

**WV COMMUNITY DEVELOPMENT BLOCK GRANT - Mitigation  
SUBRECIPIENT AGREEMENT BETWEEN  
WEST VIRGINIA DEPARTMENT OF ECONOMIC DEVELOPMENT  
AND  
TOWN OF SPENCER**

**For**

**City of Spencer Miletree Dam #1 Modification Project**

**WEST VIRGINIA GENERAL INFRASTRUCTURE PROGRAM**

THIS AGREEMENT is entered this 1<sup>st</sup> day of **December 2021** by and between the West Virginia Department of Economic Development, (herein called the “Grantee”), and the **City of Spencer** (herein called the “Subrecipient”) which is authorized to do business in the State of West Virginia, for the provision of Community Development Block Grant Mitigation infrastructure, public facility hardening, and/or planning programs, as further defined in (Attachment A- Scope of Work).

**I. RECITALS**

**WHEREAS**, on January 13, 2021, HUD approved the State’s CDBG-MIT Action Plan, which funds activities that increase resilience to disaster and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters;

**WHEREAS**, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C 5121 et seq.), the State received a major disaster declaration as a result of severe storms, flooding, landslides, and mudslides in 2016;

**WHEREAS**, pursuant to the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, approved February 9, 2018, Congress appropriated \$6,875,000,000 for the Community Development Block Grant Mitigation (“CDBG-MIT”) program;

**WHEREAS**, pursuant to the August 30, 2019 Federal Register Notice for Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Subrecipients, the State has received an allocation of CDBG-MIT from the U.S. Department of Housing and Urban Development (“HUD”) in the amount of \$106,494,000;

**WHEREAS**, the CDBG-MIT 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

**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

**WHEREAS**, the Subrecipient is in conformance with the State Mitigation Plan and Local Mitigation Plan approved under 44 CFR Part 201.4;

**WHEREAS**, in connection with such, the State has entered into grant agreement with HUD (the initial grant agreement, hereinafter the "Grant Agreement");

**WHEREAS**, the State will comply with all grant allocation requirements and the Subrecipient will also be required to meet all requirements;

**WHEREAS**, the Subrecipient has identified its housing and community development needs, including those of low- and moderate-income persons and urgent need mitigation and the activities to be undertaken to meet such needs.

**WHEREAS**, for audit purposes, the Catalog of Federal Domestic Assistance number is 14.228, Community Development Block Grant State's Program, funded by the Department of Housing and Urban Development.

**WHEREAS**, the Subrecipient has requested assistance from the State and has offered assurances that maximum feasible priority has been given to activities which will benefit low- and moderate-income families, or to meet other community needs having a particular urgency because an existing condition poses a serious and immediate threat to the health and welfare of the community where other financial resources are not available to meet such needs.

**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 Terry Williams, 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

**NOW, THEREFORE**, the parties hereto do mutually agree as follows:

**II. GENERAL AWARD INFORMATION**

The Subaward 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 Department of  
Economic Development  
1900 Kanawha Boulevard, East  
Building 3, Room 700  
Charleston, WV 25305  
Phone: (304) 558-2234  
Fax: (304) 558-2246

**Subrecipient:**

City of Spencer  
116 Court Street  
Spencer, WV 25276  
Phone- 304-927-1640

**Federal Award Identification Number: B-18-DP-54-0001**

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

**Federal Award Date:** January 13, 2021

**Indirect Cost Rate for the Federal Award:**

Grant Funds may be used for payment of indirect costs pursuant to 2 CFR Part 200, Subpart E – Cost Principles. The Subrecipient may use its current, up to date, federally negotiated rate awarded by a cognizant agency and provide the awarding letter to the Grantee.

**Federal Award Project Descriptions: The purpose of this award is to provide the City of Spencer with funds to modify a high risk dam and mitigate against the risk of dam failure.**

The Subrecipient will be responsible for the completion of City of Spencer Miletree Dam #1

Modification Project for the City of Spencer as set forth in this agreement.

**Is this Award for Research and Development:** No

**Subrecipient's Unique Entity Identifier:** DUNS # 030244508

**Subaward Period of Performance:** Performance will begin upon execution of this agreement, which may include eligible rehabilitation activities for the General Infrastructure Program project for the City of Spencer , **December 1, 2021** and will end on the earlier of the date that the Subrecipient completes its obligations under this Agreement or **December 31, 2024**.

**Total Amount of the Federal Award Committed to the Subrecipient by the Grantee:** \$ 535,000

**Amount of Federal Funds Obligated by this Agreement:** \$535,000

**Total Amount of Federal Funds Obligated to the Subrecipient:** \$535,000

**Pre-Award Costs:** The subrecipient may be eligible for limited pre-award costs, to be approved by the Grantee prior to the execution of the subrecipient agreement, including preliminary engineering reports completed within 1 year of the application, can only be paid 24 months from the effective date of the subrecipient agreement, and no more than the greater of 25 percent of the amount of the grant made for that year or \$300,000. . Pre-award costs are subject to 24 CFR 570.200(h).

