



# The City of Morgantown

389 Spruce Street  
Morgantown, West Virginia 26505  
(304) 284-7439 Fax: (304) 284-7525  
www.morgantownwv.gov

## AGENDA MORGANTOWN CITY COUNCIL REGULAR MEETING

Tuesday, November 16, 2021 at 7:00 PM

1. **CALL TO ORDER:**

2. **ROLL CALL:**

3. **PLEDGE:**

4. **APPROVAL OF MINUTES:**

**A.** November 2, 2021, Special Meeting minutes

**B.** November 2, 2021, Regular Meeting minutes

5. **CORRESPONDENCE:**

**A.** GIS Proclamation

**B.** ESRI Special Achievement in GIS (SAG) Award

**C.** Small Business Saturday Proclamation

6. **PUBLIC HEARINGS:**

7. **UNFINISHED BUSINESS:**

8. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION:**

9. **SPECIAL COMMITTEE REPORTS:**

**A.** Citizens Police Review & Advisory Board - Mayor, ex-officio

**B.** Special Committee on Unsheltered Homelessness - Members; Mayor Selin, Deputy Mayor Trumble, Councilor Vega, Councilor Harshbarger, and Councilor Butcher. *Next Scheduled meeting: December 9, 2021, at 2:00 p.m.*

10. **CONSENT AGENDA:**

- A.** Approval to purchase a Cummins 70 KVV generator from Cummins Sales & Service for the Morgantown Municipal Airport

**11. NEW BUSINESS:**

- A.** Consideration of **Approval of (MMAGIC) Monongalia Morgantown Area Geospatial Information Consortium Memorandum of Agreement**
- B.** Consideration of **Approval of a Resolution Approving a Grant from the West Virginia Department of Economic Development, for Citywide Food Pantry Program**
- C.** Consideration of **Approval of a Resolution Approving a Grant from the West Virginia Department of Economic Development, for Rent & Utility Assistance Program**
- D.** Consideration of **Approval of a Resolution authorizing funding for a Cold Shelter**

**12. CITY MANAGER'S REPORT:**

**13. REPORT FROM CITY CLERK:**

**14. REPORT FROM CITY ATTORNEY:**

**15. REPORT FROM COUNCIL MEMBERS:**

**16. EXECUTIVE SESSION:**

**17. ADJOURNMENT:**

**For accommodations please call or text 304-288-7072**

# City of Morgantown

## SPECIAL MEETING November 2, 2021

**Special Meeting November 2, 2021:** The Special Meeting of the Common Council of the City of Morgantown was held in City Hall Council Chambers on Tuesday, November 2, 2021, at 6:00 p.m.

**PRESENT:** Mayor Jenny Selin, Deputy Mayor Danielle Trumble, Council Members Bill Kawecki, Joe Abu-Ghannam, Ixya Vega, Dave Harshbarger, and Brian Butcher.

The meeting was called to order by Mayor Selin.

**Executive Session:** Pursuant to West Virginia Code Section 6-9a-4(b)(2)(a) to discuss Personnel Matters in considering new appointments for Board and Commissions. Motion by Councilor Abu-Ghannam, second by Councilor Butcher, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:01 p.m.

### Tree Board

6:00 p.m. – Dave Barnett

6:20 p.m. – Gregory Dahle

### Health & Wellness Commission

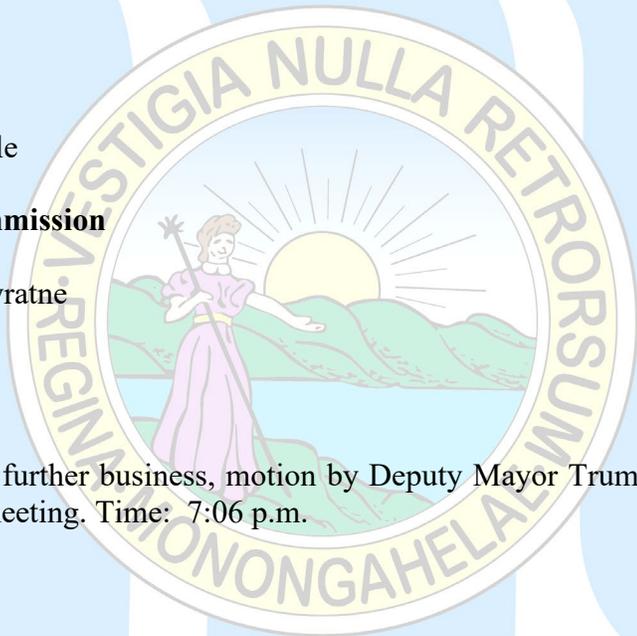
6:40 p.m. – Ronalie Abeyratne

### ADJOURNMENT:

There being no further business, motion by Deputy Mayor Trumble, second by Councilor Butcher, to adjourn the meeting. Time: 7:06 p.m.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor





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Office of the Mayor

## PROCLAMATION

- Whereas,** the City of Morgantown recognizes that an understanding, use and application of geospatial technology is crucial to operating our infrastructure, sustaining our natural resources, and stimulating economic growth, thus, benefitting the welfare of the general public through Monongalia County; and
- Whereas,** geographic information systems (GIS) technology allows us to see and model complex relationships and patterns to respond more intelligently; and
- Whereas,** there is a need to promote GIS awareness, education, and technical training to use this rapidly developing technology to its full potential; and
- Whereas,** the City of Morgantown acknowledges those that have chosen GIS as their profession or as part of their discipline to improve the lives of our citizens; and
- Whereas,** to recognize and support the efforts of nonprofits who work on activities to improve conservation, human services, and various humanitarian efforts to better our world; and
- Whereas,** having a day of GIS activities open to students, citizens, and government leaders will help promote STEM education and inspire others to a higher calling to use technology for good; and
- Whereas,** the City of Morgantown is committed to utilizing GIS to inform decision making and better serve its residents and make useful geographic information open and easily available to the public, as a platform for innovation;

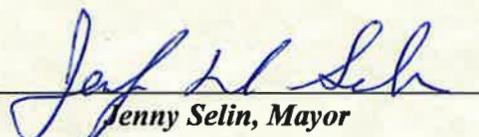
**Now therefore, I, Jenny Selin, Mayor of the City of Morgantown, West Virginia, on behalf of the City Council, do hereby proclaim the 17th day of November 2021 as**

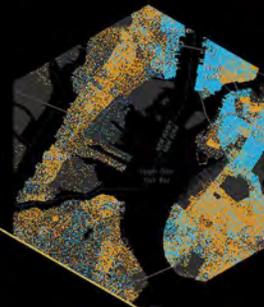
# GIS day

and encourage each individual to join in the recognition of the value and application of this technology.

**Seal:**



  
**Jenny Selin, Mayor**  
**November 16, 2021**



esri  
**SAG AWARD**  
SPECIAL ACHIEVEMENT IN GIS

# CELEBRATION PACKET





It is with great pleasure that Esri congratulates you on winning a Special Achievement in GIS (SAG) Award. Esri acknowledges your special work and the amazing things that you have done with GIS.

Esri users are nominated by Esri leadership and distributor organizations from around the world, with finalists selected by Jack Dangermond, president and founder of Esri. The award represents the difference that you are making with GIS. We appreciate all your hard work. Jack likes to call it “heroic work.”

**Be proud of your work.** We encourage you to share your work and award with others. There are some elements included here that will help you to promote your achievement.

Congratulations, and thank you for your efforts.





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Office of the Mayor

## PROCLAMATION

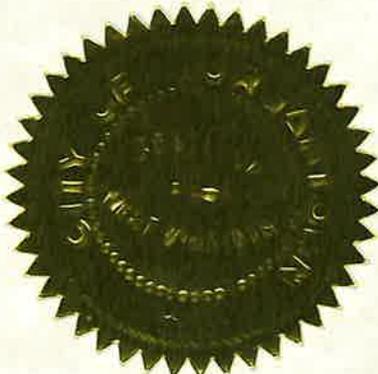
- Whereas,** the government of Morgantown, West Virginia, celebrates our local small businesses and the contributions they make to our local economy and community; and
- Whereas,** according to the United States Small Business Administration, there are 31.7 million small businesses in the United States, they represent 99.9% of all firms with paid employees in the United States, and are responsible for 65.1% of net new jobs created from 2000 to 2019; and
- Whereas,** small businesses employ 47.1% of the employees in the private sector in the United States, 62% of U.S. small businesses reported that they need to see consumer spending return to pre-COVID levels by the end of 2020 in order to stay in business, 65% of U.S. small business owners said it would be most helpful to their business to have their “regulars” return and start making purchases again, and three-quarters of U.S. consumers are currently looking for ways to Shop Small® and support their community; and
- Whereas,** 96% of consumers who shopped on Small Business Saturday® agree that shopping at small, independently owned businesses supports their commitment to making purchases that have a positive social, economic, and environmental impact; and
- Whereas,** 95% of consumers who shopped on Small Business Saturday® reported the day makes them want to shop or eat at small, independently owned businesses all year long, not just during the holiday season; and
- Whereas,** Morgantown, WV supports our local businesses that create jobs, boost our local economy, and preserve our communities; and
- Whereas,** advocacy groups, as well as public and private organizations, across the country have endorsed the Saturday after Thanksgiving as Small Business Saturday®.

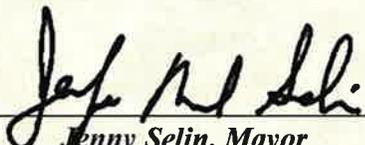
**Now therefore, I, Jenny Selin, Mayor of the City of Morgantown, West Virginia, on behalf of the City Council on this 16th day of November, do hereby proclaim the 27th day of November 2021 as**

## Small Business Saturday®

and urge the residents of our community, and communities across the country, to support small businesses and merchants on Small Business Saturday® and throughout the year.

Seal:



  
\_\_\_\_\_  
Jenny Selin, Mayor



October 28, 2021

Mr. A. Kim Haws  
City Manager  
City of Morgantown  
430 Spruce Street  
Morgantown, WV 26505

RE: Purchase of Generator for Airport Rescue & Firefighting Facility

Dear Mr. Haws:

The Morgantown Municipal Airport would like to request City Council approval of purchasing a Cummins 70KVV generator from Cummins Sales & Service for the Airport using the Sourcewell cooperative purchasing agreement. The Sourcewell cooperative purchasing agreement has been used by the City of Morgantown many times. Sourcecell is an experienced purchasing organization for public and private sector procurement in the United States. Sourcewell competitively solicits contracts from suppliers and streamlines the purchasing process for State and local government entities.

The Morgantown Municipal Airport needs the generator for the ARFF building to provide power to the facility during a power outage. The Airport Rescue truck is required to respond to an emergency within three minutes of receiving the notification. If the building is experiencing a power outage the doors need to be manually operated which takes more than three minutes to open due to the manual pulley system. This building also serves as the emergency operations center for the airport during an emergency. Without generator backup, the facility is not a dependable location for the emergency operations center.

The cost of the generator through the Sourcewell cooperative purchasing program is \$28,965.00. The cost without using the Sourcewell purchasing program would be \$30,895.00. The ability to use the Sourcewell purchasing program will save the Morgantown Municipal Airport \$1,930.00. The funds for this project are budgeted in the Airport's capital budget.

The Morgantown Municipal Airport appreciates your consideration for the recommendation for award of contract for purchase to Cummins Sales & Service via the Sourcewell cooperative purchasing program. Please feel free to contact me if you have any questions.

Sincerely,

Jonathon Vrabel  
Airport Director

**Morgantown Municipal Airport**  
100 Hart Field Road  
Morgantown, West Virginia 26505  
(304) 291-7461

October 28, 2021

To  
 KENNY MYERS  
 MORGANTOWN MUNICIPAL AIRPO  
 100 HART FIELD RD  
 MORGANTOWN West Virginia 26505-3755

Prepared by  
 Alan Beasley  
 In412@cummins.com

We are pleased to provide you this quotation based on your inquiry.

Item	Description	Qty
1	Remote E-stop	1
2	Service - start up & testing	1
3	Service - load bank testing	1
4	Annunciator-panel mount with enclosure (RS485)	1
5	Battery-Wet, 12V, Group 34, 850CCA	1
6	OTECC, OTEC Transfer Switch-Electronic Control: 300A/400A/600A OTEC400, Transfer Switch, PowerCommand, 400 Amp Listing-UL 1008/CSA Certification Application-Utility to Genset Transfer Switch Warranty-2 Year Comprehensive Cabinet-Type 3R Poles-3 (Solid Neutral) Frequency-60 Hz System-3 Phase, 3 or 4 Wire Voltage-208 Volts AC Genset Starting Battery-12V DC PC40 Control Aux Relay-Emergency Position-12 Volts DC Aux Relay-Normal Position-12 Volts DC OTECC_Design_Choice	1
7	C70N6, 70kW, 60Hz, Standby, Natural Gas/Propane Genset U.S. EPA, Stationary Emergency Application C70N6, 70kW, 60Hz, Standby, Natural Gas/Propane Genset Duty Rating-Standby Power (ESP) Emissions Certification-SI, EPA, Emergency, Stationary, 40CFR60 Listing-UL 2200 NFPA 110 Type 10 Level 1 Capable Control Mounting-Left Facing PowerCommand1.1 Controller Gauge-Oil Pressure AmpSentry™ UL Listed Protective Relay Stop Switch-Emergency Control Display Language-English Load Connection-Single Circuit Breaker, Location A, 70A-250A, 3P, LSI, 600 Volts AC, 100%, UL Engine Governor-Electronic, Isochronous Single Gas Fuel-NG or LP Vapor Engine Starter-12 Volt DC Motor Engine Air Cleaner-Normal Duty Battery Charging Alternator Battery Charger-6 Amp, Regulated Engine Cooling-Radiator, High Ambient Air Temperature, Ship Fitted Shutdown-Low Coolant Level Extension-Coolant Drain Engine Coolant-50% Antifreeze, 50% Water Mixture Exciter/Regulator-Permanent Magnet Generator, 3 Phase Sensor Coolant Heater, Extreme Cold Ambient Voltage-120/208, 3 Phase, Wye, 4 Wire Engine Oil Heater-120 Volts AC, Single Phase Engine Oil	1

Item	Description	Qty
	Genset Warranty-2 Years Base Alternator-60Hz, 12L, 208/120V, 120C, 40C Ambient Literature-English Packing-Skid, Poly Bag Extension-Oil Drain Sandstone Sound Level 2 Intake Baffle-Ship Loose Aluminum Sound Attenuated Level 2 Enclosure, with Exhaust System Enclosure Color-Sandstone, Aluminum Enclosure-Wind Load 180 MPH, ASCE7-10 Larger Battery Rack Skidbase-Housing Ready C70N6_Design_Choice	
8	Enclosure Installation Kit (Arrow)	1

**TOTAL: \$ 28,965.00**

Quote value does not include any tax.

