaces or otherwise contains language that conflicts with these *Supplemental Terms and Conditions*, these *Supplemental Terms and Conditions* shall supersede and control to the extent necessary to accomplish these conditions. The remaining provisions of this RFR shall remain in effect and enforced to the fullest extent permitted.
3. The Commonwealth's *Standard Terms and Conditions* [as currently and jointly issued by EOAF, CTR, and OSD] are incorporated by reference into this RFR. To the extent that any amendment, attachment, condition or other part of this RFR deletes, modifies, replaces or otherwise contains language that conflicts with the Commonwealth's *Standard Terms and Conditions*, the official printed language of the Commonwealth's *Standard Terms and Conditions* shall supersede and control to the extent necessary to accomplish its conditions. The remaining provisions of this RFR shall remain in effect and enforced to the fullest extent permitted.
4. The terms of 801 CMR 21.00: Procurement of Commodities and Services (and 808 CMR 1.00: Compliance, Reporting and Auditing for Human and Social Services, if applicable) are incorporated by reference into this RFR. Words used in this RFR shall have the meanings defined in 801 CMR 21.00 (and 808 CMR 1.00, if applicable). Additional definitions may also be identified in this RFR. Unless otherwise specified in this RFR, all communications, Responses, and documentation must be in English, all measurements must be provided in feet, inches, and pounds and all cost proposals or figures in U.S. currency. All Responses must be submitted in accordance with the specific terms of this RFR. No electronic Responses may be submitted in Response to this RFR.
5. Bidder Communication. Bidders are prohibited from communicating directly with any employee of EOEA except as specified in this RFR, and no other individual Commonwealth employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFR. Bidders may contact the contact person for this RFR in the event this RFR is incomplete or the Bidder is having trouble obtaining any required attachments electronically through Comm-PASS.
6. Reasonable Accommodation. Bidders with disabilities or hardships that seek reasonable accommodation, which may include the receipt of this RFR information in an alternative format, must communicate such requests in writing to the contact person. Requests for accommodation will be addressed on a case by case basis. A Bidder requesting accommodation must submit a written statement which describes the Bidder's disability and the requested accommodation to the contact person for the RFR. The Department reserves the right to reject unreasonable requests.

The Department may require the Contractor to provide all materials, software, maps, studies, reports, and other products or data in alternative formats upon request.

7. Public Records. All Responses and information submitted in response to this RFR are subject to the Massachusetts Public Records Law, M.G.L. Chapter 66, section 10 and Chapter 4, section 7(26). Any statements in submitted Responses that are inconsistent with the Public Records Law shall be void and disregarded.
8. All materials, software, maps, studies, reports, and other products or data, regardless of physical form or

characteristics, produced in furtherance of the Contract and funded, in whole or in part, under the Contract shall be considered in the public domain and available to EOEA or its agencies at the reasonable cost of reproduction in any of the formats in which it is stored or maintained. The Contractor shall not obtain, attempt to obtain or file for a patent, copyright, trademark or any other interest in any such materials, software, maps, reports, and other products or data without the express, written consent of the Department and subject to any other approvals required by state or federal law.