**Indirect Cost Rate Applicable to the Subaward to the Subrecipient:** The Subaward may include an federally negotiated indirect cost rate that can be utilized by the Subrecipient.

### III. SCOPE OF SERVICES

#### A. Eligible Use of Funds

As a condition of receiving this Subaward, the Subrecipient shall complete the activities in a manner satisfactory to the Grantee and consistent with the terms and conditions of this Agreement and applicable Federal statutes and regulations.

The Subrecipient, its contractors and/or its designated agent(s), in accordance with the CDBG 24 CFR 570, and the CDBG-MIT Policy and Procedures must be used in the administration of the project, 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 City of Spencer Miletree Dam #1 Modification Project that will.

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 Attachment A- **Scope of Work (SOW)** Attachment B- **Project Performance Schedule**, Attachment C, **Budget**, and the **final National Objective of Benefiting Low- and Moderate-Income Area (LMA)** in accordance with 24 CFR 570.483(b)(1)(i).

#### **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 as an Addendum. **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.**

## **Prohibited Activities**

The Subrecipient may only carry out the activities described in this Agreement. The Subrecipient is prohibited from charging to the Subaward the costs of CDBG-MIT ineligible activities, including those described at 24 CFR 570.207 and 84 FRN 45838, and from using Grant Funds provided herein or personnel employed in the administration of activities under this Agreement for political activities, inherently religious activities, or lobbying.

## **Program Delivery for CDBG-MIT Eligible Activities**

General Infrastructure Program Infrastructure Project for the City of Spencer

Grant Funds have been allocated for the following Scope of Work (Attachment A). To accomplish this activity, the Subrecipient will perform the following, not all inclusive:

- Review project specific environmental documentation to ensure compliance with 24 CFR Part 58 (see section IX. R. 1. Environmental Reviews);
- Develop and issue a Request for Bid for construction;
- Develop and issue a Request for Proposals for professional services;
- Review RFP sealed bids and issue construction contract based procurement standards at 2 CFR 200 and West Virginia Code 5G after HUD's Authority to Use Grant Funds is received by the Grantee;
- Review project draw requests for compliance and accuracy;
- Perform continuous oversight during all phases of the project;
- Responsible for all HUD requirements of the MIT Infrastructure grant;
- Responsible for submitting Grantee's project closeout reports to the Grantee once program requirements have been met
- If acquisition will adhere to URA
- Responsible for all applicable permitting

## **General Administration of Subaward**

Subrecipient will have administrative costs limited to indirect costs in the (Budget-Attachment C).

## **B. National Objectives**

The Subrecipient certifies that the activities carried out under this Agreement shall meet CDBG-MIT's national objective for **activities benefiting Low- and Moderate-Income Area (LMA) in accordance with 24 CFR 570.483(b)(1)(i).**

.

## **C. Levels of Accomplishment – Project Performance and Schedule**

Subrecipient expects to complete the activities required under this Agreement in accordance with the Scope of Work (Attachment A) following estimated timeframes and performance goals associated with each of the activities (Attachment B). Grantee acknowledges that the timeframes set forth below are estimates only and will be updated upon the implementation meeting. Quarterly progress reports regarding the project performance and schedule will be provided to the Grantee, due by the 11th of the month following the end of a quarter.

**NOTE:** All references in this Agreement pertaining to timelines and/or deadlines are in terms of calendar days unless otherwise noted.

#### **D. Personnel**

The Subrecipient shall supervise and direct the completion of all activities under this Agreement. The Subrecipient represents that it has personnel with the necessary qualifications and experience required to perform the services required under this agreement. Such personnel shall not be employees of or have any contractual relationship with the State. Subrecipient shall ensure that adequate and appropriate staffing are allocated to each activity identified in the Project Performance Schedule (Attachment B).

Management for delivering the program such as personnel must have timesheets.

Project reporting to include but not limited to, monthly project updates MBE/WBE Report, Section 3 Report, Fair Housing report, Program Income report and close out reports.

### **IV. PERFORMANCE MONITORING AND REPORTING**

#### **A. 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 *Attachment A- Scope of Work (SOW)*, *Attachment B- Project Performance Schedule*, *Attachment C, Budget*, and the final LMI benefit **National Objective**. These Performance Measures establish goals against which performance under this contract can be measured and evaluated during 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:

1. Require additional project monitoring to ensure compliance with Section 4.
2. Require Subrecipient to obtain technical assistance in order to ensure compliance with Section 4.
3. Terminate contract with Subrecipient.

