



United States Environmental Protection Agency  
Office of Wetlands, Oceans and Watersheds  
Washington, D.C. 20460



United States Department of the Army  
U.S. Army Corps of Engineers  
Washington, D.C. 20314

AUG 23 1993

**MEMORANDUM TO THE FIELD**

**SUBJECT: ESTABLISHMENT AND USE OF WETLAND MITIGATION BANKS IN  
THE CLEAN WATER ACT SECTION 404 REGULATORY PROGRAM**

1. This memorandum provides general guidelines for the establishment and use of wetland mitigation banks in the Clean Water Act Section 404 regulatory program. This memorandum serves as interim guidance pending completion of Phase I of by the Corps of Engineers' Institute for Water Resources study on wetland mitigation banking<sup>1</sup>, at which time this guidance will be reviewed and any appropriate revisions will be incorporated into final guidelines.
2. For purposes of this guidance, wetland mitigation banking refers to the restoration, creation, enhancement, and, in exceptional circumstances, preservation of wetlands or other aquatic habitats expressly for the purpose of providing compensatory mitigation in advance of discharges into wetlands permitted under the Section 404 regulatory program. Wetland mitigation banks can have several advantages over individual mitigation projects, some of which are listed below:
  - a) Compensatory mitigation can be implemented and functioning in advance of project impacts, thereby reducing temporal losses of wetland functions and uncertainty over whether the mitigation will be successful in offsetting wetland losses.
  - b) It may be more ecologically advantageous for maintaining the integrity of the aquatic ecosystem to consolidate compensatory mitigation for impacts to many smaller, isolated or fragmented habitats into a single large parcel or contiguous parcels.

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<sup>1</sup>The Corps of Engineers Institute for Water Resources, under the authority of Section 307(d) of the Water Resources Development Act of 1990, is undertaking a comprehensive two-year review and evaluation of wetland mitigation banking to assist in the development of a national policy on this issue. The interim summary report documenting the results of the first phase of the study is scheduled for completion in the fall of 1993.

c) Development of a wetland mitigation bank can bring together financial resources and planning and scientific expertise not practicable to many individual mitigation proposals. This consolidation of resources can increase the potential for the establishment and long-term management of successful mitigation.

d) Wetland mitigation banking proposals may reduce regulatory uncertainty and provide more cost-effective compensatory mitigation opportunities.

3. The Section 404(b)(1) Guidelines (Guidelines), as clarified by the "Memorandum of Agreement Concerning the Determination of Mitigation under the Section 404(b)(1) Guidelines" (Mitigation MOA) signed February 6, 1990, by the Environmental Protection Agency and the Department of the Army, establish a mitigation sequence that is used in the evaluation of individual permit applications. Under this sequence, all appropriate and practicable steps must be undertaken by the applicant to first avoid and then minimize adverse impacts to the aquatic ecosystem. Remaining unavoidable impacts must then be offset through compensatory mitigation to the extent appropriate and practicable. Requirements for compensatory mitigation may be satisfied through the use of wetland mitigation banks, so long as their use is consistent with standard practices for evaluating compensatory mitigation proposals outlined in the Mitigation MOA. It is important to emphasize that, given the mitigation sequence requirements described above, permit applicants should not anticipate that the establishment of, or participation in, a wetland mitigation bank will ultimately lead to a determination of compliance with the Section 404(b)(1) Guidelines without adequate demonstration that impacts associated with the proposed discharge have been avoided and minimized to the extent practicable.

4. The agencies' preference for on-site, in-kind compensatory mitigation does not preclude the use of wetland mitigation banks where it has been determined by the Corps, or other appropriate permitting agency, in coordination with the Federal resource agencies through the standard permit evaluation process, that the use of a particular mitigation bank as compensation for proposed wetland impacts would be appropriate for offsetting impacts to the aquatic ecosystem. In making such a determination, careful consideration must be given to wetland functions, landscape position, and affected species populations at both the impact and mitigation bank sites. In addition, compensation for wetland impacts should occur, where appropriate and practicable, within the same watershed as the impact site. Where a mitigation bank is being developed in conjunction with a wetland resource planning initiative (e.g., Special Area Management Plan, State Wetland Conservation Plan) to satisfy particular wetland restoration objectives, the permitting agency will determine, in coordination with the Federal resource agencies, whether use of the bank should be considered an appropriate form of compensatory mitigation for impacts occurring within the same watershed.

