

Abandoned Mine Land Economic Revitalization (AMLER) Terms and Conditions (Formerly AML Pilot)

Note: Federal guidelines within the CFR override the state guidelines. State guidelines cannot allow something that the Federal guidelines do not; otherwise, follow state guidelines.

I. General Guidelines

1. Act in good faith to conduct the project in a manner that maintains high ethical standards.
2. Provide a projected timeline for project development and construction. Proceed with the project in a reasonable and timely manner.
3. Submit to the Virginia Department of Energy (Virginia Energy) an itemized and categorized budget. Virginia Energy will use the budget for Application for Payment (AFP) requests through the Virginia Energy eForms system.
4. Attend mandatory Virginia Energy eForms training and adhere to AFP requirements through the Virginia Energy eForms system.
5. Subrecipients will submit AFP requests in a timely manner within the quarter in which the reimbursable expenses were incurred. Subrecipients will submit invoices (e.g. from contractors) to Virginia Energy as part of their AFP requests. Unless revisions are requested, Virginia Energy will remit payment for allowable expenses to the Subrecipient within 30 days of the final approval date for the AFP. Subrecipients will be required to remit payment to contractors, vendors, etc. within seven calendar days of receiving payment from Virginia Energy.
6. All contracts over the small purchase threshold (\$100,000) must include administrative, contractual, or legal remedies for contractors who violate contract terms, and provide appropriate sanctions and penalties.
7. Virginia Energy will withhold 5% retainage on all invoices except for project development expenditures.
8. Project applications received in FY20 and beyond should ensure that AMLER soft cost expenditures do not exceed 10% of the total AMLER funding request. Soft costs include project management, project development costs such as professional services for engineering, architectural design, NEPA environmental studies, and permits as well as inspections and other services during construction. Requests in excess of 10% may be considered only if sufficient justification is provided including a detailed cost analysis of what the funds would be expended for.
9. Ensure compliance with applicable laws, regulations, ordinances and codes and obtain all required permits.
10. Provide documentation of compliance with the Virginia Public Procurement Act (VPPA) in obtaining goods or services. Virginia Energy requires that all AMLER projects follow the appropriate competitive process outlined in the VPPA to procure equipment and any construction or professional services regardless of monetary threshold.
11. All contracts over \$10,000 must include provisions that allow you to terminate the contract for cause or for convenience. They must include notice of your termination procedures.
12. Coordinate with Virginia Energy's procurement officer for guidance in following the Virginia Public Procurement Act (VPPA) and appropriate inclusion of small, women and minority owned businesses (SWaM) in the procurement process.
13. Maintain compliance with the National Environmental Policy Act (NEPA) and Endangered Species Act (ESA). OSMRE requires, at minimum, that an Environmental Assessment (EA) be prepared for each AMLER project. Categorical exclusions (CE's) will NOT be accepted. Agencies to be consulted include DCR, DEQ, DHR, NRCS, USACE, USFWS, DWR and VMRC. Virginia Energy staff should be copied on agency consultation letters and responses. Consultations must include the **entire** project area and the scope of work. AMLER funds cannot be expended outside of the consultation boundary.
14. Any construction activities and purchases of property or equipment cannot be initiated until the project plans and NEPA document are approved by Virginia Energy and OSMRE, respectively and by other entities as necessitated by individual project needs. Following such approvals, a contract will be executed between Virginia Energy and the Subrecipient for the project.

15. OSMRE must vet each project and applicant following selection by Virginia Energy's Advisory Committee. Significant changes from the OSMRE-vetted project proposal that affect project outcomes will require an explanatory addendum and will be submitted to OSMRE for review and possibly further vetting.
16. Virginia Energy reserves the right to maintain in its possession, use, or distribute at its sole discretion, any documents, plans, or other intellectual property produced in conjunction with AMLER funds for the purpose of successfully executing this or other projects. Furthermore, subrecipient must abide CFR Title 37 Chapter IV Part 401 in reference to copyrights and rights in data, patent rights for any discovery or invention which arises or is developed under the grant.
17. Virginia Energy reserves the right to request additional information or impose additional conditions in the future.
18. Misuse of projects funds may result in repayment.
19. Indirect costs are not allowable expenses and will not be reimbursed through the AMLER grant.
20. AMLER funds cannot be used to reimburse travel expenses without prior permission.
21. AMLER funds cannot be expended for nutrient credits.

