

IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA

MARKWEST LIBERTY MIDSTREAM)
& RESOURCES, L.L.C.)

Plaintiff,)

v.)

J. F. ALLEN COMPANY; AMEC)
FOSTER WHEELER ENVIRONMENT)
& INFRASTRUCTURE, INC.;)
REDSTONE INTERNATIONAL INC.;)
CIVIL & ENVIRONMENTAL)
CONSULTANTS, INC.; and COASTAL)
DRILLING EAST, LLC.)

Defendants.)

Case No. 16-C-82

Judge Cramer

COMPLAINT

MarkWest Liberty Midstream & Resources, L.L.C. (“MarkWest”), by and through its attorneys, K&L Gates LLP and Crichton & Crichton, files this Complaint against the Defendants, J. F. Allen Company (“J.F. Allen”), Amec Foster Wheeler Environment & Infrastructure, Inc. (“Amec”), Redstone International Inc. (“Redstone”), Civil & Environmental Consultants, Inc. (“CEC”), and Coastal Drilling East, LLC (“Coastal”) and states as follows:

OVERVIEW

1. MarkWest owns and operates the Mobley Processing Plant in Wetzel County, West Virginia (the “Mobley Site”). The Mobley Site originally consisted of four natural gas facilities that served as a critical infrastructure component in the transportation and processing of natural gas and natural gas liquids produced throughout northern West Virginia. Although the Mobley Site is located in the mountainous terrain of rural Wetzel County, MarkWest sought to expand its operations and increase plant capacity with a fifth facility creating even more jobs locally.

2. To do so, however, MarkWest needed additional flat land. MarkWest planned to excavate the mountainous area immediately next to the facility and construct a series of retaining walls to create the flat land necessary to build the Mobley V Processing Plant (“Mobley V”).

3. The largest of these retaining walls would be used as a place to put the excavated land. MarkWest contracted with J.F. Allen to design and build a 100-foot tall, 1250-foot long retaining wall with a life expectancy of 75 to 100 years (the “Retaining Wall”). The plan was for J.F. Allen to backfill the area behind the wall with the excavated dirt as J.F. Allen built up the height of the Retaining Wall so that other contractors could simultaneously build Mobley V on cleared, flat land where the mountain area had been excavated.

4. J.F. Allen, therefore, had to move each portion of the Retaining Wall forward in a timely fashion so it could receive the dirt as it was excavated or else J.F. Allen would create a bottleneck and delay the progress of the other contractors MarkWest hired to build Mobley V.

5. Based on the clear understanding of this material term, J.F. Allen contractually promised MarkWest that it would safely and timely design, with the assistance of Amec, and safely and timely build, with the assistance of Redstone, the Retaining Wall in exchange for approximately \$12 million (the “Contract”). *See Exhibit A.*

6. To MarkWest’s disappointment, J.F. Allen utterly failed to deliver on its promises at every turn, including but not limited to:

- a. J.F. Allen and Amec negligently designed the Retaining Wall and committed numerous errors and omissions by failing to meet contractual requirements and industry standards, creating an inherent safety risk that the Retaining Wall could prematurely and catastrophically fail and not last the minimum number of years generally accepted in the industry;
- b. J.F. Allen, Redstone, and Redstone’s replacement contractor, Coastal, failed to properly construct the Retaining Wall in a timely and workmanlike manner;

- c. CEC, MarkWest's quality control engineer, committed numerous errors and omissions by failing to timely notify MarkWest (if at all) of the numerous engineering and construction mistakes made on the Project by J.F. Allen and its various contractors;
- d. J.F. Allen neglected to install monitoring instrumentation as expressly provided for under the Contract, which would have allowed MarkWest to measure the ongoing stability and warn of possible failure of the Retaining Wall; and
- e. J.F. Allen failed to meet its contractual obligation to timely discharge liens filed by contractors as both J.F. Allen and Redstone refused to pay for work performed by their subcontractors.

7. MarkWest now seeks to recover over twenty million in damages it has and will incur as a result of the Defendants' numerous failures on the Project, including damages that resulted from the Project delays attributable to the late construction of the Retaining Wall, correction of the defective design and construction work associated with the Retaining Wall, cost of MarkWest installing monitoring instrumentation on the Retaining Wall for safety purposes and legal fees incurred and payments made by MarkWest to resolve the liens filed on its property.

PARTIES

8. MarkWest is a Delaware limited liability company with a place of business located at 320 South View Dr., Bridgeport, West Virginia 26330. MarkWest is a citizen of, among other places, West Virginia. MarkWest is engaged in the gathering, processing, fractionation, storage, and transportation of natural gas.

9. J.F. Allen is a West Virginia corporation with its principal place of business located at US Rt. 33, West Red Rock Road, Buckhannon, WV 26201. J.F. Allen is the contractor responsible for the design and build of the Retaining Wall under the Contract.

10. Redstone is a Pennsylvania corporation with its principal place of business located at 732 McClellandtown Road, Suite 1, Uniontown, PA 15401. Redstone subcontracted with J.F. Allen to build the Retaining Wall.

11. Amec is a foreign British corporation registered to do business in West Virginia with a principal office address at 1105 Lakewood Parkway, Suite 300, Alpharetta, GA 30009. Amec subcontracted with J.F. Allen to provide engineering and design services for the Retaining Wall.

12. CEC is a Pennsylvania corporation with its principal place of business at 333 Baldwin Road, Pittsburgh, PA 15205. CEC contracted with MarkWest to provide quality assurance services during design and construction of the Retaining Wall.

13. Coastal is a West Virginia limited liability company with its principal place of business at 130 Meadow Ridge Road, Mt. Morris, PA 15349. Coastal contracted with J.F. Allen to take over Redstone's scope of work on the project and build the Retaining Wall.

JURISDICTION AND VENUE

14. Pursuant to W.Va. Code § 51-2-2, this Court has jurisdiction over this matter.

15. Venue is appropriate in the Circuit Court of Wetzel County, West Virginia because the events giving rise to this cause of action occurred in Wetzel County, West Virginia, and the Retaining Wall is located in Wetzel County, West Virginia.

16. Further, MarkWest and J.F. Allen contractually agreed that, "[t]he venue of any action filed under this Contract shall be in the court of the state, county or federal district of the Property." *See* Ex. A at Section 27.0.

FACTUAL BACKGROUND

A. The Parties' Contractual Relationship.

a. J.F. Allen

17. Effective September 5, 2014, MarkWest and J.F. Allen entered into the Contract for the design and construction of the Retaining Wall. *See* Ex. A.

18. Pursuant to Section 10.0 of the Contract, J.F. Allen provided an express warranty:

Contractor warrants . . . that all Work performed under this Contract shall conform in all respects to the drawings and specifications, if any, and shall be performed in a good and workmanlike manner and shall be free from defective workmanship, materials and equipment and that all Work performed under this Contract shall be fit for the purpose intended by **Company**.

19. Further, as J.F. Allen knew and agreed, time was of the essence. *Id.* at § 2.0.

Accordingly, the parties agreed to a Project Completion Date of March 31, 2015. *Id.* at § 2.0.

20. In exchange, MarkWest agreed to pay J.F. Allen the lump sum price of \$12,350,000. *Id.* at § 3.1.

b. Amec

21. J.F. Allen contracted with Amec to design the Retaining Wall.

22. As a result, Amec agreed to design the Retaining Wall consistent with the industry standards, which require a retaining wall of this magnitude to achieve certain engineering qualifications, including a minimum factor of safety of 1.5 with 3,000 per square foot surcharge load for the Retaining Wall, resulting in a life expectancy of 75 to 100 years.

23. Amec knew by nature of the design-build contract that MarkWest would own the Retaining Wall and any design deficiencies would significantly harm MarkWest.

24. Nonetheless, Amec negligently designed the Retaining Wall resulting in direct harm to MarkWest.

c. Redstone

25. J.F. Allen contracted with Redstone to construct the Retaining Wall.

26. Redstone, in turn, hired a number of subcontractors and suppliers to provide services necessary to build the Retaining Wall.

27. Redstone knew by nature of the design build contract that MarkWest would own the Retaining Wall and any construction deficiencies or delay would significantly harm MarkWest.

28. Nonetheless, Redstone not only failed to properly construct the Retaining Wall in a timely and workman like manner, it abandoned the Project before its scope of work was even complete, all of which resulted in direct harm to MarkWest.

29. Some time after Redstone's abandonment, J.F. Allen terminated Redstone from the Project.

d. CEC

30. MarkWest had previously contracted with CEC to provide multiple professional engineering services from time to time as needed in the course of its business plans and the expansion of Mobley Site.

31. Under section 5.7 of the Master Services Agreement, CEC "warrant[ed] and guarantee[d] to [MarkWest] that all equipment, materials, labor, workmanship, other services, and other items furnished under this Agreement shall be of a quality currently acceptable in the trade, and free from defective workmanship and defects."

32. Further, Sections 1 and 10 of the Professional Services Contract memorialized CEC's agreement to perform its services "with that standard of care, skill, and diligence normally provided by a professional person or firm in the performance of similar services."

33. For the Retaining Wall project, CEC agreed to provide certain engineering services, including but not limited to, geotechnical engineering and construction quality assurance ("CQA")

services, initially to solicit and review bids and eventually to ensure construction was completed in compliance with the project drawings and specifications.

34. CEC's work fell below the applicable standard of care for such professional services by failing to detect a number of J.F. Allen's and its subcontractors' shortcomings during design and construction of the Retaining Wall, resulting in direct harm to MarkWest.

e. **Coastal**

35. J.F. Allen retained Coastal to complete Redstone's scope of the project after Redstone's termination.

36. Coastal knew by nature of the design build contract that MarkWest would own the Retaining Wall and any design or construction deficiencies or delay would significantly harm MarkWest.

37. Coastal failed to properly perform or rectify its work in a timely manner that met the applicable standard of care for the construction industry, resulting in direct harm to MarkWest.

B. **J.F. Allen's Delay Had a Negative Impact on MarkWest's Other Prime Contractors Involved In The Mobley Site Expansion.**

38. J.F. Allen's repeated failure to timely perform the work as agreed to under the Contract significantly impacted MarkWest's other prime contractors at the Mobley Site which were dependent on J.F. Allen's timely performance to effectively execute their scope of work in building the Mobley V plant.

39. Specifically, MarkWest contracted with The Lane Construction Corporation ("Lane") to excavate dirt and rock that was intended to be processed once and disposed of behind the Retaining Wall as fill material to avoid the cost of double handling or hauling it off site. However, because the Retaining Wall experienced delays, J.F. Allen was unable to dispose of excavated material as planned, which significantly slowed the excavation and instead the

excavated material was placed into stockpiles all over the site. This stockpiling required double handling and created additional logistical and access problems further impacting and delaying the site preparation work.

40. Next, MarkWest retained Chapman Corporation (“Chapman”) to install the concrete foundations for the Mobley Site expansion on the Lane cleared site pads, which were unavailable because of J.F. Allen’s failure to maintain schedule. The availability of systematically cleared site pads was critical to Chapman’s construction schedule thus the scattered and delayed release caused significant delays and impacted productivity of Chapman’s work.

41. Finally, MarkWest contracted with Bilfinger Westcon Incorporated (“Westcon”) to erect the mechanical and electrical equipment closely following Chapman’s completion of the individual foundations, which were already significantly delayed by J.F. Allen’s failure to complete its work, and MarkWest was forced to incur additional acceleration costs to try and recoup lost production time on the original schedule.

42. As result, MarkWest incurred millions of dollars in change orders from the contractors who were delayed and impacted in performing their operations at the Mobley site because J.F. Allen failed to timely perform and meet the Project Completion Date.

C. MarkWest Had Lost Revenues Due to the Delay in Putting the Mobley V Plant in Operation.

43. MarkWest does significant business with EQT in the Marcellus Shale gas fields.

44. MarkWest needed the Mobley V Project completed on-time so that it could meet its contractual obligation to supply EQT with Ethane, Propane, Isobutane, Normal Butane and Natural Gasoline from the fractionation process.