**NOTES:**

Proposal is for equipment only, offloading, rigging, and installation by others.  
 Fuel and permits, unless listed above, is not included.  
 Cummins Standard Start-up and testing is included. Additional tests, such as NETA testing, if required, is by others  
 Coordination Study not provided.

Please feel free to contact me if you require any additional information; or if you have any further questions or concerns that I may be of assistance with.

Thank you for choosing Cummins.

Submitted by:

Alan Beasley  
[ln412@cummins.com](mailto:ln412@cummins.com)

SUBMITTALS. An order for the equipment covered by this quotation will be accepted on a hold for release basis. Your order will not be released and scheduled for production until written approval to proceed is received in our office. Such submittal approval shall constitute acceptance of the terms and conditions of this quotation unless the parties otherwise agree in writing.

THERE ARE ADDITIONAL CONTRACT TERMS AND CONDITIONS ATTACHED TO THIS QUOTATION, INCLUDING LIMITATIONS OF WARRANTIES AND LIABILITIES, WHICH ARE EXPRESSLY INCORPORATED HEREIN. BY ACCEPTING THIS QUOTATION, CUSTOMER ACKNOWLEDGES THAT THE CONTRACT TERMS AND CONDITIONS HAVE BEEN READ, FULLY UNDERSTOOD AND ACCEPTED.

\_\_\_\_\_  
 Authorized Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Company Name

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Printed Name & Title

---

Purchase Order No

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## **TERMS AND CONDITIONS FOR SALE OF POWER GENERATION EQUIPMENT**

These Terms and Conditions for Sale of Power Generation Equipment, together with the Quote, Sales Order, and/or Credit Application on the front side or attached hereto, are hereinafter referred to as this "Agreement" and shall constitute the entire agreement between the customer identified in the quote ("Customer") and Cummins Inc. ("Cummins") and supersede any previous representation, statements, agreements or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement. Electronic transactions between Customer and Cummins will be solely governed by the Terms and Conditions of this Agreement, and any terms and conditions on Customer's website or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, any terms and conditions related thereto shall be null and void and of no legal effect on Cummins.

### **SCOPE**

Cummins shall supply power generation equipment and any related parts, materials and/or services expressly identified in this Agreement (collectively, "Equipment"). No additional services, parts or materials are included in this Agreement unless agreed upon by the parties in writing. The Quote is based upon the assumption that the Equipment will be reasonably available and is not subject to unusual market fluctuations. In the event of unusual and/or unanticipated price fluctuations and/or shortage of materials ("Fluctuations"), Cummins reserves the right to adjust the estimated delivery time and/or the price to reflect such Fluctuations. Subject to the foregoing, any Quote is valid for 60 days, and the price is firm provided drawings are approved and returned within 60 days after submission and ship date is not extended beyond published lead times. Any delays may result in escalation charges. A Sales Order for Equipment is accepted on hold for release basis. The Sales Order will not be released and scheduled for production until written approval to proceed is received. A Quote is limited to plans and specifications section set forth in the Quote. No other sections shall apply. Additional requirements for administrative items may require additional costs. The Quote does not include off unit wiring, off unit plumbing, offloading, rigging, installation, exhaust insulation or fuel, unless otherwise stated. Cummins makes no representation or assurance as to the Equipment complying with any Buy America or Buy American laws, regulations, or requirements unless specifically provided in the Quote.

### **SHIPPING; DELIVERY; DELAYS**

Unless otherwise agreed in writing by the parties, Equipment shall be delivered FOB origin, freight prepaid to first destination. For consumer and mobile products, freight will be charged to Customer. Unless otherwise agreed to in writing by the parties, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate. Cummins may deliver in installments. A reasonable storage fee, as determined by Cummins, may be assessed if delivery of the Equipment is delayed, deferred, or refused by Customer. Offloading, handling, and placement of Equipment and crane services are the responsibility of Customer and not included unless otherwise stated. All shipments are made within normal business hours, Monday through Friday. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order and will be in effect after engineering drawings have been approved for production. Cummins shall use best efforts to meet estimated dates, but shall not be liable to customer or any third party for any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result from Fluctuations or directly or indirectly from acts of Customer or any unforeseen event, circumstance, or condition beyond Cummins' reasonable control including, but not limited to, acts of God, actions by any government authority, civil strife, fires, floods, windstorms, explosions, riots, natural disasters, embargos, wars, strikes or other labor disturbances, civil commotion, terrorism, sabotage, late delivery by Cummins' suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities.

***AS A RESULT OF THE OUTBREAK OF THE DISEASE COVID-19 ARISING FROM THE NOVEL CORONAVIRUS, TEMPORARY DELAYS IN DELIVERY, LABOUR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND CUMMINS RESERVES THE RIGHT TO MAKE PARTIAL DELIVERIES OR MODIFY ITS LABOUR OR SERVICE. WHILE CUMMINS SHALL MAKE EVERY COMMERCIALY REASONABLE EFFORT TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE.***

### **PAYMENT TERMS; CREDIT; RETAINAGE**

Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of the invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Equipment. If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay Cummins' costs and expenses (including reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. Retainage is not acceptable nor binding, unless required by statute or accepted and confirmed in writing by Cummins prior to shipment.

### **TAXES; EXEMPTIONS**

Unless otherwise stated, the Quote excludes all applicable local, state and federal sales and/or use taxes, permits and licensing. Customer must provide a valid resale or exemption certificate prior to shipment of Equipment or applicable taxes will be added to the invoice.

### **TITLE; RISK OF LOSS**

Unless otherwise agreed in writing by the parties, title and risk of loss for the Equipment shall pass to Customer upon delivery of the Equipment by Cummins to freight carrier or to Customer at pickup at Cummins' facility.

### **INSPECTION AND ACCEPTANCE**

Customer shall inspect the Equipment upon delivery, before offloading, for damage, defects, and shortage. Any and all claims which could have been discovered by such inspection shall be deemed absolutely and unconditionally waived unless noted by Customer on the bill of lading. Where Equipment is alleged to be non-conforming or defective, written notice of defect must be given to Cummins within three (3) days from date of delivery after which time Equipment shall be deemed accepted. Cummins shall have a commercially reasonable period of time in which to correct such non-conformity or defect. If non-conformity or defect is not eliminated to Customer's satisfaction, Customer may reject the Equipment (but shall protect the Equipment until returned to Cummins) or allow Cummins another opportunity to undertake corrective action. In the event startup of the Equipment is included in the services, acceptance shall be deemed to have occurred upon successful startup.

### **LIEN; SECURITY AGREEMENT**

Customer agrees that Cummins retains all statutory lien rights. To secure payment, Customer grants Cummins a Purchase Money Security Interest in the Equipment. If any portion of the balance is due to be paid following delivery, Customer agrees to execute and deliver such security agreement, financing statements, deed of trust and such other documents as Cummins may request from time to time in order to permit Cummins to obtain and maintain a perfected security interest in the Equipment; or in the alternative, Customer grants Cummins a power of attorney to execute and file all financing statements and other documents needed to perfect this security interest. Cummins may record this Agreement, bearing Customer's signature, or copy of this Agreement in lieu of a UCC-1, provided that it shall not constitute an admission by Cummins of the applicability or non-applicability of the UCC nor shall the failure to file this form or a UCC-1 in any way affect, alter, or invalidate any term, provision, obligation or liability under this Agreement. The security interest shall be superseded if Customer and Cummins enter into a separate security agreement for the Equipment. Prior to full payment of the balance due, Equipment will be kept at Customer's location noted in this Agreement, will not be moved without prior notice to Cummins, and is subject to inspection by Cummins at all reasonable times.

### **CANCELLATION; CHARGES**

Orders placed with and accepted by Cummins may not be cancelled except with Cummins' prior written consent. If Customer seeks to cancel all or a portion of an order placed pursuant to this Agreement, and Cummins accepts such cancellation in whole or in part, Customer shall be assessed cancellation charges as follows: (i) 10% of total order price if cancellation is received in Cummins' office after Cummins has provided submittals and prior to releasing equipment to be manufactured; (ii) 25% of total order price if cancellation is received in Cummins' office after receipt of submittal release to order, receipt of a purchase order for a generator already on order with the factory, or is asked to make any hardware changes to the equipment already on order with the factory; (iii) 50% of total order price if cancellation is received in Cummins' office 60 or fewer days before the scheduled shipping date on the order; or (iv) 100% of total order price if cancellation is received in Cummins' office after the equipment has shipped from the manufacturing plant.

### **MANUALS**

Unless otherwise stated, electronic submittals and electronic operation and maintenance manuals will be provided, and print copies may be available upon Customer's request at an additional cost.

### **TRAINING; START UP SERVICES; INSTALLATION**

Startup services, load bank testing, and owner training are not provided unless otherwise stated. Site startup will be subject to the account being current and will be performed during regular Cummins business hours, Monday to Friday. Additional charges may be added for work requested to be done outside standard business hours, on weekends, or holidays. One visit is allowed unless specified otherwise in the Quote. A minimum of two-week prior notice is required to schedule site startups and will be subject to prior commitments and equipment and travel availability. A signed site check sheet confirming readiness will be required, and Cummins personnel may perform an installation audit prior to the startup being completed. Any issues identified by the installation audit shall be corrected at the Customer's expense prior to the start-up. Portable load banks for site test (if offered in the Quote) are equipped with only 100 feet of cable. Additional lengths may be arranged at an extra cost. Cummins is not responsible for any labor or materials charged by others associated with start-up and installation of Equipment, unless previously agreed upon in writing. Supply of fuel for start-up and/or testing, fill-up of tank after start up, or change of oil is not included unless specified in the Quote. All installation/execution work at the site including, but not limited to: civil, mechanical, electrical, supply of wall thimbles, exhaust extension pipe, elbows, hangers, expansion joints, insulation and cladding materials, fuel/oil/cooling system piping, air ducts, and louvers/dampers is not included unless specified in the Quote. When an enclosure or sub-base fuel tank (or both) are supplied, the openings provided for power cable and fuel piping entries, commonly referred to as "stub-ups", must be sealed at the site by others before commissioning. All applications, inspections and/or approvals by authorities are to be arranged by Customer.

### **MANUFACTURER'S WARRANTY**

Equipment purchased hereunder is accompanied by an express written manufacturer's warranty ("Warranty") and, except as expressly provided in this Agreement, is the only warranty offered on the Equipment. A copy of the Warranty is available upon request. While this Agreement and the Warranty are intended to be read and applied in conjunction, where this Agreement and the Warranty conflict, the terms of the Warranty shall prevail.

## WARRANTY PROCEDURE

Prior to the expiration of the Warranty, Customer must give notice of a warrantable failure to Cummins and deliver the defective Equipment to a Cummins location or other location authorized and designated by Cummins to make the repairs during regular business hours. Cummins shall not be liable for towing charges, maintenance items such as oil filters, belts, hoses, etc., communication expenses, meals, lodging, and incidental expenses incurred by Customer or employees of Customer, "downtime" expenses, overtime expenses, cargo damages and any business costs and losses of revenue resulting from a warrantable failure.

**LIMITATIONS ON WARRANTIES** THE REMEDIES PROVIDED IN THE WARRANTY AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.

The limited warranty does not cover Equipment failures resulting from: (a) inappropriate use relative to designated power rating; (b) inappropriate use relative to application guidelines; (c) inappropriate use of an EPA-SE application generator set relative to EPA's standards; (d) normal wear and tear; (e) improper and/or unauthorized installation; (f) negligence, accidents, or misuse; (g) lack of maintenance or unauthorized or improper repair; (h) noncompliance with any Cummins published guideline or policy; (i) use of improper or contaminated fuels, coolants, or lubricants; (j) improper storage before and after commissioning; (k) owner's delay in making Equipment available after notification of potential Equipment problem; (l) replacement parts and accessories not authorized by Cummins; (m) use of battle short mode; (n) owner or operator abuse or neglect such as: operation without adequate coolant, fuel, or lubricants; over fueling; over speeding; lack of maintenance to lubricating, fueling, cooling, or air intake systems; late servicing and maintenance; improper storage, starting, warm-up, running, or shutdown practices, or for progressive damage resulting from a defective shutdown or warning device; or (o) damage to parts, fixtures, housings, attachments and accessory items that are not part of the generating set.

## INDEMNITY

Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Equipment supplied under this Agreement (collectively, the "Claims"), where such Claims were caused or contributed to by, in whole or in part, the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.

**LIMITATION OF LIABILITY** NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, ENHANCED DAMAGES, MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY, AND/OR DAMAGES CAUSED BY DELAY) IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF EQUIPMENT UNDER THIS AGREEMENT OR THE USE OR PERFORMANCE OF EQUIPMENT SUPPLIED UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS' LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF EQUIPMENT SUPPLIED BY CUMMINS UNDER THIS AGREEMENT GIVING RISE TO THE CLAIM. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN EVEN IF THE EXCLUSIVE REMEDY UNDER THE WARRANTY IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

## DEFAULT; REMEDIES

Customer shall be in breach and default if: (a) any of the payments or amounts due under this Agreement are not paid; (b) Customer fails to comply, perform, or makes any misrepresentation relating to any of the Customer's obligations or covenants under this Agreement; or (c) prior to full payment of the balance due, Customer ceases to do business, becomes insolvent, makes an assignment for the benefit of its creditors, appoints a receiver, commences an action for dissolution or liquidation, or becomes subject to bankruptcy proceedings, or the Equipment is attached, levied upon, seized under legal process, is subjected to a lien or encumbrance, or transferred by operation of law or otherwise to anyone other than Cummins.