II. Obligations of the Subrecipient

1. Prepare and provide to Virginia Energy the following project documents:
 - a. Scope of Work
 - b. Detailed Construction Plan, if applicable to the project
 - c. Categorized detailed Budget

These documents are subject to review and approval by Virginia Energy for inclusion in a project construction phase contract between Virginia Energy and the Subrecipient.

2. Allow Virginia Energy to inspect, review and comment on the project plan design and any future amendments, changes, or modifications.
3. Strictly adhere to the OSMRE AMLER funding objectives outlined in the Guidance for Project Eligibility under the Abandoned Mine Land Reclamation Economic Development Pilot Program (FY2020 and prior) or the Guidance for Project Eligibility under the Abandoned Mine Land Economic Revitalization Program (FY2021 and later).
4. Erect a project sign at the project site's most convenient point of public access and in plain view prior to the construction phase and to be maintained for the project duration. The sign must comply with Virginia Energy specifications and display information including the project name and Virginia Energy logo that will be provided to the Subrecipient by Virginia Energy.
5. Compliance with Federal Rules and Regulations: Funding for this project is authorized through the Catalog of Federal Domestic Assistance (CFDA) #15.252. Expenditures made and services provided pursuant to this project shall be in accordance with 2 CFR Part 225, "Cost Principles for State, Local, and Indian Tribal Governments" (OMB Circular A-87), and OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations." If the Subrecipient is a political subdivision of the Commonwealth of Virginia, it is governed by 48 CFR Part 31, Contract Cost Principles and Procedures. If the Subrecipient is a for-profit organization, it is governed by 48 CFR Part 31, Contract Cost Principles and Procedures. The Subrecipient also is governed by the administrative requirements of 10 CFR 600, Federal Financial Assistance Regulations. Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the OSMRE Award Administrator for guidance. It is the responsibility of the Subrecipient to identify such an inconsistency and bring it to the attention of Virginia Energy. The Subrecipient shall adhere, and require adherence by all vendors, contractors, and subcontractors performing work required by this project, to the federal rules as noted.
6. Provide and pay all funds required to complete construction of the project site within the specified time period in accordance with the approved construction design, including but not limited to the costs of all permits, licenses, land acquisitions, and/or rights-of-way and easements pursuant to the Award Conditions.

