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RECEIVED**OCT 23 2018****PUBLIC SERVICE
COMMISSION**

PHONE: (606) 666-4400

FAX: (606) 257-4161

October 22, 2018

Ms. Gwen R. Pinson, Executive Director
Public Service Commission
P.O. Box 615, 211 Sower Blvd.
Frankfort, Kentucky 40602-0615

RE: Breathitt County Water District (BCWD)
Ky. Hwy. 1098 South Fork Elk View Waterline Extension

Dear Ms. Pinson:

As counsel for and on behalf of the BCWD, I am requesting an exemption from filing for a Certificate of Public Convenience and Necessity for the current BCWD project designated as the Ky. Hwy. 1098 South Fork Elk View Waterline Extension. This project is an extension of two previously approved project for Kentucky Hwy. 1098 South Fork Extension (Phase I) – Case No. 2011-00415; Kentucky Hwy. 1098 South Fork Extension (Phase II) – Case No. 2012-00230.

This request is based upon the language of 807 KAR 5:001, Rules of procedure, Section 9, subsection 3, and KRS 278.020(1)(a).

Under 807 KAR 5:001, the proposed extensions do not create wasteful duplication of plant, equipment, property or facilities, do not conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, do not involve sufficient capital outlay to materially affect the existing financial condition of the utility and will not result in increased charges to its customers.

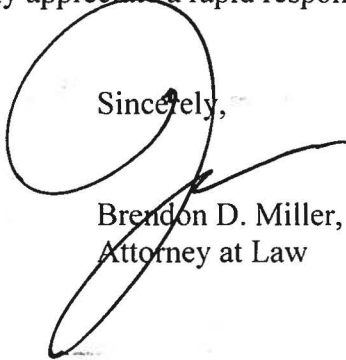
In relation to KRS 278.020(1)(a)(2), the Breathitt County Water District is a Class A or B utility as defined in the uniform system of accounts established in KRS 278.220. The cost of the project is greater than \$500,000.00 (as the amount is approximately \$1,950,000.00 including lines and ground storage tanks), however, the District will not incur obligations requiring PSC approval for this project to be funded, as the project will be totally and completely paid for directly by the Breathitt County Fiscal Court with designated funds in the full amount of \$1,950,000.00, pursuant to the Memorandum of Agreement between the Commonwealth of Kentucky, Division of Abandoned Mine Lands and the Breathitt County Fiscal Court, (attached) and no commission approval pursuant to KRS 278.300 is required. Given this, an exemption from the issuance of a certificate that public convenience and necessity require the service is warranted and requested.

This project has been bid and ready for award to the responsible low bidder for Contract 1, being the waterlines, G&W Construction Co., Inc., of Morehead, and for Contract 2, being the ground storage tanks, B3 Electrical, and is ready for construction, with an anticipated beginning date of December 1, 2018.

There are no public water suppliers in the proposed area of these extensions, the residents currently rely on wells, springs or hauled water for their domestic needs.

Thank you for your time and attention to this matter and if you have any questions, please do not hesitate to contact me. The District would greatly appreciate a rapid response to this request.

Sincerely,



Brendon D. Miller,
Attorney at Law

Breathitt County Water District

South Fork Elk View Waterline Extension

Project Description

Work is to include installation of approximately 30,000 LF of 6-inch and 1,300 LF of 8-inch directionally drilled creek/river crossings and other appurtenances, Installation of a duplex pump station with telemetry and service for a proposed campground and visitors center. Work also includes installation of a 20,000-gallon ground storage tank and a 48,000-gallon ground storage tank, Valve Vault, final grading, site restoration and Fencing. For much of the project the waterline will be constructed by simply trenching the earth, at stream locations the waterlines will be directionally drilled to avoid surface disturbance.

The public necessity is to provide safe and reliable drinking water to the project area. There are no other existing water utilities in this area, therefore this project will not cause duplication of service. This extension will be served through a connection to an existing BCWD waterline

Apparent low responsible bidder for contract 1 Waterlines is G & W Construction and for contract 2 Ground Storage Tanks is B3 Electrical.

Funding

That Applicant proposes to finance 100% of the Project with a grant per a Memorandum of Agreement between the Commonwealth of Kentucky, Division of Abandoned Mine Lands and the Breathitt County Fiscal Court. The funding grant is in the amount of \$1,950,000 and includes construction of the waterline, tanks and campgrounds.

Construction

Setting out the date of December 1, 2018, when it is anticipated that construction will begin and June 31, 2019 when it is anticipated to end.