5. Wetland mitigation banks should generally be in place and functional before credits may be used to offset permitted wetland losses. However, it may be appropriate to allow incremental distribution of credits corresponding to the appropriate stage of successful establishment of wetland functions. Moreover, variable mitigation ratios (credit acreage to

impacted wetland acreage) may be used in such circumstances to reflect the wetland functions attained at a bank site at a particular point in time. For example, higher ratios would be required when a bank is not yet fully functional at the time credits are to be withdrawn.

6. Establishment of each mitigation bank should be accompanied by the development of a formal written agreement (e.g., memorandum of agreement) among the Corps, EPA, other relevant resource agencies, and those parties who will own, develop, operate or otherwise participate in the bank. The purpose of the agreement is to establish clear guidelines for establishment and use of the mitigation bank. A wetlands mitigation bank may also be established through issuance of a Section 404 permit where establishing the proposed bank involves a discharge of dredged or fill material into waters of the United States. The banking agreement or, where applicable, special conditions of the permit establishing the bank should address the following considerations, where appropriate:

- a) location of the mitigation bank
- b) goals and objectives for the mitigation bank project;
- c) identification of bank sponsors and participants;
- d) development and maintenance plan;
- e) evaluation methodology acceptable to all signatories to establish bank credits and assess bank success in meeting the project goals and objectives;
- f) specific accounting procedures for tracking crediting and debiting;
- g) geographic area of applicability;
- h) monitoring requirements and responsibilities;
- i) remedial action responsibilities including funding; and
- j) provisions for protecting the mitigation bank in perpetuity.

Agency participation in a wetlands mitigation banking agreement may not, in any way, restrict or limit the authorities and responsibilities of the agencies.


7. An appropriate methodology, acceptable to all signatories, should be identified and used to evaluate the success of wetland restoration and creation efforts within the mitigation bank and to identify the appropriate stage of development for issuing mitigation credits. A full range of wetland functions should be assessed. Functional evaluations of the mitigation bank should generally be conducted by a multi-disciplinary team representing involved resource and regulatory agencies and other appropriate parties. The same methodology should be used to determine the functions and values of both credits and debits. As an alternative, credits and debits can be based on acres of various types of wetlands (e.g., National Wetland Inventory classes). Final determinations regarding debits and credits will be made by the Corps, or other appropriate permitting agency, in consultation with Federal resource agencies.


8. Permit applicants may draw upon the available credits of a third party mitigation bank (i.e., a bank developed and operated by an entity other than the permit applicant). The



Section 404 permit, however, must state explicitly that the permittee remains responsible for ensuring that the mitigation requirements are satisfied.

9. To ensure legal enforceability of the mitigation conditions, use of mitigation bank credits must be conditioned in the Section 404 permit by referencing the banking agreement or Section 404 permit establishing the bank; however, such a provision should not limit the responsibility of the Section 404 permittee for satisfying all legal requirements of the permit.

 8/23/93  
ROBERT H. WAYLAND, III (date)  
Director  
Office of Wetlands, Oceans,  
and Watersheds  
U.S. Environmental Protection Agency

 8/23/93  
MICHAEL L. DAVIS (date)  
Office of the Assistant Secretary  
of the Army (Civil Works)  
Department of the Army

# AMD&ART

*Creating Community Assets*

c/o The BOTTLEWORKS  
411 Third Avenue  
Johnstown, PA 15906  
(814) 539-5357  
amdart@gte.net

May 20, 1999

Richard H. Hogg, P.E.  
District Engineer  
PADOT District 10-0  
P.O. Box 429  
Route 286 South  
Indiana, PA 15701

ATTN: TOM BALZ

RE: Wetland Mitigation  
Partnership Agreement

Dear Gentlemen,

On April 8, 1999 a meeting was held to discuss a cooperative agreement between AMD&ART and PADOT regarding the construction of wetlands. The meeting included the attendance of the following parties:

Tom Baltz - PADOT District 10-0  
Corey Jordan - PADOT District 10-0  
Bill Savage - PADOT District 9-0  
John Paxton - PADEP  
Rich Sobol - USACOE  
Tammy Sherwin - L. Robert Kimball and Associates  
Ken Stockert - Skelly and Loy, Inc.  
Steve Pernick - Skelly and Loy, Inc.  
Allen Comp - AMD&ART, Inc.  
Shelbie Knox - AMD&ART, Inc.

