

## AML PILOT PROGRAM SUBAWARD CONTRACT

Department of Mines, Minerals and Energy and  
Russell County Reclamation, LLC

Contract Number: P091806

This AML Pilot Project subaward CONTRACT, made and entered into this 28th day of December, 2020, by and between the Commonwealth of Virginia, acting by and through the Department of Mines, Minerals and Energy, Division of Mined Land Reclamation (hereinafter called “**DMME**”), and Russell County Reclamation, LLC (hereinafter called “**SUBRECIPIENT**”);

WITNESSETH:

WHEREAS, **DMME** is the agency of the Commonwealth of Virginia delegated the duties and powers to implement and enforce the Virginia Coal Surface Mining Control and Reclamation Act of 1979, Va. Code §§ 45.1-226 et seq., and the regulations promulgated thereunder (herein “State Program”), as the same may be or become effective at any time or from time to time, as the Commonwealth’s permanent state regulatory program and abandoned mine land reclamation program approved pursuant to the federal Surface Mining Control and Reclamation Act of 1977, (herein referred to as “SMCRA”).

WHEREAS, as part of its State Program, **DMME** has an approved abandoned mine land reclamation program (herein “**AML Program**”) as codified in Va. Code §§ 45.1-260 et seq. The AML Program requires **DMME** to annually prepare and submit to the United States Secretary of Interior applications for funding, including the implementation of specific AML reclamation projects;

WHEREAS, consistent with the Consolidated Appropriations Act, 2018 (Public Law 115-141), the Department of the Interiors (**DOI**) Office of Surface Mining Reclamation and Enforcement (**OSMRE**) had made funding available for projects in the Abandoned Mine Land Reclamation Economic Development Pilot Program **2018 AML Pilot**. The **2018 AML Pilot** has provided the Commonwealth of Virginia with a grant award of \$10 million to accelerate the remediation of AML

sites with economic and community development end uses. This **2018 AML Pilot** is an opportunity for local communities and states to return impacted areas to productive reuse to achieve the economic and community development goals identified for the community and/or region.

WHEREAS, the **SUBRECIPIENT** has submitted a complete grant application (Application) (Attachment B.2) under the terms of the **2018 AML Pilot** Program (Attachment B.1) for the Project Reclaim Phase II Project located in the South Clinchfield section of Russell County, Virginia. With the AML features and land adjacent to these AML features known to DMME, the **SUBRECIPIENT** will place an additional 174,000 cubic yards of backfill material that will produce final grade(s) that are more uniform and level in elevation to further enhance the new industrial site. This work shall be hereinafter called the **PROJECT**.

WHEREAS, the Application has been reviewed by the AML Pilot Advisory Committee and submitted to OSMRE for vetting; and

WHEREAS, the OSMRE has determined that the applicant is approved for Subrecipient Status (Attachment B.4); and

WHEREAS, the OSMRE is satisfied with the concept of the Project and that it meets the intent of the AML Pilot program and has given the DMME notice to move forward by the issuance of a Letter to Proceed with project development (Attachment B.3); and

WHEREAS, the **SUBRECIPIENT** has completed Project Development which included preparation of an Environmental Assessment, Scope of Work, and project plans (Attachments A.1, B.7, C); and

WHEREAS, the DMME has reviewed the project plans and the Environmental Assessment has been submitted for OSMRE approval and a Finding of No Significant Impact (FONSI) and Authorization to Proceed (ATP) (Attachment A.2) have been obtained from OSMRE; and

WHEREAS, the **DMME** and the **OSMRE** have determined that the **PROJECT** meets identified characteristics and terms established for AML Pilot; and

WHEREAS, AML Pilot Program projects such as this **PROJECT** are government-financed via a subaward from **DMME** through its grant award from the **2018 AML Pilot** and the **DMME** under the **OSMRE**'s approval has authority to reimburse the **Subrecipient** out of the AML Pilot Grant for funds expended on project costs. The **DMME** and the **OSMRE** accepted and approved funding based upon the proposed preliminary project budget (Attachment B.5) and **DMME** has accepted a revised project budget (Attachment B.6)

WHEREAS, the **SUBRECIPIENT** will comply with the Environmental Assessment (Attachment A.1), Scope of Work (Attachment B.7), budget (Attachment B.6), and detailed project plans (Attachment C) as required by the **DMME** and the **OSMRE**.