Upon the occurrence of any event of Customer's default, Cummins, at its sole option and without notice, shall have the right to exercise concurrently or separately any one or all of the following remedies, which shall be cumulative and not alternative: (a) to declare all sums due, and to become due, under this Agreement immediately due and payable; (b) to commence legal proceedings, including collection actions and specific performance proceedings, to enforce performance by Customer of any and all provisions of this Agreement, and to be awarded damages or injunctive relief for the Customer's breach; (c) to require the Customer to deliver the Equipment to Cummins' branch specified on the face of this Agreement; (d) to exercise one or more of the rights and remedies available to a secured party under applicable law; and (e) to enter, without notice or liability or legal process, onto any premises where the Equipment may be located, using force permitted by law, and there to disconnect, remove and repossess the Equipment, the Customer having waived further right to possession after default. A waiver of any event of default by Cummins shall not be a waiver as to any other or subsequent default.

## CUSTOMER REPRESENTATIONS; RELIANCE

Customer is responsible for obtaining, at its cost, permits, import licenses, and other consents in relation to the Equipment, and if requested by Cummins, Customer shall make these permits, licenses, and consents available to Cummins prior to shipment. Customer represents that it is familiar with the Equipment and understands operating instructions and agrees to perform routine maintenance services. Until the balance is paid in full, Customer shall care for the Equipment properly, maintain it in good operating condition, repair and appearance; and Customer shall use it safely and within its rated capacity and only for purpose it was designed. Even if Customer's purchase of Equipment from Cummins under this Agreement is based, in whole or in part, on specifications, technical information, drawings, or written or verbal advice of any type from third parties, Customer has sole responsibility for the accuracy, correctness and completeness of such specifications, technical information, drawings, or advice. Cummins make no warranties or representations respecting the accuracy, correctness and completeness of any specifications, technical information, drawings, advice or other information provided by Cummins. Cummins makes no warranties or representations respecting the suitability, fitness for intended use, compatibility, integration or installation of any Equipment supplied under this Agreement. Customer has sole responsibility for intended use, for installation and design and performance where it is part of a power, propulsion, or other system. Limitation of warranties and remedies and all disclaimers apply to all such technical information, drawings, or advice. Customer acknowledges and agrees by accepting delivery of the Equipment that the Equipment purchased is of the size, design, capacity and manufacture selected by the Customer, and that Customer has relied solely on its own judgment in selecting the Equipment.

## CONFIDENTIALITY

Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

## GOVERNING LAW AND JURISDICTION

This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the courts of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

## INSURANCE

Upon Customer's request, Cummins will provide to Customer a Certificate of Insurance evidencing Cummins' relevant insurance coverage.

## ASSIGNMENT

This Agreement shall be binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

## INTELLECTUAL PROPERTY

Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a licence or any other rights to use any of the intellectual property rights of Cummins.

## MISCELLANEOUS

Cummins shall be an independent contractor under this Agreement. All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in this Agreement. No amendment of this Agreement shall be valid unless it is in writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining

terms hereof. These terms are exclusive and constitute entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for and Customer has agreed to purchase of the Equipment pursuant to these terms and conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such terms and conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement. In the event of a conflict in the terms of this Agreement with any Customer terms or conditions or agreement (whether referenced in an order submitted by Customer as the terms that govern the purchase of the Equipment or otherwise) or any terms set forth in any other documentation of Customer with respect to the Equipment, the terms of this Agreement shall govern. Cummins may incur additional charges which will be passed on to the Customer, as applicable.

### COMPLIANCE

Customer shall comply with all laws applicable to its activities under this Agreement, including, without limitation, any and all applicable federal, state, and local anti-bribery, environmental, health, and safety laws and regulations then in effect. Customer acknowledges that the Equipment, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Equipment or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable all laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall act as the importer of record with respect to the Equipment and shall not resell, export, re-export, distribute, transfer, or dispose of the Equipment or related technology, directly or indirectly, without first obtaining all necessary written permits, consents, and authorizations and completing such formalities as may be required under such laws, rules, and regulations. In addition, Cummins has in place policies not to distribute its products for use in certain countries based on applicable laws and regulations including but not limited to UN, U.S., UK, and European Union regulations. Customer undertakes to perform its obligations under this Agreement with due regard to these policies. Strict compliance with this provision and all laws of the territory pertaining to the importation, distribution, sales, promotion and marketing of the Equipment is a material consideration for Cummins entering into this Agreement with Customer and continuing this Agreement for its term. Customer represents and warrants that it has not and shall not, directly or through any intermediary, pay, give, promise to give or offer to give anything of value to a government official or representative, a political party official, a candidate for political office, an officer or employee of a public international organization or any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities for the purposes of inducing such person to use his influence to assist Cummins in obtaining or retaining business or to benefit Cummins or any other person in any way, and will not otherwise breach any applicable laws relating to anti-bribery. Any failure by Customer to comply with these provisions will constitute a default giving Cummins the right to immediate termination of this Agreement and/or the right to elect not to recognize the warranties associated with the Equipment. Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of those laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.

**To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.**

Check if this Agreement pertains to government work or facilities

## MMAGIC MEMORANDUM OF AGREEMENT

**THIS MEMORANDUM OF AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, ("Effective Date") by and between the MONONGALIA COUNTY COMMISSION (County), CITY OF MORGANTOWN (City), and MORGANTOWN UTILITY BOARD (MUB), hereinafter collectively referred to as the "Associates".

### **RECITALS:**

**WHEREAS**, in 2021, Monongalia County, City of Morgantown, and Morgantown Utility Board formed an informal cooperative association and arrangement for the purpose of developing, operating, and maintaining a coordinated geographic information system ("GIS") effort known as the Monongalia Morgantown Area Geospatial Information Consortium ("MMAGIC"); and

**WHEREAS** Monongalia County, City of Morgantown, and Morgantown Utility Board agreed to become Associates of MMAGIC in 2021; and

**WHEREAS**, in addition to its Associates, MMAGIC serves both public and private licensees and external users throughout Monongalia and other West Virginia counties, including local governmental entities, consultants, businesses, educational institutions, non-profit corporations and other users; and

**WHEREAS**, MMAGIC provides a framework for Associates and other participants to retain their separate identities, budgets, and oversight and approval authority of governing bodies while coordinating projects and eliminating duplication of efforts; and

**WHEREAS** the Associates desire that MMAGIC continue developing, maintaining, and proactively supporting a comprehensive GIS that promotes user-focused, cost effective, and efficient use of geospatial and applications technology through operational and technological improvements and expanded services; and

**WHEREAS**, in order to promote MMAGIC as the primary coordinator of geospatial data and application services throughout the Morgantown Metro region for the benefit of existing and future MMAGIC Associates, licensees, and users, the Associates believe it necessary and beneficial to set forth agreements relative to the purpose and duties of MMAGIC, including their undertakings, responsibilities, data and cost sharing and the manner in which they will prioritize projects and support their cooperative arrangement.

**NOW THEREFORE**, in consideration of the mutual covenants hereinafter set forth, the Associates hereby agree as follows:

### **SECTION 1. INCORPORATION OF RECITALS**

1.1 The above recitals are incorporated herein by reference as if fully set forth herein and are adopted as true and correct findings of fact by the Associates.

## **SECTION 2. DEFINITIONS**

2.1 The following terms shall have the meaning set forth below:

2.1.1 Data: The geographic data, jointly owned by Associates, stored and made accessible to Associates and Stakeholders.

2.1.2 GIS: Geographic information system of hardware, software, applications, and data used to store, retrieve, map and analyze geographic information.

2.1.3 Stakeholder: An Associate or other entity accessing the GIS Data by separate agreement with MMAGIC or an Associate, excluding public users who may access data only subject to terms of service through publicly available media such as a website. Any entity within the Morgantown Metro region may make a request to be a Stakeholder of MMAGIC. The Associate Committee will review requests and be the approving body for an entity to become a Stakeholder.

2.1.4 Associate: An agency or organization which has a seat on the MMAGIC Associate Committee, and which is assigned, by the Associate Committee, specific administrative and responsibilities for MMAGIC, subject to the provisions of this Agreement. An agency or Stakeholder, other than the Associates initially listed in this agreement, may become an Associate by a majority vote of the Associate Committee and necessary updates to this Agreement, including revising cost and revenue share allocations as described within this Agreement.

The use of the term "Associate" in this Agreement is not intended to and does not mean, infer, or imply, nor shall it be construed or interpreted to mean that the parties or their representatives are "partners", engaged in a partnership under West Virginia law or that MMAGIC is a "partnership," or any legal entity other than an informal collection of public agencies operating under an intergovernmental agreement as permitted by law, under any state, federal, or local law, as to their relationship to each other or to any third party.

2.1.5 Associate Committee: The Committee created under this Agreement to oversee, manage, and control the overall recommendations, funding requests, and activities of MMAGIC.

2.1.6 Project Manager: The Associate identified as responsible for the management and administration of a specific GIS project as identified by the Associate Committee.

## **SECTION 3. STATEMENT OF PURPOSE**

3.1 The Associates agree to the creation and continuation of MMAGIC for the purpose of developing, encouraging, and proactively supporting a comprehensive and coordinated GIS that promotes user-focused, cost effective and efficient use of geospatial and applications technology by and for the benefit of its Associates, licensees and external users.

3.2 The Associates agree to mutually cooperate and to effectuate the intent and purpose of the Agreement, the specific objectives of which are to:

3.2.1. Define the respective undertakings, duties and responsibilities of MMAGIC Associates with regard to the operation of MMAGIC including the manner of prioritizing projects, identifying Project Managers.

3.2.2. Define the primary GIS data, products and services to be provided by the Associates and MMAGIC Participants which shall include:

A. A digital platform (computer infrastructure and software) that supports access to and the use of GIS data and applications.

B. Comprehensive, high-quality, and regularly updated GIS datasets.

C. Custom GIS services, applications, and support to users; and

D. Administrative and management services to ensure efficient operations between all participating Associates and Stakeholders.

3.2.3. Provide services pursuant to this Agreement in a professional, courteous, effective and efficient manner and in compliance with all applicable policies, codes, rules, laws and regulations.

3.2.4. Cooperate with each other and execute such instruments, documents, or agreements, and take such other actions as may be reasonably requested from time to time in order to carry out, evidence, or confirm their rights or obligations or as may be reasonably necessary or helpful to give effect to this Agreement.

#### **SECTION 4. DURATION**

4.1 This Agreement shall commence on the Effective Date and shall continue in full force annually unless terminated under the terms listed in Section 9 of this Agreement.

#### **SECTION 5. GOVERNANCE**

5.1 Associate Committee. A committee, known as the "Associate Committee," is hereby created to oversee, manage, and control the overall recommendations, funding requests, and activities of MMAGIC. The Associate Committee acts in an advisory manner by which mutually beneficial GIS projects, ideas, and funding requests, are taken to each Associate's governing body for review, consideration, and approval. By execution of this Agreement, each Associate authorizes a GIS staff member or his or her designee to serve on the Associate Committee. An Associate may appoint this individual as the primary Committee member as well as identify an individual as a secondary designee who shall have the authority to act in the stead of the Associate's primary Committee member. The Associate's appointment(s) shall be made in writing and shall be sent to the Associate Committee Chair.

5.1.2 The Associate Committee shall elect from its members a Chair by majority vote. The election shall occur annually at a regular or special meetings of the Associate Committee to begin July 1 of a calendar year and end on June 30 of the following calendar year. Nominations shall be made from the floor by any member of the Associate Committee

entitled to vote.

5.1.3 The duties of the Chair shall be to preside over and call all meetings of the Committee, sign resolutions, policies, and other documents which the Committee has authorized be signed by the Chair, and to perform all the duties incident to the office of Chair and such other duties as may be prescribed from time to time by the Associate Committee. The Chair, or Secretary if designated, shall keep complete records of completed Project Worksheets, Agreement updates or revisions, reports, funding requests/approval, and any other document produced by the Associate Committee.

5.1.4 The Associate Committee may appoint an Associate to serve in the role of Secretary. The duties of the Secretary shall be to perform the duties of the Chair in the temporary absence of the Chair, except as may otherwise be provided by the Associate Committee, and to record and prepare minutes of the meetings of the Associate Committee. In the absence of the Chair and Secretary, the Chair may appoint any other Associate of the Associate Committee to preside at a meeting as Chair Pro Tem.

5.1.5 The Chair and Secretary shall serve for a term of one (1) year and thereafter until a successor is elected. The Chair and Secretary may succeed themselves in office however may not succeed themselves in office for more than two (2) succeeding terms except by unanimous vote.

5.2 Stakeholder Subcommittee. A committee, known as the Stakeholder Subcommittee, is hereby created to assist the Associate Committee with its considerations and by monitoring the interests of and activities of MMAGIC. Each Stakeholder is a member of the Stakeholder Subcommittee.

5.2.1 The Chair of the Associate Committee shall serve as the Chair on the Stakeholder Subcommittee.

5.3 Meetings. Regular meetings of the Associate Committee shall be held at least once each quarter, the date, time and location of which shall be fixed by the Associate Committee. Regular meetings of the Stakeholder Subcommittee shall be held at least twice a year, the date, time and location of which shall be fixed by the Stakeholder Subcommittee and may be concurrent to a Associate Committee meeting. At least annually, the Chair shall establish a calendar of regular Associate Committee and Stakeholder meetings which shall be established at its first regular meeting of each fiscal year. The Chair or a majority of the members of the Associate Committee or Stakeholder Subcommittee may call a special meeting for their respective Committee/Subcommittee.

5.4 Quorum. A majority of the members of the Associate Committee shall constitute a quorum at any Associate Committee Meeting. A quorum is not required for a Stakeholder Subcommittee Meeting.

5.5 Committee Action. A majority vote in the affirmative by the Associate Committee members present at a meeting at which there is a quorum shall be required to take official Associate Committee action, except as otherwise stated in this Agreement. When a unanimous vote is required by this Agreement, a motion, or pending question will not be approved unless it receives an affirmative vote from every member of the Associate

Committee. Each member of the Associate Committee, including the Chair, shall be entitled to one vote on a motion or question.