Contact

Estill McIntosh, 1137 Main Street, Jackson, KY 41339
606-666-3800 ext 250, Breathittwater@yahoo.com
Bobby Thorpe, Jr, Chairperson

Breathitt County Fiscal Court
Opinion of Probable Construction and Project Cost
South Fork Elk View Campground and Visitor Center
Post Bid 10/1/2018



nesbitt engineering, inc.
 providing professional engineering services
 227 North Upper Street
 Lexington, KY 40502-1010

Construction Costs	
Water Lines (Post Bid)	
Contract 1 Waterlines Bid	\$ 974,181.25
Contract 2 Water Storage Tanks Bid	\$ 544,000.00
Contract 2 Proposed Reduced Change Order	\$ (125,600.00)
Site Development (Campgrounds) (Not Yet Bid)	\$ 235,806.75
Total Construction Costs =	\$ 1,628,388.00
Project Related Costs	
Administration	\$ 25,000.00
Land Purchase	\$ 7,500.00
Engineering	
Design	\$ 122,284.00
Engineering during Construction (Contract Admin)	\$ 30,572.00
Resident Observation & Construction Oversight	\$ 100,305.00
Permitting (DOW & KYTC)	\$ 5,000.00
Geotechnical Report	\$ 12,451.00
Property acquisition research, surveying, and Surveying (Property & Topo)	\$ 12,500.00
Easements, ROW exhibit prep	\$ 6,000.00
Total Project Related Costs =	\$ 321,612.00
Total Construction and Project Costs =	\$ 1,950,000.00



Commonwealth of Kentucky

PURCHASE ORDER

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description: SOUTH FORK ELK VIEW WATERLIND & CAMPGROUND AML PILOT PROJECT

Doc ID No: PO2 [REDACTED]

Procurement Folder: [REDACTED]

Procurement Type: MOA/PSC Exception

Record Date:

Issued By: BETH WILSON

Cited Authority: KRS45A.690(1)(D)11

Telephone: 502-564-2141

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BREATHITT COUNTY FISCAL COURT
SOUTH FORK ELK VIEW WATERLINE & CAMPGROUND AML PILOT PROJECT
ATTN: JOHN LESTER SMITH JUDGE EXECUTIVE
1137 MAIN ST
JACKSON KY 41339
US

Effective From: 01/30/2018

Effective To: 06/30/2018

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	SOUTH FORK ELK VIEW WATERLINE & CAMPGROUND AML PIL		0.00		0.00000	1,950,000.00	1,950,000.00

Extended Description

The Kentucky Energy and Environment Cabinet, Division of Abandoned Mine Lands shall reimburse the "Contractor" (the Breathitt Count Fiscal Court) up to \$1,950,000.00 for the following activities related to the South Fork Elk View Waterline and Campground AML PILOT Project.

The South Fork Elk View Waterline and Campground AML PILOT Project is being proposed for funding as part of the e Completion of this project will directly benefit the City of Jackson and Breathitt County. Magoffin, Knott, and Perry counties should also see a benefit from this project as various trails will be developed in the future to link to each of them. Furthermore, the installation of the waterline in this area should help attract other businesses to bring jobs to the area. This MOA is effective from January 30, 2018 through June 30, 2018.

The AML PILOT funds will provide all of the startup funding for this project.

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[REDACTED]
DIVISION OF AML - FRANKFORT
300 SOWER BLVD, 2ND FLOOR

FRANKFORT KY 40601
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DIVISION OF AML - FRANKFORT
300 SOWER BLVD, 2ND FLOOR

FRANKFORT KY 40601
US

Total Order Amount: 1,950,000.00

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Memorandum of Agreement Terms and Conditions

Revised May 2016

This Memorandum of Agreement (MOA), in the amount of One Million Nine Hundred Fifty Thousand Dollars (\$1,950,000.00) is entered into, by and between the Commonwealth of Kentucky, Division of Abandoned Mine Lands ("the Commonwealth") and the Breathitt County Fiscal Court ("the Contractor") to establish an agreement for funding the **South Fork Elk View Waterline and Campground AML Pilot Project**. This funding will be used for design and construction services to install a waterline to serve a proposed campground and horse arena/expo center. The campground will included a bath house, visitor's center, and cabins. The horse arena and expo center will include a large steel building with horse stalls, bleachers, rest rooms, animal wash stall, and fenced paddock area for grazing. The waterline, campground, and horse area/expos center will be located at the South Fork Elk View area on Highway 1098 (South Fork), in Breathitt County. Completion of this project will directly benefit the City of Jackson and Breathitt County. Magoffin, Knott, and Perry counties should also see a benefit from this project as various trails will be developed in the future to link to each of them. Furthermore, the installation of the waterline in this area should help attract other businesses to bring jobs to the area. This MOA is effective from January 30, 2018 through June 30, 2018.

