

CONSULTING AGREEMENT

This Consulting Agreement, effective as of December 30, 2021, is between the Mid-Ohio Valley Regional Council, a regional planning agency with an address of 709 Market Street, Parkersburg, WV 26201, hereinafter referred to as "MOVRC", and JH Consulting, LLC, a limited liability company with an address of 29 East Main Street, Suite 1, Buckhannon, WV 26201, hereinafter referred to as "Contractor". JH Consulting, LLC is an Equal Opportunity Employer (EOE).

WHEREAS Contractor provides services related to emergency preparedness, including but not limited to assessing vulnerability, operations planning, and exercising;

WHEREAS MOVRC desires to obtain from Contractor certain emergency preparedness services, and Contractor desires to provide such services to MOVRC, all on the terms and conditions set forth in this Agreement.

The parties agree as follows:

1. **Services to Be Provided.** Subject to the availability of Contractor resources, Contractor will provide services as detailed in the Scope of Work, attached hereto as Exhibit B (proposal document dated October 22, 2021). It is expressly understood and agreed that for the purposes of this Agreement, the services are undertaken by Contractor in the capacity of an independent contractor. Contractor shall be entitled to give priority to its own business needs in determining the availability of its employees to provide the services.
2. **Term and Termination.** The Agreement shall begin as of the date first stated above and continue until September 30, 2022, unless either party serves written notice thirty (30) days in advance of its intent to cancel the Agreement.
3. **Compensation, Payment, and Expense Reimbursement.** Contractor fee for services herein will be a lump sum of \$40,000.00. Contractor will provide MOVRC with three invoices for services: (a) 20% of the total contract amount upon completion of the kickoff meeting (\$8,000.00), (b) 40% of the total contract amount upon completion of planning and public meetings (\$16,000.00), and (c) the remaining 40% upon receipt of the "Approved Pending Adoption" designation from FEMA Region III (\$16,000.00). Council will pay invoices within 60 days of the date of the invoice. Payments not received in a timely manner will incur interest at the rate of 5% per annum.
4. **Data Ownership and Security.** MOVRC shall retain ownership of the data and all work produced by the Contractor and will be transferred upon completion of the contractual obligations and payment of all outstanding invoices.
5. **Client Confidentiality.** The Contractor and all support staff agree to comply with all federal and state laws concerning the confidentiality of information concerning individuals rendering services by the MOVRC. Such information shall only be used for the purpose of carrying out this Agreement. Disclosure of information for any other purpose is prohibited except upon the written consent of the eligible individual or appropriate order of a court. Information is not considered confidential if it: (i) is generally available to the public at the time of the disclosure; (ii) is already known to Contractor at the time of the disclosure, (iii) has been disclosed to Contractor by a third party under no obligation of confidentiality, or (iv) has been established independently by Contractor.
6. **Contractor Work Product.** MOVRC agrees to keep Contractor's work product confidential and will not disseminate Contractor's work product to third parties or cause it to be modified without Contractor's consent.
7. **Liability and Indemnification.** Neither party shall be liable to the other for the death or injury to any employee of the other, or loss of or cause of damage to its property, unless

caused solely by its own negligence or willful action. Each party shall indemnify and hold harmless the other for any loss, damage or injury, including reasonable attorneys' fees and expenses, (a) caused by a breach of this Agreement by such party, or (b) suffered by any third party and arising out of such party's performance of this Agreement.