This letter is to verify the agreements discussed at that meeting and to provide formal documentation as to the processes outlined at that time.

During the referenced meeting it was determined that PADOT is required by PADEP to mitigate a total of 5.8 acres of wetland impacts associated with improvements to Route 22 in Indiana and Cambria Counties. It was agreed that this mitigation could be conducted as part of the AMD&ART site at Vintondale. The Vintondale site includes an AMD treatment system and associated wetlands

as well as some community facilities. AMD&ART noted they need approximately \$200,000 to complete construction of the project.

In order to develop a compensation rate for the impacts it was agreed to by all parties that an amount would be based on the PA Wetland Replacement Project (the Fund). Currently, 0.40 to 0.50 acre of wetland replacement costs \$7,500 which would equate to \$15,000 per acre. It should be noted that the PADEP Wetland Replacement Fund is not an option because the 5.8 acre impact exceeds the 0.5 acre upper limit established by the Fund. Applying this rate to the 5.8 acres of proposed impact provides a total of \$87,000.

The payment of \$87,000 to AMD&ART will fulfill PennDOT's commitment for wetland Mitigation and will be divided proportionately between the Districts. District 10-0's portion of the project in Indiana County has a proposed impact of 3.33 acres of wetland and would require payment of \$49,950. District 9-0's portion in Cambria County has a proposed impact of 2.47 acres and would require a payment of \$37,050.

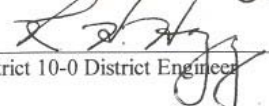
AMD&ART has proposed a maximum amount of ten acres of wetlands be constructed at the Vintondale site. It is agreed that a minimum 5.8 acres will be allocated to PADOT to satisfy their mitigation requirements. It is noted that the remaining available wetland acreage may be used by PennDot for other projects in the area presently requiring wetland mitigation, and as approved by the PADEP and USACOE. A similar payment option to AMD&ART would also be required to use the remaining available acreage.

By signature of this letter AMD&ART formally agrees to allocate a minimum of 5.8 acres of constructed wetland for PADOT wetland mitigation. By signature of this letter PADOT formally agrees to provide \$87,000 to AMD&ART for use in the construction of this project.

It is understood that at this time the actual payment mechanism is still being determined. It is anticipated that the final design consultant, L. Robert Kimball and Associates, will pay AMD&ART and be reimbursed by PennDOT. L. Robert Kimball is currently responsible for the final design of the wetland replacement site for the project. Payment to AMD&ART is an upfront payment that satisfies PADEP's and the USACOE's mitigation requirements for the required Joint Permit Applications. It is also understood that AMD&ART will be responsible for the successful completion of the wetland replacement project, maintenance, and monitoring of the site as required by the PADEP and USACOE.

  
District 10-0 Environmental Manager

6/16/99  
Date

  
District 10-0 District Engineer

7/23/99  
Date

\_\_\_\_\_  
District 9-0 Environmental Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
District 9-0 District Engineer

\_\_\_\_\_  
Date

\_\_\_\_\_  
PA Dept. of Environmental Protection

\_\_\_\_\_  
Date

\_\_\_\_\_  
US Army Corps of Engineers

\_\_\_\_\_  
Date

*J. H. [Signature]*  
AMD&ART, Inc.