Scope of Services:

The Breathitt County Fiscal Court shall undertake activities to implement the South Fork Elk View Waterline and Campground AML Pilot Project as outlined in Attachment A, Scope of Work or Service.

Notifications

All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing and sent to the following:

John Lester Smith, Judge Executive
Breathitt County Courthouse
1137 Main Street
Jackson, KY 41339
606-666-3800 ext. 224
breathittjudgeexec@gmail.com
DUNS#: 093553993

Additional Point of Contact for the Breathitt County Fiscal Court:

Lottie Hutchinson
hutchinsonlottie@gmail.com

Bob Scott, Director
Kentucky Division of Abandoned Mine Lands
300 Building

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300 Sower Boulevard
Frankfort, KY 40601
502-782-6761
bobf.scott@ky.gov

Pricing:

The Energy and Environment Cabinet, Division of Abandoned Mine Lands, shall reimburse the Breathitt County Fiscal Court up to One Million Nine Hundred and Fifty Thousand dollars (\$1,950,000.00) for services and activities as outlined in Attachment B, Program Budget.

Cancellation clause:

Either party may cancel the agreement at any time for cause or may cancel without cause on 30 days' written notice.

Funding Out Provision:

The state agency may terminate this agreement if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the agreement. The state agency shall provide the Contractor thirty (30) calendar days written notice of termination of the agreement due to lack of available funding.

Reduction in Contract Worker Hours:

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the agreement will be reduced by the amount specified in that document.

Access to Records:

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030(8) and (10), agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement for the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

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Effective Date:

All Memorandum of Agreements are not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the agreement and until the agreement has been submitted to the government contract review committee. However, in accordance with KRS 45A.700, memoranda of agreement in aggregate amounts of \$50,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes.

KRS 45A.695(7) provides that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

Violation of tax and employment laws:

KRS 45A.485 requires the Contractor and all subcontractors performing work under the agreement to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the agreement shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the Contractor and all subcontractors performing work under the agreement shall be in continuous compliance with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination as described above, or failure to comply with the above statutes for the duration of the agreement shall be grounds for the Commonwealth's cancellation of the agreement and their disqualification from eligibility for future state contracts for a period of two (2) years.

[Check box section below need only be included for Contractors that are quasi-governmental entities or 501(c)3 non-profit entities.]

Contractor must check one:

☐ The Contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.


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_____ The Contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). Attached is a list of such determination(s) , which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

Discrimination:

This section applies only to agreements disbursing federal funds, in whole or part, when the terms for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this agreement, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
2. In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will, I state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.
3. The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

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5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of the said rules, regulations or orders, this agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

7. The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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Attachment A

Scope of Work or Service

The Breathitt County Fiscal Court

for the

South Fork Elk View Waterline and Campground AML PILOT Project

The Kentucky Energy and Environment Cabinet, Division of Abandoned Mine Lands shall reimburse the "Contractor" (the Breathitt Count Fiscal Court) up to \$ 1,950,000.00 for the following activities related to the South Fork Elk View Waterline and Campground AML PILOT Project.

SCOPE OF WORK OR SERVICE

The South Fork Elk View Waterline and Campground AML PILOT Project is being proposed for funding as part of the Department of Interior's (DOI) Office of Surface Mining Reclamation and Enforcement (OSMRE) Abandoned Mine Land Reclamation FY 2016 \$30,000,000.00 (Thirty Million) Economic Development Pilot Program (AML Pilot). This project was chosen by Kentucky because it was deemed to offer potential significant benefits for coal field communities via a positive impact towards AML cleanup and economic and community development.

The proposed project will provide funding for design and construction services to install a waterline to serve a proposed campground and horse arena/expo center. The campground will included a bath house, visitor's center, and cabins. The horse arena and expo center will include a large steel building with horse stalls, bleachers, rest rooms, animal wash stall, and fenced paddock area for grazing. The waterline, campground, and horse area/expos center will be located at the South Fork Elk View area on Highway 1098 (South Fork), in Breathitt County.