5.6 Duties. The duties of the Associate Committee shall include the following:

5.6.1 Review, prioritize, and make recommendations on GIS projects for the upcoming fiscal year operations and long-term planning for the Five-Year Capital Improvement Plan utilizing the Project Worksheet, included in Appendix C of this Agreement which shall be incorporated in and made a part hereof, as if fully set forth herein. Input on GIS projects shall include recommendations from the Stakeholder Subcommittee. Formally submit budget requests from Associates and, if applicable, additional Stakeholders, for shared amount of project costs at a time in which it aligns with each Associate/participating Stakeholder budget planning cycle.

5.6.2 Elect and appoint, by unanimous vote, a Project Manager from among the Associates of MMAGIC, to be the responsible party of a specific project. It is understood and agreed, however, that no Associate shall be elected Project Manager without the Associate's consent, and no change in the Project Manager shall be permitted between January 1<sup>st</sup> and June 30<sup>th</sup> of the then current fiscal year, except by unanimous vote of the Committee.

5.6.3 Annually, or on an interval as deemed appropriate, review and approve, by unanimous vote, the Cost Share Method Breakdowns shown in Appendix A of this Agreement, setting forth the amount each Associate will pay which utilize a standardized method, towards MMAGIC projects for the next fiscal year. Reference in this Section and throughout this Agreement to "Fiscal Year" means the fiscal year of the original Associates, which runs July 1 through June 30. The Cost Share Method Breakdowns as of FY 2022 (July 1, 2021 through June 30, 2022) is set forth in Appendix A of this Agreement and shall be incorporated in and made a part hereof, as if fully set forth herein. Cost Share Method Breakdowns for subsequent fiscal years will be updated through appropriate revisions to this agreement and incorporated into the Agreement or as needed.

5.6.4 The Associate Committee will direct the MMAGIC Chair to provide an annual, or more frequently as requested, report on MMAGIC operations. The Associate Committee will review, request revisions, and approve the reports about MMAGIC operations prepared by, or under the direction, of the MMAGIC Chair. The timing and content of the reports will be determined by the Associate Committee.

5.6.5 Establish, authorize, approve, and/or monitor policies, procedures, rules, resolutions, and other documents necessary and or beneficial to the operations of MMAGIC, including policies and procedures regarding data distribution and disclosures to MMAGIC Associates and Stakeholders, privacy, licensing, data security, public internet data distribution, and financial management, provided the same are not in conflict with policies, procedures, rules, resolutions, and other documents established, authorized, and approved by the governing bodies of the MMAGIC Associates.

5.6.6 Approve, by unanimous vote, the admission of new Associates to MMAGIC, including by agreement with each new Associate, the percentage or proportionate share of operating and capital costs of MMAGIC to be paid by each new Associate. The new

Associate will then become part of the Associate Committee and be granted a vote in decisions. The Associate Committee shall also determine the terms and conditions of amendments to this Agreement and any Addendum to this Agreement which may be necessary to effectuate the admission of new Associates.

5.6.7 Approve, by majority vote, the admission and agreement creation of new Stakeholders to MMAGIC.

## **SECTION 6. MMAGIC ASSOCIATES**

6.1 In addition to all other terms and conditions of this Agreement, each MMAGIC Associate agrees to and shall comply with the following:

6.1.1 Utilize MMAGIC resources and services in accordance with MMAGIC's defined and written policies as well as provide basic advisory support for Associates and Stakeholders for GIS needs assessment and application assistance within the realm of collective progress for MMAGIC. Respond to questions from GIS users in Associate organizations about MMAGIC data, supported software, and custom applications.

6.1.2 Appoint a GIS staff member to the Associate Committee as the primary designee and, if desired, appoint a secondary designee to serve in the stead of the GIS staff member.

6.1.3 Provide original data, data updates, and maintain data on a regular or as needed basis to maintain shared MMAGIC data. Work with Associates and Stakeholders to configure new GIS data sets for incorporation into MMAGIC database.

6.1.4 Distribute Data only in accordance with the adopted and/or approved MMAGIC data distribution policies, procedures, rules and/or regulations including the sale and distribution of any data.

6.1.5 Provide and/or procure and maintain the Associate's own GIS equipment, software, and GIS-related assets and resources as deemed necessary to support its own GIS operations. Maintain existing custom GIS applications for Associates and work towards integration between GIS and external software and databases associated with these custom applications.

6.1.6 Contribute designated amounts to MMAGIC projects and expenses per the Associate Committee approved project worksheets, which have also been approved by each Associate's legislative or governing body and budgeted for during the Associates' budgeting processes. The Project Manager will provide regular invoices for specific projects. Associates must provide payment to the Project Manager within thirty (30) days of the date of any invoice, provided that, the invoice is within the terms of the agreed upon project worksheet.

6.1.7 Follow MMAGIC defined procedures for "sale" of good or services related to GIS. Record any revenues earned and distribute to contributors based on agreed upon Revenue Sharing methods as outlined in Appendix B. Provide details of all Revenue to the MMAGIC Associate Committee for tracking and reporting purposes.

## **SECTION 7. PROJECT MANAGERS**

7.1 Project Manager: The Project Manager is an Associate which is designated to be

responsible for the overall management, administration and maintenance of specific projects initiated by MMAGIC and approved by the Associate Committee and individual governing bodies. The Project Manager shall exercise its authority and perform its duties and responsibilities in accordance with this Agreement and the mission, vision, objectives, goals and plans for MMAGIC established by the Associate Committee.

7.2 Duties: The authority, duties and responsibilities of the Project Manager shall include the following:

7.2.1 Entering contracts, agreements, leases, and/or procurement arrangements for identified, budgeted, and agreed upon projects by the Associates, following West Virginia purchasing and bidding guidelines, in accordance with and in furtherance of this Agreement. The Project Manager shall abide by its individual agency's purchasing and procurement policies and procedures in procuring and executing any such documents.

7.2.2 The Project Manager is responsible for direct payment to contractor, consultant, vendor, etc. for the assigned project. The Project Manager then invoicing each Associate involved in that specific project at the time of substantial completion, or other regular intervals, for the Associate's share of the cost of the project. The cost share invoiced to each Associate for that project shall be based on this Agreement and the approved Project Worksheet in which a Cost Share Breakdown Method was selected and approved by each Associate and/or Participant.

7.2.3 Sending notice of delinquency to any MMAGIC Associate that has not remitted payment within thirty (30) days of the date of invoice.

7.2.4 Providing regular project updates to the Associate Committee on approved projects, including current phase (such as planning, bidding, contract negotiations, active, quality control, or completed).

7.2.5 Notifying the Associate Committee and Associates of any unforeseen project circumstances, schedule delays, proposed change orders that increase/decrease project costs or change work product within one (1) week of notification from contractor, consultant, vendor, etc.

7.2.6 Providing Associates and/or Participants of that project with the final work product from the contractor, consultant, vendor, etc. The work product received by the Project Manager shall be identical to the work product given to the Associates and/or Participants of that project.

## **SECTION 8. EXPANSION OF MMAGIC ASSOCIATION AND SERVICE AREA**

8.1 The Associate Committee may expand the geographic service area for MMAGIC data, products, and services to include areas outside of Monongalia County provided the expansion is in the best interests of the Associates and is consistent with MMAGIC's mission. Any such expansion shall be approved by a majority vote of the Associate Committee. Such approval may also require formal agreements with non-Associate organizations (e.g. neighboring counties) as deemed necessary by the Committee and/or updated to agreement terms as necessary, including but not limited to cost sharing.

## **SECTION 9. TERMINATION OF ASSOCIATION**

9.1 Termination: An Associate may terminate its participation in MMAGIC at any time and for any reason or no reason by providing written notice to the Associate Committee, and provided that the Associate provides 30 days' notice before the termination becomes effective. Termination does not abrogate any responsibility of the terminating Associate(s) to pay their portion of previously approved, budgeted, and/or executed contracts for GIS services, and payment of invoices provided by the Project Manager(s) for the previously executed contract(s) must still be paid within the timeframes discussed in this Agreement. Termination also does not abrogate the Association from disbursement of revenue earned for Data collected through MMAGIC, through the end of the fiscal year termination is activated, as outlined in this Agreement and Appendix B. Termination of partnership in MMAGIC should only occur as the result of unforeseen circumstances or due to a Partner's executive, legislative, or governing body failing to authorize the continued participation in MMAGIC or expenditure of the Partner's share of funds.

9.2 Should any of the Associates of MMAGIC elect to terminate their participation in MMAGIC, MMAGIC may continue in operation for the benefit of the remaining Associates providing that a minimum of two (2) of the remaining Associates elect to continue their participation by making such election in writing within 60 days of the date of the notice of termination of one of more Associates. If all MMAGIC Associates, or all but one Associate, gives notice of termination, this Agreement shall terminate as of the date the last termination becomes effective and MMAGIC shall be deemed to have been dissolved.

## **SECTION 10. MMAGIC DATA**

10.1 Any MMAGIC data policies and procedures established, authorized, and approved by the Associate Committee shall be consistent with this Agreement and with the policies and procedures of each Associate organization, and any and all applicable laws, rules, and/or regulations. Data policies approved by the Associate Committee shall take into account the following:

10.1.1 MMAGIC Associates will release or sell GIS data only in accordance with the policies and procedures developed under this Agreement.

10.1.2 The data supplied by Associates to MMAGIC that have been collected prior to the execution of this Agreement will be owned by the individual Associate, however, the data may be utilized by other Associates for purposes consistent with this Agreement and any policies and procedures adopted by an Associate in furtherance of this Agreement. All datasets, mapping, and other completed work products have been collected after the execution of this Agreement and that have been paid for by Associates, and Participants when applicable, per Section 11 of this agreement shall be jointly owned by MMAGIC Associates.

10.1.3 An Associate may refuse to disclose data to MMAGIC if such disclosure is prohibited by any federal or state statute, law, court order, local ordinance or contract, and to the extent necessary to preserve any statutory or common law privilege.

10.2 Data Management and Sharing.

10.2.1 Premise. For the purpose of this agreement, sharing within the section

refers only to internal sharing of Data between MMAGIC Associates. All agencies who adopt the Memorandum of Agreement that recognizes MMAGIC shall, as Associate data owners, share and manage their authoritative data with other recipient agencies utilizing efficient methods. Applicable data sets will be labeled with the originating source's legal disclaimers and limitations.

10.2.2 Withholding Sharing. Each data owner retains the ability to withhold sharing to specific or all agencies of MMAGIC only if one of the following instances occurs:

A. Data is being actively updated by the data owner and is planned to be shared once updates and quality control checks are completed.

B. Data is classified as, or contains attribute data considered to be, sensitive or confidential in nature, and cannot be reproduced in a way that maintains security

C. Recipient agency has not been sharing data without a specified reason.

D. Recipient agency has not been participating in cost sharing for any MMAGIC data collection projects for more than one calendar year.

E. An exception that is mutually agreed-upon by the Associates.

10.2.3 Categories of Authoritative Data to be Shared. MMAGIC recognizes as more and more data is created by participating agencies, the need to identify specific datasets to share is burdensome and inefficient. The Associate Committee adopts the ESRI March 2020 categories and subcategories for all authoritative data to be shared and is listed in Appendix E – Categories of Shared Authoritative Data.

10.2.4 Methods of Sharing Data. MMAGIC identifies the need to maintain authoritative data that is shared between Associate agencies. Member agencies shall strive to utilize sharing methods that always provide recipients the mutually agreed-upon “best” versions of authoritative data. The three methods outlined in this section shall not be construed to reflect all available methods but reflect the most common methods of data sharing expected to be used for the Associates of MMAGIC.

A. ArcGIS Collaborations. This method is the most streamlined means to share and update data between each Associate's ArcGIS organizations (Enterprise or Online). The two types of ArcGIS Collaboration available at the time of this Agreement are Partnered (ArcGIS Online organization to ArcGIS Online organization) and Distributed (ArcGIS Enterprise Portal to another ArcGIS Enterprise Portal or ArcGIS Online organization). In either instance, data can be shared and/or updated between all member agencies using ArcGIS Collaboration, reducing redundancy and ensuring up-to-date authoritative data between all agencies.

The requirement of this method is agencies maintain an operational ArcGIS Enterprise Portal site or ArcGIS Online organization to connect to the collaboration groups.

B. Individual ArcGIS Hosted Feature Service Layers. This method is different

from Collaborations as it involves sharing URLs or layer files individually with agencies that directly load the hosted feature service (or its “view”) layer being shared by an agency. This method provides agencies the shared data and allows for viewing of updates to the data but is inefficient for multiple hosted feature service layers being shared. This method is not limited to either ArcGIS Enterprise Portal or ArcGIS Online as both can utilize it.

C. Disconnected Data Transfers (ex. External Hard Drive swapping). This method is not recommended for sharing data due to the static nature and immediate obsolescence of data being shared through this method. Data that would not be regularly updated or only involves one collection, such as aerial imagery or LiDAR, is the only recommended use for this method. As member agencies mature in their GIS infrastructure, other avenues of sharing this data should be explored.

D. Other means. If other methods to seamlessly share data between member agencies were identified to be equal to or better than the methods in the above sections, they may be adopted by MMAGIC and added to this section.

10.3 Open Data and other Initiatives. Member agencies of MMAGIC shall strive to adopt and follow Open Data policies for their authoritative data that is collected and/or maintained through taxpayer funds and whose availability does not pose potential security or public safety hazards. This is not to include data processing or customized requests that are beyond the scope of the authoritative data and require additional agency resources to accommodate (ex. Parcel clip exports, private purchases of datasets, post-processed elevation data, etc.). Fees established by the agency maintaining ownership shall be followed for such requests. Revenue sharing policies for jointly owned Data is described in Appendix B Revenue Sharing Methods for MMAGIC Associates.

10.4 Sharing Data to Stakeholders. MMAGIC Associates have agreed to share in the cost required to develop and maintain data sets. Sharing of MMAGIC Data with Stakeholders shall only occur in accordance with that Stakeholder’s agreement with MMAGIC, as approved by the Associate Committee. Any Associate may share the requested Data with the Stakeholder as long as the sharing meets the terms of this Agreement and that the Revenue Share Method form, as seen in Appendix B, is completed and details sent to the MMAGIC Associate Committee for record keeping.