45. Additionally, MarkWest could have earned compression, ethane recovery, transportation, processing fees and in some case marketing fees from EQT as soon as the Mobley V plant went on-line.

46. As a result of J.F. Allen's delay and resulting impacts to MarkWest's other prime contractors, MarkWest lost revenue and significant profits that it would have derived from EQT.

D. J.F. Allen Designed and Built a Defective Retaining Wall.

47. Section 1.0 of the Contract provides that Allen shall perform construction as described in more detail in Exhibit "A" of the Contract.

48. Exhibit A to the Contract collects the documents defining the Scope of Work and the "Instructions to Bidders" is incorporated therein. See Ex. A at p.5 of Exhibit A ("Instructions to Bidders") to Contract.

49. Section 6.1 of the Instructions to Bidders" provides as follows:

The Wall shall be designed to accommodate future building construction with a minimum of 3,000 pounds per square foot (psf) foundation bearing pressure 42 inches below the ground surface at least 30 feet from the face of the Wall. The future building locations are not known at this time; therefore the entire length of the Wall 30 feet from the Wall face will be considered as having this load. No reinforcement shall be proposed within the upper 5 feet of the Wall beyond 30 feet from the Wall face. Furthermore, a surcharge load of 350 psf will be considered in the design for the entire area behind the Wall during and after construction.

50. Section 6.1 further provides that "[t]he Wall design shall evaluate the external, internal, and global stability of the structure. A minimum factor of safety versus failure shall be 1.5."

51. The "Design and Documents Report" dated September 19, 2014 and provided by J.F. Allen and Amec in response to the Contract requirements acknowledged and referenced the minimum factor of safety of 1.5 and 3,000 psf surcharge load for the Retaining Wall, along with

application of Section 1.2 of the Geotechnical Engineering Circular No. 4 (“GEC-4”) requiring a 75 to 100 year lifespan for permanent anchored systems.

52. As early as June 19, 2015 (three months after the original Project Completion Date), MarkWest formally put J.F. Allen on notice that it not only failed to meet the scheduled March 31, 2015 Project Completion Date, but that the design and construction work that had been completed was defective and deficient.

53. J.F. Allen exhibited no ability or true desire to cure its defective performance.

54. Accordingly, by letter dated October 16, 2015, MarkWest formally declared J.F. Allen in breach of the Contract. Moreover, that letter specifically identified a number of design and installation deficiencies that J.F. Allen was required to cure under the Contract.

55. To date, numerous anchors (i.e. steel rods that go through the Retaining Wall to lock it into the mountainside) have failed and full repairs to all of the failed anchors have not been completed.

56. The most recent anchor failures occurred over the weekend of February 13, 2016. During this time, two anchors (# A-60 and # A-65) failed suddenly by shearing at the connection at the face of the vertical retaining wall. These failures are an example of inadequate and defective design and construction of the anchor system to provide the long term support of loads resulting from the earth fill behind the wall. The long term stability (75 to 100 years) of the entire project rests on the long term adequacy of the anchor system to provide support for the loads resulting from the earth fill behind the Retaining Wall.

57. The Retaining Wall is neither designed nor constructed in compliance with the contractual requirements and industry standards of a 1.5 factor of safety with 3,000 psf surcharge and estimated lifespan of 75 to 100 years.

58. The Retaining Wall is not providing the required and expected support and is not expected to meet the required life expectancy and safety standards due to its defective design and construction. As such, MarkWest will incur costs to remediate the Retaining Wall so that it will have the structural stability that J.F. Allen promised.

E. J.F. Allen Failed to Supply and Install Contractually Required Wall Monitoring Instrumentation.

59. Section 6.1 of the “Instructions to Bidders” requires the following:

The Wall design shall incorporate instrumentation to monitor the Wall condition during and after construction. An instrumentation measuring program shall be proposed by the Contractor which outlines the manufacture of the instrumentation, measurement procedures, and the method and frequency of measurements to be taken. At a minimum, instrumentation to measure lateral deflection of the Wall face and settlement of the fill will be incorporated into the design. The instrumentation should be designed to be functional for a period of no less than five years. The Contractor is responsible for the functionality of the instrumentation; although the Contractor is not responsible for the collection of the instrumentation measurements after the completion of construction.

60. J.F. Allen did not supply and install instrumentation meeting the specifications outlined in the Contract.

61. Despite knowing that the Retaining Wall faced continual anchor failures and receiving warnings regarding the Retaining Wall’s structural integrity and potential imminent failure, to save money on the Project, J.F. Allen recklessly refused to install the instrumentation to monitor the Retaining Wall.

62. On December 4, 2015, MarkWest notified J.F. Allen that due to the structural and safety concerns, it would immediately install appropriate instrumentation in order to monitor the Retaining Wall’s status at J.F. Allen cost.

63. MarkWest’s installation of instrumentation and associated exploratory efforts, such as soil monitoring and expert evaluations, are extensive and ongoing to date.

64. MarkWest incurred and will continue to incur significant costs and fees associated with rectifying the failure of J.F. Allen to install appropriate monitoring instrumentation as agreed to in the Contract as well as investigation costs due to the instability of the Retaining Wall.

F. J.F. Allen's Failure to Discharge Subcontractor/Supplier Liens.

65. Section 11.1 of the Contract provides:

Contractor shall pay and discharge all taxes, lienable claims, charges or other assessments imposed and to be imposed by law on **Contractor** or on the Property or equipment thereon, arising out of, in connection with, or resulting from the Work, or other liens arising by, through or under **Contractor** (excluding, however, **Contractor's** lien rights arising from the unexcused failure of **Company** to make payment hereunder). Upon request of **Company**, **Contractor** shall furnish proof satisfactory to **Company** that such impositions are satisfied or discharged, such as lien waivers from **Contractor** and subcontractor(s), provided that **Company** may withhold from **Contractor's** compensation amounts necessary for **Company** to satisfy or discharge such impositions. (the "Lien Discharge" provision)

66. Notwithstanding its contractual obligation set forth in the Lien Discharge provision of the Contract, J.F. Allen refused to pay and discharge liens filed against MarkWest's property as a further means to avoid spending money.

67. Specifically, MarkWest and J.F. Allen received notice that the following J.F. Allen subcontractors and sub-subcontractors had filed liens against the real property upon which the Mobley site (collectively, the "Subcontractors") is located, encumbering MarkWest's real property interests:

- On August 21, 2015, Redstone, a subcontractor of Allen, filed a notice of mechanic's lien in the amount of \$2,915,815.18 against MarkWest's property.
- On August 31, 2015, United Rentals (North America), Inc., ("United Rentals"), a subcontractor or supplier of Redstone, filed a notice of mechanic's lien in the amount of \$94,331.98 against MarkWest's property.

- On September 14, 2015, Black Diamond Equipment Rental LLC, (“Black Diamond”), a subcontractor or supplier of Redstone, filed a notice of mechanic’s lien in the amount of \$228,927.62 against MarkWest’s property.
- On September 17, 2015, R. W. Conklin Steel Supply, Inc., (“R. W. Conklin”), a subcontractor or supplier of Redstone, filed a notice of mechanic’s lien in the amount of \$269,452.16 against MarkWest’s property.
- On October 9, 2015, Carr Concrete, a division of CXT Inc., (“Carr Concrete”), a subcontractor or supplier of Redstone, filed a notice of materialman’s lien in the amount of \$41,990.50 against MarkWest’s property.
- On December 29, 2015, Williams Form Engineering Corp. (“Williams”), a subcontractor or supplier of Redstone, filed a notice of mechanic’s lien in the amount of \$685,441.28 against MarkWest’s property.

68. MarkWest then notified J.F. Allen on at least six occasions to discharge said liens.

69. Despite the clear contractual obligation of J.F. Allen to discharge the liens placed on MarkWest’s property and MarkWest’s repeated demands for J.F. Allen to comply with the Contract, J.F. Allen failed to take any action to discharge the liens.

70. Eventually, on January 29, 2016, Carr Concrete filed a Complaint seeking to enforce its mechanic’s lien in the Circuit Court of Wetzel County, West Virginia against MarkWest, J.F. Allen, and Redstone. Redstone then filed a similar action against MarkWest.

71. As a result of these liens and the litigation, MarkWest incurred significant costs to (i) discharge some of the liens itself; and (ii) hire attorneys to defend itself from legal action taken by one or more of the J.F. Allen subcontractor and sub-subcontractors.

72. Specifically, pursuant to a Lien and Vendor Agreement dated June 15, 2016, between MarkWest, J.F. Allen, and Redstone (the “Lien and Vendor Agreement”), MarkWest issue joint checks as follows:

- Joint check in the amount of \$88,821.05 made payable to J.F. Allen and United Rentals;
- Joint check in the amount of \$218,737.66 made payable to J.F. Allen and Black Diamond;

- Joint check in the amount of \$685,441.28 made payable to J.F. Allen and Williams;
- Joint check in the amount of \$76,000.00 made payable to J.F. Allen and Jinnings Equipment LLC; and
- Joint check in the amount of \$22,000.00 made payable to J.F. Allen and International Construction Equipment, Inc.

G. Meeting of Certain Parties

73. Representatives of MarkWest, J.F. Allen, Amec and Redstone have met in an attempt to reach a resolution of this dispute, but have been unable to resolve the matter.

74. Therefore, MarkWest has no choice but to file this lawsuit.

COUNT I

**(Breach of Contract)
MarkWest v. J.F. Allen**

75. MarkWest restates and incorporates by reference all of the foregoing paragraphs of this Complaint as if fully set forth herein.

76. MarkWest and J.F. Allen entered into a valid Contract, pursuant to which MarkWest agreed to pay J.F. Allen \$12,350,000 to complete the Retaining Wall timely and in a workmanlike manner.

77. MarkWest performed all material obligations under the Contract.

78. J.F. Allen materially breached its obligations under the Contract, including, but not limited to, the following:

- a. Failure to complete the Retaining Wall by the Project Completion Date;
- b. Failure to complete the work performed on the Retaining Wall in a workmanlike manner consistent with industry standards as expressly warranted;
- c. Failure to discharge all liens on the Mobley Site; and

d. Failure to install instrumentation to monitor the Retaining Wall's safety and structural conditions.

79. As a direct and proximate cause of J.F. Allen's breaches of contract and warranty, MarkWest suffered significant damages and is entitled to all such damages under the Contract, including compensatory damages and lost profits as a result of the delay.

WHEREFORE, MarkWest requests the Court to enter judgment in its favor and against J.F. Allen for all damages allowed by law, plus interest, costs, and expenses, and such other relief as this Court deems appropriate.

COUNT II

(Negligence/Gross Negligence) MarkWest v. J.F. Allen

80. MarkWest restates and incorporates by reference all of the foregoing paragraphs of this Complaint as if fully set forth herein.

81. J.F. Allen knew that its work on the Retaining Wall was to be performed for the benefit of MarkWest and any design or construction deficiencies would significantly harm MarkWest. Therefore, a special relationship exists between J.F. Allen and MarkWest with regard to J.F. Allen's work on the Retaining Wall.

82. As a result of the special relationship between J.F. Allen and MarkWest, at all times relevant herein, J.F. Allen had a duty to complete all work timely and consistent with generally accepted construction practices and standards of its industry.

83. At all times relevant herein J.F. Allen negligently performed such duties with resulting breaches thereof. In particular, J.F. Allen knew that the Retaining Wall had been poorly designed and constructed, yet J.F. Allen failed to install monitoring instrumentation to save cost despite the fact that MarkWest employees and property would be endangered by such failures.

84. The acts and omissions of J.F. Allen constitute gross negligence, as that term is defined by law. Viewed objectively from the standpoint of J.F. Allen at the time of the occurrences, the acts and omissions of J.F. Allen involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and J.F. Allen had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious, reckless and/or outrageous indifference to the rights, health, safety and welfare of others.

85. As a direct and proximate result of J.F. Allen's gross negligence and the legal malice of J.F. Allen, MarkWest suffered significant damages to its business and property, and is entitled to all such damages and punitive damages.