8. **Disclaimer; No Assurance of Success.** Except as otherwise provided herein, Contractor makes no warranties, representations, or assurances of success of any kind or nature, express or implied, relating to the services, including any warranties of merchantability and fitness for a particular purpose. Contractor specifically disclaims any and all warranties or representations concerning the services.
9. **Limitations of Liability.** Contractor shall not be responsible for any third party actions or inactions preventing Contractor from providing services. Furthermore, Contractor shall not be liable to MOVRC with respect to services or this Agreement under any contract, negligence, tort, strict liability, or other legal or equitable theory for any amounts representing loss of revenues, loss of profits, loss of business, cost of the procurement of substitute goods or services, loss of anticipated benefits and/or indirect or consequential, special, incidental, contingent, exemplary or punitive damages, even if Contractor was advised, had other reason to know, or in fact knew of the possibility of such damages.
10. **Non-Solicitation.** During the term of this Agreement and for a period of one (1) year after the termination of this Agreement, each party agrees not to seek to persuade any of the other party's employees, consultants, directors, or officers to discontinue their association with the other party or become involved directly or indirectly in any endeavor that might compete with the other party's business.
11. **Amendment of Agreement.** This Agreement is the entire Agreement between the parties and may not be amended at any time except by a written Agreement signed by both parties.
12. **No Third Party Beneficiaries.** This Agreement is not intended to create any third party beneficiary rights in any person not a party to this Agreement, regardless of whether any other person may be named herein.
13. **Assignment.** MOVRC may not assign or transfer, by operation of law or otherwise, any of its rights or obligations under this Agreement to any third party without the prior written consent of Contractor, except pursuant to an assignment of its interests to an entity within its control group.
14. **Force Majeure.** The date for performance of either party's obligations hereunder shall be postponed to the extent any event of force majeure delays the performance of the obligations of either party hereunder.
15. **Signatures.** Each person executing this Agreement represents and warrants that he or she has the authority to act for and bind the entity on whose behalf he or she purports to act.
16. **Notice.** Any notice, request, or approval or other document required or permitted to be given under this Agreement shall be in writing unless otherwise provided herein; and shall be deemed to have been sufficiently given if delivered in person, dispatched by U.S. mails, or sent by other electronic means where receipt can be verified, as follows.

If to Contractor, addressed to: Jeffery W. Harvey, Managing Member, JH Consulting, LLC, 29 East Main Street, Suite 1, Buckhannon, WV 26201

If to MOVRC, addressed to: Fred Rader, Community Development Director, Mid-Ohio Valley Regional Council, 709 Market Street, Parkersburg, WV 26101

Either party may change its address for receipt of notices by delivering a notice thereof pursuant to this Section 16.

17. **Severability.** Should any portion of this Agreement be found unenforceable to operation of statute or by administrative or judicial decision, the operation of the balance of this Agreement is not affected thereby, provided, however, the absence of the illegal provision does not render the performance of the remainder of the Agreement impossible.
18. **Applicable Law.** This Agreement is to be construed in accordance with the laws of the State of West Virginia.
19. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and supersedes all prior negotiations, understandings, and writings between the parties as to the matters covered herein.
20. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
21. **Binding Effect.** This Agreement shall be binding upon the legal representatives, heirs, successors, and assigns of the respective parties.
22. **Waiver.** Any waiver by any party of any act, failure to act, or breach on the part of the other party shall not constitute a waiver of such waiving party of any prior or subsequent act, failure to act, or breach by such other party.
23. **Survival.** The terms and provisions of Sections 3 through 10 shall survive the termination of this Agreement.

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

Contractor



Jeffery W. Harvey, Managing Member
JH Consulting, LLC

12-30-2021

Date

MOVRC



Carol Jackson, Executive Director
Mid-Ohio Valley Regional Council

1-10-2022

Date

EXHIBIT A: WEST VIRGINIA DEPARTMENT OF ECONOMIC DEVELOPMENT CDBG-MITIGATION TERMS AND CONDITIONS (CONTRACTS FOR ALL PROFESSIONAL SERVICES)