#### **B. Monitoring**

The Grantee shall monitor the performance of the Subrecipient as necessary and in accordance with regulations of Subrecipient Monitoring and Management, 2 CFR 200.330 – 2 CFR 200.332, to ensure compliance with all the requirements of this Agreement and the

accomplishments toward performance standards established in Attachments A, B, C, and D and the National Objective of Benefiting Low- and Moderate-Income Area (LMA) in accordance with 24 CFR 570.483(b)(1)(i). Subrecipient shall provide Grantee all necessary reporting information as required by the WV Department of Economic Development and its designated internal auditor as required by the Federal Registers governing the CDBG-MIT grant. 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 the Grantee, the Grantee may impose additional conditions on the Subrecipient and its use of Grant 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 limited to, on-site visits by Grantee-staff, limited desk 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 inspections, reviews, and investigations, or audits deemed necessary by the Director of WVDED. 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.

### **C. Reporting**

The Subrecipient shall submit monthly project updates and regular quarterly progress, to be submitted by the 11th of the month following the end of each quarter (March 31, June 30, September 30, and December 31). Reports shall be submitted by the dates set by the Grantee. These reports must include the status of expenditures of funds toward the completion of timeliness performance standards. The WV Department of Economic Development requires a monthly meeting with all subrecipients to review progress, expenditures, and any other items as needed. Quarterly reports must also include written narratives on progress of the project to be shared with State and Federal agencies.

The close-out report is due thirty days after the completion of the project contained in this Agreement or **by December 31, 2024**, whichever occurs first. If all required reports are not received by 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 action as stated in Paragraph "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.

The period of performance for the Subrecipient, meaning the time during which the Subrecipient may incur new obligations to carry out activities under this Agreement, shall become effective upon the date of the Award Notice and end no later than December 31, 2024. This Agreement and its terms and conditions shall remain in effect during any period that the Subrecipient has control over Grant Funds provided through this Agreement.

The Subrecipient is required to immediately report to the Grantee any incident of criminal misapplication of funds associated with this contract.

**V. BUDGET**

The Subrecipient shall complete all activities in this Agreement in accordance with the Grantee approved Budget (Attachment C). Any amendments to the Budget must be approved in writing by both the Grantee and the Subrecipient. Budget reviews and expenditures will be reviewed monthly during program meetings with the Grantee.

**A. Budget**

The final budget allocation for the Project is attached hereto as the *CDBG-MIT Budget (Attachment C, Form Number 2)* 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.

In accordance with the CDBG-MIT 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-MIT Rules that must be complied with to allow payments of program funds to the Subrecipient.

Project Costs

Grantee will, upon receipt of acceptable documentation from the Subrecipient, reimburse actual Project Costs related to the General Infrastructure Program project for the City of Spencer Miletree Dam #1 Modification Project. Project costs are direct costs of undertaking a project. These include, but are not limited to, acquisition, demolition and site clearance, construction hard costs, and soft costs. Soft costs include, but are not limited to, appraisal, environmental (completed by the developer for review and approval), engineering, architect, interest, bonds, licenses, taxes, insurance, fees, title and survey, and permits.

Administrative Costs

Subrecipient will have administrative costs limited to indirect costs in the (Budget-Attachment C).

Non-interesting, separate Bank Account

A separate non-interest bearing bank account must be established for each CDBG-MIT grant. Only CDBG-MIT funds should be deposited into this account. Match and other funds should not be deposited into this account.

**VI. PERIOD OF PERFORMANCE AND TERM**

**A. Eligible Costs**



Subrecipient shall receive and use Grant Funds for Eligible Costs, as defined herein. "Eligible Costs" for Grant Funds under this Agreement include those applied to eligible activities, including HUD approved Action Plan and Action Plan Amendment(s), that are recovery-related, and are otherwise in furtherance of the intent of this Agreement and the goals and objectives as set forth herein, when approved by the Grantee in accordance with eligibility rules under CDBG-MIT guidelines and subject to limitations established by the Grantee.

**B. Program Income (if applicable)**

The Subrecipient agrees to return any Program Income received by the Subrecipient to the Grantee immediately upon receipt of any Program Income. No program income is anticipated at the time of this Agreement.

**VII. PAYMENT**

It is expressly agreed and understood that the total amount to be paid under this Agreement shall not exceed **\$535,000**.

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 C*. The Subrecipient must invoice the Grantee at least once a month to include all expenses.

The Grantee shall pay to the Subrecipient CDBG-MIT 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.

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.

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 and identified in CDBG-MIT policy and procedure manual to substantiate 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 applicable Community Development Block Grant-Mitigation 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-MIT funds remaining due to cost underruns.

Program Income: Subrecipient will not have any program income.

## **VIII. AMENDMENT AND TERMINATION**

### **A. Amendments**

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are approved by the Subrecipient's governing body, and are signed in writing by a duly authorized representative of the Grantee and the Subrecipient. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from any obligations under this Agreement not specifically amended. Amendments will generally be required when any of the following are anticipated: i) revision to the scope or objectives of the Program, including purpose, beneficiaries, additional; ii) need to extend the availability of Grant Funds; iii) revision that would result in the need for additional funding; and iv) expenditures on items for which applicable cost principles require prior approval. The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons with Subrecipient's consent. Any amendments will be incorporated only by written amendment signed by both Grantee and Subrecipient.