9. Best Value Selection and Negotiation. The Department may select the Response(s) which demonstrates the best value overall, including proposed alternatives, that will achieve the procurement goals of the Department. The Department and a Selected Bidder, or a Contractor, may negotiate a change in any element of contract performance or cost identified in the original RFR or the Selected Bidder's or Contractor's Response which results in lower costs or a more cost effective or better value than was presented in the Selected Bidder's or Contractor's original Response.
10. The Department reserves the right to fund a portion, change the scope, and/or delete tasks of any Response to more closely meet the purposes of the program or to obtain the best procurement value for the Department. Selected Bidders may decide not to enter into a contract if the revised scope does not meet its approval. The Department does not guarantee that any Contract will be awarded under the RFR. Any potential Contract with a Selected Bidder shall be subject to the appropriation and availability of funds.
11. Costs. Costs which are not specifically identified in the Bidder's Response, and accepted by a Department as part of a Contract, will not be compensated under any contract awarded pursuant to this RFR. The Commonwealth will not be responsible for any costs or expenses incurred by Bidders responding to this RFR.
12. Comm-PASS. This RFR has been distributed electronically using the Comm-PASS system, RFR attachments that are referenced will be found either as a separate .pdf file along with the RFR, or are found in the "Forms and Information" section at: (<http://www.comm-pass.com/comm-pass/forms.html>). Bidders are solely responsible for obtaining and completing required attachments that are identified in this RFR and for checking Comm-PASS for any addenda or modifications that are subsequently made to this RFR or attachments. The Commonwealth and its subdivisions accept no liability and will provide no accommodation to Bidders who fail to check for amended RFRs and submit inadequate or incorrect Responses. Bidders are advised to check the "last change" field on the summary page of RFRs for which they intend to submit a Response to ensure that they have the most recent RFR files. Bidders may not alter (manually or electronically) the RFR language or any RFR component files. **Modifications to the body of the RFR, specifications, terms and conditions are prohibited and may disqualify a Response.** Bidders having difficulty obtaining any required attachments electronically through Comm-PASS should seek assistance from the Comm-PASS "Help Desk" by calling 1-800-MA-STATE.

If the Department is also distributing this RFR directly to Bidders, those Bidders, that requested and received a copy of this RFR directly from the Department, will be sent a copy of any modifications or amendments to the RFR by the Department.

13. Northern Ireland Notice and Certification. All Bidders must complete the "Northern Ireland Notice and Certification" form to satisfy M.G.L. Chapter 7, section 22C.
14. Subcontracting. Prior written approval of the Department is required for any subcontracted service (which includes consultants) of the contract. Contractors are responsible for the performance and oversight of its subcontractors. Subcontractors are required to meet the same state and federal financial and program reporting requirements and are held to the same reimbursable cost standards as contractors.
15. Affirmative Market Program. Massachusetts Executive Order 390 established a policy to promote the award of state contracts in a manner that develops and strengthens Minority and Women Business Enterprises

(M/WBEs). As a result, M/WBEs are strongly encouraged to submit Responses to this RFR, either as prime vendors, as joint venture partners, or as subcontractors.

Non-M/WBE Bidders are strongly encouraged to develop creative initiatives to help foster *new business relationships* with M/WBEs within the primary industries affected by this RFR. The highest number of points will be awarded for Responses that clearly illustrate how the proposed business relationship(s) will result in the development and growth of M/WBEs within these primary industries. A lesser number of points will be awarded for traditional subcontracting relationships. The least number of points will be awarded for ancillary uses of M/WBEs.

In order to satisfy this section, the Bidder must submit: the names, addresses, phone numbers and contact persons of each M/WBE firm; a description of each business relationship to be established; and the actual dollar amounts, or percentages, to be awarded to each M/WBE firm. MBE and WBE firms must submit a copy of their SOMWBA certification letter for the current period. A directory of SOMWBA certified firms is available via the Internet at <http://www.magnet.state.ma.us/somwba>.

A Minority Business Enterprise (MBE) or a Woman Business Enterprises (WBE) is defined as a business that has been certified as such by the State Office of Minority and Women Business Assistance (SOMWBA). Minority and women-owned firms that are not currently SOMWBA-certified but would like to be considered as an M/WBE for this RFR should apply for certification. A fast track application is available, and will be considered for the purposes of this RFR. For further information on SOMWBA certification contact the State Office of Minority and Women Business Assistance at (617) 727-8692 or via the Internet at <http://www.magnet.state.ma.us/somwba>.

All Bidders must complete and sign the “Affirmative Action Plan Form” for any RFR from which a Contract may result that has a potential financial benefit of \$50,000 or more.