*25 May 99*  
Date

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

DATE: March 2, 2000 Telephone: 724/357-2874  
Fax: 724/357-1905

SUBJECT: U. S. Route 22 Improvement  
Gas Center and Penn View Summit Projects  
Cambria and Indiana Counties  
Wetland Mitigation

TO: Dean A. Schreiber, P.E., Director  
Bureau of Design  
P. O. Box 2966  
7th Floor, Forum Place

FROM: Richard K. Hogg, P.E., District Engineer  
Engineering District 10-0

The District requests the approval of the proposed wetland mitigation project at Vintondale, Pennsylvania, as proposed for the above-referenced project. The rationale for this preference are outlined in the following summary:

1. Cost savings would be immediately achieved due to the fact that a portion of an existing funding source (lump sum agreement) with our final design firm (L. Robert Kimball and Associates) would be utilized to contribute to the completion of the site construction. This transfer of design funds (-\$87,000.00) would be done without any additional costs incurred by the Pennsylvania Department of Transportation (Department) and the Federal Highway Administration (FHWA) for the completion of the construction of this proposed wetland mitigation site. The Department and FHWA would not be required to expend any additional funds for site evaluation and/or design. Additionally, the negotiated cost of -\$15,000.00 per acre would be less than the average costs for typical Department and FHWA wetland construction (conservatively estimated at -\$30,000.00 per acre). Refer to Appendix "A" for a more detailed explanation.
2. The nature of the wetland mitigation site would be more effective than conventional mitigation sites due to the fact that multi-use activities would be a part of the site with a rails-to-trails (Ghost Town Trail), a cultural industrial heritage site, and an acid mine drainage remediation, which would all be accommodated within this site. Furthermore, wetland habitat would be constructed as a part of the entire site.
3. The local area would benefit with the provision of a wetland mitigation site, which would accommodate the intended replacement of wetland functions and values, as well as augment a developed industrial heritage site and provide wetland treatment of an existing acid mine drainage discharge.



Dean A. Schreiber, P.E., Director  
March 2, 2000  
Page 2

4. The Redevelopment Authority of Cambria County will administer the contract for the construction of the wetland site. All procurement transactions for construction services shall be conducted in a manner to provide open and free competition. Refer to Appendix "B," which is a letter from the Redevelopment Authority explaining the bidding procedures.
5. The site under consideration was analysed in accordance with NEPA regulations. The environmental analysis performed by David Hamilton of the Office of Surface Mining in Harrisburg dated July 1, 1999, found that the project is of "no significant impact." Refer to Appendix "C" for the AMD & ART letter documenting NEPA clearance.
6. In Appendix "C," the letter from AMD & ART dated January 13, 2000, explains that the land is currently owned by the Borough of Vintondale. The Borough is in the final stages of negotiations with a land conservancy in the Southern Alleghenies region to donate the land. This will ensure that the system can be protected and maintained in perpetuity.

It should be pointed out that the regulatory agencies (PADEP and USACOS), as well as the environmental staff of both Districts 9-0 and 10-0 of the Department, have seen and agreed to this site as comparable wetland mitigation for the entire project related wetland impacts for the U. S. Route 22 Penn View Summit and Gas Center projects.

We trust that the subject site can proceed with our participation, provided your concurrence is received for the project. If you have any questions about the proposed action, or if you need any background materials, please do not hesitate to contact Craig A. Chelednik, P.E., at 724-357-2874.

Enclosure  
1000/CAC/kjr  
(wetmit.cac)  
cc: R. H. Hogg, P.E., District Engineer  
Route JPD / CAC (file)

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

March 31, 2000

FILE COPY



Indiana County  
S.R. 0022, Section 495 and Section 491  
Gas Center and Penn View Summit Projects  
Cambria and Indiana Counties  
Wetland Mitigation

Mr. James A. Cheatham, P.E.  
Division Administrator  
Federal Highway Administration  
228 Walnut Street, Room 558  
Harrisburg, PA 17101-1720

OPTIONAL FORM 93 (7-99)

## FAX TRANSMITTAL

# of pages ▶ 3

To	Ellen Miceli	From	Pete Nanov
Dist. Agency	AMD & ART	Phone #	717 221-3780
Fax #	(717) 539-4245	Fax #	
NSN 7540-01-917-7968		5095-103	
GENERAL SERVICES ADMINISTRATION			

Dear Mr. Cheatham:

We are requesting your approval of the proposed wetland mitigation project at Vintondale, Pennsylvania for the above-referenced projects. We have been discussing the proposed wetland mitigation project with Mr. Peter Nanov and Ms. Lynn Bortel of your staff. The enclosed letter from Engineering District 10-0 provides information to support our request for approval of the proposed wetland mitigation project.