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

**I. OBLIGATIONS OF SUBRECIPIENT – SUBRECIPIENT shall:**

1. Prepare and provide to **DMME** a detailed construction plan for the **Project**, which corresponds with the approved Scope of Work.
2. Allow the **DMME** to inspect, review and comment on the **Project** plan design and any future amendments, changes, or modifications. A copy of the final **Project** plan design approved by **DMME** is attached as Attachment C, which this plan is incorporated herein and made a part thereof.
3. Strictly adhere to the **OSMRE** 2018 AML Pilot funding objectives contained in Attachment B.1 hereto and made a part hereof, the AML Subaward, and the obligations of the **SUBRECIPIENT** contained within this CONTRACT (herein "**Award Conditions**").
4. Compliance with Federal Rules and Regulations: Funding for this CONTRACT is authorized through the Catalog of Federal Domestic Assistance (CFDA) #15.252. Expenditures made and services provided pursuant to this CONTRACT shall be in

accordance with 2 CFR Part 225, "Cost Principles for State, Local, and Indian Tribal Governments" (OMB Circular A-87), and OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations." Since the **SUBRECIPIENT** is a for-profit organization, it is governed by 48 CFR Part 31, Contract Cost Principles and Procedures. The **SUBRECIPIENT** also is governed by the administrative requirements of 10 CFR 600, Federal Financial Assistance Regulations. Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the **OSMRE** Award Administrator for guidance. It is the responsibility of the **SUBRECIPIENT** to identify such an inconsistency and bring it to the attention of **DMME**. The **SUBRECIPIENT** shall adhere, and require adherence by all recipients, subrecipients, vendors and subcontractors performing work required by this **CONTRACT**, to the federal rules as noted.

5. Provide and pay all funds required to complete construction of the **PROJECT** site within the specified time period in accordance with the approved construction design, including but not limited to the costs of all permits, licenses, land acquisitions, and/or rights-of-way and easements pursuant to the Award Conditions.
6. Maintain on the **PROJECT** site all information required by 4 VAC 25-130-707.12 including a description of the **Project**, the exact location and boundaries of the **PROJECT** and that the **DMME** administration of the **PROJECT** is being financed with federal funds through its **2018 AML Pilot Program Grant**.
7. Prior to commencement of construction at the **PROJECT** site, ensure that the Final Construction Design Plan and/or addenda, amendments thereto are in accordance with the **Award Conditions**. Any addenda or amendments to the Construction Design Plan

and/or construction documents shall be approved in writing by **DMME** and **OSMRE** prior to their execution, issuance and/or implementation.

8. Provide to **DMME** copies of all documents and addenda the **SUBRECIPIENT** uses in contracting for the performance of construction work for the **PROJECT** if any.
9. Afford **DMME** personnel notice of and opportunity to attend and participate in all pre-construction conferences, and other relevant meetings concerning the **PROJECT**, if any.
10. Provide free and reasonable access by **DMME** and **OSMRE** personnel to the **PROJECT** site for the purpose of conducting weekly, or more frequent if necessary, inspections.
11. Upon completion of the work required by the Construction Plan, provide **DMME** with a copy of “as built” drawings of the **PROJECT** and/or a certification of completion.
12. Designate a Project Director who shall be knowledgeable of and responsible for **PROJECT** activities and who shall act as the contact between **DMME** and **SUBRECIPIENT**.
13. Provide **DMME** with written monthly progress reports within fifteen (15) days following the end of each calendar month after this **CONTRACT** is fully executed. The report shall include all work accomplished, difficulties or delays encountered along with necessary remedial actions(s), and a schedule of future work.
14. Provide to **DMME** written verification that all easements, licenses, and applicable federal, state, or local permits or clearances required for the performance of the work required to complete the **PROJECT** have been obtained prior to start of any work on the **PROJECT**.