### **B. Termination/Suspension for Cause**

The Grantee may suspend or terminate this Agreement, in whole or in part, upon 30 days' prior written notice, 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:

1. 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;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement including the Timeliness Standards and Guidelines listed below;
  - a) Clearance of all Grant Award conditions within six (6) months of grant award;
  - b) Start of construction activities no later than nine (9) months after grant award; and

- c) Draw down of all funds within thirty-six (36) months of grant award.
- 3. Ineffective or improper use of Grant Funds as provided under this Agreement;  
or
- 4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

Notwithstanding anything hereinabove to the contrary, Grantee agrees that it shall not exercise its right to suspend or terminate this Agreement until it shall have given written notice to the Subrecipient of the alleged non-compliance and has given the Subrecipient a reasonable amount of time to correct and/or cure the alleged non-compliance. 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.

NOTE: The Subrecipient may be responsible for full reimbursement of the CDBG-MIT funds expended toward the project if completion is not met by the deadline specified.

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

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

### **C. Termination for Convenience**

Either Party may terminate this Agreement in whole, or in part, upon 30 days' prior written notice, to the other Party.

The written notice shall set forth the reasons for termination, the effective date, and in the case of partial termination, the portion to be terminated. Upon receipt of notice by

Subrecipient, the Subrecipient shall, unless the notice directs otherwise, immediately discontinue all activities hereunder, except as may otherwise be legally required pursuant to a binding commitment to perform. The Subrecipient shall cancel as many outstanding obligations as possible.

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 30 days after the date of termination. The Grantee will allow the 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.

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 2 CFR 200.343 Closeout and 200.344 Post-closeout adjustments and continuing responsibilities.

#### **D. Termination Due to Unavailable Funds**

The continuation of this Agreement is contingent upon the appropriation and release of sufficient Grant Funds to the Grantee to fulfill the requirements of this Agreement. Failure of the appropriate authorities to approve and provide an adequate budget to the Grantee for fulfillment of this Agreement shall constitute reason for termination of this Agreement by the Grantee. The Subrecipient shall be paid for all authorized services properly performed prior to termination, as well as be permitted to draw Grant Funds in an amount required to fund all commitments made by the Subrecipient to third parties for grants, loans, and/or procurement contracts prior to termination.

#### **E. Obligations Governing Use of CDBG-MIT Funds Survive Termination**

Termination of this Agreement under any of the foregoing provisions shall not alter or diminish the Subrecipient's obligations governing the use of Grant Funds under applicable statutes and regulations or under this Agreement and/or terminate any of the Subrecipient's obligations that survive the termination of this Agreement. Such obligations and/or duties may include but are not limited to the following: (1) duty to maintain and provide access to records; (2) duty to monitor and report on the use of any Grant Funds expended or awarded to the Subrecipient in compliance with all terms, conditions and regulations herein; (3) the duty to enforce compliance with terms of grants or loans issued by the Subrecipient under this Agreement; and (4) the duty to monitor, collect and remit Program Income, if applicable.

#### **F. Payment Upon Termination**

Except as in the event of termination or suspension for cause, the Subrecipient shall be entitled to payment on invoices submitted to the Grantee no later than 30 days from the date of termination contained within the notice, to the extent that requests represent eligible activities satisfactorily completed during the term of the Agreement and otherwise reimbursable under the terms of this Agreement. Construction project costs are only

reimbursed if the project has been completed to meet the CDBG-MIT federal deadlines and pass requisite inspection/permitting conditions/requirements.

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

The Grant 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.

**A. 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 Grant 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 per 84 FR 45838; FR-6109 N-02 CDBG Mitigation Notice; 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 any of the 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 Grant Funds in complying with its obligations under this Agreement, regardless of whether Grant Funds are made available to the Subrecipient on an advance or reimbursement basis.

**B. 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. If a duplication of benefits occurs, funds may be recaptured per the terms and conditions of the subrogation agreement (Attachment D). Guidance to assist in preventing a duplication of

benefits is provided in a notice published in the Federal Register at 76 FR 71060 (November 16, 2011). Further program guidelines are in the WV CDBG-Mitigation Duplication of Benefits Policies and Procedures.

### **C. Drug-Free Workplace**

Subrecipients shall comply with drug-free workplace in compliance with the 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).

### **D. Insurance & Bonding**

The Subrecipient shall ensure that all contractors and developers comply with the bonding and insurance requirements of 2 CFR §200.325 and §200.310.

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:

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.

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.

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.

### **E. 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).

The subrecipient must develop a plan for the long-term operation and maintenance of the infrastructure projects. The subrecipient must have a plan for the useful life of the infrastructure as documentation which must include a yearly funding proposed budget. Funding options might include State or local resource, borrowing authority, or retargeting of existing financial resources in accordance with 84 FRN 45838 V.A.13a.(i).