WHEREFORE, MarkWest requests the Court to enter judgment in its favor and against J.F. Allen for all damages allowed by law, including punitive damages, plus interest, costs, and expenses, and such other relief as this Court deems appropriate.

COUNT III

(Negligence) MarkWest v. Redstone

86. MarkWest restates and incorporates by reference all of the foregoing paragraphs of this Complaint as if fully set forth herein.

87. Redstone knew by nature of the design-build contract between MarkWest and J.F. Allen that MarkWest would own the Retaining Wall and any construction deficiencies would significantly harm MarkWest. Therefore, a special relationship exists between Redstone and MarkWest with regard to Redstone's work on the Retaining Wall.

88. As a result of the special relationship between Redstone and MarkWest, at all times relevant herein, Redstone had a duty to complete all work timely and consistent with generally accepted construction practices and standards of its industry.

89. At all times relevant herein Redstone negligently performed such duties with resulting breaches thereof.

90. As a direct and proximate result of Redstone's negligence, MarkWest suffered significant damages and is entitled to all such damages as a result of the negligent construction of the Retaining Wall.

WHEREFORE, MarkWest requests the Court to enter judgment in its favor and against Redstone for all damages allowed by law, plus interest, costs, and expenses, and such other relief as this Court deems appropriate.

COUNT IV

**(Negligence)
MarkWest v. Amec**

91. MarkWest restates and incorporates by reference all of the foregoing paragraphs of this Complaint as if fully set forth herein.

92. Amec knew by nature of the design-build contract between MarkWest and J.F. Allen that MarkWest would own the Retaining Wall and any design deficiencies would significantly harm MarkWest. Therefore, a special relationship exists between Amec and MarkWest with regard to Amec's work on the Retaining Wall.

93. As a result of the special relationship between Amec and MarkWest, at all times relevant herein, Amec had a duty to complete all work safely and consistent with generally accepted design and engineering practices and standards of its industry.

94. At all times relevant herein Amec negligently performed such duties with resulting breaches thereof.

95. As a direct and proximate result of Amec's negligence, MarkWest suffered significant damages and is entitled to all such damages as a result of the negligent design of the Retaining Wall.

WHEREFORE, MarkWest requests the Court to enter judgment in its favor and against Amec for all damages allowed by law, plus interest, costs, and expenses, and such other relief as this Court deems appropriate.

COUNT V

**(Negligence)
MarkWest v. Coastal**

96. MarkWest restates and incorporates by reference all of the foregoing paragraphs of this Complaint as if fully set forth herein.

97. Coastal knew by nature of the design-build contract between MarkWest and J.F. Allen that MarkWest would own the Retaining Wall and any construction deficiencies would significantly harm MarkWest. Therefore, a special relationship exists between Coastal and MarkWest with regard to Coastal's work on the Retaining Wall

98. As a result of the special relationship between Coastal and MarkWest, at all times relevant herein, Coastal had a duty to complete all work timely and consistent with generally accepted construction practices and standards of its industry.

99. At all times relevant herein Coastal negligently performed such duties with resulting breaches thereof.

100. As a direct and proximate result of Coastal's negligence, MarkWest suffered significant damages and is entitled to all such damages as a result of the negligent construction of the Retaining Wall.

WHEREFORE, MarkWest requests the Court to enter judgment in its favor and against Coastal for all damages allowed by law, plus interest, costs, and expenses, and such other relief as this Court deems appropriate.

COUNT VI

**(Breach of Contract)
MarkWest v. Defendant CEC**

101. MarkWest restates and incorporates by reference all of the foregoing paragraphs of this Complaint as if fully set forth herein.

102. MarkWest has performed all material obligations pursuant to its contracts with CEC.

103. Pursuant to Sections 1 and 10 of the Professional Services Contract and Section 5.7 of the Master Service Agreement, MarkWest relied on CEC technical expertise in defining the project in the Request for Proposals (RFP) and after award for construction quality assurance oversight of the Allen design build effort. CEC warranted and guaranteed that its professional services would be performed with the care, skill, and diligence normally provided by a professional rendering such services.

104. CEC did not provide professional engineering services meeting the applicable standard of care warranted in the Professional Services Contract and Master Service Agreement.

105. Because CEC did not satisfactorily provide the services warranted, including but not limited to, geotechnical engineering and construction quality assurance, MarkWest was forced to incur significant costs and expenses for project delays, additional professional monitoring, and remedial construction efforts which are all likely to continue indefinitely due to the condition of the Retaining Wall.

106. As a direct and proximate result of CEC's breach of contract, MarkWest has suffered significant damages and is entitled to all such damage under the Contract, including compensatory and consequential damages resulting from the breach.

WHEREFORE, MarkWest requests the Court to enter judgment in its favor and against CEC for all damages allowed by law, plus interest, costs, and expenses, and such other relief as this Court deems appropriate.

DEMAND FOR JURY TRIAL

MarkWest hereby demands a trial by jury on all claims and issues.

Dated: August 18, 2016

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Resources, L.L.C.*

COMPLAINT EXHIBIT 'A'

Execution Version

**CONSTRUCTION CONTRACT - LUMP SUM
Mobley 5 Retaining Wall Construction**

This Construction Contract ("Contract") is effective as of the 5th day of September, 2014, by and between **MarkWest Liberty Midstream & Resources, L.L.C.**, a Delaware limited liability company with an address at 1515 Arapahoe Street, Tower 1, Suite 1600, Denver, CO 80202 ("**Company**") and J.F. Allen Company ("**Contractor**").

WHEREAS, **Company** desires to have certain work performed at the **Company's** site on 14624 North Fork Road, Smithfield, WV 26437; and

WHEREAS, **Contractor** desires to perform such work pursuant to the terms and conditions of this Contract.

NOW THEREFORE, in consideration of the promises and the mutual covenants of the parties set forth herein, the parties agree as follows:

1.0 Scope of Work

Contractor shall perform Retaining Wall Construction (collectively "**Plant**"), as described in more detail in Exhibit "A" ("Scope of Work") including Appendix "A" and all documents referenced therein, all of which are incorporated herein by reference and made a part hereof, and shall be referred to herein as "**Scope of Work**" or "**Work**" or "**Services**". The Scope of Work includes, but is not limited to, all workmanship, labor, materials and equipment necessary to complete the work referenced in Appendix A and as subsequently added by **Company**. Further, this shall include all required pressure testing, plant testing, commissioning, and start-up support. The Work shall be performed on the **Company's** Mobley Plant site which is located in Wetzel County, WV, and within certain easements and rights-of-way on which **Company** has rights; all being referred to herein as the "**Property**".

2.0 Work Completion Schedule and Project Completion.

2.1 Time is of the essence in this Contract and **Contractor** shall complete the Mechanical Scope of Work and achieve Mechanical Completion (as defined below in Section 2.3) to **Company's** satisfaction by February 28, 2015, and achieve Project Completion (as defined below in Section 2.2.) to **Company's** satisfaction by March 31, 2015 (each of these dates shall be referred to as a "Required Completion Date" and such schedule and associated milestones needed to achieve the Required Completion Dates shall be referred to as the "Work Completion Schedule"). **Contractor** shall maintain, on a daily basis, a comprehensive project schedule that reflects tasks for the complete scope of work and any subsequent approved scope additions (change orders).

2.2 Project Completion. Project Completion shall be achieved hereunder if and only if:

2.2.1 The mechanical checkout, which includes but is not limited to completion of the following: **Company** walk down of the system to verify conformance to construction drawings and specifications as provided in Exhibit "A" and as modified (with **Company's** approval) during the course of construction; **Company** shall provide a list of punch-out items to **Contractor** for correction; **Contractor** shall complete items designated as pre-start or pre-commissioning; **Company** shall authorize receipt of each system by signature from **Company** Project Manager and **Company** Operations Manager ("Mechanical Checkout") has occurred as required herein with results consistent with the Mechanical Scope of Work.

2.2.2 All punch list items have been completed.

2.2.3 All restoration of the Property disturbed by **Contractor** has been completed such that the Property is substantially in the same condition as it was prior to **Contractor's** activities.

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2.2.4. **Contractor** has performed all of the Services and other work required to be performed hereunder (other than warranty work agreed by **Company** to be completed after Project Completion).

2.2.5 **Contractor** shall have delivered all releases or waivers of liens arising out of this Contract or the performance of the Work hereunder;

2.2.6 **Company** has delivered to **Contractor** a certificate stating that the requirements under clauses 2.2.1. through 2.2.7., of this Section have been satisfied.

2.2.7 **Contractor** has provided a project turnover over package with as-built information including:

- Rock anchor locations, elevations, proof test results, and drill logs
- Rock anchor connection to the soldier pile locations and elevations
- Soldier pile locations, drill logs with approximate strata elevations, concrete backfill elevations, and top and bottom of pile elevations
- Subsurface drain and outlet locations
- Topography at the toe of the wall and 50' horizontally downhill after the wall work bench is established
- Topography at the toe of the wall and 50' horizontally downhill post-construction
- Geogrid elevations
- Any feature revised from the design documents during construction and explanation for the revision

2.3 Mechanical Completion. Mechanical Completion shall be achieved hereunder if and only if:

2.3.1

Mechanical Completion shall include completion of any punch list deemed as pre-start items. To facilitate identification of these items, **Contractor** shall provide a three day notification to **Company** when a defined system is ready for inspection so that **Company** has sufficient time to complete the inspection process and provide a punchlist to **Contractor** that will include any pre-start up items that need to be completed prior to acceptance of Mechanical Completion.

2.4. Notice and Report of Project Completion. When **Contractor** believes that it has achieved Project Completion, it shall deliver to **Company** a written notice thereof (the "Notice of Project Completion"). The Notice of Project Completion shall contain a report with sufficient detail to enable **Company** to determine the achievement by **Contractor** of all Services and other work to be performed under this Agreement, including the Punch List items.

2.5 Achievement of Project Completion. **Company** shall, within ten (10) Business Days following receipt of the Notice of Project Completion, inspect all work, review the report submitted by **Contractor** and the results of the Mechanical Checkout and either (a) deliver to **Contractor** a certificate stating that Project Completion has been achieved or (b) if reasonable cause exists for doing so, notify **Contractor** in writing that Project Completion has not been achieved, stating in detail the reasons therefore. In the event that **Company** determines that Project Completion has not been achieved, **Contractor** shall promptly take such action or perform such additional work as will achieve Project Completion and shall issue to **Company** another Notice of Project Completion. Such procedure shall be repeated as necessary until Project Completion is achieved.

3.0 Lump Sum Contract and Payment

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3.1 It is understood and agreed by Company and Contractor that this is a lump sum Contract, and the sole and total compensation for full and satisfactory completion of the Scope of Work is a lump sum price of twelve million, three hundred and fifty thousand dollars (\$12,350,000).

3.2 Payment of the lump sum Contract price shall be made as specified in Section 3.3.

3.3 Payment.

3.3.1. Payment Procedure. Payments under this Agreement shall be based upon the amount of progress completed by Contractor as set forth in Section 3.2. Payments shall be determined and made by Company to Contractor according to the following procedure:

3.3.2. Applications for Payment. Applications for Payment shall be submitted when the milestones listed below in this section have been successfully completed. Each application for payment must include a letter countersigned by the Company's Project Manager that certifies completion of said milestone and shall request payment as specified herein. Each Application for Payment shall be accompanied with all supporting information reasonably requested by Company to support the amounts claimed and executed lien waivers. The Company shall review the Contractor's Applications for Payment within ten (10) Business Days after receipt and shall, within that time, approve them or else indicate, in writing, items of disapproval and approve all other items. In taking action on the Contractor's Applications for Payment, the Company shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and accompanying certificates, and shall not be deemed to represent that either of them have made audits of the supporting data, exhaustive or continuous on-site inspections, or any examination to ascertain how or for what purposes the Contractor has used the moneys previously paid under this Agreement. An Application for Payment shall constitute a representation by Contractor to Company that: (i) the applicable events have occurred; (ii) the Services covered by the billing is in accordance with this Agreement and the Exhibits hereto; (iii) Contractor is entitled to payment (or any portion thereof) in the amount requested; and (iv) title to all materials and equipment incorporated into the Services or delivered to the Property and covered by the billing shall, upon receipt of payment (or any portion thereof) by Contractor, pass to Company, by an appropriate Bill of Sale, free and clear of all liens, claims, security interests or encumbrances (hereinafter referred to as "Liens"). The milestones referenced above in this section are defined as follows:

5%	Mobilization
10%	Soldier Pile materials onsite
20%	Soldier Pile wall completion – open area
20%	Soldier Pile wall completion – treed area
10%	RSS/geogrid materials onsite
15%	RSS wall completion – open area
10%	RSS wall completion – treed area
10%	Project Completion

3.3.3. Payment. The amount which is due for payment (or any portion thereof) shall be payable by the Company not later than ten (10) Business Days following approval of the properly documented and prepared Application for Payment. Any payment (or portion thereof) not received within ten (10) Business Days following approval by Company of a proper Application for Payment shall be deemed delinquent, and shall bear interest from the date of said invoice at the Prime Rate as published in the *Wall Street Journal*, under "Money Rates".