15. Provide professional supervision of all construction work performed at the **PROJECT** site to ensure that the completed work conforms to the approved Final Construction Plan.
16. Certify and acknowledge that the **PROJECT** boundaries and limits are as delineated on Attachment A.3, and that no work outside said boundaries and limits shall be eligible through the **AML AWARD** or covered under the terms of this **CONTRACT**.
17. Provide proof to **DMME** that the **SUBRECIPIENT** shall require its contractors to maintain in full force and effect during the terms of this **CONTRACT** a public liability insurance policy:
  - (a) Worker's Compensation – Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements and the *Code of Virginia* during the course of the **CONTRACT** shall be in noncompliance with the contract.
  - (b) Employers Liability - \$100,000.
  - (c) Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia shall be added as an additional insured to the policy by an endorsement. ***Coverage shall not exclude claims resulting from explosion, collapse or underground damage.***
  - (d) Automobile Liability - \$1,000,000 combined single limit (required only if a motor vehicle not owned by the Commonwealth is to be used in the **CONTRACT**).

**SUBRECIPIENT** must assure that the required coverage is maintained by the **SUBRECIPIENT** (or third party of such motor vehicle).

18. The **SUBRECIPIENT** shall indemnify, defend and hold harmless **DMME/Commonwealth of Virginia**, its agents, officers, employees, and designated representatives from any claims, damages, suits, actions, liabilities and costs of any nature or kind, whether at law or in equity, arising from or caused by performance by the **SUBRECIPIENT** or its agents, whether for design or construction of the **PROJECT**, or from the use of any materials, goods, or equipment of any kind or nature or any service of any kind, provided that such liability is not attributable to the sole negligence of the **DMME**. Nothing contained herein shall be deemed an expressed or implied waiver of the sovereign immunity of **DMME/Commonwealth of Virginia**.
19. Neither the **SUBRECIPIENT**, its officers, agents, employees, assignees, whether for design or construction of the **PROJECT**, shall be deemed employees of the **Commonwealth of Virginia** or of **DMME** by virtue of the **PROJECT**, the location of the **PROJECT**, or the **2018 AML Pilot Award**.
20. Upon completion of any audit of the **PROJECT** conducted under OMB Circular A-128, promptly provide the **DMME** with a copy of any and all such audit reports.
21. The **SUBRECIPIENT** shall ensure that their contractors are responsible for sequencing, scheduling, coordinating, and monitoring the progress of the work as well as taking appropriate action to keep the work on schedule. The **SUBRECIPIENT** shall prepare and submit to the agency after signing the contract, a contract performance schedule for accomplishing the work based upon the completion time stated in the contract.
22. The **SUBRECIPIENT** shall include in all Project Invitation for Bid packages the **DMME** supplied Applicant Violator System (AVS) form (OMB #1029-0119) (ATTACHMENT D.2). All bidders must submit the completed form with the required

Project bid documents. Any subcontractors, which will earn more than 10 percent of the AML Pilot portion of the project, shall submit the Applicant Violator System (AVS) form documentation prior to the award of the bid(s) to the prime contractor. All engineering contractors to be selected for the project design awards shall also submit the Applicant Violator System (AVS) form. Prior to the award of any such contract(s), the form(s) will be submitted to DMME for the required AVS check to confirm bidder eligibility by the use of the Applicant Violator System. The Project award may not be made until the AVS check has been completed. Pursuant to the provisions of 30 CFR § 874.16, the DMME may direct the rejection of any contractor(s), subcontractor(s), or engineering firm(s) if the AVS review determines the entity, at the time of contract award, is not eligible to receive a permit or conditional permit to conduct surface coal mining operations under the Virginia Coal Surface Mining Reclamation Regulations.

23. Commit to no **CONTRACT** or **CONTRACT** extension whose performance could extend beyond the **28th day of December 2023**, the expiration date of the **AML Pilot Award**.
24. Agree to not let the project be idled for a cumulative period exceeding sixty (60) days and to return to work forces and equipment upon request of **DMME** at the end of the sixty-day period. **SUBRECIPIENT's** failure to perform this part may result in termination of the **CONTRACT** and default under Articles X and XI.
25. **ANTI-DISCRIMINATION**
  - A. During the performance of this **CONTRACT**, the **SUBRECIPIENT** agrees as follows:
    1. The **SUBRECIPIENT** and its Contractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or disabilities, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the **SUBRECIPIENT**



or its Contractor exists. The **SUBRECIPIENT** agrees to, and will require its Contractors to, post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The **SUBRECIPIENT**, in all solicitations or advertisements for employees placed by or on behalf of the **SUBRECIPIENT** or its Contractors, will state, and require that its Contractors state, that such **SUBRECIPIENT** or Contractor is an equal opportunity employer.