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

Subrecipients shall comply with 24 CFR 570.502 (a), 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. These provisions include:

##### 1. Financial & Program Management

The Subrecipient shall expend and account for all Grant 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.

- a) A provision specifying a scope of work that clearly establishes the tasks that the Recipient is required to perform.
- b) 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.
- c) A provision specifying the financial consequences that apply if the Subrecipient fails to perform the minimum level of service required by the agreement.
- d) A provision specifying that the Subrecipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.
- e) A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the State.
- f) 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.
- g) The Subrecipient will establish a separate non-interest bank 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.

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

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.

## 2. 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:

- a) Depreciation methods for fixed assets shall not be changed without the approval of the Federal cognizant agency.
- b) Fines, penalties, damages, and other settlements are unallowable costs to the CDBG-MIT program.
- c) 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);
- d) Organization costs (2 CFR 200.455); and

## **G. Documentation and Record Keeping**

### 1. 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.

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 Grant Funds.

Each Subrecipient shall establish and maintain sufficient records to enable the Grantee to determine whether the Subrecipient 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 Grant Funds, including its location (if the activity has a



geographical locus), the amount of Grant 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 24 CFR 570.208.

## 2. 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.

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

Prior to closeout 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. . 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.

The Subrecipient shall retain financial records, supporting documents, statistical records, and all other Subrecipient records pertinent to this Agreement and Subrecipient's Subaward for the 3 years after the State's closeout of the entire CDBG-Mitigation grant to HUD, as prescribed in the applicable mitigation federal register notices. The preceding requirement is however, subject to the following exceptions:

- a) 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;
- b) 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;
- c) 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;
- d) 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;
- e) When records are transferred to or maintained by HUD or the Grantee, the 3-year retention requirement is not applicable to the Subrecipient;
  - f) 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
  - g) 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:
    - (1) 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.
    - (2) 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 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.

#### 4. 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.

Subrecipient shall further comply with the requirements of the Records Management and Preservation of Essential Records Act, W. Va. Code §§ 5A-8-21, 22; the Consumer Credit and Protection Act, General Consumer Protection, W. Va. Code §§ 46A-6-101, *et seq.*; the Breach of Security of Consumer Information Act, W. Va. Code § 46A-2A-101-105; the West Virginia Governmental Ethics Act, W. Va. Code §§ 6B-1-1, *et*

*seq.*; and the West Virginia Freedom of Information Act, W. Va. Code §§ 29B-1-1, *et seq.*, as applicable.

## **H. Closeout**

The Subrecipient shall close out its use of the Grant Funds and its obligations under this Agreement by complying with the closeout procedures in 84 FRN 45838, 2 CFR 200.343 and 24 CFR 570.509. Activities during this close-out period may include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records.

Notwithstanding the terms of 2 CFR 200.343, upon the expiration of this Agreement, the Subrecipient shall transfer to the recipient any Grant Funds on hand at the time of expiration and any accounts receivable attributable to the use of Grant Funds, further, any real property under the Subrecipient's control that was acquired or improved in whole or in part with Grant Funds (including Grant Funds provided to the subrecipient in the form of a loan) shall be treated in accordance with 24 CFR 570.503(b)(7) and 24 CFR 570.509. Subrecipient shall be responsible for a final performance and expenditure report, provided by the Grantee, for completed activities which will be submitted to the Grantee.

Final closeout shall be completed when the State: (a) is receipt of the Final Performance Report; (b) has determined all WVCEDE and HUD monitoring findings have been formally addressed and resolved; (c) has received completed, final project audit and has determined that any findings have been resolved; (d) WVDEDCAD has received the subrecipient's single audits for the period of performance of this agreement.

## **I. Audits, Inspections, and Monitoring**

### **1. 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 2CFR 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 2C.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 2C.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. 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 a report package to the West Virginia Department of Economic Development.

### 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.

### 2. Single Audit

The Subrecipient must be audited as required by 2 CFR Part 200, Subpart F when it is expected that the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR 200.501 Audit requirements.

### 3. Inspections and Monitoring

The Subrecipient shall permit the Grantee, HUD, WVDED, WV State Auditor, and auditors to have access to the Subrecipient's records and financial statements as necessary for the Grantee to meet the requirements of 2 CFR Part 200. This access will also include the WVDED Internal Auditor which is required by the CDBG-MIT Federal Registers.

The Subrecipient must submit to monitoring of its activities by the Grantee as necessary to ensure that the Subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this Agreement.

This review must include: (1) reviewing financial and performance reports required by the Grantee; (2) following-up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from the Grantee detected through audits, on-site reviews, and other

means; and (3) issuing a management decision for audit findings pertaining to this Federal award provided to the Subrecipient from the Grantee as required by 2 CFR 200.521.

#### 4. Corrective Actions

The Grantee may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. The Grantee may require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from the pass-through entity detected through audits, on-site reviews, and other means. In response to audit deficiencies or other findings of noncompliance with this Agreement, Grantee may impose additional conditions on the use of the Grant Funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance.