3.3.4. Company may, in Company's sole discretion, decline to approve any invoice for payment or Company may nullify in whole or in part any approval previously made to such extent as may be necessary in Company's opinion for any one or more of the following reasons:

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- 3.3.4.1 **Contractor's** failure to perform the Scope of Work in accordance with this Contract, including but not limited to, failure to correct defective work; or
- 3.3.4.2 Third party claims or liens filed or reasonable evidence indicating probable filing of such claims or liens; or
- 3.3.4.3 **Contractor's** failure to make necessary payments to a subcontractor or supplier; or
- 3.3.4.4 Reasonable evidence that the Scope of Work cannot be completed for the unpaid balance of **Contractor's** compensation; or
- 3.3.4.5 Physical damage to **Company's** personal or real property, the Property, or the property of another contractor; or
- 3.3.4.6 Reasonable evidence that the Scope of Work will not be completed within the Work Completion Schedule; or
- 3.3.4.7 **Contractor's** failure to adequately support invoices, including, without limitation, the failure to provide appropriate lien waivers.

Any payment which is withheld for any reason shall be subsequently made to **Contractor** at such time as the reasons for withholding such payment have been corrected to the satisfaction of **Company**. All claims for monies due or to become due from **Company** shall be subject to deduction by **Company** for any setoff or counterclaim arising out of this Contract or any other contract with **Contractor**, whether such setoff or counterclaim arose before or after any permitted assignment or delegation by **Contractor**.

3.4 Retained amounts and final payment shall be paid to **Contractor** within thirty (30) days after Project Completion and **Company's** final acceptance of the Scope of Work; provided, however, that neither the final payment nor the retained amount shall become due until **Contractor** submits within thirty (30) days after final acceptance of all Work, (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which **Company** or **Company's** property might in any way be responsible, have been paid or otherwise satisfied, (b) consent of surety, if any, to final payments, and (c) other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of this Contract, to the extent and in such form as may be designated by **Company**. If any subcontractor refuses to furnish a release or waiver required by **Company**, **Contractor** may furnish a bond satisfactory to **Company** to indemnify **Company** against all costs and attorneys' fees incurred in an attempt to obtain a release or waiver of any such lien. If any such lien remains unsatisfied after all payments are made, **Contractor** shall reimburse **Company** for all costs incurred by **Company** in discharging such lien, including attorneys' fees. Nothing done pursuant to the provisions of this paragraph, nor the final acceptance of the Work by **Company**, shall relieve **Contractor** of **Contractor's** obligations to protect and indemnify **Company** against all liens and claims of mechanics, laborers or suppliers of material or equipment, nor relieve **Contractor** of any other obligations whatsoever provided in this Contract which extend by their nature beyond the date of such final acceptance.

4.0 Changes to the Scope of Work

4.1 Changes to the Scope of Work (for work in addition to that covered under the Lump Sum Work) shall be accomplished only by a written change order issued by **Company**. The compensation or deduction for any change order shall be in accordance with the pricing and payment terms of the change order, and at **Company's** election, may include additional work to be performed on a rate sheet basis, time and materials basis, on a lump-sum or turnkey basis at the price specified in the change order. **Contractor** shall begin performance of the change to the Scope of Work only after **Company** accepts **Contractor's** proposal in writing and authorizes **Contractor** to begin performance of the change to the Scope of Work. Any change order work performed by

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Contractor prior to its receipt of an executed change order authorizing such work shall be done at **Contractor's** sole risk and expense unless and until such work is subsequently authorized by a change order executed by a duly authorized representative of **Company**.

5.0 Records and Accounting of Costs, Audits and Rebates

5.1 **Contractor** shall maintain and ensure that **Contractor's** subcontractors maintain a true, correct, and complete set of records, including books and accounts in accordance with generally accepted principles consistently applied, relating to all Work performed under this Contract. **Contractor** shall maintain and ensure that **Contractor's** subcontractors maintain records of the cost of individual items and major components of plant and equipment, including freight, installation and fabrication costs as well as an allocation of overhead and other intangible cost. The records must be maintained in such a manner that charges to individual items and major components of plant and equipment can be traced to a source document. **Contractor** shall retain and ensure that **Contractor's** subcontractors retain such records for three (3) years following the end of the calendar year during which the Work hereunder is finally accepted by **Company** or this Contract is terminated.

5.2 With respect to any Work performed under a change order, as set forth in Section 4.1, that is on a payment basis other than a lump sum payment, **Contractor** shall permit and shall ensure that **Contractor's** subcontractors permit **Company** to inspect, audit, and reproduce any and all such records of **Contractor** and **Contractor's** subcontractors related to this Contract, respectively, during the period of the Work or during such period of retention; provided, however, that **Contractor** and any subcontractor shall have the right to exclude any trade secrets from any such audit.

5.3 **Contractor** shall not, and **Contractor** shall ensure that **Contractor's** subcontractors shall not, grant any rebates or gratuity to any employee(s) or officer(s) of **Company** or **Company's** affiliates in connection with performance of the Scope of Work.

6.0 Right to Perform Other Work

Company reserves the right to perform other work and to let other contracts in connection with the Scope of Work. **Contractor** shall afford **Company**, and other contractors, reasonable opportunity for the introduction and storage of their materials and the execution or results upon work of **Company**, or of another contractor. **Contractor** shall inspect such work and promptly report to **Company** any defects in such work that render it unsuitable for such proper execution and result. **Contractor's** failure to so inspect and report such defects prior to **Contractor's** commencement of the affected portion of the Scope of Work shall constitute an acceptance of **Company's** and other contractor's work as fit and proper for the execution of the Scope of Work, except as to defects which may develop in **Company's** or other contractor's work after execution of the Scope of Work. To ensure the proper execution of subsequent Work, **Contractor** shall examine work already in place and shall at once report to **Company** any discrepancy between the executed work and the drawings and specifications.

7.0 Examination; Purchasing; Routing of Shipments; Protection and Maintenance of the Property and Adjacent Property; Contractor's Buildings; Responsibility During Construction; Labor Agreements

7.1 To **Company's** knowledge, all relevant information in **Company's** possession concerning the physical condition of the Property and/or the general subject matter of the Work has been made available to **Contractor**, including the terms, conditions and restrictions under **Company's** Ground Lease with Columbia Gas Transmission. **Contractor** represents that **Contractor** has carefully examined all such information available concerning the Property, existing conditions and limitations, including all laws, ordinances, and regulations affecting this Contract and the performance of the

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Scope of Work, has satisfied itself that **Contractor** has the ability, and has or is able to obtain the type of equipment, materials and personnel necessary to complete the Scope of Work, and that **Contractor's** compensation includes a sum sufficient to cover the cost of all items required to complete the Scope of Work contemplated by this Contract whether or not specifically described herein, including any unexpected conditions. **Contractor** has made an independent evaluation of **Company** data and other information provided or available, based on **Contractor's** own knowledge, judgment, and experience, or other available expertise, and **Contractor** does not rely upon any conclusions or statements of **Company** or its agents. Failure of **Contractor** to have made a full investigation as contemplated above shall not relieve **Contractor** from any of the obligations of this Contract and **Contractor** shall not be entitled to additional compensation for Work other than as specified herein.

7.2 **Contractor** shall furnish at **Contractor's** own expense and cost any and all necessary personnel, machinery, equipment, tools, materials, transportation and other items necessary for the performance and completion of the Scope of Work other than such items **Company** specifically agrees, in writing, to furnish. In procuring items hereunder, **Contractor** shall comply with **Company's** applicable purchasing policies. If **Contractor** is to be reimbursed directly for items **Contractor** purchases, **Contractor** shall promptly apply for and obtain all discounts (including discounts due to payment of bills on a cash basis) refunds, rebates, sales tax exemptions, deductions (including tax collection allowances) and the like to which **Contractor** or **Company** may be entitled with respect to the items charged to **Company** hereunder. **Company** shall be entitled to a credit in the amount of each such discount, refund, rebate, deduction and the like and **Contractor** shall make reasonable and timely efforts to ensure that they are secured. **Contractor** shall be solely responsible for any loss or damage to **Contractor's** equipment, materials, or supplies at all times except that **Company** shall be responsible for any loss or damage to equipment, materials, or supplies of **Contractor** occurring during transportation by **Company** or by conveyance arranged for or by **Company** to the extent such loss or damage is not covered by the insurance required to be carried by **Contractor**. Upon final payment to **Contractor** for completion of the Scope of Work, **Company** shall obtain title to all such Work including those items that the cost of which were reimbursable to **Contractor** hereunder.

7.3 **Company** reserves the right to specify the routing from **Contractor's** shops and warehouses, and from the shops and warehouses of subcontractors and suppliers to **Contractor** or **Contractor's** subcontractors at the Work site of all shipments of material weighing in excess of five thousand (5,000) pounds of lading. If **Company** elects to specify the routing, **Company's** Representative as designated in Paragraph 16.1 shall schedule the routing with **Contractor's** Representative as designated in Paragraph 16.2, it being understood that **Contractor** will not be required to route the material as specified by **Company**, if, in **Contractor's** opinion: (a) it is physically impossible to ship the material under consideration by designated routes; or (b) the designated routes are not a reasonably efficient and cost effective way to deliver the materials; or (c) the shipment by the designated routes will substantially delay the completion of the Scope of Work.

7.4 During performance of the Scope of Work, **Contractor** shall take all necessary precautions to protect all workmanship, materials and equipment furnished under this Contract (including workmanship, materials and equipment furnished by **Company**) from loss or damage, and shall protect the Property and adjacent or adjoining property and any other real or personal property from loss or damage of any sort which might result, either directly or indirectly, from **Contractor's** operations under this Contract. The means which **Contractor** provides for protecting **Company's** property shall be subject to **Company's** approval, but **Company's** approval shall not relieve **Contractor** of any responsibility therefor. **Contractor** shall comply strictly with all **Company's** safety policies and regulations. **Contractor's** operations shall be concluded so as to avoid damage to any existing underground structures or equipment that may be encountered.

7.5 **Contractor** shall abide by the terms, conditions and restrictions of any applicable ground lease or other restrictions applicable to the Property. **Contractor** shall not block any roads on the

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Property or adjacent properties, nor obstruct access to any of **Company's** or its Lessor's equipment without first obtaining **Company's** approval.

7.6 **Contractor** shall at all times keep the premises free from accumulation of waste materials and rubbish due to the performance of any Work. Promptly after completing the Scope of Work, **Contractor** shall remove all construction equipment from the site of the Property, remove all rubbish and waste material of any kind resulting from the performance of any Work, dispose of said rubbish and waste material in a lawful manner satisfactory to **Company**, and restore and place the ground around the Work site in a condition satisfactory to **Company**; and, if any similar Work is needed because of repairs, alterations, changes or corrections which **Contractor** subsequently makes on any Work or any portion thereof, **Contractor** shall perform same.

