

CONTRACT NO. OSM 56(2517)201.1  
AGREEMENT

THIS AGREEMENT made and entered into this 27  
day of SEPT. A.D., 20 12 by and between the Commonwealth of Pennsylvania by  
the Department of Environmental Protection, party of the first part, hereinafter called the "Commonwealth", and  
Earthmovers Unlimited, Inc., P.O. Box 187, Kylertown, PA 16847, party of the second part, hereinafter called the  
"Contractor", WITNESSETH:

In consideration of the mutual undertakings, covenants and agreements, hereinafter stipulated to be  
kept and performed, the parties hereto, intending to be legally bound hereby, agree as follows:

Article 1 - The Contractor agrees, at its own sole cost and expense, to perform all the labor and  
services, and furnish all the materials, except as otherwise noted in the specifications, plant and equipment  
necessary to complete, and to complete in a good, substantial, workmanlike and approved manner, the following:

ABANDONED MINE LAND RECLAMATION PROJECT  
RAILROAD STREET  
WINDBER BOROUGH  
SOMERSET COUNTY, PENNSYLVANIA

The Contractor further agrees to complete the work within the time hereinafter specified, and in  
accordance with the terms, conditions and provisions of this contract, and of the instructions, orders and directions  
of the Department's Representative made in accordance with the contract.

Article 2 - The Contractor agrees to begin work within ten (10) calendar days after receipt of notice to  
start work, unless such time is extended in writing by the Department's Representative. The tenth calendar day  
after such date of notice shall be the official starting date. The Contractor further agrees to prosecute the work  
with speed and diligence so as to insure the completion within one hundred eighty (180) calendar days after the  
official starting date, which time is of the essence of this Agreement.

Article 3 - The Commonwealth agrees to pay and the Contractor agrees to accept, as full  
compensation, satisfaction and discharge for all work done and all materials furnished, whether mentioned in the  
following schedule or not, and for all costs and expenses incurred and damages sustained, and for each and every  
matter, thing or act performed, furnished or suffered in the full and complete performance and completion of the  
work of the contract in accordance with terms, conditions and provisions thereof and of the instructions, orders

and directions of the Department's Representative thereunder, except extra work which shall be paid for as provided in Subsection 6.7, Extra Work, page 87 and 88, of the General Conditions, as herein defined and except as in the contract otherwise specifically provided, the following unit or lump sum prices, to wit:

**SCHEDULE OF UNIT PRICES**

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
1.	Mobilization and Demobilization	Job	Job	L.S.	\$2,483.00
2.	Implementation of the Erosion and Sediment Pollution Control Plan	Job	Job	L.S.	6,240.00
3.	Grading	7,600	C.Y.	\$1.95	14,820.00
4.	Seeding				
	(A) Seed Bed Preparation	4	Acre	300.00	1,200.00
	(B) Agricultural Limestone	32	Ton	40.00	1,280.00
	(C) Commercial Fertilizer				
	1. Nitrogen	400	Lb.	1.50	600.00
	2. Phosphate	800	Lb.	1.00	800.00
	3. Potash	800	Lb.	1.00	800.00
	(D) Grass Seed	200	Lb.	5.60	1,120.00
	(E) Tree Seed	40	Lb.	40.00	1,600.00
	(F) Mulching	4	Acre	950.00	3,800.00
<b>Total Contract Amount:</b>					<b>\$34,743.00</b>

Article 4 - In case of default in completing the whole work to be done under this contract within the time herein specified, including such extensions, if any, as may have been granted in accordance with Subsection 4.2, Extension of Time, page 33 of the General Conditions, the Contractor hereby agrees to pay to the party of the first part the sum of two hundred fifty dollars (\$250.00) per calendar day, not as a penalty but as liquidated damages, for each and every calendar day thereafter until the work shall have been entirely completed. The party of the first part shall have the right to deduct such liquidated damages from any monies due or to become due to the Contractor, and the amount, if any, still owing after such deductions shall be paid on demand by the Contractor or its surety. Payment of such liquidated damages shall not relieve the Contractor or its sureties from any other obligation under the contract, but shall be additional thereto.

Article 5 - If the Contractor shall fail to comply with any of the terms, conditions, provisions or stipulations of the contract according to the true intent and meaning thereof, then the party of the first part may avail itself of any or all remedies provided in its behalf in the contract, and shall have the right to proceed in accordance with the provisions thereof.

Article 6 - It is hereby agreed by the parties of this Agreement that the following exhibits, numbered 1 and 2, attached hereto are made a part hereof, and exhibits numbered 3 and 4 although not attached hereto are made a part hereof by reference hereto, and all shall constitute integral parts of said Agreement, the whole to be collectively known and referred to as the contract:

1. The Agreement form, pages 1 to 7, inclusive;
2. Bonds, including Performance Bond, Material and Labor Payment Bond, and Maintenance Bond, Pages CB-1 to CB-4, inclusive;
3. Contract No. OSM 56(2517)201.1 Bid Documents, including the Invitation For Bids, Bid Instructions, Bid Form, Drawings as numbered and titled in the Bid Document, Prevailing Minimum Wage Determination, Special Requirements, Technical Specifications, pages numbered and titled as per the Bid Document, and Signatures;
4. General Conditions for Construction, Commonwealth of Pennsylvania, Department of Environmental Protection, dated 2006 ("General Conditions").

Article 7 - The Contractor agrees to furnish proper bonds, as provided in Subsection 3.9, Contract Bonds, page 25 and 26 of the General Conditions, subject to the satisfaction and approval of the Commonwealth, conditioned upon the faithful performance of the contract and the prompt payment for all material furnished and labor supplied or performed in the prosecution of the work.