The Subrecipient shall be subject to reviews and audits by the Grantee, including onsite reviews of the Subrecipient as may be necessary or appropriate to meet the requirements of 42 U.S.C. 5304(e)(2).

#### **J. Procurement and Contractor Oversight**

The Subrecipient shall comply with, and incorporate in its own procurement policies, procedures, and practices, the procurement standards in 2 CFR 200.318 - 200.326 and State Code 5G when procuring property and services under this Agreement.

The Subrecipient shall impose the Subrecipient's obligations under this Agreement on its contractors, specifically or by reference, so that such obligations will be binding upon each of its contractors.

The Subrecipient must comply with CDBG-MIT regulations regarding debarred or suspended entities at 24 CFR 570.609. Grant Funds may not be provided to excluded or disqualified persons.

The Subrecipient shall maintain oversight of all activities under this Agreement and shall ensure that for any procured contract or agreement, its contractors perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this Agreement.

All contracts and agreements (with subrecipients, recipients, and contractors) must clearly state the period of performance or date of completion, incorporate performance requirements and liquidated damages into each procured contract or agreement, or other similar contract oversight provisions. They also may include limitations on the types of procurements for administrative responsibilities or reporting requirements that all procurements be posted on the Grantee's website.

NOTE: All procured contracts must include HUD CDBG-MIT Cross Cutting Requirements.

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 I, 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: 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.

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.

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.

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.

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. 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.

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.

#### **K. Building Code Standards**

For all projects that include construction or rehabilitation, the Subrecipient shall meet or shall cause recipients of Grant Funds to meet all applicable State and local building code requirements. In addition, the Subrecipient will follow building standards as defined in 84 FRN 45838, which includes but is not limited to Green Building standards, elevation requirements, and broadband infrastructure.

#### **L. Property Standards**

The Subrecipient shall also comply with the Property Standards in 2 CFR 200.310 through 2 CFR 200.316, except to the extent they are inconsistent with 24 CFR 570.200(j) and 24 CFR 570.489(j), in which case Subrecipient shall comply with 24 CFR 570.200(j) and 24 CFR 570.489(j), and except to the extent that proceeds from the sale of equipment are program income and subject to the program income requirements under this agreement, pursuant to 24 CFR 570.489(e)(1)(ii).

#### **M. 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 Grantee 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 Grantee 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.

- 1. 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 SAMS CAGE number and provide the SAMS CAGE 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.
- 2. 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.

## **N. Relocation, Real Property Acquisition, and One-for-one Housing Replacement**

The Subrecipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 USC 4601 – 4655, 49 CFR Part 24, 24 CFR Part 42, and 24 CFR 570.606.

In addition to other URA requirements, these regulations (49 CFR 24.403(d)) implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5181, which provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [URA] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act".

## **O. 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.

### **1. 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 Grant 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.

## 2. Architectural Barriers Act and the Americans with Disabilities Act

The Subrecipient shall ensure that its activities are consistent with requirements of the 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 insure 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.

## 3. State and Local Nondiscrimination Provisions

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.

## 4. Title VI of the Civil Rights Act of 1964 (24 CFR Part 1)

a) 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. 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 Grant 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 2 CFR Part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

b) 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 Grant 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 1 shall extend to any facility located wholly or in part in such space.

#### 5. Affirmative Action

##### a) 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.

##### b) 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.

##### c) 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.

##### d) 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.

#### **P. Labor and Employment**

##### 1. Labor Standards

The Subrecipient shall comply with the 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 Grantee 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)).

## **Q. 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 its implementing regulations at 24 CFR Part 75.

The Subrecipient shall include the “Section 3 clause” at 24 CFR 75 in every “Section 3 covered contract” (as defined in 24 CFR 75).

## **R. Conduct**

### 1. Hatch Act

The Subrecipient shall comply with the Hatch Act, 5 USC 1501 – 1508, and shall ensure that no Grant 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 provisions 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 CDBG-MIT funds who exercises or has exercised any function or responsibilities with respect to activities assisted with C 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. These rules prohibit local officials and staff from being a party to any contract assisted with CDBG funds. Such a conflict would arise when:

- The employee, officer or agent,
- Any member of his immediate family,
- His or her partner, or
- An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Sub-grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or Local Law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and sub-grantee's officers, employees, or agents, or by contractors or their agents.

In addition, the Conflict of Interest prohibition at 24 CFR Part 570.489 (h) is applicable to all CDBG-MIT grants and activities. This rule, generally, prohibits elected officials, and staff who are in a position to influence decisions, from receiving any benefit in a CDBG-MIT assisted project. This includes the benefit from living or owning property in a CDBG-MIT target area that receives CDBG-MIT improvements.