Funding for this project will be used for waterline and camp ground/facility-related construction activities; site development; engineering/design services; administrative services; legal services; construction inspection services; permitting; surveying; easement/right-of-way acquisition/use; archaeological and environmental studies; contingencies; and other closely associated work necessary for the development of this

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MOA. A detailed explanation of proposed project costs is shown below.

The project encompasses three tracts of land. One tract will be leased from Revelation Energy LLC and the other two tracts (the Marie R. Turner tract and the Treva Howell tract) will be donated to Breathitt County. Finalized lease and donation agreements must be in place prior to releasing funds pursuant to this agreement.

Completion of this project will directly benefit the City of Jackson and Breathitt County. Magoffin, Knott, and Perry counties should also see a benefit from this project as various trails will be developed in the future to link to each of them. Furthermore, the installation of the waterline in this area should help attract other businesses to bring jobs to the area. This MOA is effective from January 30, 2018 through June 30, 2018.

The AML PILOT funds will provide all of the startup funding for this project.

Included in the maximum-allowable reimbursement to the Contractor (Breathitt County Fiscal Court) is a management fee to be paid to the Kentucky River Area Development District – KRADD) described as follows:

A total reimbursement of \$25,000.00 to the Contractor for financial administration, oversight, and management of the project by KRADD for the entire length of the project/duration of this MOA as described herein. The Cabinet shall process payments to the Contractor promptly after receipt of monthly Requests for Payment. Payments of the \$25,000.00 administration fee will be made in installments, not to exceed \$4,000 per month. Requests for this fee should coincide with, and be included as part of, monthly requests for payment for services rendered/work completed for this project. The final \$5,000.00 amount to be paid for this financial administration, oversight, and management service will be processed upon receipt of the final invoice for the project. All such payments are conditioned upon the receipt of sufficient justification explaining expenses for reimbursement for all financial administration, project oversight, and project management fees earned for each month, including a breakdown showing each months' fees and a cumulative total of management and oversight fees earned to date. Financial administration, oversight, and management includes:

1. Salaries and fringe benefits for one Manager and one Accounts Payable Clerk/Administrative Assistant;

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2. Incidentals (rent, telephone, office supplies, copies, travel, and other necessary and properly justified and documented expenses);
3. Attorney fees as necessary;
4. Audit fees to comply with required annual federal audit;
5. **Liability insurances as necessary**

ACTIVITIES

OBLIGATIONS OF THE CONTRACTOR

The Contractor shall undertake the following obligations:

(All obligations as discussed below that require submittal of documentation to the Cabinet shall be submitted in electronic format. If electronic submittals are not possible, paper submittals are permissible and should be mailed to The Kentucky Division of Abandoned Mine Lands (Attention: Bill Overman – Assistant Director), 300 Sower Blvd, Frankfort, KY 40601. Electronic submittals should be e-mailed to bill.overman@ky.gov.)

Preparation of Request for Proposals (RFPs), based on bid requirements, and solicitation of bids. Architectural, design, surveying, title, environmental, and construction services must be acquired with methods that are in compliance with Kentucky's Model Procurement Code (KRS 45A).

The Contractor shall procure all architectural, design, surveying, title, environmental, and construction contracts in accordance with applicable state and federal laws and regulations. **Specifically, the Contractor agrees to comply with all pertinent provisions of KRS 45A, "Kentucky Model Procurement Code", as amended.**

Review, for completeness, accuracy and suitability, any plans, specifications, bid documents, and other related information.

Selection of appropriate bidder(s) with concurrence from the Kentucky Division of Abandoned Mine Lands.

The Contractor shall submit the names of the low bidder for all contracts and all subcontracts to the Cabinet so that the Cabinet may conduct an Office of Surface Mining Reclamation and Enforcement (OSMRE) Applicant Violator System (AVS)

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review. The Cabinet may reject the low bidder or any subcontractor if the review identifies the low bidder or subcontractor as a mining violator. The Contractor shall provide the Cabinet with a copy of each contractor/subcontractor's federal ID#, mailing address and phone number.

The Contractor shall require each bidder to sign and submit to the Cabinet a Campaign Finance Law Compliance affidavit in accordance with KRS 45A.110 and KRS 45A.115. Failure by the bidder to provide the affidavit shall be grounds for disqualification.

Preparation of all contract documents for the selected bidder(s). The Contractor shall, submit a Tabulation of Bids (a chart showing the amount bid by each bidder for each pay item in the contract), as needed for each service, and any Notices of Award to the Cabinet.

Review and agreement of contract terms with selected bidder(s) and acquisition of all required contract signatures.