10.5 Sharing Data to Outside Agencies. MMAGIC understands that there may be times when Data that has been collected and paid for by Associates and other participating agencies may be of value to an agency or group that holds no existing membership or affiliation with MMAGIC. MMAGIC desires to be a community partner in GIS. Most Data is available to the public to view free of charge through the various Associates’ GIS websites. Select Data that can be publicly viewed may also be available for purchase. The price to purchase includes an administrative fee and may include a portion of the project costs. The portion of project costs are reviewed on a case-by-case basis. The funds collected and redistributed amongst contributing Associates are intended to further promote and progress GIS within the community.

10.6 Expiration of Data. In an instance that data has expired in its relevance or becomes outdated due to lack of maintenance, and the data owner wishes to remove it from sharing,

prior notice shall be given to all member agencies informing them of the data being removed and the timeframe it will be removed. If an instance exists where the data will never be updated or become relevant again, an archived version of the data shall be kept by the data owner and available upon request to member agencies.

## 10.7 Project Cost Sharing

**10.7.1 Premise.** MMAGIC finds that data collection projects done at the countywide scale (or similar) provide an inherent benefit to all agencies within Monongalia County area. Due to the expense of data collections, such as aerial imagery and LiDAR, cost sharing shall be implemented to lessen the expense of any one Associate and distribute it to other Associates that will benefit from the data collected from projects. Stakeholders may participate in the project from the beginning, pending their participation in the project cost sharing. They may also access the Data after the fact by “purchasing” it by following MMAGIC procedures defined by the Associate Committee. The amount of cost shared by member agencies may or may not be equal across individual projects but shall reflect agreed-upon Cost Share Methods as described in Appendix A or as described in the approved Project Worksheet completed for the Project.

**10.7.2 Cost Sharing Analysis.** Due to the complexities of data acquisition and the overlapping jurisdictional or service boundaries of entities within Monongalia County, two simplified versions for the basis of cost sharing methods are recommended. While individual projects may have more accurate cost sharing methods which are not specifically included in this Agreement, the Associates of MMAGIC believe that a simplified method is appropriate for expeditious and fair execution of projects. While it is important to use standardized methods when possible to expedite the review, approval, and execution of collectively beneficial projects, the Project Worksheet shown in Appendix C allows for other methods to be considered on a project-by-project basis. MMAGIC also understands that these characteristics are not static, and agrees that the cost share methods will annually, or on an interval as deemed appropriate, be reviewed and approved, by unanimous vote, by the Associate Committee.

**10.7.3 Payment for Projects.** The Project Manager for a project is responsible for making payments to the contractor, consultant, or other entity for agreed upon work. The Project Manager then is responsible for establishing invoicing procedures for all participating agencies to complete the payment for the project. Invoices to participating agencies must include copies of the invoices from the contractor/consultant and must be paid within thirty (30) days of receipt, unless otherwise agreed by the Associates.

**10.7.4 Deliverables.** At completion of the project, the complete deliverable shall be made immediately available to all Associates and other participating Stakeholders. It is the responsibility of all Associates and other participating Stakeholders to acquire the deliverable. Ownership of the data shall be shared between all Associates and other participating Stakeholders, with public availability through MMAGIC’s established Open Data policies and procedures.

**10.7.5 Refusal to Participate in Cost Share.** Any Associate which refuses to participate in the share of cost for a data collection project shall be refused the project deliverable at time of completion of the project and be refused ownership privileges of the

deliverable data. MMAGIC shall establish fees and procedures for a non-participating agency to have access to the deliverable and allocate said fee(s) toward a future project.

## **SECTION 11. OWNERSHIP OF MMAGIC SHARED DATA AND PROPERTY**

11.1 Ownership of MMAGIC Shared Data: All datasets, mapping, and other completed work products that have been paid for (or have had a portion of the cost paid for per executed Project Worksheets) by Associates and Participants when applicable, shall be utilized and held in trust by the Associate(s) and Participants for use as MMAGIC data. Such MMAGIC data will be identified by the Project Manager as being jointly owned by MMAGIC Associates. All Associates retain ownership of the data, regardless of participation in MMAGIC or the continued existence of MMAGIC. Nothing herein, however, shall limit the ability of an Associate to maintain its own (non-shared) GIS resources, staff, or services if the maintenance of the GIS resources, staff and/or services is consistent with the terms and conditions of this Agreement and MMAGIC's Mission.

11.2 Effect of Dissolution: Dissolution of MMAGIC has no effect on an Associate's or Stakeholder's ownership rights to data existing at the time of dissolution, provided that, the cost to obtain the data has been fully paid for and the Associate is not in default of payment of their respective cost share to the Project Manager. An Associate that terminates its association and has not paid, or does not continue to pay, for the Associate's assigned cost-share in any data shall no longer have access to or ownership of the data.

11.3 Loaning of Equipment: Any Associate may, with approval of the Associate Committee and their governing body, loan property or equipment to MMAGIC for the furtherance of its mission in accordance with this Agreement. Such property will continue to be owned by the loaning Associate organization, and the Associate/MMAGIC shall maintain an inventory of the loaned equipment. If the Associate owning the loaned equipment wishes to withdraw it from MMAGIC service, the Associate may do so provided that, if in the opinion of the Associate Committee, the property is essential to MMAGIC and requires replacement to ensure consistency and proper functioning of MMAGIC, then such loaned equipment will be withdrawn only after providing a reasonable period of time after notice of withdrawal sufficient to allow for replacement of the equipment.

## **SECTION 12. LIMITATION OF LIABILITY**

12.1 The Project Manager makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the programs or data, or warranty with respect thereto. In no event shall the Project Manager be liable for any incidental, indirect, special or consequential damage in connection with or arising out the performance of its duties, obligations, and responsibilities contained in this Agreement. Data sets that are shared with MMAGIC, and subsequently "Viewable" for the public will be marked with any legal notices or limitations set forth by the data owner or MMAGIC Associate Committee as deemed appropriate.

## **SECTION 13. MAINTENANCE OF RECORDS AND OPEN RECORDS REQUESTS**

13.1 The Associates shall maintain during this Agreement, and for not less than five years from the date of its termination or dissolution, complete and accurate records of all the services provided hereunder. The Associates shall allow the other Associates, at any reasonable time, to inspect and audit those records by authorized representative of its own or of any public accounting firm selected by it.

13.2 MMAGIC is not a separate government entity for purposes of the West Virginia Freedom of Information Act. Any MMAGIC Associate or employee thereof who receives a request for public records related to MMAGIC will forward the request to each Associate to be handled in accordance with law and will notify the requester that MMAGIC is not a separate government entity but that the request has been delivered to the government entity Associates.

#### **SECTION 14. AMENDMENTS**

14.1 This Agreement may be amended in writing at any time by mutual written agreement of all of the Associates that are signatories to this Agreement and current Associates of MMAGIC. Amendments will refer to this Agreement and to subsequent amendments, if any, on the same subject and will specify the language to be changed or to be added. The execution of any amendment will be authorized by the passage of an appropriate resolution, ordinance or other proper and lawful action by the authorities of each Associate.

#### **SECTION 15. GOVERNING LAW**

15.1 This Agreement will be governed according to all applicable laws of the State of West Virginia.

#### **SECTION 16. CAPTIONS**

16.1 The captions or headings in this Agreement are for convenience only and no way define, limit, or describe the scope or the intent of any provision or sections of this Agreement.

#### **SECTION 17. SUCCESSORS**

17.1 This Agreement shall be binding upon and inure to the benefit of the Associates hereto and their respective, heirs, successors, and assigns.

#### **SECTION 18. SEVERABILITY**

18.1 If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

#### **SECTION 19. AUTHORITY**

19.1 Each Associate has all the authority and power necessary to execute, deliver, and perform this Agreement without the need to obtain the consent of any person or entity. Each Associate represents that the execution, delivery, or performance of this Agreement will not result in a breach or contravention of any other contract obligation, charter, or by-laws of any Associate. This Agreement constitutes the valid and legally binding responsibilities and obligations of the Associates, enforceable in accordance with its terms.

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

Monongalia County

By:

\_\_\_\_\_

Name:

\_\_\_\_\_

Its:

\_\_\_\_\_

City of Morgantown

By:

\_\_\_\_\_

Name:

\_\_\_\_\_

Its:

\_\_\_\_\_

Morgantown Utility Board

By:

\_\_\_\_\_

Name:

\_\_\_\_\_

Its:

\_\_\_\_\_

## APPENDIX A- COST SHARE METHODS FOR MMAGIC PARTNERS

This Appendix defines the standardized cost share methods agreed to by MMAGIC Partners consistent with this Agreement. Cost Share Methods are intended to simplify and accelerate review and approval process for a project by all Partners. Two main methods are listed.

During project review phase, one of the below cost sharing methods should be selected, or if deemed appropriate, an alternative cost sharing method may be clearly defined on the project worksheet and selected for that project.

**Table A-1: Equal Share Method**

<b>MMAGIC Partner</b>	<b>Cost Share (based on Partners listed)</b>
Monongalia County	1/3 Project Cost (33.33%)
City of Morgantown	1/3 Project Cost (33.33%)
Morgantown Utility Board	1/3 Project Cost (33.33%)
<b>TOTAL:</b>	100%

**Table A-2: Grid/Tile Based Method (County Wide)**

<b>MMAGIC Partner</b>	<b>Cost Share (based on Partners listed)</b>
Monongalia County	688 Tiles (80%)
City of Morgantown	45 Tiles (6%)
Morgantown Utility Board (remaining)	120 Tiles (14%)
<b>TOTAL:</b>	853 Tiles (100%)

## APPENDIX B- REVENUE SHARE METHODS

<b>Sec. 1 –Requested Information</b>		
Agency Receiving Request		
Is Requesting Entity a Municipality?	<input type="checkbox"/> Yes _____ <input type="checkbox"/> No _____	<i>If no, list entity:</i> _____
Is the Requesting Entity a MMAGIC Stakeholder?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<i>If yes, list sharing arrangement:</i> _____
Requested Data / Information		
<b>Sec. 2 – Administrative Fee</b>		
Anticipated time needed to complete request: _____ Hours	Processing Rate \$20 / Hour	Administrative Fee to be collected and retained by Agency Receiving and Processing Request: \$_____ (Hrs x \$20/Hr)  <input type="checkbox"/> Check this box if Administrative fee waived per approved Stakeholder Agreement.
Was the requested information paid for collectively by MMAGIC Partners?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, select Partner(s) who contributed: <input type="checkbox"/> Monongalia County <input type="checkbox"/> City of Morgantown <input type="checkbox"/> Morgantown Utility Board <input type="checkbox"/> Others _____
Cost Share Method Used	<input type="checkbox"/> Equal Share Method <input type="checkbox"/> Grid/Tile Based Method <input type="checkbox"/> Other _____	
<b>Sec. 3 – Revenue Share Method</b>		
Revenue Share Method	<input type="checkbox"/> Aerial Data for Municipality – See Appendix B, Table 1. <i>Revenue retained by Monongalia County, who's current cost share percentage covers these jurisdictions.</i>  <input type="checkbox"/> Equivalent Population for Municipality – See Appendix B, Table 2 <i>Revenue split equally between contributing Partners Identified in Section 2 Above.</i>  <input type="checkbox"/> Other	
Original Project Cost	\$	
Requestor's Share in Project Costs (% Share x Project Cost)	\$	

## APPENDIX B- REVENUE SHARE METHODS

Sec. 4 – Revenue Share Return Information	
Monongalia County Share To Be Returned	\$
City of Morgantown Share To Be Returned	\$
Morgantown Utility Board Share To Be Returned	\$
_____ Share To Be Returned	\$

**Table 1 - Aerial (Tile Based Cost Share Percentage)**

Jurisdiction	No Tiles Used	% of Tiles
Blacksville	3	0.35%
Granville	8	0.94%
Morgantown	45	5.28%
Star City	8	0.94%
Westover	19	2.23%
MUB	200	23.45%
Remainder (Monongalia Co)	570	76.20%
<b>Total</b>	<b>853</b>	<b>100%</b>

**Table 2 – Equivalent Population**

Jurisdiction	Commercial	Residential	Multi-family	Industrial	Mixed Use	Other	Total Equiv.	% of Equiv. Population
Blacksville	348.5	338.1	17.4	0	0	73.5	133000	1%
Granville	336.6	0	2,170.7	1,050.5	2,903.8	0	603.98	4%
Morgantown	0	30,983	0	0	0	0	6880.904	27%
Star City	2,382	288.1	476.3	0	0	0	61910	2%
Westover	0	1,375.5	0	73.6	15,750.6	0	4358.052	10%
MUB	0	50,498	0	0	0	0	20041.3	37%
Remainder (Monongalia Co)	0	25,947	0	0	0	0		19%
<b>Total</b>	<b>853</b>					<b>TOTAL</b>	226794.2	<b>100%</b>

**APPENDIX C- PROJECT WORKSHEET**

<b>Sec. 1 – Project Information</b>			
Project Title			
Project Description			
Project Manager (Choose one)	<input type="checkbox"/> Monongalia County <input type="checkbox"/> Other _____ <input type="checkbox"/> City of Morgantown <input type="checkbox"/> Morgantown Utility Board		
<b>Sec. 2 – MMAGIC Policy Board Findings</b>			
Does the project cover most or all of Monongalia County?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<i>If no is selected:</i> What is the size of the project coverage area? _____ Sq Mi	Project primarily covers the following Partner jurisdiction(s): <input type="checkbox"/> Monongalia County <input type="checkbox"/> City of Morgantown <input type="checkbox"/> Morgantown Utility Board
	<input type="checkbox"/> Yes <input type="checkbox"/> No	If no, select Partner(s) who will not utilize the product. <input type="checkbox"/> Monongalia County <input type="checkbox"/> City of Morgantown <input type="checkbox"/> Morgantown Utility Board	
Additional Participating Organizations <i>(if applicable)</i>			
Chosen Cost Share Distribution Method	<input type="checkbox"/> Equal Share Method for Each Organization <input type="checkbox"/> Area Based Method for Each Organization <input type="checkbox"/> Population Served Based Method for Each Organization <input type="checkbox"/> Grid/Tile Based Method for Each Organization <input type="checkbox"/> Other		
Other Method <i>(if applicable)</i>			
<b>Sec. 3 – Cost Share Information</b>			
Estimated Total Project Cost	\$		
Monongalia County Share	\$		
City of Morgantown Share	\$		
Morgantown Utility Board Share	\$		
_____ Share	\$		
_____ Share	\$		