The following summarizes this regulation:

- Conflicts prohibited. No persons described in paragraph 2 (below) who exercise or have exercised any functions or responsibilities with respect to activities assisted with CDBG-MIT funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- Persons Covered. The conflict of interest provisions of paragraph 1 (above) apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving or administering CDBG-MIT funds.

- Definition of Family or Business Ties. The Grantee defines the meaning of the term "family or business ties" as follows:
  - Family: "A group of people related by ancestry or marriage; relatives."
  - Business: "The buying and selling of commodities and services; commerce, trade."
  - Ties: "Something that connects, binds or joins; bond; link."

**NOTE:** *If you have any questions regarding who may or may not be covered under the conflict of interest provisions above, please call the Grantee immediately to discuss such matters **prior to entering into contracts or disbursing money.***

### 3. Lobbying Certification

The Subrecipient hereby certifies that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, 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;
- b) 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;
- c) 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
- d) 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.

### S. Religious Activities

The Subrecipient agrees that Grant 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. Religious Organizations are allowed to participate in CDBG-MIT grant programs to support Mitigation and any eligible activity.

## **T. Environmental Conditions**

### Environmental Reviews

The Subrecipient shall be responsible for reviewing environmental documentation for all selected properties funded through the General Infrastructure Program to ensure compliance with 24 CFR Part 58. Once the Subrecipient has completed its review and all required public notification/comment period(s) are complete, the assessment packet will be forwarded to the Grantee for final review and submission of the Certification and Request for Release of Funds to HUD for approval.

The Subrecipient agrees that it shall not commit any Grant Funds to a project until it has approval from the Grantee to do so and HUD has provided the Authority to Use Grant Funds.

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, which 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.

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 notice 84 FRN 45838 governing the CDBG-MIT award.



#### 4. Lead-Based Paint

The Subrecipient shall follow the Grantee's procedures with respect to CDBG-MIT 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.

#### 6. Additional Environmental Requirements

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; 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.

#### **U. Resolution of Disputes**

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



**ATTACHMENT A**

Scope of Work

**ATTACHMENT B**

Project Performance Schedule

**ATTACHMENT C**

Budget

**ATTACHMENT D**

Subrogation Agreement



**Attachment A**  
**West Virginia Department of Economic Development**  
**Community Development Block Grant- Mitigation**  
**(CDBG-MIT)**  
**SCOPE OF WORK (SOW)**

Provide a clear and precise description of the proposed project including any milestones, reports, and deliverables (task and outcomes) expected to be provided. What are the project outcomes? How will outcomes be measured, collected, documented? Fully describe all activities for all parts of the proposed project; a description of the immediate and adjacent geographical areas; all effects the project will have on low- to moderate-income persons; all contemplated actions.

The City of Spencer is currently under Order from the West Virginia Department of Environmental Protection to modify (or remove) this Dam in order to comply with current governmental regulations. The City has determined that it is in the public's best interest for it to modify this structure in lieu of abandonment.

Planned modifications include the installation of drainage structures within the existing embankment along with associated clearing, grubbing, excavation, embankment, concrete work, slope protection, removal of existing concrete spillway, seeding and mulching, and other miscellaneous items. These modifications would lower the permanent pool elevation of the impoundment by 10 feet. The proposed drainage structures consist of twin, seven-foot diameter, circular pipes with cast-in-place concrete slopewalls at their entrance and exit. Estimated quantities of work include 950 c.y. of excavation, 200 l.f. of 7' diameter culvert, 480 c.y. of No. 57 limestone pipe bedding, 30 c.y. of cast-in-place concrete, 420 c.y. of 12"-18" limestone riprap, 600 s.y. of filter fabric, 950 c.y. of embankment, and 4,000 s.y. of seeding and mulching. Miscellaneous work items include mobilization, demolition of existing concrete spillway and training walls, temporary pollution control, and demobilization.



# Attachment B, Form Number: 3

## West Virginia Department of Economic Development Community Development Block Grant-Mitigation (CDBG-MIT) Infrastructure Project Performance Schedule

Project No.: NGIPLMI-0008

Subrecipient: City of Spencer

Original  Revised: Revision No.:  
\$535,000

Project Name: Miletree Dam #1 Modifications Proj.  
Administering Agency: WV-CAD

Funds: Split Year \_\_\_\_\_

As of Date: 1/10/2022

Funding Scenario: \_\_\_\_\_

Prepared By: Luke Peters, Project Coordinator

Preparer Signature: *Luke Peters*

WVCAD Project Manager Approval: *Alexandria Phares*  
WVCAD Program Manager Approval: *Sherry Rish*

