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Charleston, West Virginia, 25305  
(800) 982-3386 • (304) 558-2234  
[westvirginia.gov](http://westvirginia.gov)

February X, 2021

Name  
Mayor/Commissioner  
Street  
West Virginia

**RE: Community Development Block Grant Program-CARES ACT  
Town /County of  
Grant Award: \$ CDBG-CV Project Number:**

Dear INSERT TITLE AND LAST NAME:

Congratulations on Governor Justice's recent Community Development Block Grant (CDBG) CARES Act award of \$0000 to assist the Town/County name of Project.

This funding is provided under Title I of the Housing and Community Development Act of 1974 under regulations of the Department of Housing and Urban Development, including but not limited to 24 CFR (Code of Federal Regulations), Part 570, Sub-Part I, as amended or revised, The CARES Act, section 601(d) of the Social Security Act, created the Coronavirus Relief Fund (CRF) in Federal Register (FR-6218-N-01) and subject the State of West Virginia's CDBG-CARES Act Policies and Procedures Manual and all program guidelines.

Funds are provided to meet the HUD National Objective of Benefit to Low- and Moderate-Income (LMI) persons in the Eligible Activity of Public Service to include the list activity funded and the 570 reg cite pertaining to 24CFR570.201(e) . No funds may be expended prior to the full execution of this grant agreement and written authorization from the West Virginia Development Office (WVDO).

- **The WVDO may cancel the grant and reallocate the grant funds if the grant agreement is not prepared, signed, and processed within 30 days of the date of this letter.**
- **The Subrecipient must submit all Evidentiary Material requested on the enclosed list to the WVDO within 30 days of the date of this letter.**
- **Written authorization from the WVDO is required prior to the commitment or expenditure of any funding associated with this project.**

This enclosed grant agreement certifies that the local government, as the subrecipient, shall comply with the policies, guidelines, and requirements of Title I of the Housing and Community Development Act of 1974 and all applicable State and Federal laws in the administration and distribution of funds provided under this agreement.

An implementation meeting will be scheduled in the two weeks to discuss the requirements of CDBG grant funding. A representative of your office, the sub-awardee and the project manager must be present at this meeting.

The project team will be provided with a copy of the CDBG-CARES Act Policies and Procedures Manual and other program guidelines. A manual is also available at [WVCAD.org/resources](http://WVCAD.org/resources).

If you have any questions concerning this letter, please contact Ryan Halsey, CDBG Project Manager, via email at [Ryan.J.Halsey@wv.gov](mailto:Ryan.J.Halsey@wv.gov) or Hannah Carter, CDBG Project Manager, via email at [Hannah.M.Carter@wv.gov](mailto:Hannah.M.Carter@wv.gov) or call 304-558-2234. We look forward to working with you to complete this project.

Sincerely,

Sherry Risk  
CDBG Program Manager

cc: Ryan Halsey  
Hannah Carter

Enclosures

**West Virginia CDBG CARES Program  
REQUEST FOR APPROVAL OF EVIDENTIARY MATERIALS**

<b>Subrecipient</b>		<b>Project #</b>	
<b>Project Name</b>		<b>Amount</b>	
<b>Prepared By</b>		<b>Sub-awardee</b>	
<b>Project Scope of Work</b>			
Provide date of submittal to WVDO for all documents. Unless otherwise noted, all documents are due within 30 days of the date of the Award Notice Letter.		<b>Submitted to WVDO</b>	<b>Revision Date (if applicable)</b>
		<b>WVDO Approval Date and Initials</b>	

1.	Signed Subrecipient Agreement and Grant Award Notice with Grant Letter. <b>Due within 30 days</b>			
2.	Legally Binding Agreements between active parties: Sub-Recipient and Project Administrator and/or Sub-Awardee			
3.	CDBG-CV Program Policy and Procedures and Forms created by Subrecipient for Project			
4.	Final Budget After Obligation – (Attachment A- Form C1)			
5.	Project Performance Schedule indicating project completion within 12 months – (Attachment B, Form C2)			
6.	Duplication of Benefits (Attachment C, Form C3)			
7.	Environmental Review Determination – (Attachment D, Form C4)			
8.	Grantee Debarment Form (Attachment E, Form C5)			

\_\_\_\_\_

*Signature of Chief Elected Official* *Date*

\_\_\_\_\_

*Typed Name of Chief Elected Official* *Date*

The Subrecipient is hereby advised that no funds may be obligated, expended, or disbursed prior to the written authorization of the WVDO.

**COMMUNITY DEVELOPMENT BLOCK GRANT CARES ACT – GRANT AGREEMENT**

**THIS COMMUNITY DEVELOPMENT BLOCK GRANT CARES ACT AGREEMENT (“Agreement”),**

Dated and effective \_\_\_\_\_, is between the West Virginia Development Office, a division of the West Virginia Department of Commerce (“State” and “Grantee”), and the **Town/County of** \_\_\_\_\_ and its authorized officers, agents, and representatives (“Subrecipient”).

**I. RECITALS**

A. **WHEREAS**, on Insert date of July 1, 2020, HUD approved the State’s Annual CDBG Action Plan 2019- Amendment One and CDBG CARES Act FR-6218-N-01 which addresses COVID-19;and

B. **WHEREAS**, in connection with such, the State has entered into grant agreement with HUD (the initial grant agreement, hereinafter the “Grant Agreement”) for the CDBG CARES Act allocation for addressing COVID-19;and

C. **WHEREAS**, the CDBG-CARES funds made available for use by the Subrecipient under this Agreement constitute a subaward of the Grantee’s Federal award, the use of which must be in accordance with requirements imposed by Federal statutes, regulations, and the terms and conditions of the Grantee’s Federal award; and

D. **WHEREAS**, the Grant Funds made available for use by the Subrecipient under this Agreement constitute a Subaward of the Grantee’s Federal award, the use of which must be in accordance with requirements imposed by Federal statutes, regulations, and the terms and conditions of the Grantee’s Federal award; and

E. **WHEREAS** the State (“Grantee”) will comply with all grant allocation requirements and the Subrecipient will also be required to meet all requirements;

F. **WHEREAS**, the State has elected to administer the non-entitlement portion of the Community Development Block Grant (CDBG) Program as authorized by Title I of the Housing and Community Development Act of 1974 (Public Law 93-383), as amended, subject to the applicable regulations of the Department of Housing and Urban Development, including but not limited to 24 CFR (Code of Federal Regulations), Part 570, Sub-Part I, as amended or revised, the CARES Act, section 601(d) of the Social

Security Act, created the Coronavirus Relief Fund (CRF), and Federal Register (FR-6218-N-01) Non-Entitlement set aside and subject to the scope of the State of West Virginia's CDBG CARES Act Policies and Procedures Manual and other Program Guidelines, availability of which is hereby acknowledged by the Grantee.