16. The Commonwealth makes no guarantee that any commodities or services will be purchased from any contract resulting from this RFR. Any estimates or past procurement volumes referenced in this RFR are included only for the convenience of Bidders, and are not to be relied upon as any indication of future purchase levels.
17. Unless otherwise specified in this RFR, any reference to a particular trademark, trade name, patent, design, type, specification, producer or supplier is not intended to restrict this RFR to any manufacturer or proprietor or to constitute an endorsement of any commodity or service, and the Department may consider clearly identified offers of substantially equivalent commodities and services submitted in response to such reference.
18. Alternatives. A Response which fails to meet any material term or condition of the RFR, including the submission of required attachments, may lose points or be deemed unresponsive and disqualified. Unless otherwise specified, Bidders may submit Responses proposing alternatives which provide equivalent, better or more cost effective performance than achievable under the stated RFR specifications. These alternatives may include related commodities or services that may be available to enhance performance during the period of the contract. The Response should describe how any alternative achieves substantially equivalent or better performance to that of the RFR specifications. The Department will determine if a proposed alternative method of performance achieves substantially equivalent or better performance. The goal of this RFR is to provide the best value of commodities and services to achieve the procurement goals of the Department. Bidders that propose discounts, uncharged commodities and services or other benefits in addition to the RFR specifications may receive a preference or additional points under this RFR as specified.
19. Contract Expansion. If additional funds become available during the contract duration period, the Department reserves the right to increase the maximum obligation to some or all contracts executed as a result of this RFR or to execute contracts with contractors not funded in the initial selection process, subject to available funding, satisfactory contract performance and service or commodity need.

20. **Year 2000 Compliance.** The contractor warrants that all systems, interfaces to such systems, or information technology produced in furtherance of this Contract and funded, in whole or in part, under this Contract must be year 2000 compliant. Year 2000 compliant means information technology that accurately processes date/time data (including but not limited to calculating, comparing and sequencing) from, to and between the twentieth and twenty-first centuries and the years 1999 and 2000 including leap year calculations. Furthermore, year 2000 compliant information technology, when used in combination with other information technology, shall accurately process date/time data if the other informational technology properly exchanges date/time data with it. This warranty shall survive the expiration or termination of this contract.
21. **Environmentally Preferable Products and Services.** At the Department's sole discretion, the Department and contractor may negotiate during the contract term to permit the substitution or addition of Environmentally Preferable Products (EPPs) when such products become available at a competitive cost and satisfy the Department's performance needs. Unless otherwise specified in the RFR, during evaluation of Responses, an EPP may be considered best value even when the price is greater than (but does not exceed 10% in price) that of a non-EPP. Bidders are encouraged to submit appropriate information to identify important environmental attributes of items being procured, even when such attributes are not being required. Information or technical assistance regarding EPPs may be obtain from OSD at 617-727 7500 ext. 351 or via the Internet at <http://www.magnet.state.ma.us/osd/enviro/enviro.htm>.
22. Selected respondents will be required to execute the Commonwealth's *Standard Terms and Conditions, Standard Contract*, W-9 form, Signature Verification, and any other forms specified in this RFR.
23. **GIS Standards.** All GIS (Geographic Information System) data collected, compiled or created under this RFR shall conform to standards developed or established by the Office of Geographic and Environmental Information (a/k/a MassGIS) within EOEA. Such GIS data shall be made available to MassGIS upon request and at the reasonable cost of reproduction (cost to copy and/or transmit the data to MassGIS).
24. Nothing in this RFR authorizes or purports to grant the right to any Bidder, governmental entity or other person to enter or remain on any public or private property. If access to any property is necessary in any way for any purpose, such as responding to this RFR (e.g. surveying), that Bidder, governmental entity or other person must obtain appropriate permission authorizing such access from the person or governmental agency that has lawful control of the property.
25. **Anti-Collusion.** In reviewing responses to the RFR and awarding a contract, the Department will strictly interpret all provisions of the RFR, response and contract and other state regulations to ensure that collusion or the appearance of collusion has not occurred at any stage of the contracting process. Any attempt to secure information about this procurement through procedures other than those outlined in this RFR will be considered in violation of this provision and will result in disqualification of the Bidder.