7.7 **Contractor's** buildings and other forms of protection for tools and materials within **Company's** premises will be permitted only at such places as **Company** shall designate.

7.8 **Contractor** shall keep itself and **Company** fully advised as to all pertinent local and regional labor agreement practices, including any local labor union contract negotiations occurring during the term of this Contract. **Contractor** shall use **Contractor's** best efforts to resolve any labor disputes affecting **Contractor's** performance hereunder, with due consideration for **Company's** interest hereunder and will consult with **Company** in connection with any such labor dispute.

7.9 **Contractor** shall provide and maintain passageways, guard fences, lights, and other protective equipment as may be required for the protection of the general public.

7.10 **Company** reserves the right to use all of the premises at the Property for **Company's** own purposes in any manner **Company** deems fit and proper, provided **Company's** use thereof does not interfere unduly with the performance of the Scope of Work.

7.11 **Contractor** represents that **Contractor** has become familiar and fully understands the Scope of Work and that **Contractor** has been provided a copy of all safety policies of **Company** relevant to performance of the Scope of Work herein, including those set forth on Exhibit "C". **Contractor** further agrees and warrants that **Contractor** will comply with all aspects and requirements of said project procedures and safety policies in performance of the Scope of Work, and all further safety policies which **Company** may, in **Company's** sole discretion, promulgate during the performance of this Contract.

8.0 Independent Contractor

The Scope of Work shall be performed by **Contractor** as an independent contractor, and **Contractor's** employees shall at all times be under **Contractor's** supervision, direction and control. **Contractor** shall have full power and authority to select the means, manner and methods of performing all work without supervision, direction or control by **Company**. Compliance by **Contractor**, or **Contractor's** employees, with project procedures, safety policies, safety practices or change orders issued by **Company** or **Company's** Representative shall not affect **Contractor's** status as an independent contractor and shall not relieve **Contractor** of **Contractor's** obligations under the Contract. **The independent contractor is not entitled to workers' compensation benefits and the independent contractor is obligated to pay federal and state income taxes on any monies earned pursuant to the contract relationship.**

9.0 Confidentiality of Information

All knowledge and information acquired or developed by or on behalf of **Contractor** or any permitted subcontractor hereunder shall be and remain the confidential and proprietary information of **Company**, with all ownership rights vested in, or considered assigned to, **Company**. Any information acquired or developed by **Contractor** hereunder shall be turned over to **Company**, if and to the

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extent requested, and/or at the cancellation or termination of this Contract. **Contractor, Contractor's employees, permitted subcontractors and agents shall maintain strict security over all knowledge and information acquired or developed by it during the performance of this Contract and shall not divulge any such knowledge and information directly or indirectly to any person, other than the authorized representatives of Company, without the prior written consent of Company, which consent may be withheld for any reason.**

10.0 Contractor's Warranty

10.1 **Contractor warrants that the Scope of Work shall be performed and completed in accordance with the terms of this Contract and all applicable federal, state and local laws, ordinances and governmental rules and regulations; that all materials and equipment furnished by Contractor shall be new, unless otherwise agreed, and shall be of the very best quality, first class in every particular for the grade specified; that all Work performed under this Contract shall conform in all respects to the drawings and specifications, if any, and shall be performed in a good and workmanlike manner and shall be free from defective workmanship, materials and equipment; and that all Work performed under this Contract shall be fit for the purpose intended by Company.**

10.2 **If during performance of the Scope of Work or within one (1) year after completion of the Scope of Work or termination of this Contract, any portion of the Scope of Work or its performance fails to conform to the requirements of the paragraph above, Contractor shall promptly correct, at Contractor's own expense, such a nonconformance after receipt of a written notice from Company which shall be given within thirty (30) days after discovery and evaluation of such nonconformance. Contractor shall remedy promptly (but in no event later than 5 days following notice from the Company) at its expense defects which appear during the term of this warranty and if Contractor does not remedy those defects in a timely fashion, Company may arrange for the remedy thereof, all at Contractor's expense. As to such nonconformance, the requirements of the paragraph above shall continue for an additional one (1) year period from the correction of such nonconformance in accordance with the sentence above.**

11.0 Liens; Title

11.1 **Contractor shall pay and discharge all taxes, lienable claims, charges or other assessments imposed and to be imposed by law on Contractor or on the Property or equipment thereon, arising out of, in connection with, or resulting from the Work, or other liens arising by, through or under Contractor (excluding, however, Contractor's lien rights arising from the unexcused failure of Company to make payments hereunder). Upon request of Company, Contractor shall furnish proof satisfactory to Company that such impositions are satisfied or discharged, such as lien waivers from Contractor and subcontractor(s), provided that Company may withhold from Contractor's compensation amounts necessary for Company to satisfy or discharge such impositions.**

11.2 **Title to all Work completed or installed in the course of construction or performance, and all materials on account of which any payments have been made by Company to Contractor, shall be in Company.**

12.0 Taxes

Contractor shall pay all sales, use and other taxes of every kind applicable to the performance of this Contract, and shall reimburse Company if Company pays any such taxes.

13.0 Liability; General Indemnification; Patent Indemnification.

13.1 **Contractor shall carry on performance of the Scope of Work at Contractor's own risk; and in case of any loss or damage occurring at the Work site by fire, windstorm, or any other cause, to**

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any equipment, tools, construction supplies, temporary structures, unerected materials, or partially or wholly completed construction prior to final acceptance of the completed Scope of Work by **Company**, **Contractor** shall, at **Contractor's** own expense, repair or replace the same, except that **Contractor** assumes no liability for such loss or damage to the extent occurring or resulting from the negligence of **Company**.

13.2 **Contractor** shall defend, indemnify and save **Company** harmless from and against any and all losses, claims, demands, liabilities, suits, actions, civil or criminal fines or penalties, cost and expenses (including reasonable expenses and attorneys' fees) for injuries to or the death of any person or persons, including the employees of each party hereto and the employees of their subcontractors, or for loss of or damage to the property of any person or persons, including the property of **Company**, caused by or resulting from negligence of **Contractor** or any of **Contractor's** subcontractors or the employees of either, or from poor, improper or unworkmanlike performance of the Scope of Work to be performed hereunder, or by materials used in performing said Work, or otherwise arising in connection with or related to **Contractor's** or any of **Contractor's** subcontractors or the employees of either, performance of this Contract, and **Contractor** agrees to reimburse **Company** for all sums which **Company** may pay or be compelled to pay in settlement of any claim or account thereof, including any claim under the provisions of any workers' compensation law or for other liability.

13.3 **Contractor** shall defend on behalf of **Company**, but at **Contractor's** expense any action at law or suit in equity which may be brought against **Company** at any time for infringement of any patent or patents allegedly relating to (a) the design, composition, use, mode of fabrications, or other particulars of the apparatus or structures, or any one or more of the elements or parts thereof, furnished under the Contract by **Contractor**, **Contractor's** subcontractors or suppliers; or (b) the use of raw, unfabricated or unassembled materials, composition of matter, fabrication procedure, heat treatment, or other items entering into the manufacture of said machines, or other construction devices used in the execution of Work under this Contract; provided, **Company** promptly notifies **Contractor** in writing of the institution of such action or suit and permits **Contractor** to control **Contractor's** defense. **Contractor** shall pay all costs and expenses of any such action or suit, including compensation and expenses of experts and counsel of **Contractor's** choice in any such action or suit. **Company** may be represented by counsel of **Company's** own selection at **Company's** own expense, and agrees to cooperate fully in the defense of any such action or suit and to furnish all the evidence in **Company's** control.

13.4 For the purposes of this paragraph, the term "**Company**" shall also include **Company's** members, partners, directors, officers, employees, agents and **Company's** successors, assignees, joint venturers, and affiliates and each of their respective members, partners, directors, officers, employees and agents.

14.0 Insurance

14.1 **Contractor** will obtain and continue in force, during the term of this Contract, at **Contractor's** own expense, all minimum insurance specified below; provided, however, that the insurance to be obtained by **Contractor** is in addition to the obligations mentioned in Paragraph 13.0 above and shall not be construed as limiting **Contractor's** obligations to the amount of the insurance coverage. **Contractor** shall not commence the Scope of Work nor allow any permitted subcontractor to commence Work until all insurance has been obtained and accepted by **Company**. The insurance to be obtained and continued in force by **Contractor** is the following:

14.1.1 Workers' Compensation insurance in accordance with all applicable State and Federal Laws.

14.1.2 Employer's Liability insurance with minimum limits of not less than \$1,000,000 each accident, \$1,000,000 for disease, and \$1,000,000 each employee for disease.

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- 14.1.3 Automobile Liability insurance with minimum limits of not less than \$1,000,000 combined single limit per occurrence. Such coverage shall include owned, hired, leased, rented and non-owned vehicles operated by **Contractor** or by its subcontractors.
- 14.1.4 General Liability insurance with minimum limits of not less than \$1,000,000 combined single limit per occurrence, and \$2,000,000 aggregate.
- 14.1.5 Umbrella/Excess Liability insurance, with limits not less than \$5,000,000 each occurrence/aggregate where applicable to be excess of coverage and limits required in Paragraphs 14.1.2 through 14.1.4.
- 14.1.6 Professional Errors and Omissions Liability Insurance: \$1,000,000 per occurrence and \$2,000,000 aggregate limit.

14.2 Such insurance policies shall delete the x, c, and u exclusions.

14.3 "**Company**" as defined in Paragraph 14.4 below shall be listed and endorsed as an additional insured under all insurance policies except for the insurance policies described in Paragraphs 14.1.1 and 14.1.2, above, and such policies shall contain provisions that the insurance companies will waive and have no right of recovery or subrogation against **Company**, and that **Contractor's** policies shall be primary without right of contribution from **Company** or **Company's** insurers.. **Contractor** shall furnish **Company** with certificates of insurance which shall include the following statements or provisions:

- 14.3.1 At least thirty (30) days prior to the effective date of any material change or cancellation, written notice thereof will be sent to **Company**.
- 14.3.2 The Comprehensive General Liability insurance covers:
 - 14.3.2.1 Damage to underground property;
 - 14.3.2.2 Collapse of structures;
 - 14.3.2.3 Damage resulting from explosion or blasting;
 - 14.3.2.4 Products and completed operations; blanket contractual coverage, broad form property damage, personal injury liability, independent contractors, and sudden and accidental pollution; and
 - 14.3.2.5 Contractor's protection – Let or sublet work.
- 14.3.3 The contractual liability insurance covers the liability the insured assumed under the indemnity and insurance provisions of this Contract.
- 14.3.4 "**Company**" as defined in Paragraph 14.4 below is an additional insured, except under the insurance policies described in Paragraph 14.1.1 above.
- 14.3.5 The insurance companies will waive and have no right of recovery or subrogation against **Company**.

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14.4 For the purpose of this paragraph, the term "Company" shall also include Company's directors, officers, employees and agents and Company's successors, assignees, joint venturers, and related affiliates and their directors, officers, employees and agents.

14.5 Contractor shall provide certificates of insurance, and if requested by Company, copies of insurance policies, to Company prior to commencement of Work under the Contract. If policies for which certificates have previously been furnished to Company expire during the course of this Contract, certificates evidencing the renewals of such policies shall immediately be provided to Company. All policies shall provide to Company no less than thirty (30) days notice of termination of coverage. Contractor shall instruct Contractor's insurance representative to undertake responsibility for advising Company immediately of any changes in Contractor's insurance policies which would materially affect Contractor's compliance with the insurance requirements in this Contract.

14.6 Contractor shall require all of its subcontractors engaged in Work at the Property under this Contract to comply with and maintain insurance of the types and in the minimum amounts and subject to the requirements as specified on Exhibit "D", attached hereto.

15.0 Inspection and Reports

Company, Company's Representatives, and the directors, officers, employees and agents of Company and its affiliates shall at all times have free and complete access to and the right to inspect the locations at which Contractor is conducting or has completed Work including Contractor's suppliers' shops. Contractor shall provide safe facilities for inspections. If requested by Company, Contractor shall prepare and furnish to Company a written report indicating the status and progress of the operations being performed by Contractor. If requested by Company, all Work shall be uncovered for inspection at Contractor's expense if such Work was covered without a reasonable opportunity for inspection by Company.