We have contacted Mr. David Hamilton of the Office of Surface Mining regarding the NEPA clearance of the proposed site. Attached is a copy of the Environmental Assessment and the Finding of No Significant Impact provided by Mr. Hamilton for the AMD & ART AMD Remediation Project at Vintondale. If you would like to discuss the project with Mr. Hamilton, his telephone number is 782-2285, Extension 15.

If you have any questions regarding this submission, please contact Keith Highlands at (717) 772-2706.

Sincerely,

for Dean A. Schreiber, P.E.  
Director  
Bureau of Design

Approval Daniel W. Johnson Date 4/6/2000  
FHWA Division Administrator

Enclosure

ENGINEERING REVIEW PERFORMED  
AND FOUND TO BE SATISFACTORY

4-5-00  
AREA ENGINEER

Note: The attached documentation supports  
this mitigation approach as being in the  
public's best interests.

Environmental Review Performed  
and Found to be Satisfactory

4/6/00  
Division Environmental Scientist

6455

REVISED 5/99

TYPE OF AGREEMENT MISCELLANEOUS

CONTRACT NO: 104447

PARTY: AMD&ART, Inc.

CITY: JOHNSTOWN COUNTY: CAMBRIA

FEDERAL ID NO: 25-1814169 AMOUNT: \$ 92,100.00

DESCRIPTION: WETLANDS MITIGATION

CONTACT PERSON: CRAIG A. CHELEDNIK PHONE NO: (724) 357-2874

=====
PLEASE SUBMIT ONLY ONE ORIGINAL. MAKE COPIES ONCE FULLY EXECUTED.
=====
FOR EXECUTION

DEPUTY SECRETARY FOR TRANSPORTATION
9TH FLOOR, FORUM PLACE

MMP
9/22/00

OFFICE OF CHIEF COUNSEL FOR PRELIMINARY/FINAL APPROVAL
9TH FLOOR, FORUM PLACE

with
9/20/00

9/27/00
yo

OFFICE OF COMPTROLLER FOR AUDIT AND APPROVAL
6TH FLOOR, FORUM PLACE

FZ 10/16

OFFICE OF CHIEF COUNSEL FOR LOGGING, ATTN: DEBBIE SHEADS
9TH FLOOR, FORUM PLACE

10/10

OFFICE OF GENERAL COUNSEL
CHARLES E. ANDERSON
17TH FLOOR HARRISTOWN II, 333 MARKET STREET

DO send fax (Burt)

10/16

OFFICE OF ATTORNEY GENERAL
FOR REVIEW AND APPROVAL
15TH FLOOR STRAWBERRY SQUARE

10/17

OFFICE OF CHIEF COUNSEL
FOR DATE / FINAL LOGGING
9TH FLOOR, FORUM PLACE

FOR FINAL DISTRIBUTION
ATTN: CRAIG A. CHELEDNIK PHONE: (724) 357-2874
ENGINEERING DISTRICT: DISTRICT 10-0

FOR DISTRIBUTION (1 COPY EACH)
DISTRIBUTION:

- COPY TO CONTRACTOR
COPY TO COMPTROLLER - 6TH FLOOR FORUM PLACE
COPY TO TREASURY - TREASURY DEPT., TREASURY AUDITS, RM G-11 FINANCE BLDG,
ATTN: BILL WHITSEL

AGREEMENT NO. 104447  
FEDERAL ID NO. 25-1814169

SR 0022, Sections 491 and 495  
Indiana and Cambria Counties

**COMPENSATION AGREEMENT FOR WETLAND MITIGATION** ✓

THIS AGREEMENT is made this 17<sup>th</sup> day of October, 2000, by and between the Commonwealth of Pennsylvania, acting through the Department of Transportation ("DEPARTMENT"),

a n d

AMD&ART, Inc., a nonprofit corporation organized, created and existing under the laws of the Commonwealth of Pennsylvania, whose address is 411 Third Avenue, Johnstown, Pennsylvania 15906 ("AMD&ART").