7. Maintain on the project site all information required by 4 VAC 25-130-707.12 including a description of the project, the exact location and boundaries of the project and that the Virginia Energy administration of the project is being financed with federal funds through its AMLER Program Grant.
8. Prior to commencement of construction at the project site, ensure that the Final Construction Design Plan and/or addenda, amendments thereto are in accordance with the Award Conditions. Any addenda or amendments to the Construction Design Plan and/or construction documents shall be approved in writing by Virginia Energy and OSMRE prior to their execution, issuance and/or implementation.
9. Provide to Virginia Energy copies of all documents and addenda the Subrecipient uses in contracting for the performance of construction work for the project if any.
10. Afford Virginia Energy personnel notice of and opportunity to attend and participate in all pre-construction conferences and other relevant meetings concerning the project, if any.
11. Provide free and reasonable access by Virginia Energy and OSMRE personnel to the project site for the purpose of conducting weekly, or more frequent if necessary, inspections.
12. Upon completion of the work required by the Construction Plan, provide Virginia Energy with a copy of "as built" drawings of the project and/or a certificate of completion.
13. Designate a Project Director who shall be knowledgeable of and responsible for project activities and who shall act as the contact between Virginia Energy and Subrecipient.
14. Provide to Virginia Energy written verification that all easements, licenses and applicable federal, state, or local permits or clearances required for the performance of the work required to complete the project have been obtained prior to start of any work on the project.
15. Provide professional supervision of all construction work performed at the project site to ensure that the completed work conforms to the approved Final Construction Plan.
16. Certify and acknowledge that that no work outside the project boundaries and limits shall be eligible through the AMLER AWARD or covered under the terms of this agreement.
17. Provide proof to Virginia Energy that the Subrecipient shall require its contractors to maintain in full force and effect during the life of the project a public liability insurance policy:
 - a. Worker's Compensation – Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the project shall be in noncompliance.
 - b. Employers Liability - \$100,000.
 - c. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia shall be added as an additional insured to the policy by an endorsement. Coverage shall not exclude claims resulting from explosion, collapse or underground damage.
 - d. Automobile Liability - \$1,000,000 combined single limit (required only if a motor vehicle not owned by the Commonwealth is to be used in the project). Subrecipient must assure that the required coverage is maintained by the Subrecipient (or third party of such motor vehicle).
18. The Subrecipient shall indemnify, defend and hold harmless Virginia Energy/Commonwealth of Virginia, its agents, officers, employees, and designated representatives from any claims, damages, suits, actions, liabilities and costs of any nature or kind, whether at law or in equity, arising from or caused by performance by the Subrecipient or its agents, whether for design or construction of the project, or from the use of any materials, goods, or equipment of any kind or nature or any service of any kind, provided that such liability is not attributable to the sole negligence of the Virginia Energy. Nothing contained herein shall be deemed an expressed or implied waiver of the sovereign immunity of Virginia Energy/Commonwealth of Virginia.
19. Neither the Subrecipient, its officers, agents, employees, assignees, whether for design or construction of the project, shall be deemed employees of the Commonwealth of Virginia or of Virginia Energy by virtue of the project, the location of the project, or the AMLER Award.

20. Upon completion of any audit of the project conducted under OMB Circular A-128, promptly provide the Virginia Energy with a copy of any and all such audit reports.
21. The Subrecipient shall ensure that their contractors are responsible for sequencing, scheduling, coordinating, and monitoring the progress of the work as well as taking appropriate action to keep the work on schedule. The Subrecipient shall prepare and submit to the agency after signing the contract, a contract performance schedule for accomplishing the work based upon the completion time stated in the contract.
22. The Subrecipient shall include in all project Requests for Proposals and Invitation for Bid packages the Virginia Energy supplied Applicant Violator System (AVS) form (OMB #1029-0119). All bidders must submit the completed form with the required project proposal or bid documents. Any subcontractors shall submit the Applicant Violator System (AVS) form documentation prior to the award of the bid(s) to the prime contractor. All contractors for project management, project design, or other contracted services associated with the project shall also submit the Applicant Violator System (AVS) form. Prior to the award of any such contract(s), the form(s) will be submitted to Virginia Energy for the required AVS check to confirm bidder eligibility by the use of the Applicant Violator System. Awards may not be made until the AVS check has been completed. Pursuant to the provisions of 30 CFR § 874.16, the Virginia Energy may direct the rejection of any contractor(s), subcontractor(s), or engineering firm(s) if the AVS review determines the entity, at the time of contract award, is not eligible to receive a permit or conditional permit to conduct surface coal mining operations under the Virginia Coal Surface Mining Reclamation Regulations.
23. Agree to not let the project or project development be idled for a cumulative period exceeding sixty (60) days
24. During the term of this Project, the Subrecipient shall not dispose of, modify the use of, or change the terms of the real property title, or other interest in the Property, including the Project, and facilities without permission and instructions from the Virginia Energy. The Subrecipient shall record the federal interest in the title of Property in accordance with Virginia Energy directives and shall include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the Project. The Subrecipient shall adhere to 30 CFR part 879.14 and 879.15 for Property management and disposition.
25. Pursuant to *Code of Virginia* § 2.2-4321.3, beginning May 1, 2021, each State Agency shall ensure that its bid specifications or other public contracts require bidder, offerors, contractors, and subcontractors to pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services in connection with the public contract for public works at the prevailing wage rate.
26. All contracts made by you under a Federal award in excess of \$2,000 must include a provision for compliance with the Davis-Bacon Act (40 USC 3141-3148) in your contracts.
27. All contracts you award in excess of \$100,000 that involve the employment of mechanics or laborers must include provision for compliance with 40 USC 3702, 3704, and the Contract Work Hours and Safety Standards Act (40 USC 327-330).
28. ANTI-DISCRIMINATION
 - a. During the performance of this project, the Subrecipient agrees as follows:
 - i. The Subrecipient and its Contractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or disabilities, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Subrecipient or its Contractor exists. The Subrecipient agrees to, and will require its Contractors to, post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - ii. The Subrecipient, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient or its Contractors, will state, and require that its Contractors state, that such Subrecipient or Contractor is an equal opportunity employer.

- iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
- b. The Subrecipient and its Contractors will include the provisions of the foregoing paragraphs 23.A.i; 23.A.ii; and 23.A.iii in every subcontract of any amount and every purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

III. Certifications:

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

1. State and Local Government Conflict of Interests Act;
2. General Assembly Conflict of Interests Act;
3. Virginia Freedom of Information Act;
4. Virginia Fair Employment Contracting Act;
5. Virginia Governmental Frauds Act;
6. Virginia Public Procurement Act;
7. Virginians with Disabilities Act;
8. Americans with Disabilities Act;
9. All contracts for supplies or construction materials must require compliance with the Buy American Act (41 USC Chapter 83);
10. Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871);
11. Federal Immigration Reform and Control act of 1986; and
12. Federal statutes relating to nondiscrimination, including but not limited to:
 - a. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) (prohibits discrimination on the basis of race, color or national origin);
 - b. Title IX of the Education amendments of 1972, as amended (20 U.S.C. Sections 1681-1683, and 1685-1686) prohibits discrimination on the basis of sex;
 - c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C., Section 794) prohibits discrimination on the basis of handicaps;
 - d. The Age Discrimination Act of 1975, as amended (42 U.S.C., Sections 6101-6107) which prohibits discrimination on the basis of age;
 - e. The Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse;
 - f. 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;
 - g. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C., 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - h. Title VIII of the Civil Rights Act of 1968 (42 U.S.C., Section 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; and/or any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made, and the requirement on any other nondiscrimination statute(s) which may apply to the AMLER AWARD or this agreement.
13. All construction contracts and subcontracts over \$10,000 must require compliance with Executive Order (E.O.)11246, *Equal Employment Opportunity*, E.O. 11375, and related Department of Labor regulations (41 CFR Part 60)
14. All contracts for construction or repair must require compliance with the Copeland "Anti-Kickback" Act (18 USC 874) and related Department of Labor regulations (29 CFR Part 3)

15. Federal Lobbying Act, 31 U.S.C.A., Section 1352 (entitled, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions, and the Virginia Lobbying Disclosure and Regulation Act, Sec. 2.1-779 through 2.1-794, Code of Virginia, 1950 as amended, including, without limitation, obtaining and delivering to the Virginia Energy all necessary certifications and disclosures.
16. Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally assisted programs. These requirements apply to all interest in real property acquired for project purposes regardless of Federal participation in purchases.
17. Hatch Act (5 U.S.C., Sections 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
18. Copeland Act (40 U.S.C., Section 276c and 18 U.S.C., Section 874), the Contract Work Hours and Safety Standards Act (40 U.S.C., Sections 327-333) regarding labor standards for federally assisted construction sub-contracts.
19. Flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
20. Environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project's consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C., Sections 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176 (c) of the Clean Air Act of 1955, as amended (42 U.S.C., Section 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
21. Wild and Scenic Rivers Act of 1968 (16 U.S.C., Sections 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
22. The Subrecipient shall assist the Virginia Energy in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
23. 40 CFR 122-EPA Storm Water Regulations; PL 92-500, Section 404 – Utility Crossings of Navigable Waters – U.S. Army Corps of Engineers; Code of Virginia, Title 10.1, Chapter 5, Article 4 - Erosion and Sediment Control Law – Soil and Water Conservation Commission; VR 625-02-00 – Erosion and Sediment Control Regulations; Code of Virginia, Title 62.1, Chapter 3.1, Article 44 – State Water Control Law; VR 680-15-02 – Virginia Water Protection Permit; Code of Virginia, Title 62.1, Chapter 3 – Sub-aqueous Bed Permit – Marine Resources Commission.
24. All contracts must recognize mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat.871);
25. All contracts, subcontracts, and subgrants over \$100,000 must require compliance with all applicable standards and requirements issued under section 306 of the Clean Air Act (42 USC 1857(h)), section 508 of the Clean Water Act (33 USC 1368), E.O. 11738, and Environmental Protection Agency regulations (40 CFR Part 15)