G. **WHEREAS**, the Subrecipient has requested assistance from the State ("Grantee") and has offered assurances activities will benefit low- and moderate-income persons, where other financial resources are not available to meet such needs; and

H. **WHEREAS**, the Subrecipient has legal authority to enter this Agreement, and the Subrecipient's governing body has duly adopted the Motion to grant signature authority to **INSERT OFFICIAL'S NAME**, dated **INSERT DATE**, authorizing the Subrecipient to enter this Agreement with the Grantee, and by signing this Agreement, to assure the Grantee that it will comply with all the requirements of the Subaward described herein; and

In consideration of the need for recovery from the COVID-19 Pandemic responsible for the requirement in FR-6218-N-01 and the promises and mutual covenants described herein, the Parties mutually agree to the terms described in this Agreement.

Now, Therefore the parties hereto agree mutually agree as follows:

## **II. GENERAL AWARD INFORMATION**

The award from the Grantee to the Subrecipient, which is described below, is for the purpose of carrying out a portion of a Federal award described in Section I of this Agreement and creates a Federal assistance relationship with the Subrecipient. This Agreement must be updated to reflect any changes to the federal award and the following award information.

### **Contact Information:**

#### **Grantee:**

West Virginia Development Office  
1900 Kanawha Boulevard, East  
Building 3, Room 700  
Charleston, WV 25305  
Phone: (304) 558-2234  
Fax: (304) 558-2246

#### **Subrecipient:**

**INSERT subrecipient name address phone number here**

**Federal Award Identification Number:** B-20-DW-54-0001

**CFDA Number and Name:** 14.228 Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii

**Federal Award Date:** July 1, 2020

**Period of Performance:** Performance will begin upon execution of this agreement, to include eligible planning and administrative activities for the **INSERT NAME OF PROJECT** from March 1, 2021 and will end on the earlier of the date that the Subrecipient completes its obligations under this Agreement or June 30, 2022.

**Total Amount of the Federal Award Committed to the Subrecipient by the Grantee:** \$ **INSERT AMT**

**Amount of Federal Funds Obligated by this Agreement:** \$ **INSERT AMT**

**Total Amount of Federal Funds Obligated to the Subrecipient:** \$ **INSERT AMT**

**Indirect Cost Rate for the Federal Award:** Grant Funds will be used for payment of indirect costs pursuant to 2 CFR Part 200, Subpart E – Cost Principles.

**Pre-Award Costs:** Please note, costs incurred before the execution of the grant agreement with WVDO is subject to the CARES Act provisions that CDBG-CARES funds may be used to cover or reimburse allowable costs of activities to prevent, prepare for, and respond to Coronavirus incurred by a State or locality from January 21, 2020. WVDO can pay costs in accordance with pre-agreement cost authority under 24 CFR 570.489(b) (States). Reimbursed costs must comply with all grant agreements and the CARES Act Federal Register 6218-N-01.

**Prohibited Activities**

The Subrecipient may only carry out the activities described in this Agreement. The Subrecipient is prohibited from charging the cost of CDBG CARES ineligible activities, including those described at 24 CFR 570.207, and from using funds provided herein or personnel employed in the administration of activities under this Agreement for political activities, inherently religious activities, or lobbying.

**III. Scope of Services and Assistance**

1. **Assistance to Subrecipient.**

The State shall obligate to the Subrecipient, from funds allocated to the State by Grant Agreement B-20-DW-54-0001, **\$INSERT AMT** to perform such tasks hereafter described in the Scope of Services ("Project"). Funding for the Project is provided to meet the National Objective of Benefit to Low- and Moderate-Income (LMI) persons in the Eligible Activity of Public Services in accordance with 24CFR Part 570.201(e) and FR 6128-N-01.

A) Budget.

- i. The final budget allocation for the Project is attached hereto as the *CDBG-CARES Budget (Form C1, as Attachment A)* and fully incorporated herein by reference ("Budget"). Any subsequent modifications to the Budget shall otherwise be in a form and substance satisfactory to the State and consistent with applicable requirements of law.
- ii. In accordance with the CDBG CARES Act Rules, the Subrecipient shall cause the Budget to be in sufficient detail to provide a sound basis for the State effectively to monitor Subrecipient's performance under this Agreement and to meet the requirements set forth in the CDBG CARES Act Rules that must be complied with to allow payments of program funds to the Subrecipient.

B) Scope of Services

- i. Eligible Uses of Funds- The Subrecipient, its contractors and/or its designated agent(s), in accordance with the Community Development Block Grant CARES Act Policy and Procedures to be used in the administration of the Community Development Block Grant CARES Act Grant, and in accordance with the approved application of the Grantee, shall do, perform, and carry out, in a satisfactory and proper manner all duties, tasks, and functions necessary complete the **INSERT** Town or County description of project insert here.
- ii. The Subrecipient shall administer and/or perform the activities detailed in the Scope of Services in a manner satisfactory to the State and otherwise in accordance with this Agreement. The Scope of Services is set forth in detail in *CDBG CARES Act Project Schedule (Form C2) attached hereto as Attachment B and fully incorporated by reference ("Performance Measures")*.

2. **Changes:**

The State *will consider program amendments initiated by the Subrecipient or by the State. The State defines a program amendment as a request for change in an approved program which (i) is an activity in the program, (ii) significantly alters the scope, location, or objective of the approved activities or beneficiaries, and/or (iii) results in a change or cumulative changes of the approved budget, and iv. changes between budget line items.* The Subrecipient, from time to time, may require changes in the Scope of the Services of the work to be performed hereunder. Such changes, including any decrease in the amount of the Subrecipient's compensation and work to be performed which are mutually agreed upon by and between the State and the Subrecipient, shall be incorporated in written amendments to this Contract. The State reserves the right to make final determination on questions/*requests* regarding changes in the Scope of Services and any impact to Citizen Participation requirements.

3. **Term of Agreement (Time of Performance) Term:**

The term of this Agreement (the "Term") commences on the acceptance date of March 1, 2021 and expires June 30, 2022, or such later date as the Parties may agree to in writing. This Agreement shall remain in full force and effect during the Term, unless earlier terminated in accordance with the provisions hereof; provided, that in accordance with certain provisions of this Agreement those provisions shall survive the end of the Term or early termination hereof.

4. **Performance:**

The State shall monitor for the achievements and performance requirements of the Subrecipient, Sub-awardee and Project Manager achievement of the performance requirements set forth in the Scope of Work or this Agreement. Substandard performance as determined by the State shall constitute noncompliance with this Agreement.

Achievement and compliance with the performance measures will be evaluated based upon the *CDBG Project Schedule (Form C2) attached hereto as Attachment B and fully incorporated by reference ("Performance Measures")*. These Performance Measures establish goals against which performance under this contract can be measured and evaluated during a scheduled monitoring visits by the State. Failure to meet these Performance Measures can result in termination of this contract. If the Subrecipient fails to comply with Section 4, the State shall provide notice and an opportunity to cure within 30 days. If the Subrecipient fails to cure such non-compliance with Section 4 within the time provided by the State, the State shall have the discretion to take one or more of the following actions:

- i. Require additional project monitoring to ensure compliance with Section 4.
- ii. Require Subrecipient to obtain technical assistance in order to ensure compliance with Section 4.
- iii. Terminate contract with Subrecipient.