W I T N E S S E T H:

WHEREAS, the DEPARTMENT is undertaking improvements to State Route 22 in Indiana and Cambria Counties, which projects are designated as the S.R. 0022, Section 491, Penn View Summit Project, situated entirely in Indiana County, and the S.R. 0022, Section 495, Gas Center Project, situated in both Cambria and Indiana Counties (collectively, "Projects"); and,

WHEREAS, the environmental approvals granted by the United States Army Corps of Engineers ("USACOE") and the Pennsylvania Department of Environmental Resources ("PADEP") require the DEPARTMENT to mitigate a total of 6.14 acres of wetland impacts associated with the Projects; and,

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WHEREAS, AMD&ART engages in the design and construction of acid mine drainage treatment systems at former mining sites, including watersheds in their vicinity, so that they can be used for community parks and recreation areas; and,

WHEREAS, AMD&ART is currently undertaking a remediation project at a mining site in the Borough of Vintondale, Cambria County ("Vintondale Site"), consisting of a treatment system, associated wetlands and certain community facilities; and,

WHEREAS, the DEPARTMENT has obtained the approval of the United States Department of Transportation, Federal Highway Administration ("FHWA") to conduct the wetland mitigation required for the Projects at the Vintondale Site; and,

WHEREAS, AMD&ART is willing to conduct the required wetland mitigation, subject to advance payment by the DEPARTMENT; and,

WHEREAS, the parties are entering into this Agreement to set forth their respective obligations concerning wetland mitigation for the Projects, in accordance with the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the foregoing premises and of the mutual promises set forth below, the parties agree, with the intention of being legally bound, as follows:

1. The foregoing recitals are incorporated by reference as a material part of this Agreement.
2. As part of the wetland construction that it will undertake at the Vintondale Site, AMD&ART agrees to construct a minimum of six and

fourteen-hundredths (6.14) acres to be allocated to the DEPARTMENT in satisfaction of its mitigation requirements for the Projects ("Mitigation Wetlands").

3. AMD&ART shall construct the Mitigation Wetlands in accordance with the requirements of the USACOE and the PADEP. If it has not done so already, AMD&ART shall secure all necessary approvals, permits and licenses from all other governmental agencies as may be required to construct the Mitigation Wetlands. This obligation shall include the responsibility for preparation or revision of environmental impact statements, environmental assessments, categorical exclusions, environmental reports or other documents required by law and/or environmental litigation; and the defense of environmental litigation resulting from the planning, design and/or construction of the Mitigation Wetlands. At the DEPARTMENT's request, AMD&ART shall furnish to the DEPARTMENT, prior to advertising and letting the contract for construction of the Mitigation Wetlands, evidence of the approvals, permits, licenses and approved environmental documents.

4. AMD&ART shall procure the construction services for the Mitigation Wetlands through open and free competition in accordance with the requirements of the County Code, as amended, 16 P.S. § 101 et seq., relating to advertisement, award to the lowest responsive bidder, bonds and insurance. The DEPARTMENT authorizes AMD&ART to engage the Redevelopment Authority of Cambria County ("Redevelopment Authority") to provide certain administrative services in conjunction with the bidding and administration of the construction services, as outlined in the Redevelopment Authority's two-page letter to the DEPARTMENT dated January 4, 2000, a copy of which is attached as Exhibit "A" and made part of this Agreement.

5. AMD&ART shall construct the Mitigation Wetlands at a cost of fifteen thousand and no/100 dollars (\$15,000.00) per acre, for a total cost of ninety-two thousand one hundred and no/100 dollars (\$92,100.00). The DEPARTMENT shall pay this amount to AMD&ART in full in advance in the following manner: following execution of the contract for construction services referred to above in Paragraph 3, AMD&ART shall furnish a copy of the fully executed contract to the DEPARTMENT. Upon receipt of this document, the DEPARTMENT will process an invoice for a one-time lump-sum payment, entirely from state funds, to AMD&ART. Upon completion of construction of the Mitigation Wetlands, AMD&ART shall account to the DEPARTMENT for its expenditures by submitting certified paid invoices to Engineering District 10-0. If the total amount of the advance payment exceeds the total amount of the invoices, the DEPARTMENT shall send AMD&ART a request for repayment of the excess, and AMD&ART shall make repayment within thirty (30) days of the receipt of the DEPARTMENT's request. Although the DEPARTMENT will divide the cost of the Mitigation Wetlands proportionately between District 9-0, for the Cambria County portion, and District 10-0, for the Indiana County portion, the DEPARTMENT will issue a single check to AMD&ART and will allocate the cost between the two Districts using internal accounting procedures.