**APPENDIX C- PROJECT WORKSHEET**

**Sec. 4 – Preliminary Project Acceptance (for Budgeting Purposes)**

**\* The section should only be completed to indicate acceptance of the project as a MMAGIC supported project and to agree with the information included in sections 1 through 3 including cost share method, project manager, and participating agencies.**

**This information will be used for budgeting purposes.**

Monongalia County Representative Name	Signature
Title	Date
City of Morgantown Representative Name	Signature
Title	Date
Morgantown Utility Board Representative Name	Signature
Title	Date
Additional Organization Name	Signature
Organization and Title	Date
Additional Organization Name	Signature
Organization and Title	Date
Additional Organization Name	Signature
Organization and Title	Date

**APPENDIX C- PROJECT WORKSHEET**

<p><b>Sec. 5 – Final Project Acceptance (to allow Project Manager to move to Contract Execution)</b></p> <p><b>*This section should only be completed once funds are budgeted within each organization.</b></p> <p><b>By signing this acceptance, you are agreeing to pay your respective cost share as indicated in this project worksheet Section 3.</b></p>	
Monongalia County Representative Name	Signature
Title	Date
City of Morgantown Representative Name	Signature
Title	Date
Morgantown Utility Board Representative Name	Signature
Title	Date
Additional Organization Name	Signature
Organization and Title	Date
Additional Organization Name	Signature
Organization and Title	Date
Additional Organization Name	Signature
Organization and Title	Date

## APPENDIX D- RATES FOR GIS SERVICES

### Background

This Appendix defines the standardized rates for GIS services agreed to by MMAGIC Partners consistent with this Agreement. GIS services are available based on the availability of resources to complete the project, compatibility of the Partner(s)'s GIS capabilities, and the discretion of the Partner's GIS Coordinator. Having established rates for services is intended to simplify and accelerate GIS requests from outside users.

MMAGIC Partners may bill \$75.00 per hour for GIS Services with a one-hour minimum charge. Three paper or digital PDF maps will be supplied with each project at no additional charge, if requested. Additional maps are available at the rates specified below. The individual MMAGIC Partners' ArcGIS Online platforms may also be utilized to host data and interactive maps as an alternative to paper or digital PDF maps.

The intention of MMAGIC's ability and willingness to provide GIS services is not to compete with GIS services offered by private enterprise and will generally not provide GIS services to "for profit" entities unless circumstances of the request are such that it is for the good of the public.

### Rates

**GIS Administrative Fee:** \$75.00 per hour (1-hr minimum)

**Additional Maps (up to 11"x17"):** \$10.00 each

**Additional Maps (Arch D - 24"x36"):** \$25.00 each

**Additional Maps (Arch E - 36"x48"):** \$40.00 each

ArcGIS Online Map & Data Storage Costs (as alternative to paper/PDF options):

**Feature Services < 50MB and Data Storage < 10GB:** No cost

**Feature Services > 50MB and Data Storage > 10GB:** \$40/year

### Data Policy

It is intended any work performed or data obtained by MMAGIC Partners is for the good of the public, therefore any non-sensitive maps or data shall be made available to the public. Any work performed and any data obtained by MMAGIC Partners may be stored locally (on the desktop machine), on ESRI's ArcGIS Online, or a cloud-based server through various contractors. Any maps and/or data will be stored until such a time that they have expired in use or relevance, if space requirements warrant removal or archiving, or at the discretion of the Partner(s)'s GIS Coordinator.

No sensitive information will be released publicly by MMAGIC Partner(s) unless legally obligated or if public safety or security requires it. Any data requests that cannot be accommodated through the MMAGIC's existing online infrastructure, such as large data requests, transfers that include sensitive information, etc. will be treated on a case-by-case basis and will require the person or entity requesting the data to provide a medium (CD/DVD, flash drive, or external HDD) for the requested data to be transferred.

For more information, please contact one of the Partner's GIS Service offices.

## APPENDIX E- CATEGORIES OF SHARED AUTHORITATIVE DATA

MMAGIC recognizes as more and more data is created by participating agencies, the need to identify specific datasets to share is burdensome and inefficient. MMAGIC, as part of this agreement, adopts the ESRI March 2020 categories and subcategories for all authoritative data to be shared.

**Table C-1: Shared Authoritative Data by MMAGIC Partners**

Category	Subcategory
<b>Trending</b> —Maps and apps that are new and noteworthy additions to Living Atlas or relevant to current events, such as natural disasters, sporting events, and national elections, or holidays.	<b>New and Noteworthy</b> —Maps and apps that are new and noteworthy additions to Living Atlas.
	<b>Current Events</b> —Maps and apps that are relevant to current events, such as natural disasters, sporting events, and national elections, or holidays.
<b>Basemaps</b> —Maps and layers that provide reference maps for the world and context for your work. The basemaps can provide general reference information, creative styles for focused maps, component layers to create basemaps, and historical maps.	<b>Reference Maps</b> —General purpose and contemporary reference maps that can be used independently or as a background map for other map layers.
	<b>Creative Maps</b> —A variety of creatively designed maps that can be used independently or as a background map for specific types of map layers.
	<b>Vector Tiles</b> —Maps and layers referencing vector tile layers.
	<b>Component Layers</b> —Tile layer components that can be combined to create multiple types of basemaps, such as an imagery hybrid map.
	<b>Historical Maps</b> —Historical maps that can be used independently or as a background map for other map layers.
<b>Imagery</b> —Imagery of various types, such as multiscale imagery built for use as a basemap, multispectral imagery that reveals different characteristics, temporal imagery that reveals change over time, and imagery of places affected by major events.	<b>Basemap Imagery</b> —Imagery maps and layers that are designed to be used as a background map for other map layers.
	<b>Multispectral Imagery</b> —Imagery maps and layers referencing multiband imagery that can be configured in various band combinations to reveal different characteristics, such as healthy vegetation or impervious surface.
	<b>Temporal Imagery</b> —Imagery maps and layers referencing multitemporal imagery that can be enabled to display imagery captured on different dates or times to understand change over time.
	<b>Event Imagery</b> —Imagery maps and layers captured for specific events, such as natural disasters, to reveal the impact of those events.
<b>Boundaries</b> —Boundaries and places of different types, such as administrative areas, environmental areas, and various geometric areas (for example, hexagons and grids).	<b>Administrative</b> —Boundary maps and layers for administrative areas, such as countries, states and provinces, counties and districts, cities and populated places, census geographies, and postal geographies.
	<b>Environmental</b> —Boundary maps and layers for environmental areas, such as protected areas, ecological regions, and watershed boundaries.
	<b>Geometric</b> —Boundary maps and layers for

**APPENDIX E- CATEGORIES OF SHARED AUTHORITATIVE DATA**

	<p>geometric areas of various types and sizes, such as hexagons, triangles, and rectangular grids.</p>
<p><b>People</b>—Essential information about population, the housing and neighborhoods in which people live, the jobs that provide their incomes, how they spend their time and money, and their health and safety.</p>	<p><b>Population</b>—Statistical information about human population, including population counts, density, growth, age, gender, race, marital status, household sizes, and more.</p> <p><b>Housing</b>—Statistical information about housing for people, including housing units, occupied and vacant housing, home value, housing fuels, and other characteristics of housing.</p> <p><b>Neighborhoods</b>—Information about the neighborhoods in which people live, including neighborhood names, boundaries, and types, and the lifestyle characteristics (for example, how they spend their time and money) of people that live in these neighborhoods.</p> <p><b>Jobs</b>—Information about the jobs that people have, including population of employed civilians and military, labor force by occupation, unemployment rate, daytime population, commuter population, and more.</p> <p><b>Income</b>—Information about the income that people have, including per capita income, household income, disposable income, food stamps, income by age, net worth, and more.</p> <p><b>Spending</b>—Information about the spending habits of people, including annual budget expenditures and spending on food, restaurants, clothing, housing, insurance, entertainment, personal care, and more.</p> <p><b>Health</b>—Information about the health of people, including median age, health insurance coverage, health care spending, persons with a disability, and more.</p> <p><b>Education</b>—Information about the education of people, including level of educational attainment, population enrolled in school, types of schooling, and more.</p> <p><b>At Risk</b>—Information about people who are at risk and may have additional needs (for example, transportation or medical care) related to an incident. This may include senior citizens, children, or persons with a disability, limited language proficiency, or limited transportation options.</p> <p><b>Public Safety</b>—Information about the public safety of people, including crime rates, accident rates, workplace injuries, access to emergency services, and more.</p>
<p><b>Infrastructure</b>—The things and institutions that people create, such as transportation networks, structures, utilities, businesses, governments, and agriculture.</p>	<p><b>Transportation</b>—Information about transportation systems created to move people and goods, including highway networks, rail networks, airport facilities, shipping lanes, public transportation, transit access, bridge conditions, and more.</p> <p><b>Traffic</b>—Information about traffic conditions on transportation networks, including traffic counts, live</p>

## APPENDIX E- CATEGORIES OF SHARED AUTHORITATIVE DATA

	<p>traffic services, traffic recorder stations, traffic cams, traffic accidents, commute times, travel speeds, and more.</p>
	<p><b>Structures</b>—Information about structures created by people, such as buildings, factories, museums, monuments, towers, housing, schools, hospitals, and more.</p>
	<p><b>Utilities</b>—Information about utility facilities for energy and water supply, communications infrastructure and services, and sewage and waste management, including power plants, electricity and gas distribution, telecommunication and radio networks, and more.</p>
	<p><b>Businesses</b>—Information about businesses, including type of business, number and type of employees, levels of revenue, impact on local economy, and more.</p>
	<p><b>Agriculture</b>—Information and resources related to agriculture, including the cultivation of plants and fiber, breeding of animals, and manufacturing of biofuels needed to sustain and enhance human life. Topics include vegetation and crop types, agricultural facilities and workers, and more.</p>
<p><b>Environment</b>—Characteristics of the world's land and oceans, such as elevation and bathymetry, soils, geology, energy resources, fresh water, habitat, species, conservation, land cover, weather, and climate.</p>	<p><b>Earth Observations</b>—Information about the earth's systems captured via remote sensing and surveying techniques, such as wind and weather conditions, weather radar imagery, live stream gauges, wildfire activity, recent earthquakes, soil moisture, sea surface temperature, air quality, and more.</p>
	<p><b>Oceans</b>—Information about oceans (salt water bodies excluding inland waters), such as coastal information, coral reefs, bathymetry, sea surface temperatures, seafloor geomorphology, seafloor characteristics, ocean currents, and more.</p>
	<p><b>Elevation and Bathymetry</b>—Digital elevation models and various derived elevation datasets, such as hillshade and slope maps, for land, ice, and sea surface. Includes terrestrial elevation, bathymetry, and shoreline.</p>
	<p><b>Weather and Climate</b>—Information about weather and climate, such as current and forecasted weather conditions, precipitation, temperature, evapotranspiration, wind speed, atmospheric conditions, climate change, and severe weather events such as hurricanes and tornadoes.</p>
	<p><b>Land Cover</b>—Information about the physical and biological cover of the earth's surface, such as artificial surfaces, agricultural areas, forests, natural areas, wetlands, and water bodies.</p>
	<p><b>Energy Resources</b>—Information about natural energy resources, such as hydrocarbons, hydropower, bioenergy, solar, and wind.</p>
	<p><b>Soils and Geology</b>—Information about soils and geology, including the types, textures, composition,</p>

**APPENDIX E- CATEGORIES OF SHARED AUTHORITATIVE DATA**

	and structure of soil and geology units.
	<b>Fresh Water</b> —Information about fresh water, including naturally occurring water in ice caps, ice sheets, glaciers, lakes, ponds, bogs, rivers, streams, and groundwater in aquifers.
	<b>Habitat</b> —Information about habitat, which is an ecological or environmental area that is inhabited by a particular species of animal, plant, or other organism and is used to provide food, shelter, protection, and mates for reproduction. Includes terrestrial and aquatic areas.
	<b>Species</b> —Information about various animal and plant species, including their geographic distribution, endangered status, and impact on the environment.

October 26, 2021

Jenny Selin, Mayor  
City of Morgantown  
300 Spruce Street  
Morgantown, WV 26505

**RE: Community Development Block Grant Program-CARES ACT  
City of Morgantown - Citywide Food Pantry Program  
Project Grant Award: \$ 500,000.00 CDBG-CV Project Number: CV-CDBG0012**

Dear Mayor Selin:

Congratulations on Governor Justice's recent Community Development Block Grant (CDBG) CARES Act award of \$500,000.00 to assist the City of Morgantown Citywide Food Pantry Program.

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

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

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

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

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

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

If you have any questions concerning this letter, please contact Ryan Halsey, CDBG Project Manager, via email at [Ryan.J.Halsey@wv.gov](mailto:Ryan.J.Halsey@wv.gov) or call 304-352-3988. We look forward to working with you to complete this project.

Sincerely,



Sherry Risk  
CDBG Program Manager

cc: Ryan Halsey (via email)

Enclosures



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

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

Dated and effective July 1<sup>st</sup>, 2021, is between the office of West Virginia Community Advancement and Development, a division of the West Virginia Department of Economic Development (“State” and “Grantee”), and the City of Morgantown and its authorized officers, agents, and representatives (“Subrecipient”).