Provide to the Cabinet completed design drawings, technical specifications and other construction-related and contract documents in electronic format (or paper format if necessary).

Verify that all entities, associated with this project, obtain all required permits or certifications and provide all such documents to the Cabinet in electronic format (or paper format if necessary).

Complete project management to verify that all services and materials that are paid for are rendered. This includes taking reasonable steps to verify that all construction-related inspections occur and are documented and that all construction activities are in compliance with local, state, and federal building codes and reporting requirements.

Require that all sub-contractors submit all invoices to the Contractor in a timely manner.

Project-related work is verified and completed, or product delivered, according to final, or agreed-upon changes to, specifications and plans. Submission of final report to the Cabinet authorizing payment unless deficiencies exist. In the event of a deficiency, the Contractor will submit a list of such deficiencies to necessary sub-contractors and the Cabinet. All deficiencies must be corrected prior to the Cabinet authorizing payment.

Attendance at all meetings related to: a) the bidding process, b) contract award process,

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c) design and construction status, and d) changes to previously-approved design and construction plans or actions.

After approval and receipt of payment, the Contractor must disburse funds directly to the vendor.

The Contractor shall submit, on a monthly basis, a project status report to the Cabinet. The report shall include a financial report prepared while design and/or construction activities are ongoing. A "Request for Payment" form with an itemization of eligible project costs attached shall accompany monthly reports. The Chief Executive Officer of the Contractor, or his or her designee, shall sign the Request for Payment forms. Payments will be issued based on the amount of work completed, or materials purchased and stored, at the time the request is made. Payments will not be made for work not yet completed, or materials not yet delivered.

The Contractor shall comply with the provisions of Section 106 of the National Historical Preservation Act of 1966, as amended (16 U.S.C. & 470); Executive Order No. 11593, which relates to the identification and protection of historic properties; and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. & 469(a)(1) et. seq). In particular, an archaeological survey shall be performed for all areas proposed for disturbance outside the highway rights-of-way, unless the site and access thereto have previously been disturbed. Three copies of the written report resulting from such an archaeological survey shall be submitted to the Cabinet.

The Contractor shall establish a special Project Identification Code for all work performed under this AGREEMENT and records shall be maintained of all related work, whether performed by the Contractor, other governmental agencies, or private companies.

The Contractor shall establish a separate bank account, **identified with the name of this project (South Fork Elk View Waterline and Campground AML Pilot)**, for all federal receipts associated with this project, and shall **submit monthly bank statements, and canceled checks to show that all preceding months' payments were made to the correct sub-contractors and for the correct amounts, to the Cabinet.**

The Contractor, and any of its subcontractors, shall maintain records in accordance with 30 C.F.R. § 886.24, which is incorporated into this AGREEMENT by reference.

The Contractor shall have an audit performed in accordance with the audit requirements found in the Code of Federal Regulations (CFR) Part 200, Subpart F, "Uniform

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Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards". A copy of the audit shall be provided to the Cabinet within 30 days after completion of the audit, but no later than nine months after the end of the audit period.

The Contractor shall obtain prior Cabinet approval for acquisition of any equipment under this MOA. Requests for equipment acquisition authorization shall be submitted to the Cabinet.

The Contractor shall require all subcontractors to carry Workers Compensation and Public Liability Insurance, with single limit coverage of at least \$1,000,000.00. Proof of insurance shall be submitted to the Cabinet upon request.

The Contractor shall retain all records relating to the Project until such records are audited by the Cabinet, or for three years after submitting the close-out report to the Federal Office of Surface Mining Reclamation and Enforcement, whichever first occurs. The Contractor shall advise the Cabinet in writing if the Project is to be administered by another governmental entity on its behalf and the project-related records will be maintained at an alternate site.

The Contractor shall cooperate fully with the Cabinet in order to facilitate the obligations set out in this AGREEMENT including, but not limited to, allowing the Cabinet to inspect all records pertaining to the project at any time after reasonable notice.

Additional Long-Term Obligations of the Contractor

During the term of this MOA and thereafter, the Contractor shall make all financial records of any nature including, but not limited to, those electronically maintained relating to the Contractor's financial condition and all other records relating to the Contractor available for inspection and copying promptly upon receipt of a written request from the Cabinet. For a period of ten (10) years from the execution of this MOA, the Contractor shall make all financial records of any nature including, but not limited to, those electronically maintained relating to the Contractor's financial condition and all other records relating to the South Fork Elk View Waterline and Campground AML Pilot Project available for inspection and copying promptly upon receipt of a written request from the Cabinet. This provision in no way limits the rights of the Cabinet to inspect and copy any other records pursuant to this MOA.