**5. Payment:**

It is expressly agreed and understood that the total amount to be paid under this Agreement shall not exceed **\$INSERT AMT.**

The Subrecipient shall submit to the Grantee requests for payments of activities under this Agreement and consistent with the approved budget (the "Request for Payment"). Each Request for Payment shall be broken down into requested draws against the budget line items specified in Attachment A.

The Subrecipient will have the flexibility to invoice the Grantee once a month to include all expenses. These payment requests must include all required invoices and documentation to substantiate costs, to the West Virginia Community Advancement and Development Office, the Grantee, for approval and remittance. CDBG-CV funds are not paid to Subrecipients before costs are accrued. Subrecipients must be financially suited to cover initial costs in anticipation of reimbursement.

The Grantee shall pay to the Subrecipient CDBG-CV funds available under this Agreement based upon information submitted by the Subrecipient for allowable costs permitted under this Agreement and consistent with the approved budget.

**A. Eligible Expenses**

Subrecipients may use payments for any expenses eligible under section 601(d) of the Social Security Act, specifically the Coronavirus Relief Fund and further outlined in US Treasury Guidance. Payments are not required to be used as the source of funding of last resort. The final report must identify any funds paid in excess of the expenditures incurred by the Subrecipient. For the purposes of this Agreement, the term "improper payment" means or includes: Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements.

The CARES Act requires that the payments from the Coronavirus Relief Fund only be used to cover expenses that:

- i. Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
- ii. Funds transferred to Subrecipient must qualify as a necessary expenditure incurred due to the public health emergency and meet the other criteria of section 601(d) of the Social Security Act. Such funds would be subject to recoupment by the Treasury Department if the funds have not been used in a manner consistent with section 601(d) of the Social Security Act.

Payment will be made upon submission by the Subrecipient of a properly executed Request for Payment, together with all supporting invoices, bills, time sheets, and other documents necessary to justify the payment. The Request for Payment form must also be accompanied by documentation from the Subrecipient demonstrating that all procurements for which payment is requested have been made in accordance with this Agreement.

A Final Performance Report shall be submitted to the State with the final request for payment for project costs, excluding audit. Said Performance Report shall be made on the forms provided by the State and meet the requirements of said report as set forth in the appropriate Community Development Block Grant CARES Policies and Procedures of the State of West Virginia. Other reports may be requested by the State during the grant period as the State deems necessary and directs.

Cost Underruns: The State reserves the right to recapture all CDBG CARES Act funds remaining due to cost underruns.

Program Income: Subrecipient will not have any program income.



## **B. Post Award and Recipient Criteria**

All awards are subject to the State's receipt of its CDBG-CV appropriation from the U.S. Department of Housing and Urban Development (HUD). All awards are subject to pre-contract negotiations with the recipient. Additionally, all recipients must follow procurement policies identified in FR-6218-N-01 and 2 CFR 200.

All procurement and construction contracting shall be executed in a manner that provides maximum open and free competition consistent with the procedures identified in the CDBG Policies and Procedures Manual, and in accordance with Chapter 5-22-1 of the West Virginia Code and Federal Regulations, 2 CFR 200. The local government is required to take affirmative steps to assure that Section 3 and Women and Minority-Owned Business Enterprises (WBE/MBE) are encouraged to bid. These steps must include direct solicitation of Section 3 and WBE/MBE contractors and businesses, proof of which must be included in the project file.

Written authorization from the Grantee is required prior to the expenditure of any funding associated with this project. The West Virginia Community Advancement and Development (WVCAD) Office is committed to monitoring the performance of grant recipients to ensure that all Federal funds are used appropriately and, in a manner, to maximize low- and moderate-income public benefit. Subrecipients are limited to Units of General Local Government (UGLG) and County Commissions. Monitoring each subrecipient ensures that the goals and objectives identified within the State's FY2019 amended Annual Action Plan. Copies of the monitoring reports are kept in the WVCAD Office. Subrecipients that do not comply with the Post-Award and Sub-Recipient Criteria listed below will forfeit their award of CDBG-CV funds. The forfeited funds will be then returned to the CDBG-CV program for reallocation.

- i. Subrecipient shall not incur any costs or obligate any CDBG-CV funding until a release of funds is received from the U.S. Department of Housing and Urban Development by the State of West Virginia WVDO Office, a contract between The West Virginia Community Development Office and the recipient is executed, and an environmental review is complete.
- ii. CDBG-CV Planning and Public Service Projects will have **ONE** year to complete their project from execution of the grant agreement with WVDO. A one-year extension can be requested for projects subject to WVCAD approval.
- iii. CDBG-CV Public Facilities Projects will have **TWO** years to complete their project from execution of the grant agreement with WVDO. A one-year extension can be requested for projects subject to WVCAD approval.
- iv. CDBG-CV subrecipients will be required to maintain accurate records documenting the prevention of, preparation for, response to the Coronavirus **AND** records documenting targeted populations and/or areas being served by the program or project.
- v. Subrecipients will be asked to provide a final summary reporting all accomplishments and outcomes to be provided to the State and the public. This includes a description of the impact or outcomes of the program or project. Final payment will not be issued until WVCAD receives the final summary report.
- vi. Subrecipients are required to:
  - a. Collect and track data elements associated with the program/project requesting funding. These elements may include how the person/household was directly impacted by the coronavirus, number of persons/ households served, family size, race/ethnicity, income documentation, and residency documentation. Additional elements may be required, collected, and tracked depending upon the nature of the program.
  - b. Submit performance reports to Grantee on a quarterly basis. The reports are reviewed for accuracy, performance measures and compliance. In addition, on-site monitoring/auditing of agencies for ongoing compliance and eligibility is done by West Virginia Community Advancement and Development Office to ensure income guidelines and residency are being met and goals are

being reached. A monitoring will be conducted by WVCAD at least once during the project duration.

Please note, costs incurred before the execution of the grant agreement with WVDO is subject to the CARES Act provisions that CDBG-CV funds may be used to cover or reimburse allowable costs of activities to prevent, prepare for, and respond to Coronavirus incurred by a State or locality. WVDO can pay costs in accordance with pre-agreement cost authority under 24 CFR 570.489(b) (States). Reimbursed costs must comply with all grant agreements and the CARES Act Federal Register.

**6. Monitoring:**

Grantee will monitor the performance of Subrecipient in accordance with regulations of Subrecipient Monitoring and Management, 2 CFR 200.330 – 2 CFR 200.332, to ensure compliance with all of the requirements of this Agreement and the goals and performance standards as stated in this agreement. Subrecipient shall provide Grantee all necessary reporting information as required by the WV Development Office Compliance Unit. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within 30 days after being notified by Grantee, the Grantee may impose additional conditions on the Subrecipient and its use of CDBG-CARES funds consistent with 2 CFR 200.207, suspend or terminate this Agreement, or initiate other remedies for noncompliance as appropriate and permitted under 2 CFR 200.338.