Date: 3/3/22  
Date: 3/9/22  
Date: \_\_\_\_\_

ACTIVITY	DATE ACHIEVED OR EXPECTED TO ACHIEVE
Implementation Meeting	To be Determined by WVCAD
Develop PNP	
Begin Easement Acquisition	N/A
Rule 42 Completed	N/A
Submit Evidentiary Materials to WVCAD	30 days from Implementation Meeting Date
RFP for Professional Services	10/19/2007
RFP for Engineering and Legal Services	10/19/2007
Select and Award Contract for Engineering and Legal Services	10/19/2007
Submit Procurement Documentation for Professional Services to WVCAD	7/06/2021
Environmentally Exempt Activity Determination to WVCAD	1/14/2022
Submit Binding Commitment IJDC Application	N/A
Approved Project Design Submitted to WVCAD	3/1/2022
50% Easements Secured	N/A
Receive IJDC Binding Commitment	N/A
File PSC Certificate Application	N/A
100% Easements Secured	N/A
Environmental Review/FONSI/RROF Submitted to WVCAD	1/14/2022
Intent to Bid & Bid Document Checklist to WVCAD	6/20/2022
Advertise for Bids	6/25/2022
Pre-Bid Meeting	7/15/2022
Bid Opening Date	7/25/2022
Obtain PSC Approval	N/A
SAM Check Confirmation Submitted to WVCAD	1/14/2022
Contracts Awarded with Contractor	8/10/2022
Pre-Construction Meeting	8/10/2022
Notice to Proceed from Engineer	8/15/2022
Project Construction Begins	8/15/2022
CDBG-MIT Construction Funds Expended 10%	9/15/2022



## Attachment B, Form Number: 3

### West Virginia Department of Economic Development Community Development Block Grant-Mitigation (CDBG-MIT) Infrastructure Project Performance Schedule

CDBG-MIT Construction Funds Expended 30%	11/15/2022
CDBG-MIT Construction Funds Expended 50%	1/15/2023
CDBG-MIT Construction Funds Expended 70%	2/15/2023
CDBG-MIT Construction Funds Expended 90%	3/15/2023
CDBG-MIT Project Construction Completed- All CDBG Construction Funds Expended	4/15/2023

Project Closeout	6/1/2023
FPR and Final Request for Payment Submitted to WVCAD	6/15/2023
Project Closeout Report	6/15/2023
Submit Final Single Audit	11/01/2023



**Attachment C- Budget**  
**West Virginia Department of Economic Development**  
 Community Development Block Grant- Mitigation (CDBG-MIT)  
 Budget Form- Infrastructure

<b>Subrecipient:</b>	City of Spencer
----------------------	-----------------

<b>Project Name:</b>	Spencer Miletree #1 Dam Modifications Project
----------------------	---

<b>Project Number:</b>	NGIPLMI-0008
------------------------	--------------

Activity Category	CDBG-MIT Budget	Other Funds	Other Funding Source
Administration			
Project Management Fee	10,500.00		
Accounting			
Arch/Engineering	116,500.00		
Land Acquisition			
Construction	399,500.00	50,000.00	City of Spencer
Permits/Fees	3,500		
Legal	5,000		
Planning			
Demolition			
<b>TOTAL</b>	\$535,000.00 -	50,000.00	

Subrecipient Signature:	
Printed Name and Title:	Terry A Williams, Mayor
Date:	04/06/2022

WVDED Project Manager:	Alexandria Phares		
Signature:		Date:	4/6/22
WVDED Program Manager:	Sherry Risk, CDBG-MIT Program Manager		
Signature:		Date:	4-20-22

**Attachment D, Form C5**

**West Virginia Department of Economic Development  
Community Development Block Grant – Mitigation (CDBG-MIT)  
Subrogation Agreement**

I grant the State, or its designees, subrogation rights to recover, from any person or entity, funds to which I may be entitled for mitigation assistance. I understand that if I receive future assistance intended for the same purpose as the CDBG-Mitigation (CDBG- MIT) services provided through the CDBG-MIT Program, any funds (or the cost of equivalent benefits) received through WVDED CDBG-MIT must be returned to the State according to program guidelines, which can be accessed at: <https://wvcad.org/infrastructure/mit>. Examples of sources of duplicated funds include, but are not limited to:

- Federal Emergency Management Agency (FEMA);
- Economic Development Authority (EDA)
- US Department of Agriculture (USDA)
- WV Department of Environmental Protection (WVDEP)
- US Army Corps of Engineers (USACE)
- National Flood Insurance Program (NFIP);
- Small Business Administration (SBA);
- Private Insurance;
- Emergency Management Division (EMD);
- Municipal Budgets;
- Private and nonprofit disaster assistance.

I also understand that the State or its designees may recover other funds awarded to me, up to the total cost of assistance provided by the CDBG-MIT Program. I agree that if I receive duplicated funds intended for the same purpose of the CDBG-MIT program, identified in my application, I will notify the State or its designee within five (5) days of receipt of the funds. I will send the notice to: [cdbgmigation@wv.gov](mailto:cdbgmigation@wv.gov).

By signing below, I agree that I have read and understand this document or have had someone explain it to my satisfaction.

Terry A. Williams, Mayor of Spencer  
Subrecipient Chief Official Typed Name

1/10/2022  
Date

  
Subrecipient Chief Official Signature

1-10-22  
Date