Article 8 - The Contractor covenants and agrees to remedy, without cost to the Commonwealth, any defects which may develop within one year from date of completion and acceptance of the work performed under this contract, provided said defects, in the judgment of the Commonwealth, are caused by defective or inferior materials or workmanship.

Article 9 - The Contractor, subcontractor, or any persons on their behalf, shall carry out the provisions of Section 6 of the Act of May 22, 1945 (P.L. 837, No. 337), as amended (51 P.S. 492.1 et seq.), which concerns the giving of preference to honorably discharged persons, who have served in the armed forces of the United States during any war, in determining who shall be employed on public work, which Act in part reads as follows:

“Whenever the Commonwealth issues specifications for the construction, alteration or repair of any public works, such specifications shall include a provision under which the Contractors and Sub-Contractors shall agree to give a preferential rating similar to that given by this Commonwealth, as herein provided, to any soldier making application for employment upon such public works.”

Article 10 - The Contractor agrees to abide and be bounded by the laws of the Commonwealth relating to and regulating the hours and conditions of employment by Acts of Assembly in such case made and provided.

Article 11 - All Contractor claims for damages pertaining to this Agreement shall be resolved in accordance with Subsection 6.13, Claims for Damages, pages 91 and 92 of the General Conditions. All other questions or disputes arising between the parties hereto respecting any matter pertaining to this contract or any part thereof, or any breach of said contract arising thereunder, shall be resolved in accordance with applicable law.

Article 12 - This contract may at any time be terminated and cancelled by the Commonwealth in whole or in part, or the operations hereunder suspended for such time as is deemed necessary for its best interests, and in such event Contractor shall be awarded such compensation as, in the Commonwealth's judgment, is considered fair and reasonable, subject however, to appeal by the Contractor in accordance with Subsection 6.13, Claims for Damages, pages 91 and 92 of the General Conditions. In any event, Contractor shall not be entitled to a profit margin on work not performed.

Article 13 - The Contractor, subcontractor, or any persons on their behalf shall comply with all applicable anti-pollution statutes, rules and regulations.

Article 14 - This contract shall be binding on the parties hereto, their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

WITNESS:

[Signature]

COMMONWEALTH OF PENNSYLVANIA  
Department of Environmental Protection

BY [Signature]  
Allyson P. Hubler Date

Chief  
Division of Contracts, Procurement and Bonding  
Bureau of Office Services

To be completed by Contractor:

CORPORATE SEAL

ATTEST:

CONTRACTOR: Earthmovers Unlimited, Inc.

[Signature] 9/27/2012  
Secretary/Treasurer Date  
(cross out nonapplicable)

BY [Signature] 9/27/2012  
President/Vice President Date  
(cross out nonapplicable)

Diane A. Niebauer  
Typed/Printed Name

John P. Niebauer Jr.  
Typed/Printed Name

FC No. 40000 17243

Federal Tax No. [REDACTED]  
Vendor ID No. 149057

I approve this contract and hereby certify that funds in the amount of \$34,743.00 are available under Appropriation

8212212000-3555409000-V18507000000-6344630

[Signature] Robert J. Crouse 11/9/12  
Comptroller Date

7C-K-120  
(3/22/99)

Approved as to legality and form

BY PRE-APPROVED  
Office of Attorney General

[Signature]  
Chief/Assistant Counsel Date  
Department of Environmental Protection

**CONSENT TO EXTENSION OF  
THE TIME FOR EXECUTING CONTRACT  
AND ISSUANCE OF NOTICE TO PROCEED**

The Contractor hereby agrees that if it does not return the contract and bonds, properly executed, to the Department in Harrisburg, Pennsylvania, within seven (7) calendar days after receipt of the documents, an equivalent period of time beyond the seven (7) calendar days shall be added to the sixty (60) calendar day time limit for execution of the contract and issuance of the notice to proceed pursuant to the Commonwealth Procurement Code, 62 Pa. C.S. 3912-3913.

ATTEST: *Diane J. Mahan*  
Secretary/Treasurer  
(cross out nonapplicable)

(corporate seal)

Earthmovers Unlimited, Inc.  
Contractor

BY *John P. Wilbourn*  
President/Vice President  
(cross out nonapplicable)

Date Sept. 27, 2012

AFFIDAVIT RE ACCEPTING PROVISIONS OF  
THE PENNSYLVANIA WORKMEN'S COMPENSATION ACT

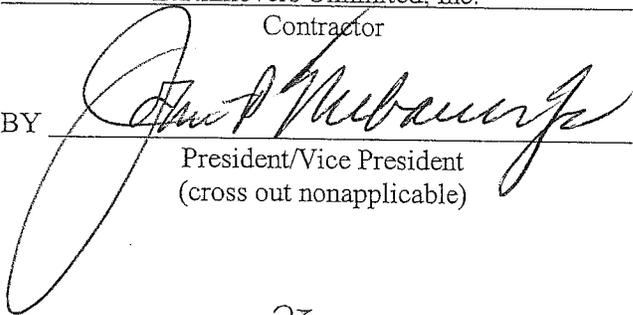
State of Pennsylvania

County of Clearfield

Earthmovers Unlimited, Inc., being duly sworn according to law, deposes and says it has accepted the provisions of The Pennsylvania Workmen's Compensation Act and has insured its liability thereunder in accordance with the terms of said Act with Lackawanna Casualty

(INSURANCE COMPANY)

(CORPORATE SEAL)

Earthmovers Unlimited, Inc.  
Contractor  
BY   
President/Vice President  
(cross out nonapplicable)

Sworn to and subscribed before me this 27 day of SEPT, A.D., 2012.

(NOTARY SEAL)

Kristin N. Quick  
Notary Public