Monitoring procedures may include, but not be limited to, on-site visits by Grantee staff, limited scope audits, or other procedures. The Subrecipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Grantee. In the event that the Grantee determines that a limited scope audit of the Subrecipient is appropriate, the Subrecipient agrees to comply with any additional instructions provided by the Grantee to the Subrecipient regarding such audit. The Subrecipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Director of WVDO. In addition, the Grantee will monitor the performance and financial management by the Subrecipient throughout the period of agreement to ensure timely completion of all tasks.

**7. Administrative Requirements and Procedures.**

Subrecipient will have general administrative cost to support activities listed in the Scope of Services. Subrecipient must have sub-awardee agreement for budgeted administration costs.

**8. Personnel:**

The Subrecipient represents that it has personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the State. Subrecipient shall ensure adequate and appropriate staffing are allocated to each activity identified in Attachment B.

Subrecipient agrees to provide documentation that Key Personnel are qualified in their tasks delivering services under the CDBG-CARES grant program. Subrecipient will have general administrative cost to support activities listed in the Scope of Services. The administrative costs cannot exceed 10% of the subaward.

The Grantee is requiring the Subrecipient to provide the following:

Project Fiscal Management to include the submission of all project invoices, paid receipts, and cleared payments with checks or banking statements. Fiscal Management for delivering the program such as key personnel, office space, supplies, utilities, etc. will be reimbursed at cost to the Subrecipient.

Project monthly reporting to include FFATA, timesheets, travel logs, monthly progress narratives and administrative allowable costs to manage the grant. Quarterly progress and close out reports.

## **A. Travel Regulations**

Reimbursement for travel expenses are allowable, eligible costs. Travel expenses shall be limited to only those individuals that are approved for performing tasks on behalf of the Subrecipient. Reimbursement rates for mileage, meals, lodging, and any other travel related expenses shall not exceed that permitted under Federal Regulation 41 CFR Chapters 300-304 for government expenses. Subrecipient must provide sufficient documentation to the Grantee with an invoice attached, prior to reimbursement payment.

## 9. **Registrations**

- A. Additional Administrative Requirements:** Additional administrative requirements of federal grants are contained in 2 CFR, Part 25. The Subrecipient and sub-awardees at all tiers must obtain a DUNS number and provide the DUNS to the State before the sub-award can be issued. The Subrecipient will register with SAM and furnish State with documentation verifying such registration in order to receive federal funding under this Agreement.
- B. Federal Award Number:** As per the Federal Funding Accountability and Transparency Act, federal agencies will assign a Federal Award Identification Number (FAIN) to each federal award. The FAINs are intended to increase transparency in federal spending and allow the American public to hold the government accountable for spending decisions. Each Subrecipient and sub-awardee should be aware of this identification number and ensure the FAIN is incorporated into all sub-grants under the Agreement.

## 10. **Accounting**

The Subrecipient shall undertake the obligations concerning financial management relating to the services set forth in the Scopes of Services. The Subrecipient agrees to comply with 2 CFR Part 200, Subpart D and the accounting principles and procedures described therein, utilize adequate internal controls, and maintain necessary source documentation for all eligible costs that are the subject of any Request for Payment or any other costs incurred. The Subrecipient will establish a separate account for the proper recording of project costs in accordance with generally accepted accounting principles and procedures so as to reflect all receipts and allowable expenditures, including program income (PI) in connection with the said project and the purpose thereof. The Subrecipient shall administer the Project in a manner consistent with the applicable requirements of law related to cost principles, including as set forth in Section 570.502 of the CDBG Rules and 2 CFR Part 200, Subpart E. PI generated prior to project closeout must be expended as received for project related activities in accordance with 24 CFR 570. If the Subrecipient received less than \$25,000 per state fiscal year in program income after closeout, the dollars received are not subject to provision of 24 CFR 570 and may be used at the Subrecipients discretion. If PI exceeds \$25,000 in any given state fiscal year after closeout, all program income earned must be expended in accordance with 24 CFR 570.489. *It is the Subrecipients responsibility to notify the state of all PI earned in any given fiscal year from this date forward.*

## 11. **Audit.**

Pursuant to provisions of Chapter 6, Article 9, Section 7 of the West Virginia Code, the Grantee has adopted the policy of accepting annual financial audits contracted or performed by the State Auditor's Office. The Subrecipient will include these funds to be audited with its yearly organization-wide audit. Audits shall be conducted in accordance with applicable provisions of 2 CFR 200, and with standards established by the Comptroller General as specified in Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. The Subrecipient must follow 2 CFR 200.318 "General Procurement Standards" through 2 CFR 200.326 "Contract provisions". Refer to these sections for the allowable methods of procurement for the Subrecipient, the procurement thresholds, and the conditions and requirements. In accordance with 2 CFR 200, the Subrecipient will incorporate these standards into its Procurement Policies and Practices. 2 CFR Part 200 Appendix II must be adhered to as applicable in grant agreements.

In accounting for the receipt and expenditure of funds under this Agreement, the Subrecipient must follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R. §200.49, "GAAP has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."

When conducting an audit of the Subrecipient's performance under this Agreement, the Grantee must use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.50,

“GAGAS, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.” c. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of and strict compliance with this Agreement, the Subrecipient will be held liable for reimbursement to the Grantee of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Grantee has notified the Subrecipient of such non-compliance. d. The Subrecipient must have all audits completed by an independent auditor.

Public Inspection of Audit Reports. Units of local government will make audit reports available for public inspection within thirty (30) days after the completion of the audit. This includes submission of report package to the West Virginia Development Office.

#### Repayment

The Subrecipient shall refund to the State or Federal government any expenditures determined to be made for an ineligible purpose for which Federal funds were received.

### 12. **Competitive Procurement Procedures**

All procurement transactions, including professional services, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with procedures identified in the CDBG Policies and Procedures Manual, 2 CFR 200.318- 2 CFR 200.326., and with applicable local or State law.