Bidders must provide a statement with their responses certifying that all parties to this response, including members of teaming arrangements agree that:

- A contract has not been solicited or secured, directly or indirectly, in a manner contrary to the laws of the Commonwealth of Massachusetts and that said laws have not been violated as they related to the procurement or the performance of the contract by any conduct, including the paying or giving of any fees, commission, compensation, gift, gratuity, or consideration of any kind, directly or indirectly, to any State employee, agent, officer or official; and
- Unless otherwise required by law, any information quoted in this response, including prices, has not knowingly been disclosed by the respondent directly or indirectly to any other respondent or to any competitor and will not knowingly be disclosed by the respondent prior to award of a contract. Respondents are further advised that the contractor, including any of its employees, agents or representatives, is prohibited

from paying or giving any fee, commission, compensation, gift, gratuity or consideration of any kind or amount, directly or indirectly, to any person connected with this procurement

CONTRACTOR AUTHORIZED SIGNATURE VERIFICATION FORM

Individuals: Individuals have **two options** to verify signature authorization:

1. **Official Sample of Signature.** Signature verification may be accomplished by submitting a copy of a driver's license, passport, social security card, business ID or other official form or identification containing the authorized signatory's signature, **OR**
2. **Notarization.** In the alternative, the Bidder can have their signature notarized in the space below.

Corporations. Corporations have **two options** to verify signature authorization.

1. **Authorization and Clerk Certification:** The Corporate Clerk may certify in the space below that they have witnessed the authorized signatory's signature (made in the Clerk's presence) **AND** that the signatory is authorized to execute contracts and other documents and legally bind the corporation. (**NOTE:** Clerks may not self-certify if they act as Clerk and as an authorized signatory. Alternative documentation should be submitted); **OR**
2. **Authorization and Official Sample of Signature or Notarization** (Complete both "a." and "b." below)
 - a. **Authorization.** The Bidder may attach a copy of a board of directors vote stating that each signatory is authorized to execute contracts and other documents and legally bind the corporation, **AND:**
 - b. **Official Sample of Signature or Notarization. (Select one option)**
 - **Official Sample of Signature.** Attach a copy of a driver's license, passport, social security card, business ID or other official form or identification containing an example of the authorized signatory's signature, **OR**
 - **Notarization.** Have each of the signatory's signature notarized (made in a notary's presence) below.

Partnership or Other Entities

1. **Authorization.** Attach documentation for each signatory of authorization to execute contracts and other documents and legally bind the partnership or other entity, **AND**
2. **Official Sample of Signature or Notarization:** (Select one option)
 - a. **Official Sample of Signature.** Attach a copy of a driver's license, passport, social security card, business ID or other official form or identification containing the authorized signatory's signature; **OR**
 - b. **Notarization.** Have their signature notarized in the space below.

THIS SECTION IS FOR NOTARIZATION OR CORPORATE CLERK CERTIFICATION

PRINT SIGNATORY'S FULL LEGAL NAME: _____

SIGNATURE: (as it will appear on documents) _____

(NOTARY) I, _____ as a notary public certify under the pains and penalties of perjury that I witnessed the signature of the aforementioned signatory on behalf of the Bidder, and the individual's identity was verified, on this date: _____, 20 _____. My commission expires on:

OR

(CORPORATE CLERK) I, _____ as corporate clerk of the Bidder/Contractor certify under the pains and penalties of perjury that I witnessed the signature of the aforementioned signatory and the signatory is authorized to execute contracts and other instruments and legally bind the Bidder/Contractor. This date: _____, 20 _____.