In the event that the Contractor sells, conveys, assigns or otherwise transfers a controlling interest in the South Fork Elk View Waterline and Campground; sells, conveys, assigns or otherwise transfers any of the real estate or other material assets

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associated with the South Fork Elk View Waterline and Campground; or merges with another entity within a period of ten (10) years from the execution of this MOA, the Contractor will refund to the Cabinet all funds that they receive pursuant to this MOA. The Cabinet shall deposit any such refund into the "Excess Funds Account 633 S FMP0" administered by the Division of Abandoned Mine Lands.

The Contractor agrees to execute all documents and take all other reasonable actions requested by the Cabinet in furtherance of this MOA:

Unless otherwise specified, the obligations of the Contractor and the rights of the Cabinet set forth in this section shall survive the expiration and/or termination of this MOA.

OBLIGATIONS OF THE CABINET

The Cabinet shall undertake the following obligations:

When requested to do so, the Cabinet shall forward the written report of any archaeological survey to the Kentucky Heritage Council and the Office of State Archaeology, University of Kentucky, for review.

The Cabinet shall review and concur, assuming terms and conditions are reasonable, with proposed contracts for preparation of plans and specifications provided by the Contractor.

The Cabinet shall provide Request for Payment forms to the Contractor.

The Cabinet shall review monthly project financial and status reports received from the Contractor.

The Cabinet shall provide an affidavit form entitled, "Campaign Finance Law Compliance" to be included in the bid documents.

The Cabinet has been awarded a Federal grant to be used toward completion of the Project, and the following information pertains to that award:

Catalog of Federal Domestic Assistance (CFDA) Number: 15.252.
CFDA Title: Abandoned Mine Lands Reclamation (AMLR) Program.
Award Name **Economic and Community Pilot Program S16-AF20056.**
Federal Awarding Agency: Office of Surface Mining Reclamations and

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Enforcement, Department of the Interior

Applicable Compliance Requirements: *The Contractor shall have an audit performed in accordance with the audit requirements found in the Code of Federal Regulations (CFR) Part 200, Subpart F, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards".*

MUTUALITY OF OBLIGATIONS

The obligations imposed upon the parties to this AGREEMENT are for the benefit of the parties and the timely fulfillment of each and every obligation in accordance with this AGREEMENT is necessary. The failure of any party to fulfill any of its obligations under this AGREEMENT shall constitute a breach of this AGREEMENT, and shall entitle the other party to commence appropriate legal or equitable action to enforce its rights under this AGREEMENT, unless the fulfillment of such obligation is waived or modified by the affected party. All waivers shall be in writing, signed by the affected party, and a waiver of one breach shall not constitute a waiver of any other breach.

In the event of a material breach by either party to this AGREEMENT, the other party may terminate this AGREEMENT, without further obligation to the other party. The rights of the parties to this AGREEMENT to pursue remedies for breach of any of the provisions hereof shall survive the termination, expiration, or cancellation of this AGREEMENT. Except as otherwise provided to this AGREEMENT, the parties to this AGREEMENT shall be solely responsible for any costs incurred in fulfilling their obligations under this AGREEMENT.

TIMELINE FOR ACTIVITIES

The Contractor shall accomplish the tasks stated in the scope of work or service above by timeline(s) and fiscal year(s) listed below, which shall also serve as the schedule for completion:

This PO2/AGREEMENT is valid from January 30, 2018 to June 30, 2018 or upon final completion of the project as specified in this MOA, whichever first occurs, unless extended in writing by the parties or terminated earlier in accordance with the terms hereof. This AGREEMENT shall automatically renew for a term of two (2) years to and including June 30, 2020, unless on or before June 30, 2018, either or both parties submits written notice to the other party of termination of this AGREEMENT.

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REPORTS

The Contractor shall:

Provide a monthly programmatic status report (see Item #16 under the "Activities" section of this Agreement). In addition, the report shall cover progress to date, any problems encountered and actions taken and any anticipated activity and work products expected during the next month as outlined in The Division of Abandoned Mine Lands Reporting Template included as Attachment C.

Provide a final report detailing activities and deliverables completed during the contract period. The final report is due 30 days after the end of the project.