16.0 Company's and Contractor's Representatives

16.1 Company shall have the right at any time hereunder to appoint and have a representative present during all phases of performance of the Scope of Work (herein called "Company's Representative"). Company reserves the right to change the designation of Company's Representative from time to time. Company's Representative shall have the right, by giving written notice to Contractor from time to time, to delegate Company's Representative's responsibilities to other representatives of Company in connection with specific portions of the Scope of Work. Company's Representative is hereby given authority, on behalf of Company, to give approval, and to take action to the extent necessary for the orderly and expeditious prosecution of the Scope of Work, but shall not have authority to amend or modify this Contract, except that Company's Representative shall have authority to order minor changes in Work not involving an adjustment in Contractor's compensation or a change or modification to the Scope of Work or an extension of the Work Schedule and not inconsistent with the intent of this Contract. Such changes shall be implemented by written order, and shall be binding on Company and Contractor. Contractor shall carry out such written orders promptly. In addition to Company's Representative's duties and authority specified in this paragraph and elsewhere in this Contract, Company's Representative shall have authority to suspend all Work of Contractor whenever Company's Representative deems such action necessary to secure the proper performance of the Scope of Work.

16.2 Contractor shall have a competent representative at the Property at all times who shall have absolute authority to act, in all respects, on behalf of and for Contractor (herein called "Contractor's Representative"). Contractor shall replace said representative, without additional charge, if so demanded by Company. Notice to Contractor's Representative shall be notice to Contractor. Contractor shall provide Company with a resume of each of Contractor's Representatives, and such Representative shall be subject to the reasonable approval of Company.

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17.0 Delays by Company; Other Contractor

In the event **Contractor** should be delayed in the completion of the Scope of Work by reason of any act or omission of **Company** or of another contractor employed by **Company** at the Property, the Contractor will work to mitigate any schedule impact or cost associated with such delay. Contractor and Company will mutually agree upon a revised Work Schedule and/or additional costs associated with the delay.

18.0 Force Majeure

Neither party shall be liable to the other for failure to perform its obligations hereunder if and to the extent such failure to perform results from reasonably unforeseen causes beyond its reasonable control, all of which causes herein are called "force majeure", including but not limited to strikes; civil disturbances; fires, floods; unusual climate conditions; acts of God; or acts of a public enemy. Financial difficulty and encountering conditions generally inherent in character of work contemplated in the Scope of Work shall not be considered a cause beyond a party's control. The party unable to perform as a result of force majeure shall promptly notify the other at the beginning and ending of each such period. If any period of force majeure resulting in substantially all ongoing Work to be suspended continues for thirty (30) consecutive days or more, either party shall have the right to terminate the Contract upon ten (10) days' prior written notice to the other party, mailed or delivered after the above period of force majeure. In the event of such termination, **Contractor** shall be compensated on the same basis as provided in Section 23.3, below.

19.0 Notice

19.1 Copies of all certificates, notices, affidavits, or other documents prepared by **Contractor** in connection with the Scope of Work performed pursuant to this Contract shall be sent to **Company** at the time of the delivery of such documents to any governmental agency or other third party.

19.2 Any notice required or permitted hereunder shall be deemed to have been properly given when delivered personally to the party for whom it is intended or seventy-two (72) hours after deposit in the U.S. Mail (certified and return receipt requested) of an original or conforming copy or twenty-four (24) hours after entrustment to a professional overnight courier service, or upon receipt of transmission by facsimile, with all necessary postage or charges fully prepaid, addressed to the party for whom it is intended, as follows:

19.2.1 If to **Company**:

John C. Mollenkopf
Chief Operations Officer
Mark West Energy Partners, L. P.
1515 Arapahoe Street
Tower 2, Suite 700
Denver, CO 80202-2126
Fax # (303) 925-9305

With a copy to:

General Counsel
Mark West Energy Partners, L. P.
1515 Arapahoe Street
Tower 2, Suite 700
Denver, CO 80202-2126
Fax # (303) 925-9308

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19.2.2 If to **Contractor**:
Gregory S. Hadjis
President
J.F. Allen Company
P.O. Box 2049
Buckhannon, WV 26201

20.0 Compliance with Law

20.1 All permits and licenses necessary for performance of the Scope of Work shall be obtained by **Contractor**, with the exception of permits and licenses which are required to be in **Company's** name, in which case **Contractor** shall assist **Company** in obtaining same.

20.2 **Contractor** shall accept exclusive liability for and pay all taxes, assessments, excises, impositions, licenses and fees (including interest or penalties, if any) levied, assessed, or imposed upon or on account of the execution of the Scope of Work under the Contract or **Contractor's** receipts therefrom, or on the materials therefor or on the manufacture, storage, sale, receipts from sale, use, transportation, inspection, or delivery of the materials therefor under any federal, state or local law or laws. When required to do so by law, **Company** shall have the right to withhold state income taxes, and pay such taxes to the state, or to delay payment, up to the amount of the tax, in those cases where **Company** is required to obtain clearance from the state that **Contractor** has satisfied **Contractor's** tax liability to that state before **Company** may make final payment to **Contractor**.

20.3 **Contractor** shall give all necessary notices and shall comply and see that all **Contractor's** subcontractors and suppliers comply with all federal, state and local laws, ordinances, governmental rules and regulations to the Scope of Work, including without limitation of the foregoing, the preservation of the public health and safety, including those matters, if applicable, included within State and Federal Occupational Safety and Health Acts. **Contractor** shall furnish to **Company** such stipulations, statements, or certificates evidencing such compliance therewith as **Company** may request. **Contractor** shall also comply with **Company's** safety and health rules. **Company**, in addition to **Company's** other rights and remedies, reserves the right to terminate this Contract immediately, without further payment obligations if, in the discretion of **Company**, **Contractor** has failed to enforce applicable safety and health laws, regulations or rules.

20.5 **Contractor** shall comply with all applicable laws, ordinances, governmental rules and regulations with respect to labor employed for performance of the Scope of Work, including, without limitation, any applicable law pertaining to old age benefits, unemployment compensation, accident compensation, and health insurance, and those matters, if applicable, included within the Fair Labor Standards Act, the Walsh-Healey Act, and the Labor Management Relations Act.

20.6 **Contractor** shall be liable for any fines or assessments levied against **Contractor** or **Company** by any federal or state governmental agency for violations of safety, health, environment and other laws, rules or regulations by employees, agents or subcontractors of **Contractor**. **Company** shall withhold payment under this Contract in the amount of any assessment, payments or any other cost, including attorneys' fees, incurred by **Company** due to such violations by **Contractor**. In the event any assessments are pending, **Company** shall withhold final payment until such assessments are resolved.

21.0 Safety

21.1 **Contractor** shall use due care throughout the performance of the Scope of Work, and that whenever the details set forth in this Contract or in any agreement or documents for any part of such Work are, in **Contractor's** opinion, faulty or at variance with any of **Company's** safety policies, rules

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or ordinances or project procedures relating, or are such as will, if followed, result in unsafe conditions or in any damage or loss to persons or property, **Contractor** will instantly stop Work on the portion affected thereby and will notify **Company** in writing of such opinion, and in what respect **Contractor** considers the details are faulty or at variance as aforesaid, and **Contractor** will not proceed with the part of the Work so affected until **Contractor** has received a written order from **Company** or **Company's** Representative directing what is to be done and when to proceed.

21.2 **Contractor** shall employ, or cause to be employed, on or in connection with the performance of the Scope of Work only persons who are fit and skilled in the Work assigned. **Contractor** shall at all times enforce, or cause to be enforced, strict discipline and good order among the workmen employed for any Work. Should any person be employed by **Contractor**, or by any subcontractor, upon or about the Property whom **Company** considers to be hostile to **Company's** best interest, **Contractor** shall at **Contractor's** expense and upon request of **Company**, replace such person and not employ such person without the written permission of **Company**.

21.3 **Contractor** shall cause **Contractor's** employees and all subcontractors to abide by all safety and security rules and policies in force on the Property.

21.4 It is the understanding of the parties hereto that **Company** shall not be responsible for the loss of or damage to the property of **Contractor** or **Contractor's** subcontractors, if any, from any cause. **Contractor** shall furnish whatever watchmen **Contractor** finds necessary to adequately protect **Contractor's** interests.

22.0 Suspension

Company shall have the right, at **Company's** sole discretion, to suspend the performance of all or any part of the Work at any time and shall give **Contractor** prompt written notice thereof. Upon receipt of such notice, **Contractor** shall proceed with the orderly cessation of work to accomplish such suspension and take such steps as will protect and preserve the Work completed and permit the resumption of the Work upon termination of the period of suspension. In the event such suspension was to continue for more than one hundred eighty (180) days, either party shall have the option of terminating this Contract under Paragraph 23.1 below.

23.0 Termination

23.1 **Company** may terminate the Contract at any time, by giving written notice to **Contractor** specifying that termination is being made under the provisions of this paragraph and specifying the effective date of termination if:

23.1.1 **Contractor** should be or become insolvent;

23.1.2 **Contractor** should make a general assignment for the benefit of creditors;

23.1.3 Any proceeding should be brought by or against **Contractor** seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, under the present or any future federal bankruptcy acts or under any other applicable federal or state law or regulation;

23.1.4 Any proceeding should be brought seeking the appointment of a receiver or similar officer of court with respect to **Contractor's** business;

23.1.5 **Contractor** should repeatedly refuse or fail to supply enough properly skilled workmen or equipment or materials of the proper quality to perform the Scope of Work;

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- 23.1.6 **Contractor** should fail to prosecute the Scope of Work with sufficient promptness and diligence or fail to complete the Scope of Work to **Company's** satisfaction within the Work Schedule as adjusted by the provisions of this Contract;
- 23.1.7 **Contractor** should repeatedly fail to make timely payments to **Contractor's** labor, permitted subcontractors, materialmen, or suppliers;
- 23.1.8 **Contractor** should disregard laws, ordinances, governmental rules or regulations, or should repeatedly disregard instructions of **Company** which are consistent with this Contract; and
- 23.1.9 **Contractor** should be guilty of a substantial violation of any provision of this Contract.

23.2 In the event of such termination:

- 23.2.1 On termination date, **Company** shall take possession of all Work and thereafter may complete the Scope of Work, or cause the Scope of Work to be completed, by whatever means **Company** deems expedient;
- 23.2.2 **Contractor** shall return to **Company** all information furnished by **Company** in connection with the Scope of Work, together with all data developed by **Contractor** under this Contract; and
- 23.2.3 **Contractor** shall not be entitled to receive any further payment under this Contract for Work already performed by **Contractor** until the Work is wholly finished and **Company** shall have the right to deduct from any balance due **Contractor** for Work already performed under this Contract the amount of damage incurred by **Company** through **Contractor's** default, including the cost of completing the Scope of Work. In the event the amount of damage exceeds the balance due hereunder, **Contractor** shall pay to **Company** the amount of such excess. Except for payments owed to **Contractor** for Work performed prior to the date of termination as adjusted above, **Contractor** shall not be entitled to receive any additional payment as provided in Section 3.2 for the Scope of Work which **Contractor** has not performed prior to the termination date.

23.3 **Company** may terminate this Contract for **Company's** convenience at any time by giving ten (10) days written notice to **Contractor**. In the event of such termination, **Company** shall pay **Contractor** a pro rata share of any fixed portions of **Contractor's** compensation based upon the percentage of completion of the Scope of Work as of the termination date.

23.4 The rights of and remedies of **Company** set forth in this paragraph shall not be exclusive and are in addition to all other rights and remedies of **Company**.