**I. RECITALS**

A. **WHEREAS**, on July 1<sup>st</sup>, 2021, HUD approved the State’s Annual CDBG Action Plan 2019-Amendment Four and CDBG CARES Act FR-6218-N-01 which addresses COVID-19;and

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

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

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

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

F. **WHEREAS**, the State has elected to administer the non-entitlement portion of the Community Development Block Grant (CDBG) Program as authorized by Title I of the Housing and Community

Development Act of 1974 (Public Law 93-383), as amended, subject to the applicable regulations of the Department of Housing and Urban Development, including but not limited to 24 CFR (Code of Federal Regulations), Part 570, Sub-Part I, as amended or revised, the CARES Act, section 601(d) of the Social Security Act, created the Coronavirus Relief Fund (CRF), and Federal Register (FR-6218-N-01) Non-Entitlement set aside and subject to the scope of the State of West Virginia's CDBG CARES Act Policies and Procedures Manual and other Program Guidelines, availability of which is hereby acknowledged by the Grantee.

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

H. **WHEREAS**, the Subrecipient has legal authority to enter this Agreement, and the Subrecipient's governing body has duly adopted the Motion to grant signature authority to Mayor Jenny Selin, dated July 1st, 2021, authorizing the Subrecipient to enter this Agreement with the Grantee, and by signing this Agreement, to assure the Grantee that it will comply with all the requirements of the Subaward described herein; and

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

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

## **II. GENERAL AWARD INFORMATION**

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

### **Contact Information:**

#### **Grantee:**

West Virginia 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 Morgantown  
300 Spruce Street  
Morgantown, WV 26505

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

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

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

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

**Total Amount of the Federal Award Committed to the Subrecipient by the Grantee:** \$ 500,000.00

**Amount of Federal Funds Obligated by this Agreement:** \$ 500,000.00

**Total Amount of Federal Funds Obligated to the Subrecipient:** \$ 500,000.00

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

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

### **Prohibited Activities**

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

### III. Scope of Services and Assistance

#### 1. Assistance to Subrecipient.

The State shall obligate to the Subrecipient, from funds allocated to the State by Grant Agreement B-20-DW-54-0001 for 500,000.00 to perform such tasks hereafter described in the Scope of Services. The Scope of Services is set forth in detail in **Attachment A- Final Budget**, **Attachment B- Project Performance Schedule**, **Attachment C- Duplication of Benefits**, **Attachment D- Scope of Work (SOW)**, **Attachment E- Subrogation Agreement**, and the National Objective of Low to Moderate Income Benefit.

#### A) Budget.

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

#### B) Scope of Services

- i. Eligible Uses of Funds- The Subrecipient, its contractors and/or its designated agent(s), in accordance with the Community Development Block Grant CARES Act Policy and Procedures to be used in the administration of the Community Development Block Grant CARES Act Grant, and in accordance with the approved application of the Grantee, shall do, perform, and carry out, in a satisfactory and proper manner all duties, tasks, and functions necessary complete the Citywide Food Pantry Program. This program will provide food to approximately 150 LMI households impacted by the COVID-19 Pandemic within the city limits of Morgantown, WV.
- ii. The Subrecipient shall administer and/or perform the activities detailed in the Scope of Services in a manner satisfactory to the State and otherwise in accordance with this Agreement. The Scope of Services is set forth in detail in *CDBG-COVID Project Schedule (Form C2)* attached hereto as **Attachment B** and fully incorporated by reference ("Performance Measures").

2. **Changes:**

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

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

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

4. **Performance:**

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

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

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

5. **Payment:**

It is expressly agreed and understood that the total amount to be paid under this Agreement shall not exceed **\$500,000.00**.

The Subrecipient shall submit to the Grantee requests for payments of activities under this Agreement and consistent with the approved budget (the "Request for Payment"). Each Request for Payment shall be broken down into requested draws against the budget line items specified in **Attachment A, Form C1**.

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

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

## A. Eligible Expenses

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

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

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

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

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

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

Program Income: Subrecipient will not have any program income.

## B. Post Award and Recipient Criteria

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

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

Written authorization from the Grantee is required prior to the expenditure of any funding associated with this project. The West Virginia Community Advancement and Development (WVCAD) Office is committed to monitoring the performance of grant recipients to ensure that all Federal funds are used

appropriately and, in a manner, to maximize low- and moderate-income public benefit. Subrecipients are limited to Units of General Local Government (UGLG) and County Commissions. Monitoring each subrecipient ensures that the goals and objectives identified within the State's FY2019 amended Annual Action Plan. Copies of the monitoring reports are kept in the WVCAD Office. Subrecipients that do not comply with the Post-Award and Sub-Recipient Criteria listed below will forfeit their award of CDBG-CV funds. The forfeited funds will be then returned to the CDBG-CV program for reallocation.

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

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

#### 6. **Monitoring:**

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

Monitoring procedures may include, but not be limited to, on-site visits by Grantee staff, limited scope audits, or other procedures. The Subrecipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Grantee. In the event that the Grantee determines that a limited scope audit of the Subrecipient is appropriate, the Subrecipient agrees to comply with any additional instructions provided by the Grantee to the Subrecipient regarding such audit. The Subrecipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Director of 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.

7. **Administrative Requirements and Procedures.**

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

8. **Personnel:**

The Subrecipient represents that it has personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the State. Subrecipient shall ensure adequate and appropriate staffing are allocated to each activity identified in **Attachment B, Form C2.**

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

The Grantee is requiring the Subrecipient to provide the following:

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

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

**A. Travel Regulations**

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

9. **Registrations**

**A. Additional Administrative Requirements:** Additional administrative requirements of federal grants are contained in 2 CFR, Part 25. The Subrecipient and sub-awardees at all tiers must obtain a DUNS number and provide the DUNS to the State before the sub-award can be issued. The Subrecipient will register with SAM and furnish State with documentation verifying such registration in order to receive federal funding under this Agreement.

**B. Federal Award Number:** As per the Federal Funding Accountability and Transparency Act, federal agencies will assign a Federal Award Identification Number (FAIN) to each federal award. The FAINs are intended to increase transparency in federal spending and allow the American public to hold the government accountable for spending decisions. Each Subrecipient and sub-awardee

should be aware of this identification number and ensure the FAIN is incorporated into all sub-grants under the Agreement.

#### 10. **Accounting**

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

#### 11. **Audit.**

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

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

When conducting an audit of the Subrecipient's performance under this Agreement, the Grantee must use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.50, "GAGAS, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits." c. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of and strict compliance with this Agreement, the Subrecipient will be held liable for reimbursement to the Grantee of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Grantee has notified the Subrecipient of such non-compliance. d. The Subrecipient must have all audits completed by an independent auditor.

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

## 12. **Competitive Procurement Procedures**

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

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

- A) If the Subrecipient uses Project funds to purchase any equipment from contractors not to exceed \$5,000, the Subrecipient shall comply with current procurement policies concerning the purchase of equipment and shall maintain inventory records of all project equipment as may be procured with funds provided herein.
- B) Procurement Standards: If the Subrecipient procures any project equipment, property, or services from any contractors with program funds, unless specified otherwise within this Agreement, the Subrecipient shall undertake such procurement in accordance with the requirements of 2 CFR Part 200, Subpart D, sections 200.317-200.326.
- C) Policies and Procedures: Subrecipient shall incorporate the provisions of 2 CFR 200.318- 200.326 into its Procurement Policies, Procedures and Practices. Subrecipient shall fully comply with Appendix II of 2 CFR 200 and incorporate such federal contracting provisions in all contracts as required thereunder.
- D) The Grantee shall procure architect/engineer services in accordance with Chapter 5G of the West Virginia State Code and be in compliance with 2 CFR 200.
- E) The Grantee shall procure construction contracts in accordance with Chapter 5-22-1 of the West Virginia State Code and be in compliance with federal regulations 2 CFR 200.
- F) The Grantee shall solicit sealed bids for all construction-related contracts or supplies related to their project which has an estimated value of over \$25,000. All transactions under \$25,000 whether construction-related contracts, supplies, or professional services should be procured in a manner that provides maximum open and free competition and files are to be maintained to document such activities. Any attempts by the Grantee to segregate the project into sections in order to circumvent competitive procurement may be cause for termination of this Agreement under Item 22, Termination of Agreement for Cause. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions of Article Three, Chapter Fifty-Nine of the Code of West Virginia. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area within a period of fourteen consecutive days with at least an interval of six full days within such period between the date of the first publication and the date of the second publication preceding the final date of submitting bids. The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, sending notification to the State's Small Business Development Center Division, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the State or its designated representative, bid documents and other evidence of compliance with these procedures. The resolution of bid and contract disputes is the responsibility of the Grantee.
- G) Grantees have the ability to procure professional and construction services, therefore, the design-build method (5-22A-1) is not allowable. Public agencies can only utilize design-build on building project. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

13. **Bonding and Insurance.** As otherwise required by law, a grant that requires the contracting or subcontracting for construction or facility improvements under \$100,000 shall provide for the Grantee to follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds provided that the Grantee's and State's interest is adequately protected and that such contracts can be executed in a timely manner; otherwise, bonding requirements shall be the same as for contracts exceeding \$100,000. Consistent with 2 CFR 200.325, if a contract or subcontract exceeds \$100,000, the minimum bonding and insurance requirements shall be as follows:
- i. A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required within the time specified.
  - ii. A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with a contract to secure fulfillment of the contractor's obligations under such contract.
  - iii. A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor or materials in the execution of the work provided for in the Contract.
14. **Facilities Operation.** The Grantee shall operate and maintain all facilities to which the general public has right of access constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable Federal, State and local statute, law, ordinance, or regulation as to actual construction procedures. The Grantee shall be responsible for maintenance and operation of such facilities upon completion. The Grantee may not change the use or planned use of any such facility (including the beneficiaries of such use) from that purpose initially approved unless the Grantee provides affected citizens with reasonable notice thereof and opportunity to comment on any proposed change all in accordance with 24 CFR Part 570.489(j).
15. **Amendments and Termination**  
The State and the Subrecipient will comply with the provisions of the Department of Treasury Circular 1075 and the CDBG CARES Policies and Procedures Manual in the process of requesting and administering funds from the State's Letter of Credit

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

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

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

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

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

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

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

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

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

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

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

## 16. **Reporting.**

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

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

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

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

## 17. **General Compliance**

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

### I. **Duplication of Benefits**

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

The Subrecipient must comply with HUD's requirements for duplication of benefits, imposed by Federal Register notice on the Grantee, which is exhibited in the completed *Duplication of Benefits Form (Attachment C, Form C3)* and the *Subrogation Agreement (Attachment E, Form C5)* attached hereto this agreement.

## II. Tie Back to COVID-19

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

## III. Drug-Free Workplace

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

## IV. Insurance & Bonding

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

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

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

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

### 18. **Financial & Program Management**

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

Performance under this Agreement is subject to 2 C.F.R Part 200, entitled “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards this Agreement includes:

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

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

### I. Cost Principles

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

- i. Depreciation methods for fixed assets shall not be changed without the approval of the Federal cognizant agency.
- ii. Fines penalties, damages, and other settlements are unallowable costs to the CDBG program.

- iii. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR 200.445);
- iv. Organization costs (2 CFR 200.455); and
- v. Pre-Award Costs, as limited by this Agreement.

## 19. Documentation and Record Keeping

### I. Records to be Maintained.

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

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

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

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

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

### II. Access to Records

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

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

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

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

- i. Records for activities subject to the reversion of assets provisions at 24 CFR § 570.503(b)(7) or change of use provisions at 24 CFR § 570.505 must be maintained for as long as those provisions continue to apply to the activity, otherwise, records for real property and equipment acquired under this Agreement must be retained for 3 years after final disposition;
- ii. Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained until such receivables or liabilities have been satisfied;
- iii. If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken;
- iv. When the Subrecipient is notified in writing by HUD, the cognizant agency for audit as defined in 2 CFR 200.18, the oversight agency for audit as defined in 2 CFR 200.73, the cognizant agency for indirect costs as defined in 2 CFR 200.19, or the Grantee, the Subrecipient shall extend the retention period consistent with the notification;
- v. When records are transferred to or maintained by HUD or the Grantee, the 3-year retention requirement is not applicable to the Subrecipient;
- vi. The retention period for the records pertaining to the earning of the program income (as defined in this Agreement) starts from the end of the Grantee's fiscal year in which the program income is earned; and
- vii. For indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates), and their supporting records:
  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 terms of this Agreement, all records the Subrecipient is required to maintain, including supporting documentation, shall be retained for the greater of three years from closeout of the Federal award to the Grantee, or the period required by other applicable laws and regulations as described in 24 CFR § 570.487 and 24 CFR § 570.488.

#### IV. 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.

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

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

## 21. **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.

## 22. **24 CFR part 6**

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

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

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

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

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

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

## 24. **State and Local Nondiscrimination Provisions**

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

### I. General Compliance

The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352), as amended [if the Grantee is subject to 24 CFR part 570, subpart K, insert: "and 24 CFR 570.601 and 570.602". No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this Agreement. The specific nondiscrimination provisions at 24 CFR 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Civil Rights Act of 1964 or 24 CFR part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 24 CFR part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 2 CFR part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

### II. Assurances and Real Property Covenants

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

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

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

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

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

### III. Affirmative Action Approved Plan

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

IV. 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.

V. 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.

VI. 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.

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

VII. Labor and Employment

i. Labor Standards

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

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

ii. 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)).

25. **Section 3 of the Housing and Urban Development Act of 1968**

I. Compliance

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

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

26. **Conduct**

II. Hatch Act

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

III. Conflict of Interest

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

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

IV. Lobbying Certification

The Subrecipient hereby certifies that:

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement;
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- iii. It shall require that the language of paragraph (a) through (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Agreements) and that all Subrecipients shall certify and disclose accordingly; and
- iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is required by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

V. Religious Activities

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

## 27. **Environmental Conditions**

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

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

This agreement does not constitute an unconditional commitment of funds or site approval. The commitment of funds to the project may occur only upon satisfactory completion of the project's environmental review in accordance with 24 CFR Part 58 and related environmental authorities. Provision of funding is further conditioned on the State's determination to proceed with, modify, or cancel the project based on the results of the environmental review. The Subrecipient agrees to abide by the special conditions, mitigation measures or requirements identified in the State's environmental approval and shall ensure that project contracts and other relevant documents will include such special conditions, mitigation measures or requirements. Until the State has approved the environmental review for the project, neither the Subrecipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance to the project or activity. The Subrecipient agrees to provide the State with all available environmental information about the project and any information which the State may request in connection with the conduct and preparation of the environmental review, including any reports of investigation or study which in the State's opinion is needed to fulfill its obligations under HUD environmental requirements. The Subrecipient agrees to advise the State of any proposed change in the scope of the project or any change in environmental conditions, including substantial changes in the nature, magnitude, extent or location of the project; the addition of new activities not anticipated in the original scope of the project; the selection of an alternative not in the original application or environmental review; or new circumstances or environmental conditions which may affect the project or have bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity

### I. Prohibition on Choice Limiting Activities Prior to Environmental Review

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

II. 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;

III. Flood Disaster Protection

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

IV. Lead-Based Paint

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

V. 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.

28. **Final Closeout**

Final Closeout shall be completed when the State:

- i. is in receipt of a Final Performance Report;
- ii. has determined that all monitoring findings have been formally addressed and are resolved; and
- iii. has received a completed, final project audit and has determined that any findings have been resolved.