6. The DEPARTMENT shall be responsible for securing the necessary permits or other approvals from the USACOE and the PADEP evidencing that the Mitigation Wetlands as completed are in compliance with the requirements of these agencies. AMD&ART shall be responsible for maintenance and monitoring of the completed Mitigation Wetlands as required by the USACOE and the PADEP and applicable statutes and regulations. The DEPARTMENT shall have no ownership or maintenance responsibilities with respect to the completed Mitigation Wetlands.

7. AMD&ART agrees that the DEPARTMENT may offset the amount of any state tax or Commonwealth liability of AMD&ART or its affiliates and subsidiaries that is owed to the Commonwealth against any payments due AMD&ART under this or any other contract with the Commonwealth.

8. AMD&ART shall comply with the Nondiscrimination/Sexual Harassment Clause, dated June 30, 1999, attached as Exhibit "B" and made part of this Agreement.

9. AMD&ART shall comply with the Contractor Integrity Provisions, dated December 20, 1991, and the Provisions Concerning the Americans with Disabilities Act, dated February 3, 1993, both set forth in Exhibit "C" attached to and made part of this Agreement.

10. AMD&ART shall comply with the Contractor Responsibility Provisions, dated April 16, 1999, attached as Exhibit "D" and made part of this Agreement.

11. Upon execution, this document, together with all exhibits and attachments annexed to it, constitutes the entire agreement between the parties and completely expresses their intent. All prior or contemporaneous agreements are merged into this document. No amendment or modification of this document shall be valid unless it is in writing and duly executed and approved by the parties.



IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

ATTEST:

AMD&ART, INC.

W. Daniels 8-8-00  
Title: Secretary/Treasurer DATE

BY E. Jeanne Glass 8-11-00  
Title: President DATE

**If a Corporation, the President or Vice-president must sign; and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest. If individuals other than these officers sign, please attach a resolution or other delegation of signature authority. Signers need to indicate titles and date their signatures.**

DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

BY Gary S. Popian 9/20/00  
Deputy Secretary of DATE  
Transportation

APPROVED AS TO LEGALITY AND FORM

PRELIMINARILY APPROVED

BY \_\_\_\_\_  
Chief Counsel DATE

BY Michael A. Alvine 9-28-00  
Assistant Counsel DATE

BY [Signature] 10/17/00  
Deputy Attorney General DATE

RECORDED NO. 104447  
CERTIFIED FUNDS AVAILABLE UNDER  
ACTIVITY PROGRAM 371  
SYMBOL 010-008-185-00-01-1  
\$92,100

BY [Signature] 10/13/00  
Deputy General Counsel DATE

BY Linda Y. Ziegler 10-6-00  
Signature DATE

[Signature]  
Comptroller  
Title

GEORGE D. RAPTOSH, Esq.  
SOLICITOR

LARRY R. CUSTER  
EXECUTIVE DIRECTOR

TED BARANIK  
SUSAN EVANS  
FRED L. SOISSON, M.D.  
CAMBRIA COUNTY COMMISSIONERS

### Redevelopment Authority of Cambria County

401 Candlelight Drive – Suite 209  
P.O. Box 93  
Ebensburg, Pennsylvania 15931

Phone 814 - 472-6711  
TDD 814 - 472-6714  
FAX 814 - 472-4233

CHARLES R. MASTERYCH  
CHAIRMAN

RONALD P. JOHNSON  
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MICHAEL D. LYNCH  
SECRETARY

MARY JANE BEARER  
TREASURER

DALE E. HILL  
ASST. SECRETARY/TREASURER

January 4, 2000

Mr. Craig Chelednik  
PennDOT Design/Planning Division  
Route 286 South  
P.O. Box 429  
Indiana, Pennsylvania 15701