3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

B. The **SUBRECIPIENT** and its Contractors will include the provisions of the foregoing paragraphs 24.A.1; 24.A.2; and 24.A.3 in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

## **II. CERTIFICATIONS:**

The **SUBRECIPIENT** assures and certifies to the **DMME** that it is, to the best of its knowledge and belief, in compliance, and will continue in compliance, and it will require that its Contractors conform, to the following Acts, as amended:

1. State and Local Government Conflict of Interests Act;
2. General Assembly Conflict of Interests Act;
3. Virginia Freedom of Information Act;
4. Virginia Fair Employment Contracting Act;
5. Virginia Governmental Frauds Act;

6. Virginia Public Procurement Act and related Agency Procurement and Surplus Property Manual;
7. Virginians with Disabilities Act;
8. Americans with Disabilities Act;
9. Buy American Act (41 USC Chapter 83)
10. Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871)
11. Federal Immigration Reform and Control act of 1986; and
12. Federal statutes relating to nondiscrimination, including but not limited to:

Title VI of the Civil Rights Act of 1964 (P.L. 88-352) (prohibits discrimination on the basis of race, color or national origin);

Title IX of the Education amendments of 1972, as amended (20 U.S.C. Sections 1681-1683, and 1685-1686) prohibits discrimination on the basis of sex;

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C., Section 794) prohibits discrimination on the basis of handicaps;

The Age Discrimination Act of 1975, as amended (42 U.S.C., Sections 6101-6107) which prohibits discrimination on the basis of age;

The Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse;

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism:

Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C., 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;

Title VIII of the Civil Rights Act of 1968 (42 U.S.C., Section 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; and/or any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made, and the requirement on any other nondiscrimination statute(s) which may apply to the **AML PILOT AWARD** or this **CONTRACT**.

13. Federal Lobbying Act, 31 U.S.C.A., Section 1352 (entitled, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions, and the Virginia Lobbying Disclosure and Regulation Act, Sec. 2.1-779 through 2.1-794, Code of Virginia, 1950 as amended, including, without limitation, obtaining and delivering to the **DMME** all necessary certifications and disclosures.
14. Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally assisted programs. These requirements apply to all interest in real property acquired for **PROJECT** purposes regardless of Federal participation in purchases.
15. Hatch Act (5 U.S.C., Sections 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
16. Copeland Act (40 U.S.C., Section 276c and 18 U.S.C., Section 874), the Contract Work Hours and Safety Standards Act (40 U.S.C., Sections 327-333) regarding labor standards for federally assisted construction sub-contracts.
17. Flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood

hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

18. Environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of Project's consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C., Sections 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176 (c) of the Clean Air Act of 1955, as amended (42 U.S.C., Section 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
19. Wild and Scenic Rivers Act of 1968 (16 U.S.C., Sections 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
20. The **SUBRECIPIENT** shall assist the **DMME** in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
21. 40 CFR 122-EPA Storm Water Regulations; PL 92-500, Section 404 – Utility Crossings of Navigable Waters – U.S. Army Corps of Engineers; Code of Virginia, Title 10.1, Chapter 5, Article 4 - Erosion and Sediment Control Law – Soil and Water

Conservation Commission; VR 625-02-00 – Erosion and Sediment Control Regulations; Code of Virginia, Title 62.1, Chapter 3.1, Article 44 – State Water Control Law; VR 680-15-02 – Virginia Water Protection Permit; Code of Virginia, Title 62.1, Chapter 3 – Sub-aqueous Bed Permit – Marine Resources Commission.