1. **Termination of Contract for Cause.** If through any cause the Contractor shall fail to fulfill in a timely and proper manner his/her obligations under this Agreement, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the Subrecipient shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor under this Agreement shall, at the option of the Subrecipient, become its property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Subrecipient for damages sustained by the Subrecipient by virtue of any breach of the Agreement by the Contractor and the Subrecipient may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Subrecipient from the Contractor is determined.
2. **Termination for Cause and Convenience of the Subrecipient.** The Subrecipient may terminate this Agreement at any time by giving at least thirty (30) day's notice in writing to the Contractor. If the Agreement is terminated by the Subrecipient as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date. If this Agreement is terminated due to the fault of the Contractor.
3. **Reports and Information.** The Contractor, at such times and in such forms as the Subrecipient may require, shall furnish the Subrecipient such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith and any other matters covered by this Agreement.
4. **Copyrights and Inventions.** No report, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.
5. **Records and Audits.** The Contractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Agreement and such other records as may be deemed necessary by the Subrecipient to assure proper accountability for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the Subrecipient, HUD, the Comptroller General of the United States, the State of West Virginia, or any authorized representative, and will be retained for three years after the expiration of this Agreement unless permission to destroy them is granted to the Subrecipient.
6. **Changes.** The Subrecipient may, from time to time, request changes in the scope of services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the Subrecipient, Contractor, and the State of West Virginia shall be incorporated in written amendments to this Agreement.
7. **Compliance with Local Laws.** The Contractor shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Contractor shall save the Subrecipient harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.

8. **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.

The Subrecipient shall ensure that its activities are consistent with requirements of both § 5-11A which discusses the additional protected classes under the West Virginia State Fair Housing Act and § 5-11 which discusses the additional protected classes under the West Virginia State Human Rights Act.

9. **Section 109 of the Housing and Community Development Act of 1974.** 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 funds made available under this title.
10. **Architectural Barriers Act of 1968 (24 CFR 570.606).** Every building or facility (other than a privately owned residential structure) designed, constructed or altered with funds made available under this part, shall comply with the requirements of the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A-117, 1-R 19 subject to the exceptions contained in 41 CFR Subpart 101-19.604, issued pursuant to the Architectural Barriers Act of 1968, 42 USC-4151. Procurement procedures and Contracts for the design, construction alteration (including rehabilitation) of public or private structures subject to this requirement should include provisions obligating the Contractor to comply with the Specifications.

11. **Interest of Member of a Subrecipient.** No member of the governing body of the Subrecipient and other officers, employees or agents of the Subrecipient and the Regional Planning and Development Council who exercises any functions or responsibilities in connection with the planning and carrying out of the program shall have any personal financial interest, direct or indirect, in the Agreement and the Contractor shall take appropriate steps to assure compliance.
12. **Interest of Other Local Public Officials.** No member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in connection with the planning and carrying out of the program shall have any personal financial interest, direct or indirect, in the Agreement, and the Contractor shall take appropriate steps to assure compliance.
13. **Interest of Consultant and Employees.** The Contractor covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed.
14. **Rights to Inventions and Materials.** Contracts or agreements, the principal purpose of which is to create, develop or improve products, processes or methods; or for exploration into fields which directly concern public health, safety or welfare; or experience outside of work funded by federal assistance, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract or agreement are subject to the regulations issued by the federal grantor agency. Although HUD presently has no regulations governing these matters, use of the following contract provisions reflects current Department policy:
 - a. If the Contractor or an employee of the contractor produces patentable items, patent rights, process or inventions as a result of this agreement, the Contractor shall promptly and fully report such production to the Regional Planning and Development Council which shall in turn report it to HUD. HUD shall determine whether protection on such invention or discovery shall be sought in the name of the United States Government and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy."
 - b. If the Contractor or an employee of the Contractor produces a book or other copyrightable material as a result of this agreement, the author or authors may copyright the book or material, but HUD reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the material for government purposes.
15. **Access to Records.** All negotiated contracts awarded by Subrecipient s shall include a provision to the effect that the Subrecipient. HUD the State of West Virginia, the Comptroller General of the United States, or any of their duly authorized representatives, 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 descriptions.