Dear Mr. Chelednik:

RE: Bidding Phase and Construction Administration Services  
Acid Mine Drainage Remediation Demonstration Project  
Borough of Vintondale, County of Cambria  
AMD & ART

Pursuant to our phone conversation earlier this date concerning the above-referenced Project, please be advised that the AMD & ART and the Redevelopment Authority are negotiating an Agreement for the Authority to provide certain administrative services to the Project. The Agreement requires that the bidding for construction services conform to the standards set forth in the County Code, i.e. the advertisement for construction services will be placed in a newspaper of daily circulation at least three times; the first advertising date to be at least 10 days before the date set for the bid opening. All procurement transactions for construction services shall be conducted in a manner to provide open and free competition. Awards shall be made to the Bidder whose bid is responsive and is most advantageous in terms of price, quality and other factors. Appropriate bid bonds, performance bonds and insurance shall be required. Positive efforts will be made to utilize small businesses, minority-owned firms and women-owned business enterprises. The Redevelopment Authority will comply with the provisions of the Davis-Bacon Act, the Copeland Act and the Contract Work Hours and Safety Standards Act regarding labor standards for federally assisted construction subagreements.

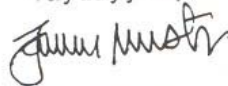
PAID	
DATE PAID	
NO. OF CHECKS	
CAC	
ADP-MAIL	
DATE	
PROJECT CODE	
FISCAL OFF.	

*1/6/00*

Mr. Craig Chelednik  
January 4, 2000  
Page Two

The Redevelopment Authority has successfully administered the federal Community Development Block Grant (CDBG) Program for the County of Cambria for more than 25 years. I trust this response is satisfactory to your inquiry. If you have any questions or if you desire additional information, please do not hesitate to contact my office.

Very truly yours,



Larry R. Custer  
Executive Director

LRC/jeg  
cc: Dr. T. Allan Comp,  
AMD & ART Project Director

## EXHIBIT "B"

### NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

Each contract entered into by a governmental agency shall contain the following provisions by which the contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the contractor, subcontractor, or any person acting on behalf of the contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

2. Neither the contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.

3. Contractors and subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

4. Contractors shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.

5. The contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, the contractor or subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Contract Administration and Business Development.

6. The contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

7. The Commonwealth may cancel or terminate the contract, and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the contractor in the Contractor Responsibility File.



EXHIBIT "C"

STANDARD CONTRACT PROVISIONS

CONTRACTOR INTEGRITY PROVISIONS

12/20/91

1. Definitions.
  - a. Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
  - b. Consent means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
  - c. Contractor means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a five percent interest.
  - d. Financial interest means:
    - (1) ownership of more than a five percent interest in any business; or
    - (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
  - e. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
2. The contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
3. The contractor shall not disclose to others any confidential information gained by virtue of this agreement.
4. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
5. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
6. Except with the consent of the Commonwealth, neither the contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.
7. Except with the consent of the Commonwealth, the contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
8. The contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
9. The contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he or she has not violated any of these provisions.
10. The contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the contractor's business or financial records, documents or files of any type or form which refer to or concern this agreement. Such information shall be retained by the contractor for a period of three years beyond the termination of the contract unless otherwise provided by law.
11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT

2/3/93

During the term of this contract, the Contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of **The Americans With Disabilities Act**, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of **The Americans With Disabilities Act** which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
2. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of paragraph 1. above.



## EXHIBIT "D"

### CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

1. The contractor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any Commonwealth contract, that neither the contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the contractor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.

2. The contractor must also certify, in writing, that as of the date of its execution, of any Commonwealth contract it has no tax liabilities or other Commonwealth obligations.

3. The contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the contractor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the contractor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the contract with the Commonwealth.

5. The contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the contractor's compliance with the terms of this or any other agreement between the contractor and the Commonwealth, which results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The contractor shall not be responsible for investigative costs for investigations that do not result in the contractor's suspension or debarment.

6. The contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us/debarment.htm> or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Telephone No: (717) 783-6472  
FAX No: (717) 787-9138