IV. Reporting

1. Monthly Reporting - The Subrecipient will provide Virginia Energy with written monthly progress reports by the 15th day of each month for the previous month. The report shall include all work accomplished,

difficulties or delays encountered along with necessary remedial actions(s), cumulative number of jobs created, and a schedule of future work.

2. Monthly Contractor Reporting - The Subrecipient will provide Virginia Energy with a cumulative spreadsheet by the 15th day of each month for the previous month documenting payments to contractors and subcontractors that will be paid with AMLER funds. A template and instructions will be provided.
3. Annual Outcomes Reporting - The Subrecipient will provide Virginia Energy with written annual progress reports by July 31st each year for the period beginning July 1st of the previous year through June 30th of the current year. These reports should describe the current status of each AMLER project, including:
 - a. Economic benefits/performance measures accomplished during the reporting period.
 - b. Expected benefits/outstanding performance measures to be accomplished and timelines for completion;
 - c. Jobs supported and jobs created
 - d. The status of any real property purchased for purposes of the AMLER approved activity.
4. Long Term Reporting - OSMRE's long term reporting requirements will be conveyed upon completion of the project.

V. Financial/Compliance Records Availability

The Subrecipient agrees to retain and provide reasonable access to all books, records, and other documents relative to this project for five (5) years after final payment or until otherwise notified by Virginia Energy, whichever is later. Virginia Energy, its authorized agents, and/or State and Federal auditors shall have full access to and the right to examine.

VI. Noncompliance

The following remedies for noncompliance are derived from CFR § 200.338:

Failure of the grant Subrecipient to comply with statutes, regulations, codes, or other terms and conditions of the AMLER award may result in OSMRE or Virginia Energy imposing additional conditions, as described in § 200.207 Specific conditions. If OSMRE or Virginia Energy determine that noncompliance cannot be remedied by imposing additional conditions, one or more of the following actions may be taken, as appropriate in the circumstances:

- a. Temporarily withhold cash payments pending correction of the deficiency or more severe enforcement action
- b. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- c. Wholly or partly suspend or terminate the AMLER award.
- d. Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- e. Withhold further Federal awards for the project or program.
- f. Take other remedies that may be legally available.

VII. Requirements for Acknowledging AMLER Funding

Subrecipients and their partners are required to acknowledge AMLER funding in their project-related public communications and publications.

AMLER funding should be acknowledged in the following products when describing projects or programs funded in whole or in part with AMLER funds:

- press releases, presentations and other public statements
- other publications, documents or videos about projects funded by AMLER
- requests for proposals and bid invitations
- and other documents describing projects funded in whole or in part with AMLER money

Acknowledgements must include the following three statements:

1. A specific acknowledgment of AMLER grant support, such as:
"The AMLER project described in this [publication/press release/production] was supported by the Virginia Department of Energy, Mined Land Repurposing's Abandoned Mine Land Program through the federally funded AMLER Grant Program with oversight from the federal Office of Surface Mining, Reclamation and Enforcement.
2. An acknowledgement of the level of AMLER funding that indicates the percentage and dollar amounts of the total project costs financed with AMLER money.
3. A disclaimer that says:
"The content of this [publication/press release/production] is solely the responsibility of the authors and does not necessarily represent the official views of the Virginia Energy or the federal Office of Surface Mining, Reclamation and Enforcement."