With respect to the purchase by Subrecipient of any equipment, property, or services to be used on the Project from any contractors in which such purchase will be paid for or reimbursed out of Project funds, the following provisions shall apply:

- A) If the Subrecipient uses Project funds to purchase any equipment from contractors not to exceed \$5,000, the Subrecipient shall comply with current procurement policies concerning the purchase of equipment and shall maintain inventory records of all project equipment as may be procured with funds provided herein.
- B) Procurement Standards: If the Subrecipient procures any project equipment, property, or services from any contractors with program funds, unless specified otherwise within this Agreement, the Subrecipient shall undertake such procurement in accordance with the requirements of 2 CFR Part 200, Subpart D, sections 200.317-200.326.
- C) Policies and Procedures: Subrecipient shall incorporate the provisions of 2 CFR 200.318- 200.326 into its Procurement Policies, Procedures and Practices. Subrecipient shall fully comply with Appendix II of 2 CFR 200 and incorporate such federal contracting provisions in all contracts as required thereunder.
- D) The Grantee shall procure architect/engineer services in accordance with Chapter 5G of the West Virginia State Code and be in compliance with 2 CFR 200.
- E) The Grantee shall procure construction contracts in accordance with Chapter 5-22-1 of the West Virginia State Code and be in compliance with federal regulations 2 CFR 200.
- F) The Grantee shall solicit sealed bids for all construction-related contracts or supplies related to their project which has an estimated value of over \$25,000. All transactions under \$25,000 whether construction-related contracts, supplies, or professional services should be procured in a manner that provides maximum open and free competition and files are to be maintained to document such activities. Any attempts by the Grantee to segregate the project into sections in order to circumvent competitive procurement may be cause for termination of this Agreement under Item 22, Termination of Agreement for Cause. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions of Article Three, Chapter Fifty-Nine of the Code of West Virginia. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area within a period of fourteen consecutive days with at least an interval of six full days within such period between the date of the first publication and the date of the second publication preceding the final date of submitting bids. The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by

mail to prospective suppliers or contractors, sending notification to the State's Small Business Development Center Division, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the State or its designated representative, bid documents and other evidence of compliance with these procedures. The resolution of bid and contract disputes is the responsibility of the Grantee.

G) Grantees have the ability to procure professional and construction services, therefore, the design-build method (5-22A-1) is not allowable. Public agencies can only utilize design-build on building project. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

13. **Bonding and Insurance.** As otherwise required by law, a grant that requires the contracting or subcontracting for construction or facility improvements under \$100,000 shall provide for the Grantee to follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds provided that the Grantee's and State's interest is adequately protected and that such contracts can be executed in a timely manner; otherwise, bonding requirements shall be the same as for contracts exceeding \$100,000. Consistent with 2 CFR 200.325, if a contract or subcontract exceeds \$100,000, the minimum bonding and insurance requirements shall be as follows:

i. A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required within the time specified.

ii. A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with a contract to secure fulfillment of the contractor's obligations under such contract.

iii. A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor or materials in the execution of the work provided for in the Contract.

14. **Facilities Operation.** The Grantee shall operate and maintain all facilities to which the general public has right of access constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable Federal, State and local statute, law, ordinance, or regulation as to actual construction procedures. The Grantee shall be responsible for maintenance and operation of such facilities upon completion. The Grantee may not change the use or planned use of any such facility (including the beneficiaries of such use) from that purpose initially approved unless the Grantee provides affected citizens with reasonable notice thereof and opportunity to comment on any proposed change all in accordance with 24 CFR Part 570.489(j).

15. **Amendments and Termination**

The State and the Subrecipient will comply with the provisions of the Department of Treasury Circular 1075 and the CDBG CARES Policies and Procedures Manual in the process of requesting and administering funds from the State's Letter of Credit

Termination of Agreement for Cause; Options to State in an Event of Default: Pursuant to 2 CFR 200.338, if the Subrecipient for any reason materially fails to comply in a timely manner with any terms of this Agreement, the State shall thereupon have the right to terminate this Agreement. All termination notices given hereunder shall set forth in reasonable detail the reasons for such termination, the date on which such termination shall become effective, and, in the case of partial termination, the provisions of this Agreement that are to be terminated. If, in the case of a partial termination, the State in its sole discretion determines that the remaining portion of the award of the Project funds contemplated herein will not accomplish the purpose for which such award was made, the State may terminate this Agreement in its entirety.

The Grantee shall promptly notify the Subrecipient, in writing, of its determination and the reasons for the termination together with the date on which the termination shall take effect and any other notifications required under 2 CFR part 200, subpart D. Upon termination, the Grantee retains the right to recover any improper expenditures from the Subrecipient and the Subrecipient shall return to the Grantee any improper expenditures no later than thirty (30) days after the date of the request. The Grantee may, at its sole discretion, allow Subrecipient to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled provided that said costs meet the provisions of this Agreement, 2 CFR Part 200, Subpart E, Cost Principles, and any other applicable state or Federal statutes, regulations, or requirements.

Upon the occurrence and during the continuance of an event of default as contemplated in this section, the State may take any or all the following actions, without prejudice to the rights of the State to enforce claims against the Subrecipient:

Termination or Suspension: Pursuant to the applicable general requirements of law (including Section 570.502 of the CDBG Rules and the CARES Act FR-6218-N-01), prior to the end of the Term and subject to the applicable notice and cure periods, this Agreement, in whole or in part, upon 30 days' notice may be terminated, or temporarily suspended, whenever it determines that the Subrecipient has failed to comply with any term, condition, requirement, or provision of this Agreement. Failure to comply with any terms of this Agreement, include (but are not limited to) the following:

- i. If any warranty or representation made by the Subrecipient in this Agreement or any previous agreement with the State is or becomes false or misleading in any respect, or if the Subrecipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the State and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;
- ii. If material adverse changes occur in the financial condition of the Subrecipient at any time during the period of agreement, and the Subrecipient fails to cure this adverse change within thirty (30) days from the date written notice is sent by the Grantee.
- iii. If any reports required by this Agreement have not been submitted to the State or have been submitted with incorrect, incomplete, or insufficient information;
- iv. If the Subrecipient has failed to perform and complete on time any of its obligations under this Agreement;
- v. Ineffective or improper use of funds provided under this Agreement;
- vi. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time.

Termination of Disbursements: The State may declare the State's obligations to make disbursements hereunder immediately terminated and, at all times thereafter, any disbursement made by the State shall be in the State's sole and absolute discretion. The Subrecipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

Termination for cause: The Grantee may terminate this Agreement, in whole or in part, at any time before the date of completion, whenever it is determined that the Subrecipient has failed to comply with any term of this Agreement.

Termination for convenience: The Parties may terminate this Agreement in whole, or in part, if the Parties determine that continuation of the Agreement obligations would not produce beneficial results commensurate with the further expenditure of funds. If so decided, the Subrecipient may not incur new obligations after the effective termination date and shall cancel as many outstanding obligations as possible.

The Grantee may apply 2 CFR 200.338 "Remedies for noncompliance" in place of suspension or termination until failure is resolved.

The Grantee may apply 2 CFR 200.339 "Termination" and should observe 2 CFR 200.342 "Effects of Suspension and Termination".

When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§200.343 Closeout and 200.344 Post-closeout adjustments and continuing responsibilities.

**16. Reporting.**

The Subrecipient must provide the Grantee with quarterly reports and a close-out report. These reports must include the status and progress of the expenditure of funds under this Agreement, in addition to any other information requested by the Grantee.

- i. Quarterly reports are due to the Grantee no later than 15 days after the end of each quarter of the program year and must be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30, and December 31. The first quarterly report due pursuant to this agreement is due for the quarter ending June 30, 2020. c.
- ii. The close-out report is due thirty (30) days after termination of this Agreement or 30 days after completion of the activities contained in this Agreement, whichever occurs first. If all required reports and copies are not sent to the Grantee or are not completed in a manner acceptable to the Grantee, the Grantee may withhold further payments until they are completed or may take other action as stated in Paragraph (15) REMEDIES. "Acceptable to the Grantee" means that the work product was completed in accordance with the Budget and Scope of Work. The Subrecipient must provide additional program updates or information that may be required by the Grantee.