AFFIX CORPORATE SEAL OR NOTARY SEAL HERE:

APPENDIX 5

PUBLIC COMMENT RECEIVED AND MA SUBCOUNCIL RESPONSE

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Public Comment Received and MA SubCouncil Response

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)¹² requires that funds recovered as part of the Housatonic River Watershed Natural Resource Damages (NRD) claim be retained by the Housatonic River Trustee Council (Trustee Council) to restore, rehabilitate, replace, or acquire the equivalent of injured or lost natural resources and/or the services they provide to other natural resources and to the public. Before these funds can be used, a Restoration Plan must be developed and adopted by the Trustee Council through a process of incorporating public notice, public meetings, and the consideration of public comments.

The Massachusetts SubCouncil (MA SubCouncil) of the Trustee Council has prepared a Restoration Project Selection Procedure (RPSP). The RPSP provides a procedural framework for the solicitation, evaluation, and selection of compensatory restoration projects for the Massachusetts portion of the Housatonic River watershed.

The DRAFT RPSP was made available for public review and comment on May 2, 2005. Public notices announcing the availability of the document were placed in the North Adams Transcript and the Berkshire Eagle. Press releases and public service announcements on the document's availability were submitted to the following newspapers, radio stations and television stations.

Newspapers used for public outreach include:

- Berkshire Eagle, Pittsfield, MA
- Berkshire Record, Great Barrington, MA
- Pittsfield Gazette, Pittsfield, MA
- Springfield Union, Springfield, MA
- Republican, Springfield, MA
- The Advocate, Williamstown, MA
- The Advocate, Lenox, MA
- Pennysaver, Lee, MA
- Yankee Shopper, Pittsfield, MA
- Shoppers Guide, Great Barrington, MA

¹² Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*

- North Adams Transcript, North Adams, MA
- Lakeville Journal, Lakeville, CT
- Litchfield County Times, Litchfield, CT

Radio stations used for public outreach include:

- WBEC 1420 AM, Pittsfield
- WAMQ 105.1 FM, Great Barrington
- WCFM 91.9 FM, Williamstown
- WNAW 1230 AM, North Adams
- WSBS 860 AM, Great Barrington
- WUPE, Pittsfield
- WBEC, Pittsfield
- WSBS, Great Barrington
- WBRK, Pittsfield
- WAMC, Albany N.Y.
- WAMQ, Great Barrington
- WCFM, Williamstown
- WNAW, North Adams
- WKZE, Litchfield, CT

Television stations used for public outreach include:

- Channel 22, Springfield, MA
- PCTV, Pittsfield, MA
- CTSB, Lee, MA
- WRGB, Albany
- WNYT, Albany
- News Channel 40, Springfield, MA
- WTEN, Albany

The MA SubCouncil held a public meeting to present the DRAFT RPSP at the Lee Town Hall in Lee, Massachusetts on the evening of May 11, 2005. Two weeks prior to the public meeting, the MA SubCouncil provided copies of the DRAFT RPSP to public libraries in the Housatonic River watershed (*see* RPSP, Appendix 2). Finally, the MA SubCouncil posted the DRAFT RPSP on the MA SubCouncil GE/Housatonic River restoration project web site (www.ma-housatonicrestoration.org).

The public comment period closed on May 27, 2005. No written comments were received by the stated deadline. One written letter with comments was received after the deadline. The MA SubCouncil chooses to respond to this written comment, although the MA SubCouncil is under no obligation to do so.

The written comment was received from Dennis Regan of the Housatonic Valley Association. A copy of the written comment is included in the Administrative Record. A summary of these comments and the MA SubCouncil response to the comments is provided below.

Comment: *It is obvious that a great deal of thought and discussion went into this document. It is a well thought-out document that attempts to be fair and equitable to all who have concerns regarding the varied impacts from PCB contamination and on how the Housatonic River NRD Funds should be spent. The MA SubCouncil's concern for equitable representation is evident in the range and diversity of acceptable restoration programs.*

Response: No response necessary.