24.0 Assignment and Subcontracting

Contractor shall not assign or subcontract any part of this Contract or Work performed hereunder without the written consent of **Company**, nor shall **Contractor** assign any monies due or to become due to **Contractor** hereunder without the written consent of **Company**. Any unauthorized assignment or subcontract shall be void. **Contractor** shall impose on the subcontractor under **Contractor's** charge the same responsibilities which **Contractor** assumes by the terms and conditions of this Contract. **Contractor** agrees that **Contractor** will be fully responsible to **Company** for the acts and omissions of **Contractor's** subcontractors and of persons either directly or indirectly

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employed by all subcontractors. This Contract shall not be transferable by operation of law. This Contract may be assigned by **Company** without the prior written consent of **Contractor**.

25.0 Contract Headings

All headings of the paragraphs of this Contract have been inserted for convenience of reference only, are not to be considered a part of this Contract, and shall in no way affect the interpretation of any of the provisions of this Contract.

26.0 Severability

In the event any provision of this Contract conflicts with the law under which this Contract is to be construed or if any such provision be held invalid by a court with jurisdiction over the parties to this Contract, such provision shall be deleted from the Contract and the Contract shall be construed to give effect to the remaining provisions thereof.

27.0 Governing Law

The validity, interpretation, and performance of this Contract shall be governed by the law of the state in which the Property is situated. The venue of any action filed under this Contract shall be in the court of the state, county or federal district of the Property.

28.0 Construction, Modification, Waiver, Successors and Assigns, Survival of Obligations, and Entire Contract

28.1 If any provision of any Exhibit of this Contract is inconsistent with any provisions of any other portion of this Contract, the provision contained in the Exhibits shall be controlling, provided however, any proposal or other document submitted by **Contractor** which, upon approval of **Company**, is incorporated herein as an exhibit to set forth the Scope of Work shall be incorporated solely for defining the Scope of Work, and all other terms and conditions contained therein shall be of no force or effect and shall be superseded by the terms and conditions which are contained in the main body of the Agreement. Further, no presumption shall be deemed to exist in favor or against either party hereto as a result of the preparation and/or negotiation of this Contract.

28.2 No change in, addition to, or waiver of any of the provisions of this Contract shall be binding upon either party unless in writing signed by an authorized representative of each party. No waiver by either party or any breach by the other party of any of the provisions of this Contract shall be construed as a waiver of any subsequent breach, whether of the same or of a different provision in this Contract.

28.3 Notwithstanding the expiration of the term of this Contract or any termination of this Contract, any duty or obligation which has been incurred and which has not been fully observed, performed, or discharged, and any right, unconditional or conditional, which has been created and has not been fully enjoyed, enforced, or satisfied (including but not limited to the duties, obligations and rights, if any, with respect to confidentiality) shall survive such expiration or termination until such duty or obligation has been fully observed, performed, or discharged and such right has been enforced, enjoyed or satisfied.

28.4 This Contract shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto.

28.5 This Contract including Exhibits attached hereto sets forth the entire agreement between **Company** and **Contractor** with respect to the subject matter hereof and supersedes all prior negotiations and dealings, including but not limited to letters of intent, pertaining to the subject matter hereof. The Exhibits which are attached hereto and are incorporated herein are as follows:

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- Exhibit A - Scope of Work
- Exhibit B - Intentionally Left Blank
- Exhibit C - Safety Procedures
- Exhibit D - Subcontractor Insurance Requirements

28.6 Printed terms and conditions in any purchase orders or other similar documents issued by Contractor to Company or by Company to Contractor shall be of no force or effect and shall be superseded by the terms and conditions which are contained in this Contract.

29.0 Examination and Evaluation of Information

All information in Company's possession concerning the physical condition of Company's property which is the subject of the Services has been or shall be made available to Contractor. Contractor represents that Contractor has or shall carefully examine all such information and other information available concerning such property, has visited such property, and is familiar with the physical condition of the property and surrounding terrain, is fully informed as to all existing conditions and limitations, including all laws, ordinances, and regulations affecting this Contract and the Services, is or shall be satisfied that Contractor has or is able to obtain the type of personnel, machinery, equipment, tools, materials, transportation and whatever else is necessary to complete performance of the Services, and Contractor's compensation includes a sum sufficient to cover the cost of all items required to complete the Services contemplated by this Contract whether or not specifically described herein. Contractor has made or shall make Contractor's independent evaluation of Company-provided and other information and has not nor shall not rely upon any conclusions of Company. Failure of Contractor to have made a full investigation as contemplated above shall not relieve Contractor from any of the obligations of this Contract and Contractor shall not be entitled to additional compensation for Services other than as specified herein.

IN WITNESS WHEREOF, the parties have executed this Lump Sum Construction Contract effective as of the day and year first above written.

COMPANY:
MarkWest Liberty Midstream & Resources, L.L.C.

DocuSigned by:
By: Frank Semple
9AB47F1CFAB74F3...
Title: Chairman, President and CEO

CONTRACTOR:
J.F. Allen Company

By: *Gregory Stodjia*
Title: President

Federal Tax ID No.: 55-0328627

DS DS DS
J. Semple *Frank Semple* *Gregory Stodjia*

EXHIBIT "A"
SCOPE OF WORK

Bid documents as defined in contractor proposals attached to the PO and as transmitted by CEC, MarkWest, or other engineering contractors for completion of the Mobley V Retaining Wall. Copies of the applicable documents defining the Scope of Work are attached.

Documents Included:

102-165-RFP.pdf
102-165-INSTRUCTIONS TO BIDDERS.pdf
102-165 Wall RFP Plan Set.pdf
102-165 PCSM Mobley 5.pdf
102-165 ES Mobley 5.pdf
102-165-Mobley 5 Gas Plant ES.pdf
102165-Waste Soil Disposal Area and Route Map.pdf
Existing Rock Core Lab Data.pdf
Frame Construction Agreement Mobley - Wall Construction.pdf
Rock Core Photos - Retaining Wall RFP.pdf
Test Boring Logs - Retaining Wall RFP.pdf
20140728-102165-Sections.dwg
20140714-102165-CP05B - 2010 Exploded.zip
Mobley Wall Pre-Bid Meeting Minutes 7-15-14.doc

Lab Testing – B400 Series:

34597 – loi.pdf
34597- S&L.pdf
34597 - rock core.pdf
34597 - rock core summary.pdf

Lab Testing – MB5 Series:

34597003 Density.pdf
34597- S&L.pdf
34597- point load.pdf
34597 - Slake Durability.xlsx.pdf
34597 - rock core.pdf
34597 - rock core (2).pdf
34597 - rock core summary.pdf



REQUEST FOR PROPOSAL

MarkWest Liberty Midstream & Resources, LLC (MarkWest) is requesting design/build proposals for the completion of the Plant 5 retaining wall (Wall) and earthwork at the MarkWest Mobley, West Virginia Gas Plant Facility. Proposals should be sent via email to the Project Management Team outlined below. Proposals will be received until 12:00 PM Eastern Time on July 31, 2014.

Project Management Team:

Owner: Daniel Rowlands: Daniel.Rowlands@MarkWest.com

Tyler Adams: Tyler.Adams@markwest.com

Barry Watson: blwatson216@gmail.com

Facility Civil Engineering Firm - Civil & Environmental Consultants, Inc. (CEC):

Thomas Stack: Tstack@cecinc.com

Michael Schumaker: Mschumaker@cecinc.com

MarkWest will host a pre-proposal conference on July 15, 2014 at 9:00 AM held at the existing administration building at the Mobley, WV facility. The administration building is on the southeastern corner of the facility which is located near the proposed Wall area. The administration building is located at approximately Latitude: 39.552095° Longitude: -80.557107°.

The Project Manager who would be assigned this project must attend this meeting. At the Bidder's discretion, the project construction estimator should be encouraged to attend. This meeting is mandatory and failure to attend this meeting will result in the Bidder being removed from the proposal list for this project. A maximum of three representatives from each invited Bidder will be permitted to attend the conference. Only those specifically invited will be permitted in the conference.

The purpose of this pre-proposal conference is to allow an opportunity to discuss and clarify the project bid documents, roles, and responsibilities. All questions raised by the Bidders relative to the proposal documents occurring during review, preparation of the proposal, or during the pre-proposal conference shall be addressed to the Project Management Team in writing. Questions received less than 48 hours before the designated proposal time will not be answered. Oral statements will not be binding to Owner



or the Contractor. Following the pre-proposal conference, bidders will be allowed to inspect the work location and facility. Bidders can make additional site visits by appointment.

MarkWest reserves the right to reject any and all proposals or to waive any informality in the proposals. The successful Bidder will be determined by MarkWest at its sole discretion. Evaluation of proposals will include, but not be limited to schedule, cost, Bidder's qualifications, Bidder's experience with similar projects, completeness of the preliminary Wall design, and other assessments deemed appropriate by MarkWest. Nothing herein shall require MarkWest to select any proposal on any particular basis. The Bidders agrees that any deletion, change, or addition shall be without liability on the part of MarkWest or penalty brought by the Bidder due to such deletion, change, or addition.

No Bidder may withdraw his bid for a period of sixty (60) days after the scheduled closing time for receipt of proposals.

Attachments:

1. Instructions to Bidders
2. Agreement
3. Preliminary Retaining Wall Drawing (5 sheets)
4. Erosion and Sedimentation Control Plan Drawings (to be provided by addendum).
5. Test Boring Logs and Rock Core Photographs
6. Existing Laboratory Testing
7. Current Laboratory Testing (to be provided by addendum)



INSTRUCTIONS TO BIDDERS

1.0 INTRODUCTION

MarkWest is issuing a Request for Proposal (RFP) for design/build work to be performed for the Plant 5 retaining wall and earthwork construction at the Mobley, West Virginia Gas Plant Facility. The objective of this RFP is to select a design/build contractor team, hereinafter referred to as the "Contractor" to provide professional design, management, and construction services for the project.

Contractors shall carefully examine all documents and data set forth in the RFP and otherwise pertaining to the scope of work stated herein. The successful Contractor shall not, at any time, claim misunderstanding with regard to nature, conditions, character, locations, scope or extent of work to be performed as summarized in this RFP. Submission of a proposal shall constitute the Contractor's full acknowledgement that he has investigated and satisfied himself as to all conditions pertaining to or affecting the work. Each Contractor is required to be represented at the project pre-proposal conference, visit the site, and review all available documentation to fully become familiar with all conditions of the Wall.

2.0 PROJECT SUMMARY

MarkWest is developing the portion of the Mobley gas plant facility south of the existing Plants 1 and 2 to construct Plant 5 and associated electrical substation. To eliminate the need to dispose of the excavation material off site, an approximately 100-foot tall retaining wall (Wall) is proposed along the eastern slope of the site. Additionally, the Wall will provide real estate to construct lightly-loaded buildings such as a warehouse and also provides additional parking and equipment laydown area. The top of the Wall adjacent to Plants 1 and 2 is proposed to be at approximately Elevation 1325'. The Wall extends to the south to allow for the existing south access road to be realigned around the proposed Plant 5 development where the top of the Wall will correspond to the realigned road contour. Construction of the Wall will require the excavation and placement of on-site earth materials to the grades shown on the plans.

All in-place excavation required for the Plant 5 construction (Plant 5 area, MCC, substation, and access road) and construction of all soil nail walls will be bid under a separate contract. The excavation for Plant 5 will be stockpiled along the existing southeast borrow area adjacent to the Wall location by a separate



contractor. The Contractor is responsible for sizing the material, if necessary, and transporting, placing, and compacting the material behind the Wall according to their design specifications.

3.0 PROJECT ADMINISTRATION

Work for the Wall will be performed under contract to MarkWest. All correspondence, questions, bids, requests for information, schedules, invoices, etc. will be directed to the Project Management Team. The Contractor will perform the work under MarkWest's agreement included with this RFP. All requested exceptions to the agreement must be provided with the proposal submission and agreed to prior to execution of the agreement.

Contractor shall be a corporation registered with the State of West Virginia to do business in the State. Engineering design services for the project must be provided by an authorized company and Professional Engineer licensed in the State of West Virginia.