**OTHER REQUIREMENTS TO COMPLY WITH FEDERAL STATUTES, REGULATIONS AND THE TERMS AND CONDITIONS OF THE FEDERAL AWARD**

The CDBG-CARES funds available to the Subrecipient through this Agreement constitute a subaward of the Grantee's Federal award under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. This Agreement includes terms and conditions of the Grantee's Federal award that are imposed on the Subrecipient, and the Subrecipient agrees to carry out its obligations in compliance with all of the obligations described in this Agreement.

**General Compliance**

The Subrecipient shall comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 CFR part 570, as modified by the Federal Register notices that govern the use of CDBG-CARES funds available under this Agreement. This includes without limitation applicable Federal Registers; 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200); 24 CFR Part 570 Community Development Block Grant dollars; applicable waivers; Fair Housing Act, 24 CFR Part 35, 24 CFR Part 58, 24 CFR Part 135; National Historic Preservation Act, 36 CFR Part 800, Executive Order 11593; and any other applicable state laws or regulations, including the requirements related to nondiscrimination, labor standards and the environment; and Action Plan amendments and HUD's guidance on funds. Notwithstanding the foregoing, (1) the Subrecipient does not assume the any of Grantee's responsibilities for environmental review, decision-making, and action, described in 24 CFR part 58 and (2) the Subrecipient does not assume any of the Grantee's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient shall also comply with all other applicable Federal, State and local laws, regulations, and policies that govern the use of the CDBG-CARES funds in complying with its obligations under this Agreement, regardless of whether CDBG-CARES funds are made available to the Subrecipient on an advance or reimbursement basis.

**Duplication of Benefits**

The Subrecipient shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5155) and described in Appropriations Act. Specifically, Section 312 prohibits any person, business concern, or other entity from receiving "any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source." 42 USC 5155 (a). A duplication occurs when a beneficiary receives assistance from multiple sources of cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of need.

The Subrecipient must comply with HUD's requirements for duplication of benefits, imposed by Federal Register notice on the Grantee, which is exhibited in the completed Duplication of Benefits form of the CDBG-CV Application.

### **Tie Back to COVID-19**

The need and/or direct impact from the pandemic must be clearly and concisely described and documented. CDBG-CV funding is only available for eligible activities that address the prevention of, preparation for, or response to the Coronavirus in the CDBG-CV Application.

### **Drug-Free Workplace**

Drug-free workplace. Subrecipients must comply with drug-free workplace requirements in Subpart B of part 2429, which adopts the governmentwide implementation (2 CFR part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

### **Insurance & Bonding**

The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR §200.325 and §200.310".

### **Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards**

Subrecipients shall comply with 24 CFR 570.502 (a) and (c), 24 CFR 570.489 (d), 24 CFR 570(j) and any applicable Federal Register Notices.

The Subrecipient shall comply with the applicable provisions in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. These provisions include:

### **Financial & Program Management**

The Subrecipient shall expend and account for all CDBG-CARES funds received under this Agreement in accordance with the requirements in 2 CFR part 200, including 2 CFR part 200, subpart D, which covers Standards for Financial and Program Management.

Performance under this Agreement is subject to 2 C.F.R Part 200, entitled "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards this Agreement includes: i. A provision specifying a scope of work that clearly establishes the tasks that the Recipient is required to perform. ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the State before payment or reimbursement. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable. iii. A provision specifying the financial consequences that apply if the Subrecipient fails to perform the minimum level of service required by the agreement. iv. A provision specifying that the Subrecipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period. v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the State. vi. A provision specifying that any funds paid in excess of the amount to which the Recipient is entitled under the terms and conditions of the agreement must be refunded to the State.

Ultimately, the requirements and procedures applicable to Subrecipients for expending and accounting for the Grantee's CDBG-CARES funds will depend on the requirements imposed by Federal statute, regulations, and the terms and conditions of the Grantee's Federal awards.

### **Cost Principles**

Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with 2 CFR part 200, subpart E. All items of cost listed in 2 CFR part 200, subpart E, that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in 2 CFR part 200, subpart E and are otherwise eligible under this Agreement, except for the following:



- (i) Depreciation methods for fixed assets shall not be changed without the approval of the Federal cognizant agency.
- (ii) Fines penalties, damages, and other settlements are unallowable costs to the CDBG program.
- (iii) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR 200.445);
- (iv) Organization costs (2 CFR 200.455); and
- (v) Pre-Award Costs, as limited by this Agreement.

## **Documentation and Record Keeping**

### Records to be Maintained.

The Subrecipient shall establish and maintain records sufficient to enable the Grantee to (1) determine whether the Subrecipient has complied with this Agreement, applicable Federal statutes and regulations, and the terms and conditions of the Grantee's Federal award and (2) satisfy recordkeeping requirements applicable to the Grantee. These records include the records described in Section III. of this Agreement, Scope of Service.

*Notwithstanding the term of this Agreement, all records the Subrecipient is required to maintain, including supporting documentation, shall be retained for the greater of three years from closeout of the Federal award to the Grantee, or the period required by other applicable laws and regulations as described in 24 CFR § 570.487 and 24 CFR § 570.488.*

At a minimum, the Subrecipient shall maintain records required by 24 CFR 570.506, as if the requirements in 24 CFR 570.506 were directly imposed upon the Subrecipient and additionally include any additional recordkeeping requirements imposed by Federal Register notice governing the use of the funds.

Subrecipient shall establish and maintain sufficient records to enable the Secretary of Housing and Urban Development to determine whether the recipient has met the requirements of this part. At a minimum, the following records are needed:

- (a) Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location (if the activity has a geographical locus), the amount of CDBG funds budgeted, obligated and expended for the activity, and the provision in subpart C under which it is eligible.
- (b) Records demonstrating that each activity undertaken meets one of the criteria set forth in §570.208.

### Access to Records

As required by 2 CFR 200.331(a)(5), the Subrecipient shall permit the Grantee and auditors to have access to the Subrecipient's records and financial statements as necessary for the Grantee to meet its audit requirements under the Federal award. The Subrecipient shall, at any time during normal business hours and as often as the State or its designated representatives deem necessary, make available for examination all records, books, accounts, reports, files, and other papers, things or property of the Subrecipient with respect to the matters covered by this Contract. All negotiated contracts awarded by the Subrecipient shall include a provision that the Comptroller General or any duly authorized representative of the State or HUD shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

### Record Retention and Transmission of Records to the Grantee

Prior to close out of this Agreement, the Subrecipient must transmit to the Grantee records sufficient for the Grantee to demonstrate that all costs under this Agreement met the requirements of the Federal award. Subrecipient shall retain financial records, supporting documents, statistical records, and all other Subrecipient records pertinent to this Agreement and Subrecipient's subaward for the longer of 3 years after the expiration or termination of this Agreement, or 3 years after the submission of the Grantee's annual performance and evaluation report, as prescribed in § 91.520 of this title or in the applicable Federal Register notices governing the use of the funds, in which the specific activity is reported on for the final time.