### III. OBLIGATIONS OF DMME

**DMME** will:

1. Review and submit to the **SUBRECIPIENT** comments on the Construction Plan to monitor adherence to AML Award conditions and obligations.
2. Provide administration of the **PROJECT**, document the costs and expenses incurred by **DMME**, document the findings necessary to qualify the **PROJECT** as a government financed construction project as contemplated by Va. Code § 45.1-253.2 and 4 VAC 25-130 Part 707 of VSMCRA, including those costs noted in the NEPA document.
3. Document eligibility of the **PROJECT** for funding by securing an Authorization to Proceed from the federal Office of Surface Mining.
4. Designate a **PROJECT** Inspector to monitor the site and to serve as contact to the **SUBRECIPIENT**.
5. Provide the **SUBRECIPIENT** with consultations and information that are available and reasonably required for **PROJECT** purposes.
6. **SAFETY INSPECTIONS OF CONSTRUCTION EQUIPMENT ON JOB SITE:**  
**DMME** reserves the right to conduct safety inspections of contractor and/or sub-contractor owned or leased equipment delivered to or present at an AML construction site. **DMME** shall conduct a pre-construction safety inspection of all equipment at the site as identified on the equipment list for the **PROJECT** as provided by the

contractor. If any previously unidentified equipment is delivered to the site for use, the contractor shall contact the Inspector/Contract Administrator to conduct a safety inspection of that equipment. **DMME** may also conduct equipment safety inspections at any time during the Contract period while the equipment is on site. The **SUBRECIPIENT** will require all contractors to adhere to these stipulations. Inspections shall be in accordance with established **DMME** inspection criteria and evidenced by a safety inspection checklist (Attachment D.1). **DMME** requires that the contractor perform a daily pre-shift inspection of all equipment prior to its use each day. **DMME** can provide a template of the Surface Equipment Inspection Pre-operational Exam Checklist upon request.

7. Upon receipt and approval of once monthly invoices, reimburse the **SUBRECIPIENT** for costs incurred by the **SUBRECIPIENT** in compliance with the **CONTRACT** and necessary for completion of the **PROJECT**. For the purpose of this **CONTRACT**, “incurred” shall mean any invoice or request for payment paid by the **SUBRECIPIENT** or waiting payment under the **PROJECT**. Reimbursement will be made in accordance with the Commonwealth of Virginia’s Prompt Pay requirements and **DMME** procedures. The **DMME** shall withhold 5% retainage on all invoices except for project development expenditures. Separate requests for payment should be submitted for project development and construction expenditures.
8. Upon receipt of proper invoicing, provide the **SUBRECIPIENT** with reimbursement for the approved actual cost and up to, but not exceeding \$1,645,340.00 for engineering and construction services for the **PROJECT** described in this **CONTRACT**.

#### **IV. TERM OF CONTRACT**

This **CONTRACT** shall be effective as of the 28th day of December 2020 and shall expire thirty-six (36) months thereafter on 28th day of December 2023.

**V. EXCESS COSTS**

If the **SUBRECIPIENT** performs, allows or causes work to be performed or accepts a bid which exceeds the line allocations set forth in the **PROJECT** budget attached hereto as Attachment B.6, as amended and approved by **DMME** from time to time, which make up the **\$1,645,340.00** appropriation for Engineering and Construction Services, the **SUBRECIPIENT** shall bear any and all such excess costs, it being understood between the parties that under no circumstances shall **DMME** be liable for the payment of and/or reimbursement to the **SUBRECIPIENT** of costs in excess of those approved by the **DMME** as part of the **PROJECT** budget but in no event in excess of the respective caps set forth for design or construction in this section.

**VI. FINANCIAL/COMPLIANCE RECORDS AVAILABILITY**

The **SUBRECIPIENT** agrees to retain and provide reasonable access to all books, records, and other documents relative to this **CONTRACT** for five (5) years after final payment or until otherwise notified by **DMME**, whichever is later. **DMME**, its authorized agents, and/or State and Federal auditors shall have full access to and the right to examine any of said materials during said period at reasonable times and upon 24 hours advance notice.