All reports, including the Project Status Report, shall be submitted electronically (or by mail if necessary) to The Division of Abandoned Mine Lands (Attn: Bill Overman); 300 Sower Blvd.; Frankfort, KY 40601 or bill.overman@ky.gov within specified timeframes listed above. The Project Status Report shall be submitted in the format included as Attachment C and submitted within specified timeframes listed above.

Metrics to be reported are specified within the "Activities" section of this Agreement.

INVOICES

The Contractor shall:

1. Invoice the Commonwealth on a monthly basis for authorized expenditures by budget line item as listed in Attachment B. The invoice shall indicate:

- Invoice number
- Invoice date
- Dates of service covered
- Current expenditures with each item listed separately

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- Cumulative expenditures to date

- Current cost share or match, if identified in budget Attachment B
- Cumulative cost share or match
- Include a copy of the transaction detail report if available and/or receipt

- Backup documentation must be maintained for each invoice, as required by the record retention schedule in Kentucky's Administrative Regulation 725 KAR 1:0612 and/or CFR 200.333 through 200.337. The backup documentation can either be submitted with the invoice or kept for inspection by the Commonwealth, if or when requested.

Examples of backup documentation may include:

a. Personnel – payroll spreadsheet showing time worked within the invoice period. Spreadsheet shall contain salary information, name of employee or some identifiable number, percent of time applied to grant, along with the number of hours and fringe benefits per person.

b. Fringe – include in payroll spreadsheet.

c. Travel – travel voucher or invoices showing airfare, hotel expenses, etc. Mileage will be paid based on rate established through a travel policy by the recipient. If no rate has been established, the recipient may use the state or federal mileage rate.

d. Equipment – receipt marked paid (an invoice shall be submitted after equipment is paid for).

e. Supplies – receipt marked paid (an invoice shall be submitted after supplies are paid for).

f. Contractual – invoice and documentation that item has been paid (recipient shall verify invoice).

g. Construction – invoices, receipts marked paid and any other documents that properly verify expenses.

h. Indirect costs – will be verified not to exceed the allowable rate established in the MOA.

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i. Other – invoice and documentation that item has been paid (recipient shall verify invoice).

2. In the event that the Contractor incurs no expenses within the monthly reporting time frame, the Contractor shall submit an invoice for zero (0) dollars or provide a “notice of no expenses.” This notice can be in the form of an email or letter.

3. All invoices shall indicate the Document ID number, which can be found at the top of the MOAPSC. The Document ID number can be recognized by the beginning letters “PON2” or “PO2.”

4. Final Invoice: The final invoice should be clearly marked as “FINAL INVOICE” to indicate that all funds that will be expended, have been expended.

WHERE TO SUBMIT INVOICES

All Invoices shall be submitted via email or mail to:

The Division of Abandoned Mine Lands
(Attn: Bill Overman, Assistant Director)
Bill.overman@ky.gov
300 Sower Blvd
Frankfort, KY 40601
In the subject line of the email list:

“South Fork Elk View Waterline and Campground AML PILOT Project - Invoice #
– start date and end date” (i.e. time frames) that the invoice pertains to.

ASSURANCES

The parties shall abide by all terms included in Attachment D.

South Fork Elk View Waterline and Campground AML Pilot Project – Proposed Budget:

Attachment B

South Fork Elk View Waterline and Campground AML Pilot Project Program Budget

Categories	Division of Abandoned Mine Lands	Cost Share /In-kind Match	Total
Personnel	\$0.00	\$0.00	\$0.00
Fringe Benefits	\$0.00	\$0.00	\$0.00
Travel	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00
Supplies	\$0.00	\$0.00	\$0.00
Construction	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Total Direct Charges	\$1,950,000.00	\$0.00	\$0.00
Indirect Charges (up to 10% of Agency's Total Direct Charges) **	\$0.00	\$0.00	\$0.00
Contractual	\$0.00	\$0.00	\$0.00
Total	\$0.00	\$0.00	\$0.00
Program Income	\$0.00	\$0.00	\$0.00

A detailed budget template provided by the Breathitt County Fiscal Court (the Contractor) shall be completed and submitted to Bill Overman, Division of Abandoned Mine Lands Assistant Director, prior to the start of the project and before the start of each fiscal year.

** RECIPIENT INDIRECT:

If the recipient is receiving state funds the recipient may not charge indirect costs in excess of ten (10) percent of total direct costs. An indirect rate **shall not** be charged on contractual expenditures. Indirect charges exceeding the ten (10) percent shall be considered as cost share provided by the recipient.