4.0 GENERAL DESCRIPTION OF WORK

The work anticipated to be performed during the summer and fall of 2014 consists of approximately 200,000 yd³ of earthwork and the design and construction of an approximate 100'-tall earth retaining wall. The type of construction will be determined by the Contractor's design and construction methods. The Contractor is responsible for site clearing and grading within the limits of the fill placement and Wall construction presented on the plans, and erosion and sedimentation controls shown on the plans and in accordance with governing authorities.

It will be the responsibility of the Contractor to complete the Wall design and provide all required engineering and Wall construction services necessary to implement the design. The Contractor will also be responsible to oversee the construction processes, develop and maintain schedules, and coordinate the activities to the Project Management Team and other site contractors.

5.0 PROPOSAL PREPARATION

The Contractor is instructed to submit a proposal in strict accordance with the attached RFP documents, and no deviation will be accepted. If the Contractor chooses to submit any voluntary alternate, it shall be in writing and emailed to the Project Management Team before submitting the proposal.



It is the intent of the Project Documents to identify and detail the Wall alignment and final grading associated with the Plant 5 development. The Contractor's price shall include all materials, equipment, and labor to perform the work within the project schedule. In order to be considered, the proposal must be responsive, complete, and comply with the requirements in the RFP. Any interpretation of the requirements of the Project or RFP will be made by addendum and provided to each Bidder. MarkWest shall not be bound by any explanations or interpretations unless given in writing. The Contractor is required to provide written acknowledgement of receipt of all addendum, communication, explanation, and interpretation in the proposal submitted.

Any questions or request for information or clarifications during the proposal process shall be addressed to the Project Management Team via email. All questions must be received 48 hours prior to the scheduled receipt of proposals.

Proposals shall be irrevocable and no Bidder may withdraw their proposal for a period of 60 days. It is the intent to award the contract and notify the successful Bidder approximately 1 week after receipt of proposals. MarkWest intends on executing all contract agreements within 1 week of the award date. Mobilization of the Contractor equipment and forces must be complete within 10 days of the award date. Time is of the essence.

6.0 PROPOSAL SUBMISSION

Proposals should be sent via email to the Project Management Team outlined in the Invitation to Bid. Proposals will be received until 12:00 PM Eastern Time on July 31, 2014.

The proposals shall include a lump sum price for the work specified herein. Additions and deletions from the lump sum price should be specified in the proposal submission.

To be considered, each proposal shall attach a Preliminary Wall design, Work Plan, Qualification, Project Schedule, acknowledgement of the project agreement, exceptions to the agreement (if any), and equipment and labor hourly rates. Each required item of the proposal submission is detailed below:



6.1 Preliminary Wall Design

The proposals shall include a preliminary design of the Wall which the Contractor believes is the best fit for the site given the current site conditions. The Wall design should be based on the proposed layout of the Wall presented in the provided Preliminary Retaining Wall Drawings, and may not be altered unless approved by the MarkWest.

The Contractor's preliminary Wall design documents shall include:

- Typical cross-section of the design;
- Assumptions made in the design of the Wall;
- Fill, soil, and bedrock material design parameters;
- Ground water conditions;
- Surcharge loads;
- Structural element characteristics;
- Design methodology and references;
- Factors of safety for applicable failure modes (e.g. internal, external, and global stability); and
- Proposed instrumentation plan.

The type of wall construction will be selected, designed, and constructed by the Contractor; although the Project Management Team will not accept designs that consist of a combination of more than two types of wall systems. Acceptable wall systems will consist of the following:

- Soldier Pile and Lagging (with or without anchors);
- Mechanically Stabilized Earth (MSE) with precast concrete panels or modular blocks up to a maximum of 25 feet tall; and
- Reinforced Soil Slope (RSS) with a minimum 10 feet tall soldier pile and lagging base section. The maximum steepness of the RSS may be up to 0.5:1 (Horizontal:Vertical). The alignment at the top of the Wall shown on the plans may not be altered from approximately Station 6+50 up to Station 12+70 to maintain the realigned south access road to the facility. The base of the Wall may be altered along these stations to achieve the top of the Wall grades; although no streams may be impacted by the realignment. The base and top of the Wall may be altered outside of the stations listed above to achieve the RSS design slope.



The fill material will come from the Plant 5 excavation and will consist primarily of excavated bedrock. The Wall design shall specify fill material requirements (general gradation, largest dimension allowable, compaction criteria, rate of fill placement, unsuitable material criteria).

The Wall shall be designed to accommodate future building construction with a minimum of 3,000 pounds per square foot (psf) foundation bearing pressure 42 inches below the ground surface at least 30 feet from the face of the Wall. The future building locations are not known at this time; therefore the entire length of the Wall 30 feet from the Wall face will be considered as having this load. No reinforcement shall be proposed within the upper 5 feet of the Wall beyond 30 feet from the Wall face. Furthermore, a surcharge load of 350 psf will be considered in the design for the entire area behind the Wall during and after construction.

The Wall design shall evaluate the external, internal, and global stability of the structure. A minimum factor of safety versus failure shall be 1.5.

Numerous seeps have been observed along the existing slope where the Wall is proposed. The Wall design shall incorporate appropriate drainage features/ground water control.

The Wall design shall incorporate instrumentation to monitor the Wall condition during and after construction. An instrumentation measuring program shall be proposed by the Contractor which outlines the manufacture of the instrumentation, measurement procedures, and the method and frequency of measurements to be taken. At a minimum, instrumentation to measure lateral deflection of the Wall face and settlement of the fill will be incorporated into the design. The instrumentation should be designed to be functional for a period no less than five years. The Contractor is responsible for the functionality of the instrumentation; although the Contractor is not responsible for the collection of the instrumentation measurements after the completion of construction.

The Contractor will verify the Wall elements do not conflict with any known existing or other proposed improvements. If any conflicts are discovered, the Contractor shall promptly notify MarkWest in writing prior to installation of any portion of the improvements which would be affected. Failure to notify MarkWest of an identifiable conflict prior to proceeding with installation relieves MarkWest of any obligation to pay for a Change Order related to such conflict.



6.2 Work Plan

The Contractor shall provide a work plan describing the procedures that the Contractor proposes to use in the performance of the work. The Contractor shall include a section on the organizational structure that will be employed, denoting key and secondary personnel who will perform work on the project. In addition, the Contractor shall provide detail as to how it intends to staff specific tasks and disciplines required for the execution of the work.

The work plan shall provide, in reasonable detail, the methods, equipment, sequence, production rates, and subcontractors the Contractor intends to use. A detailed description of the work to be performed by each subcontractor shall be included. MarkWest must approve each subcontractor who will perform any work. The approval of a subcontractor by MarkWest is only to acknowledge that they may perform work. It is the sole responsibility of the Contractor to engage subcontractors who are qualified and responsive to perform the work.

During construction, a superintendent shall be provided by the Contractor exclusively for this project. No work shall be performed under this contract unless the Contractor's superintendent or Project Manager is present on the site. Furthermore, the Contractor shall have a representative of the Wall designer at the site during construction to observe that field construction conditions do not differ from the anticipated conditions, assess the appropriateness of the design, and confirm that the design is being properly implemented.

6.3 Qualifications

The Contractor shall submit a statement of qualifications for both the designer and constructor that outlines their project experience similar to the proposed Plant 5 development and the Wall. The Contractor shall also submit a statement of qualifications for each subcontractor they intent to use on the project.

Contractor shall provide a summary of the background and experience of the key personnel who will perform the work on the project. Persons listed must be available and allocated to this project.



6.4 Project Schedule

The Contractor shall provide with its proposal a bar chart type schedule which demonstrates the anticipated duration of each task, sequencing of tasks, concurrent tasks, and total project duration.

It is anticipated that a Notice to Proceed will be issued by August 8, 2014. Contractor is required to mobilize the project with equipment and personnel within 10 days of the Notice to Proceed. It is expected that substantial project completion be obtained by January 1, 2015.

6.5 Acknowledgement of MarkWest's Agreement

The Contractor must indicate either Acceptance without Exception of MarkWest's attached agreement or Acceptance with Exception of MarkWest's attached agreement. If Acceptance with Exception is indicated, all exceptions must be provided including a detailed explanation of the exception and a specific proposed revision prior to execution of the agreement.

6.6 Hourly Rates

Bidder shall provide a list of equipment and labor hourly rates for the project for additional work that is requested by MarkWest on a time and material basis. Hourly rates are to include equipment, fuel, operator, O&M costs, overhead, profit, etc. The rates are for full compensation of the item.

7.0 PROJECT DOCUMENTS

The following attachments are included and are considered components of the Project Documents in addition to the Invitation to Bid. By submitting a proposal for the Wall, Contractor represents that he has read, reviewed, and fully understands each component and accepts and agrees to each.

- MarkWest's Agreement.
- Preliminary Retaining Wall Drawings, including supplemental figures, prepared and issued by CEC. A total of five drawing sheets are included in the plans. Existing conditions as depicted on the drawings are general and illustrative in nature. It is the responsibility of the Contractor to examine the site and be familiar with the existing conditions prior to proposal submission on this



project. If conditions encountered during examination are significantly different than those shown, the Contractor shall notify the Project Management Team.

- Erosion and Sedimentation Control Plan Drawings (to be provided by addendum).
- Test boring logs and rock core photos drilled within the proposed wall location. A total of 27 borings were drilled as part of the subsurface investigation for the wall. (Subsurface data collected by CEC are not considered all conclusive and it is the Contractor's responsibility to further investigate conditions as it determines necessary.)
- Test boring logs and rock core photos drilled within the proposed Plant 5 excavation area. A total of 10 borings were drilled as part of the subsurface investigation for Plant 5. (Subsurface data collected by CEC are not considered all conclusive and it is the Contractor's responsibility to further investigate conditions as it determines necessary.)
- Existing and current laboratory testing.

8.0 FINAL WALL DESIGN SUBMITTAL

The final Wall design will be based on the approved preliminary Wall design submitted in the Contractor's proposal. The final Wall design shall be submitted no later than 10 days after the Notice to Proceed.

Drawings and calculations must be prepared and stamped by a Professional Engineer licensed in the State of West Virginia.

The final Wall design documents shall include:

- (1) Plan and elevation view of the proposed Wall.
- (2) Cross sections at no less than 200-foot intervals.
- (3) Typical cross-section of the design and construction details.
- (4) Construction and material specifications, including:
 - a. Earthwork
 - b. Wall construction including verification testing
 - c. Instrumentation installation and monitoring including action levels for each type of parameter measured.



- (5) Final Wall design calculations, including:
 - a. Assumptions made in the design of the Wall.
 - b. Fill, soil, and bedrock material design parameters.
 - c. Ground water conditions.
 - d. Surcharge loads.
 - e. Structural element characteristics.
 - f. Design methodology and references.
 - g. Factors of safety for applicable failure modes (e.g. internal, external, and global stability).
 - h. Allowable and designed lateral deflection of the Wall face near the top of the wall.
 - i. Anticipated amount of settlement within and below the fill behind the Wall.

9.0 QUALITY CONTROL

Verification testing of the structural elements typical with the wall system chosen will be specified by the Contractor. Additionally, quality control standards associated with the Wall construction will be specified in the design documents. The Contractor is responsible for performing their own quality control which will be verified by a CEC representative.

The Wall design engineer must provide quality control inspection and testing for all aspects of construction to ensure that construction is completed in accordance with the design. Upon completion of construction, the design engineer must complete and submit to the Project Management Team a Wall completion/final certification report. The report is to include, at a minimum, the following:

- A statement that the engineer provided oversight for all aspects of construction and that the Wall was constructed in accordance with the design intent.
- As-built drawings.
- Quality control test results.
- Color photographs of specified construction.



10.0 EARTHWORK

The construction will also require all excavation and backfill to the lines and grades for construction of the Wall depicted on the site plans and contractor Wall drawings, unless approved otherwise.

The excavation for Plant 5 will be stockpiled along the existing southeast borrow area adjacent to the Wall location by a separate contractor. The Contractor is responsible for sizing the material, if necessary, and transporting, placing, and compacting the material behind the Wall according to the design specifications prepared by the Wall designer. It shall be the contractor's responsibility to meet the earthwork specifications requirements and implement any measures necessary to provide the required fill.