**VII. CONSTRUCTION ASSURANCES**

The **SUBRECIPIENT** hereby assures and certifies that they shall comply with the laws, regulations, policies, guidelines and requirements and use of Federal funds for this federally funded Project. Also, the **SUBRECIPIENT** gives assurance and certifies that:

1. The **SUBRECIPIENT** shall cause work on the **PROJECT** to be commenced within a reasonable time after **NOTIFICATION TO PROCEED** from the **DMME** and that the **SUBRECIPIENT** will execute the **PROJECT** to completion with reasonable diligence. The **SUBRECIPIENT** will keep the **DMME** informed of **PROJECT** progress and delays.

2. It is anticipated that the **SUBRECIPIENT** may convey the **Property**, including the **PROJECT**, and facilities located thereon to the Industrial Development Authority of Russell County, Virginia, a political subdivision of the Commonwealth of Virginia, prior to the completion of the **PROJECT**.  
Notwithstanding such a conveyance, the **SUBRECIPIENT** shall remain committed to completing the **PROJECT** in all respects in accordance herewith.
3. During the term of this **CONTRACT**, the **SUBRECIPIENT** shall not dispose of, modify the use of, or change the terms of the real property title, or other interest in the **Property**, including the **PROJECT**, and facilities without permission and instructions from the **DMME**. The **SUBRECIPIENT** shall record the federal interest in the title of **Property** in accordance with **DMME** directives and shall include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the **PROJECT**. The **SUBRECIPIENT** shall adhere to 30 CFR part 879.14 and 879.15 for **Property** management and disposition.

#### **VIII. EXECUTION OF CONTRACT**

This **CONTRACT** shall be executed on behalf of the **SUBRECIPIENT** by such person or persons as are authorized to act on behalf of the **SUBRECIPIENT** pursuant to law and on behalf of the **DMME** by the Division of Mined Land Reclamation (DMLR) Director of the Department of Mines, Minerals and Energy.

#### **OBLIGATION TO COMPLETE**

If the delivery of supplies, services, materials or equipment is not fully performed in accordance with the terms of the **CONTRACT** by the time specified in the **CONTRACT**, the **SUBRECIPIENT** agrees to complete the remaining or incomplete work at its own expense;



except that the accomplishment be delayed by any act, negligence, or default on the part of the Commonwealth or **OSMRE**, public enemy, war, embargo, fire, explosion or Act of God (including without limitation, adverse weather conditions) not caused by the negligence or intentional act of the **SUBRECIPIENT** or its supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for an extension from the **SUBRECIPIENT**, the **DMME** will submit the extension request to the **OSMRE**. **OSMRE** has the sole authority to approve the amendment for an extension for the performance of the **CONTRACT** or delivery of goods.

It shall also be known and understood by both parties that if the **CONTRACT** expires and the delivery of supplies, services, materials or equipment has not been fully performed in accordance with the terms of the **CONTRACT**, it is determined the Commonwealth is not at fault, and grant funding for the **CONTRACT** has expired, the subrecipient shall, at the **SUBRECIPIENT**'s sole cost and expense, complete its obligations under the **CONTRACT**.

#### **IX. INTEGRATION AND MODIFICATION**

This **CONTRACT** constitutes the entire understanding between the **SUBRECIPIENT** and **DMME**. No alteration, amendment or modification in the provisions of this **CONTRACT** shall be effective unless it is reduced to writing, signed by the parties, and attached hereto.

#### **X. TERMINATION OF CONTRACT**

Any failure by a party to perform any obligation under this **CONTRACT** shall constitute a breach of the **CONTRACT**. Upon breach of the **CONTRACT** by a party, the other party may, at its option, declare its intention to terminate the **CONTRACT** unless the breach is cured by the party breaching the **CONTRACT**. Such declaration shall be in writing

to the party in breach stating the intention to terminate, the reason(s) therefore and the action necessary to cure the breach. Upon receipt of notice of intention to terminate, the party in breach shall have 60 days to take the curative action and avoid termination. The **DMME** shall not be obligated to pay for any services or work performed after the notice of intention to terminate.

## **XI. DEFAULT**

In case of **SUBRECIPIENT**'s failure to deliver goods or services in accordance with the **CONTRACT** terms and conditions, **DMME**, after due oral or written notice, may procure them from other sources and hold the subrecipient/contractor responsible for any resulting additional purchases and administrative cost. This remedy shall be in addition to any other remedies, which the Commonwealth may have. The **DMME** may also act to forfeit **SUBRECIPIENT**'s bond in accordance with regulations promulgated under 45.1-247 of the Code.