The preceding requirement is, however, subject to the following exceptions:

- (i) Records for activities subject to the reversion of assets provisions at 24 CFR § 570.503(b)(7) or change of use provisions at 24 CFR § 570.505 must be maintained for as long as those provisions continue to apply to the activity, otherwise, records for real property and equipment acquired under this Agreement must be retained for 3 years after final disposition;
- (ii) Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained until such receivables or liabilities have been satisfied;
- (iii) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken;
- (iv) When the Subrecipient is notified in writing by HUD, the cognizant agency for audit as defined in 2 CFR 200.18, the oversight agency for audit as defined in 2 CFR 200.73, the cognizant agency for indirect costs as defined in 2 CFR 200.19, or the Grantee, the Subrecipient shall extend the retention period consistent with the notification;
- (v) When records are transferred to or maintained by HUD or the Grantee, the 3-year retention requirement is not applicable to the Subrecipient;
- (vi) The retention period for the records pertaining to the earning of the program income (as defined in this Agreement) starts from the end of the Grantee's fiscal year in which the program income is earned; and
- (vii) For indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates), and their supporting records:
  - a. If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the Grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.
  - b. If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the Grantee) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Notwithstanding the terms of this Agreement, all records the Subrecipient is required to maintain, including supporting documentation, shall be retained for the greater of three years from closeout of the Federal award to the Grantee, or the period required by other applicable laws and regulations as described in 24 CFR § 570.487 and 24 CFR § 570.488.

#### Client Data and Other Sensitive Information

The Subrecipient is required to maintain data demonstrating client eligibility for activities provided under this Agreement. Such data may include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of activities provided. The Subrecipient must comply with 2 CFR §200.303 and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 CFR 200.82, and other information HUD or the Grantee designates as sensitive or the Subrecipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

#### **Federal Funding Accountability and Transparency Act (FFATA)**

The Subrecipient shall comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The Subrecipient and Sub-awardee must have an active registration in SAM in accordance with 2 CFR part 25, appendix A, and must have a Data Universal Numbering System (DUNS) number. The Subrecipient must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

#### **Nondiscrimination**

P.L. 88-352: Refers to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.) which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Implementing regulations are found in 24 CFR Part I.

P.L. 90-284: Refers to Title VII of the Civil Rights Act of 1968 (42 U.S.C. 3601-20 et. seq.) popularly known as the Fair Housing Act which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap, or familial status. The Subrecipient further certifies that it will take actions necessary to affirmatively further fair housing. Executive Order 11063, as amended by Executive Order 12259, requires that taking of all actions necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use of occupancy thereof. Implementing regulations are contained in 24 CFR 107.

Section 109 of P.L. 93-383 requires that no person in the United States shall, on the grounds of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with community development funds.

Section 109 of the Act further provides any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et. seq.) or with respect to an otherwise qualified person as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply.

#### **24 CFR part 6**

The Subrecipient will comply with 24 CFR part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance.

The Subrecipient will adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504). Section 109 of the HCDA makes these requirements applicable to programs or activities funded in whole or in part with CDBG-CARES funds. Thus, the Subrecipient shall comply with regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs.

#### **Architectural Barriers Act and the Americans with Disabilities Act**

The Subrecipient shall ensure that its activities are consistent with requirements of Architectural Barriers Act and the Americans with Disabilities Act.

The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

## State and Local Nondiscrimination Provisions

### Title VI of the Civil Rights Act of 1964 (24 CFR part 1)

#### (i) General Compliance:

The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352), as amended [if the Grantee is subject to 24 CFR part 570, subpart K, insert: "and 24 CFR 570.601 and 570.602". No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this Agreement. The specific nondiscrimination provisions at 24 CFR 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Civil Rights Act of 1964 or 24 CFR part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 24 CFR part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 24 CFR part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

#### (ii) Assurances and Real Property Covenants:

As a condition to the approval of this Agreement and the extension of any Federal financial assistance, the Subrecipient assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this part 1.

If the Federal financial assistance under this Agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the Subrecipient's assurance herein shall obligate the Subrecipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the Subrecipient for the period during which Federal financial assistance is extended pursuant to the contract or application.

This assurance gives the Grantee and the United States a right to seek judicial enforcement of the assurance and the requirements on real property.

In the case of real property, structures or improvements thereon, or interests therein, acquired with Federal financial assistance under this Agreement or acquired with CDBG-CARES funds and provided to the Subrecipient under this Agreement, the instrument effecting any disposition by the Subrecipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

If the Subrecipient receives real property interests or funds or for the acquisition of real property interests under this Agreement, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part shall extend to any facility located wholly or in part in such space.

## Affirmative Action Approved Plan

The Subrecipient agrees that it shall carry out pursuant to the Grantee's specifications an Affirmative Action Program in compliance with the President's Executive Order 11246 of September 24, 1966, as amended, and implementing regulations at 42 CFR chapter 60. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the release of funds under this Agreement.

### **Women- and Minority-Owned Businesses (W/MBE)**

The Subrecipient shall take the affirmative steps listed in 2 CFR 200.321(b)(1) through (5) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible when the Subrecipient procures property or services under this Agreement.

### **Notifications**

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining Agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

### **Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement**

The Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

**INSERT SUBRECIPIENT NAME HERE** provides equal opportunity employment and prohibits discrimination and harassment of any type without regard to race, color, religion, age, sex, national origin, disability status, sexual orientation, etc.

### **Labor and Employment**

#### **1. Labor Standards**

The Subrecipient shall comply with the in labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended and ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Agreement shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 3141, et seq.), and 29 CFR part 1, 3, 5, 6, and 7, provided, that this requirement shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.

The Subrecipient agrees to comply with the Copeland Anti- Kick Back Act (18 U.S.C. 874) and its implementing regulations of the U.S. Department of Labor at 29 CFR part 3 and part 5. The Subrecipient shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to the Subrecipient for review upon request.

#### **2. Exemption of Volunteers to Certain Labor Standards**

When the Subrecipient intends to utilize volunteer labor to conduct projects that could be subject to Davis-Bacon they will coordinate through the Grantee with HUD to verify that the project is exempt from the Davis-Bacon and HUD determined wage rates requirements based on 24 CFR Part 70 § 70.1, § 70.2, § 70.3, § 70.4, § 70.5 as authorized by Sec. 955, Cranston-

Gonzalez National Affordable Housing Act (42 U.S.C. 1437(j), 5310 and 12 U.S.C. 1701q(c)(3); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

### **Section 3 of the Housing and Urban Development Act of 1968**

#### 1. Compliance

The Subrecipient shall comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u, and implementing its implementing regulations at 24 CFR part 135.

The Subrecipient shall include the “Section 3 clause” at 24 CFR 135.38 in every “Section 3 covered contract” (as defined in 24 CFR 135.5).