If the recipient is receiving federal funds the recipient shall use the indirect rate corresponding with the agreement the recipient has with the federal entity or ten (10) percent. The recipient shall provide a copy of the indirect agreement prior to the federal funds being awarded.

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Attachment C

Division of Abandoned Mine Lands AML PILOT Project Status Report Template

The reporting template should be submitted as required by the scope of work in Attachment A.

Grant Recipient Name:

Project Name:

Principal Investigator/Project Manager:

Date Submitted:

Reporting Period: (month & year)

Accomplishments, publicity, news:


(Provide an update on project activities, any publicity on the project, including links to articles)

Performance outcome data/metrics:

(Provide updates on specific activity targets, project timelines and/or metrics from the grant agreement)

Problems, issues, variances from plan:

(Provide updates on any problems with project activities, timelines, any variances from the original work plan)

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ATTACHMENT D

ASSURANCES:

Award Number: Catalog of Federal Domestic Assistance (CFDA) Number: 15.252,
CFDA Title: Abandoned Mine Lands Reclamation (AMLR) Program,
Award Name **Economic and Community Pilot Program S16-AF20056**
Federal Awarding Agency: Office of Surface Mining Reclamation and Enforcement
(OSMRE), Department of the Interior

Applicable Compliance Requirements: The Contractor shall have an audit performed in accordance with the audit requirements found in the Code of Federal Regulations (CFR) Part 200, Subpart F; "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards".

The parties shall comply with:

- # The Common Rule, which is incorporated by reference into this AGREEMENT.
- # The Anti-Drug Abuse Act (P.L. 100-690), which requires recipients of Federal funds to certify that they have met requirements designed to promote a drug-free workplace.
- # Federal statutes relating to nondiscrimination, including but not limited to:
- # Title VII of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, sex, color, national origin, or religion.
- # Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability.
- # The Drug Abuse Prevention, Treatment and Rehabilitation Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination 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.
- # §§ 523-527 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.
- # Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made.
- # Any other nondiscrimination statute(s) that apply to this AGREEMENT.
- # Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs.

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- # The Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limits the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.
- # The Copeland Act (40 U.S.C. § 276(c) and 18 U.S.C. § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction sub-agreements.
- # The flood insurance purchases 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 \$10,000.00 or more.
- # Comply with environmental quality control measures pursuant to the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order No. 11514.
- # Notify violating facilities pursuant to Executive Order No. 11990.
- # Protect wetlands pursuant to Executive Order No. 11990.
- # Evaluate flood hazards in flood plains in accordance with Executive Order No. 11988.
- # Ensure actions comply with state implementation plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.).
- # Protect underground sources of drinking water pursuant to the Safe Drinking Water Act of 1974, as amended (P.L. 93-523).
- # Comply with the Endangered Species Act of 1973, as amended (P.L. 93-205).
- # Comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1270 et seq.).
- # The parties shall comply with the Executive Branch Code of Ethics (KRS Chapter.

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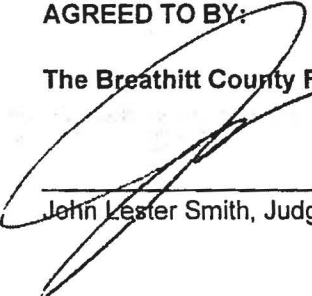
11A) and all state statutes relating to nondiscrimination

Approvals:

This contract is subject to the terms and conditions as stated. By affixing signatures below, the parties agree that electronic approvals may serve as electronic signatures. In addition, the parties verify that they are authorized to bind this agreement between parties and that they accept the terms of the agreement.

AGREED TO BY:

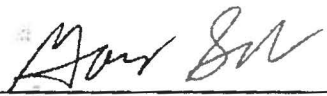
The Breathitt County Fiscal Court (BCFC):


John Lester Smith, Judge Executive

Date

1-3-18

APPROVED TO FORM AND LEGALITY FOR BCFC:


Gary Salyers, County Attorney
726 KY 15 North, Jackson, KY 41339

Date

1-3-18


Department for Natural Resources:


Allen Luttrell, Commissioner

Date

1-4-18

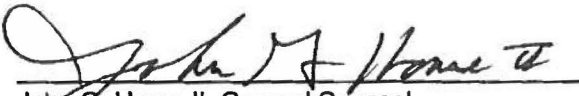
Energy and Environment Cabinet:


Charles G. Snively, Secretary

Date

1/8/2018

APPROVED AS TO FORM AND LEGALITY FOR Energy and Environment Cabinet:


John G. Horne II, General Counsel
Office of Legal Services

Date

1/5/2018