Comment: *The "Natural Recovery Period" evaluation criterion (listed in the "Relevance and Applicability of Project" category) is slanted specifically to awarding points to projects that only provide restoration benefits to injured natural resources and services. However, some proposed restoration projects may not provide benefits to injured natural resources, such as recreational projects and environmental education and outreach projects. These projects would not have an opportunity to gain as many points as the aquatic and wildlife resources and habitat restoration projects.*

Response: As noted in the summary of the "Natural Recovery Period" criterion in Section 4.2 of the DRAFT RPSP, "natural recovery period" is defined as the length of time it would take for an injured natural resource or service provided by that resource to recover to an optimal condition in the absence of human intervention. This includes the length of time necessary to recover the loss of services resulting from the injury, such as lost recreational usage and environmental education and outreach opportunities. Therefore, proposed projects that would restore, rehabilitate, enhance, or acquire the equivalent of recreational uses and environmental education and outreach opportunities in advance of the natural recovery period would be eligible to earn points in this criterion.

In addition, following the evaluation and scoring of each application, the projects will be ranked by their score relative to other projects in the same Restoration Priority Category. For example, Recreational Use projects will only be ranked relative to other Recreational Use projects. It may be challenging for Recreational Use projects to earn a high score on certain evaluation criteria, but those that do shall earn an appropriate number of points. Likewise, Aquatic and Wildlife Resource and Habitat restoration projects

may be challenged to earn high scores on other evaluation criteria, but those that do shall also earn an appropriate number of points.

This approach is consistent with the MA SubCouncil's goal of implementing a suite of projects that cumulatively benefit each of the Restoration Priority Categories. No revisions have been made to the RPSP in response to this comment.

Comment: *The “Location of Project” evaluation criterion states that proposed projects should have “... a direct, positive impact on injured natural resources....” What is the MA SubCouncil’s definition of “direct”?*

Response: The word “direct” can have many connotations in this context and, therefore, the MA SubCouncil does not find the word to be necessary in this criterion. The RPSP has been revised by the deletion of the word “direct” in this evaluation criterion. The words “and services” have been added to this criterion to reiterate that restoration projects to benefit injured or lost natural resource services are eligible for consideration.

Comment: *There is a potential conflict of interest having state employees review applications, if state agencies may also be applying for funding. The reviewers will know that their evaluations are public documents that are subject to review. This may affect their evaluation and scoring of an application. A conflict of interest may occur if a reviewer works for the same agency that submitted an application.*

Response: The MA SubCouncil has developed a process by which potential conflicts of interest during the evaluation process will be: 1) minimized and 2) identifiable, should they occur.

The MA SubCouncil may assign reviewers to applications submitted by the reviewer's agency division. However, no more than one review team member may be from the same agency division. Reviewers will not be eligible to review applications for which they are the applicant or have submitted a letter of support.

Each application will be assigned at least three review team members. Each application's review team will include a member of the Consulting Team. Review team members will first conduct an independent evaluation of their application(s) and assign a score for the application(s). All review team members assigned to each application will then meet to discuss their independent evaluations and scores. This

discussion will result in a consensus-based score. An evaluation summary memo will document the team's rationale for the consensus-based score. The consensus-based scoring approach—as opposed to simply averaging the individual scores—reduces the likelihood that a single outlying score will affect a project's final score without also providing justification that is compelling to the other review team members.

An evaluation summary memo will be developed for each application and will include:

- the consensus-based score for the project;
- the review teams' rationale for the consensus-based score;
- the final, individual scores assigned by each reviewer and;
- the affiliation of each review team member assigned to the Project Application (e.g., agency, division, office, program).

Note: The final, individual scores will be attributed to the corresponding review team member's affiliation only. The names of the review team members will not be included in the memo. Disclosure of the individual scores will allow the identification of score outliers which may represent problematic conflicts of interest. Potential conflicts of interest will be evaluated and addressed appropriately. In some cases, by rule of necessity, there may be no alternative to assigning an application to a review team member with a potential conflict of interest. If the MA SubCouncil deems that such an assignment is necessary, that potential conflict of interest will be disclosed in the evaluation summary memo for the relevant Project Application.

The MA SubCouncil has provided additional detail in Section 4.2 of the RPSP in response to this comment.