### **Conduct**

#### 1. Hatch Act

The Subrecipient shall comply with the Hatch Act, 5 USC 1501 – 1508, and shall ensure that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

#### 2. Conflict of Interest

In the procurement of supplies, equipment, construction, and services pursuant to this Agreement, the Subrecipient shall comply with the conflict of interest in the Grantee’s procurement policies and procedures. In all cases not governed by the conflict of interest provisions in the Grantee’s procurement policies and procedures, the Subrecipient shall comply with the conflict of interest provisions in 24 CFR 570.489(h).

No officer, agent, consultant, employee, elected or appointed official of the State, the Subrecipient, or any public agency or subrecipient receiving Community Development Block Grant funds who exercises or has exercised any function or responsibilities with respect to activities assisted with Community Development Block Grant funds or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from such activity or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter. The conflict of interest provision of 2 CFR 200 also applies as appropriate.

#### 3. Lobbying Certification

The Subrecipient hereby certifies that:

(i) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement;

(ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant,

loan, or cooperative Agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(iii) It shall require that the language of paragraph (a) through (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Agreements) and that all Subrecipients shall certify and disclose accordingly; and

(iv) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is required by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### 4. Religious Activities

The Subrecipient agrees that funds provided under this Agreement shall not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

### **Environmental Conditions**

The Subrecipient agrees to assume all responsibilities for completion of the Environmental Review Record, decision making, and action as specified and required in regulations issued by the Secretary of Housing and Urban Development pursuant to Section 104(g) of the Act and published in 24 CFR Part 58.

In addition to assuming responsibility for National Environmental Policy Act (P.L. 91-190), the Subrecipient must take into account, where applicable, the criteria, standards, policies, and regulations of the following: (a) Historic Preservation Act of 1966; (b) Executive Order 11593; (c) The Reservoir Salvage Act of 1960; (d) Flood Disaster Protection Act of 1973; (e) Executive Order 11988, Floodplain Management; (f) Executive Order 11990, Protection of Wetlands, (g) Coastal Zone Management Act of 1972; (h) the Safe Drinking Water Act of 1974; (i) the Endangered Species Act of 1973; (j) the Wild and Scenic Rivers Act of 1968; (k) the Clean Air Act; (l) Environmental Criteria and Standards (44 FR 40860-40866, July 12, 1979); (m) 24 CFR Part 51, Subpart B, Noise Abatement and Control; (n) Subpart C - Siting of HUD Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature; (o) and Subpart D - Siting of HUD Projects in Runway Clear Zones and Accident Potential Zones at Military Airfields. Before committing any funds, the Subrecipient must certify to the State that it has complied with all requirements and obligations that are set forth by 24 CFR Part 58. Further, the Subrecipient must submit all requested Evidentiary Material to the State for approval prior to the obligation of any funds.

This agreement does not constitute an unconditional commitment of funds or site approval. The commitment of funds to the project may occur only upon satisfactory completion of the project's environmental review in accordance with 24 CFR Part 58 and related environmental authorities. Provision of funding is further conditioned on the State's determination to proceed with, modify, or cancel the project based on the results of the environmental review.

The Subrecipient agrees to abide by the special conditions, mitigation measures or requirements identified in the State's environmental approval and shall ensure that project contracts and other relevant documents will include such special conditions, mitigation measures or requirements. Until the State has approved the environmental review for the project, neither the Subrecipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance to the project or activity. The Subrecipient agrees to provide the State with all available environmental information about the project and any information which the State may request in connection with the conduct and preparation of the environmental review, including any reports of investigation or study which in the State's opinion is needed to fulfill its obligations under HUD environmental requirements. The Subrecipient agrees to advise the State of any proposed change in the scope of the project or any change in environmental

conditions, including substantial changes in the nature, magnitude, extent or location of the project; the addition of new activities not anticipated in the original scope of the project; the selection of an alternative not in the original application or environmental review; or new circumstances or environmental conditions which may affect the project or have bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity

1. Prohibition on Choice Limiting Activities Prior to Environmental Review

The Subrecipient must comply with the limitations in 24 CFR 58.22 even though the Subrecipient is not delegated the requirement under Section 104(g) of the HCD Act for environmental review, decision-making, and action (see 24 CFR part 58) and is not delegated the Subrecipient's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. 24 CFR 58.22 imposes limitations on activities pending clearance, and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity.

2. Air and Water

The Subrecipient shall comply with the following requirements insofar as they apply to the performance of this Agreement:

Air quality. (1) The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)); and (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93).

Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, including the requirements specified in Section 114 and Section 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder;

3. Flood Disaster Protection

The Subrecipient shall comply with the mandatory flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, 42 USC 4012a. Additionally, the Subrecipient shall comply with Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which includes a prohibition on the provision of flood disaster assistance, including loan assistance, to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. Section 582 also includes a responsibility to notify property owners of their responsibility to notify transferees about mandatory flood purchase requirements. More information about these requirements is available in the Federal Register notices governing the CDBG-CARES award.

4. Lead-Based Paint

The Subrecipient shall follow the Grantee's procedures with respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.

5. Historic Preservation

The Subrecipient shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended, codified in title 54 of the United States Code, and the procedures set forth in 36 CFR part 800 insofar as they apply to the performance of this Agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.



**Final Closeout**

Final Closeout shall be completed when the State: (a) is in receipt of a Final Performance Report; (b) has determined that all monitoring findings have been formally addressed and are resolved; and (c) has received a completed, final project audit and has determined that any findings have been resolved.

Resolution of Disputes: Resolution of disputes between the State and the Subrecipient concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the State's Administrative Offices with final decision on questions of policy or fact being determined by the Director of the Community Development Division of the West Virginia Development Office or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision on a question of law, or to limit in any manner any remedies or recourses available under applicable laws. Citizens' complaints or disputes regarding Subrecipient performance or actions relative to the approved project are the responsibility of the Subrecipient.

All attachments to this Agreement are incorporated as if set out fully. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments will control, but only to the extent of the conflict or inconsistency. Notice. The parties hereto agree that notice shall be served when mailed certified U.S. Mail to the following addresses:

West Virginia Development Office  
Community Advancement and Development Division  
Capitol Complex  
Building 3, Suite 700  
Charleston, West Virginia 25305-0311

INSERT City or County

Address

City or County, West Virginia zip code

[WITNESSETH] that the parties hereto have entered their signatures hereafter with each representing to the other that the execution of this Agreement is done with full authority and that attached hereto and made a part hereof as Attachment G, is a certified copy of the resolution, motion, or similar action of the governing body of the Subrecipient directing and authorizing its official representative to act in connection with this Agreement.

STATE OF WEST VIRGINIA  
WEST VIRGINIA DEVELOPMENT OFFICE

By: Jennifer Ferrell, WVCAD Executive Director

DATE

City of County

By: Mayor or County Commissioner

DATE

FEDERAL EMPLOYER IDENTIFICATION NUMBER

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