## **XII. NOTICE**

Any notice required hereunder shall be made in writing to the applicable party at the following addresses:

### **DMME**

Lesia C. Baker  
AML Projects Coordinator  
3405 Mountain Empire Road  
Big Stone Gap, VA 24219  
Phone No. 276-523-8216

### **SUBRECIPIENT**

Kevin Large  
Russell County Reclamation, LLC  
2700 Lee Highway  
Bristol, VA 24202  
Phone No. 276-669-7851

## **ADDITIONAL NOTIFICATIONS**

For purposes of this CONTRACT, the notice shall be deemed received if mailed by certified mail, return receipt requested to the above addresses on the date of the first notice of delivery by the post office. Failure to pick up the notice in response to the notices of delivery shall not constitute a defense to receipt hereunder.

## **XIII. NON-WAIVER CLAUSE**

No review, approval, acceptance of nor payment for any of the services required by **DMME** shall be construed to operate as a waiver of any rights of or any cause of action arising out of the performance of the CONTRACT. Notwithstanding any contrary provision contained herein, the **SUBRECIPIENT** shall be and remain liable to the **DMME** for all costs of any kind which are incurred by the **DMME** as a result of a negligent act, errors or omissions of the **SUBRECIPIENT** or its Contractor in the performance of any of the services furnished.

## **XIV. GOVERNING LAW**

This CONTRACT shall be deemed executed in Wise County, Virginia. The execution, interpretation and enforcement of this CONTRACT shall be governed by the laws of the Commonwealth of Virginia without regard to any conflict of laws or principles.

## **XV. NON-APPROPRIATION**

All contracts for products and services and all payment obligations under the **2018 AML PILOT AWARD** and this **CONTRACT** are subject to appropriated AML funds being available for expenditure for that purpose. The **DMME** shall promptly notify the **SUBRECIPIENT** of any action denying such funding. In such event, any outstanding **CONTRACT** shall be cancelled without further obligation to the extent the affected products or services have not yet been duly delivered and accepted.

If any purchases are to be supported by federal funding, and such funding is not made available, the **DMME** may terminate the contracts for goods or services, which are so dependent on such federal funds without further obligation.

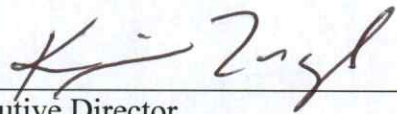
**XVI. ENTIRE CONTRACT**


This CONTRACT incorporates and contains the entire CONTRACT and understanding between the parties. There are no oral understandings, terms or conditions not herein recited, and neither party has relied upon any representations, expressed or implied, not incorporated or contained in this CONTRACT and its attachments.

**IN WITNESS WHEREOF**, the parties hereto have executed this CONTRACT by their duly authorized representatives as of the day and year first above written.

RUSSELL COUNTY RECLAMATION,  
LLC

**COMMONWEALTH OF VIRGINIA**  
DEPT. OF MINES, MINERALS & ENERGY  
DIVISION OF MINED LAND  
RECLAMATION

BY:   
Executive Director  
(Title) MANAGER

BY:   
Interim DMLR/DM Director  
(Title)

12/14/20  
(Date)

12-28-2020  
(Date)

## ATTACHMENT A

- A.1 Environmental Assessment
- A.2 Finding of No Significant Impact (FONSI) and Authorization to Proceed (ATP)
- A.3 NEPA Consultation Boundary (i.e. Project Boundary) Map

## ATTACHMENT B

- B.1 2018 AML Pilot Guidance Document
- B.2 Vetted project application
- B.3 Letter to Proceed with Project Development from OSMRE
- B.4 Subrecipient Approval Notice
- B.5 Preliminary Budget (\$1,645,340.00)
- B.6 Project Budget (\$1,645,340.00)
- B.7 Scope of Work

ATTACHMENT C

C.1 Construction Plan and Project Drawings



Attachment D

D.1 Equipment Safety Inspection Checklist

D.2 Applicant Violator System form (OMB 1029-0119) and Instructions