29. **Resolution of Disputes**

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



October 26, 2021

Jenny Selin, Mayor City  
of Morgantown 300  
Spruce Street  
Morgantown, WV 26505

**RE: Community Development Block Grant Program-CARES ACT  
City of Morgantown - Rent & Utility Assistance Program  
Project Grant Award: \$ 500,000.00 CDBG-CV Project Number: CV-CDBG0011**

Dear Mayor Selin:

Congratulations on Governor Justice's recent Community Development Block Grant (CDBG) CARES Act award of \$500,000.00 to assist the City of Morgantown Rental & Utility Assistance Project.

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

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

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

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

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

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

If you have any questions concerning this letter, please contact Ryan Halsey, CDBG Project Manager, via email at [Ryan.J.Halsey@wv.gov](mailto:Ryan.J.Halsey@wv.gov) or call 304-352-3988. We look forward to working with you to complete this project.

Sincerely,



Sherry Risk  
CDBG Program Manager

cc: Ryan Halsey (via email)

Enclosures



# Grant Award Notice

Subrecipient Information		State Accounting Information	
Name:	<b>City of Morgantown</b>	Major Program:	<b>CV-CDBG</b>
Address:	300 SPRUCE ST MORGANTOWN, WV 26505	Program:	<b>CV-CDBG Grants</b>
FEIN:	55-6000215	Oasis Grant Award Number:	<b>22*2642</b>
DUNS:	070453519	Oasis Vendor Number:	<b>211608</b>

**Federal Award Project Description**  
**Citywide Rental & Utility Assistance Program.** This project will provide rental and utility assistance to approximately 80 LMI households impacted by the COVID-10 Pandemic within the city limits of Morgantown, WV.

Federal Award Information		Pass-through Award Information	
Federal Awarding Agency:	<b>Department of Housing and Urban Development (HUD)</b>	Pass-through Awarding Agency:	<b>Economic Development, West Virginia Department of</b>
CFDA Number and Name:	<b>14.228 – Community Development Block Grant</b>	Subaward Project Number:	<b>CV-CDBG0011</b>
R&D Award	<b>No</b>	Period of Performance:	<b>07/01/2021 – 06/30/2022</b>
<b>PY2020 Funds</b>		<b>PY2020 Funds – PPC-B20</b>	
FAIN.....	<b>B20DW540001</b>	Funds Obligated by This Action.....	<b>\$500,000.00</b>
Federal Award Date.....	<b>07/01/2020</b>	Total Funds Obligated.....	<b>\$500,000.00</b>
Total Federal Funds Available.....	<b>\$20,250,608.00</b>	<b>Total CDBG Funds Committed to Project.....</b>	<b>\$500,000.00</b>

**Notice of Grant Award**  
This funding is provided under Title I of the Housing and Community Development Act of 1974 under regulations of the Department of Housing and Urban Development, including but not limited to 24 CFR (Code of Federal Regulations), Part 570, Sub-Part I, as amended or revised, and subject the State of West Virginia's CDBG Policies and Procedures Manual and all program guidelines.

**Terms of Acceptance**  
By accepting funds under this Agreement, the subrecipient agrees to comply with all terms and conditions in this Agreement; all assurances and certifications made in the Agreement; and all applicable federal statutes, regulations, and guidelines. The subrecipient agrees to administer the funded program in accordance with the Agreement and budget(s), supporting documents, and other representations made in support of the Agreement.

<p><b>For the Pass-Through Entity:</b></p> <p>_____ Date</p> <p>Authorized Signature</p> <p><b>Jennifer Ferrell, Director, WVCAD</b></p> <p>Print Name / Title</p> <p><b>304-558-2234</b></p> <p>Phone</p> <p><b>Jennifer.L.Ferrell@wv.gov</b></p> <p>Email</p>	<p><b>For the Subrecipient:</b></p> <p>_____ Date</p> <p>Authorized Signature</p> <p><b>Jenny Selin</b></p> <p>Print Name / Title</p> <p><b>304-284-7439</b></p> <p>Phone</p> <p><b>jselin@morgantownwv.gov</b></p> <p>Email</p>
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**COMMUNITY DEVELOPMENT BLOCK GRANT CARES ACT – GRANT AGREEMENT**

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

Dated and effective July 1<sup>st</sup>, 2021, is between the office of West Virginia Community Advancement and Development, a division of the West Virginia Department of Economic Development (“State” and “Grantee”), and the City of Morgantown and its authorized officers, agents, and representatives (“Subrecipient”).

**I. RECITALS**

A. **WHEREAS**, on July 1<sup>st</sup>, 2021, HUD approved the State’s Annual CDBG Action Plan 2019-Amendment Four and CDBG CARES Act FR-6218-N-01 which addresses COVID-19;and

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

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

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

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

F. **WHEREAS**, the State has elected to administer the non-entitlement portion of the Community Development Block Grant (CDBG) Program as authorized by Title I of the Housing and Community

Development Act of 1974 (Public Law 93-383), as amended, subject to the applicable regulations of the Department of Housing and Urban Development, including but not limited to 24 CFR (Code of Federal Regulations), Part 570, Sub-Part I, as amended or revised, the CARES Act, section 601(d) of the Social Security Act, created the Coronavirus Relief Fund (CRF), and Federal Register (FR-6218-N-01) Non-Entitlement set aside and subject to the scope of the State of West Virginia's CDBG CARES Act Policies and Procedures Manual and other Program Guidelines, availability of which is hereby acknowledged by the Grantee.

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

H. **WHEREAS**, the Subrecipient has legal authority to enter this Agreement, and the Subrecipient's governing body has duly adopted the Motion to grant signature authority to Mayor Jenny Selin, dated July 1st, 2021, authorizing the Subrecipient to enter this Agreement with the Grantee, and by signing this Agreement, to assure the Grantee that it will comply with all the requirements of the Subaward described herein; and

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

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

## **II. GENERAL AWARD INFORMATION**

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

### **Contact Information:**

#### **Grantee:**

West Virginia 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 Morgantown  
300 Spruce Street  
Morgantown, WV 26505

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

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

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

**Period of Performance:** Performance will begin upon execution of this agreement, to include eligible planning and administrative activities for the City of Morgantown Rent & Utility Assistance Program from July 1, 2021 and will end on the earlier of the date that the Subrecipient completes its obligations under this Agreement or June 30, 2022.

**Total Amount of the Federal Award Committed to the Subrecipient by the Grantee:** \$ 500,000.00

**Amount of Federal Funds Obligated by this Agreement:** \$ 500,000.00

**Total Amount of Federal Funds Obligated to the Subrecipient:** \$ 500,000.00

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

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

### **Prohibited Activities**

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

### III. Scope of Services and Assistance

#### 1. Assistance to Subrecipient.

The State shall obligate to the Subrecipient, from funds allocated to the State by Grant Agreement B-20-DW-54-0001 for 500,000.00 to perform such tasks hereafter described in the Scope of Services. The Scope of Services is set forth in detail in **Attachment A- Final Budget**, **Attachment B- Project Performance Schedule**, **Attachment C- Duplication of Benefits**, **Attachment D- Scope of Work (SOW)**, **Attachment E- Subrogation Agreement**, and the National Objective of Low to Moderate Income Benefit.

#### A) Budget.

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

#### B) Scope of Services

- i. **Eligible Uses of Funds-** The Subrecipient, its contractors and/or its designated agent(s), in accordance with the Community Development Block Grant CARES Act Policy and Procedures to be used in the administration of the Community Development Block Grant CARES Act Grant, and in accordance with the approved application of the Grantee, shall do, perform, and carry out, in a satisfactory and proper manner all duties, tasks, and functions necessary complete the City of Morgantown Citywide Rent & Utility Program. This program will assist approximately 80 LMI households impacted by the COVID-19 Pandemic within the city limits of Morgantown, WV.
- ii. The Subrecipient shall administer and/or perform the activities detailed in the Scope of Services in a manner satisfactory to the State and otherwise in accordance with this Agreement. The Scope of Services is set forth in detail in *CDBG-COVID Project Schedule (Form C2)* attached hereto as **Attachment B** and fully incorporated by reference ("Performance Measures").

#### 2. Changes:

The State *will consider program amendments initiated by the Subrecipient or by the State. The State defines a program amendment as a request for change in an approved program which (i) is an activity*

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

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

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

4. **Performance:**

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

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

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

5. **Payment:**

It is expressly agreed and understood that the total amount to be paid under this Agreement shall not exceed **\$500,000.00**.

The Subrecipient shall submit to the Grantee requests for payments of activities under this Agreement and consistent with the approved budget (the "Request for Payment"). Each Request for Payment shall be broken down into requested draws against the budget line items specified in **Attachment A, Form C1**.

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

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

## A. Eligible Expenses

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

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

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

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

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

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

Program Income: Subrecipient will not have any program income.

## B. Post Award and Recipient Criteria

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

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

Written authorization from the Grantee is required prior to the expenditure of any funding associated with this project. The West Virginia Community Advancement and Development (WVCAD) Office is committed to monitoring the performance of grant recipients to ensure that all Federal funds are used appropriately and, in a manner, to maximize low- and moderate-income public benefit. Subrecipients are limited to Units of General Local Government (UGLG) and County Commissions. Monitoring each subrecipient ensures that the goals and objectives identified within the State’s FY2019 amended Annual Action Plan. Copies of the monitoring reports are kept in the WVCAD Office. Subrecipients that do not

comply with the Post-Award and Sub-Recipient Criteria listed below will forfeit their award of CDBG-CV funds. The forfeited funds will be then returned to the CDBG-CV program for reallocation.

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

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

6. **Monitoring:**

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

Monitoring procedures may include, but not be limited to, on-site visits by Grantee staff, limited scope audits, or other procedures. The Subrecipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Grantee. In the event that the Grantee determines that a limited scope audit of the Subrecipient is appropriate, the Subrecipient agrees to comply with any additional instructions provided by the Grantee to the Subrecipient regarding such audit. The Subrecipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Director of 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.

7. **Administrative Requirements and Procedures.**

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

8. **Personnel:**

The Subrecipient represents that it has personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the State. Subrecipient shall ensure adequate and appropriate staffing are allocated to each activity identified in **Attachment B, Form C2.**

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

The Grantee is requiring the Subrecipient to provide the following:

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

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

**A. Travel Regulations**

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

9. **Registrations**

**A. Additional Administrative Requirements:** Additional administrative requirements of federal grants are contained in 2 CFR, Part 25. The Subrecipient and sub-awardees at all tiers must obtain a DUNS number and provide the DUNS to the State before the sub-award can be issued. The Subrecipient will register with SAM and furnish State with documentation verifying such registration in order to receive federal funding under this Agreement.

**B. Federal Award Number:** As per the Federal Funding Accountability and Transparency Act, federal agencies will assign a Federal Award Identification Number (FAIN) to each federal award. The FAINs are intended to increase transparency in federal spending and allow the American public to hold the government accountable for spending decisions. Each Subrecipient and sub-awardee should be aware of this identification number and ensure the FAIN is incorporated into all sub-grants under the Agreement.

#### 10. **Accounting**

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

#### 11. **Audit.**

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

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

When conducting an audit of the Subrecipient's performance under this Agreement, the Grantee must use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.50, "GAGAS, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits." c. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of and strict compliance with this Agreement, the Subrecipient will be held liable for reimbursement to the Grantee of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Grantee has notified the Subrecipient of such non-compliance. d. The Subrecipient must have all audits completed by an independent auditor.

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

## 12. **Competitive Procurement Procedures**

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

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

- A) If the Subrecipient uses Project funds to purchase any equipment from contractors not to exceed \$5,000, the Subrecipient shall comply with current procurement policies concerning the purchase of equipment and shall maintain inventory records of all project equipment as may be procured with funds provided herein.
- B) Procurement Standards: If the Subrecipient procures any project equipment, property, or services from any contractors with program funds, unless specified otherwise within this Agreement, the Subrecipient shall undertake such procurement in accordance with the requirements of 2 CFR Part 200, Subpart D, sections 200.317-200.326.
- C) Policies and Procedures: Subrecipient shall incorporate the provisions of 2 CFR 200.318- 200.326 into its Procurement Policies, Procedures and Practices. Subrecipient shall fully comply with Appendix II of 2 CFR 200 and incorporate such federal contracting provisions in all contracts as required thereunder.
- D) The Grantee shall procure architect/engineer services in accordance with Chapter 5G of the West Virginia State Code and be in compliance with 2 CFR 200.
- E) The Grantee shall procure construction contracts in accordance with Chapter 5-22-1 of the West Virginia State Code and be in compliance with federal regulations 2 CFR 200.
- F) The Grantee shall solicit sealed bids for all construction-related contracts or supplies related to their project which has an estimated value of over \$25,000. All transactions under \$25,000 whether construction-related contracts, supplies, or professional services should be procured in a manner that provides maximum open and free competition and files are to be maintained to document such activities. Any attempts by the Grantee to segregate the project into sections in order to circumvent competitive procurement may be cause for termination of this Agreement under Item 22, Termination of Agreement for Cause. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions of Article Three, Chapter Fifty-Nine of the Code of West Virginia. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area within a period of fourteen consecutive days with at least an interval of six full days within such period between the date of the first publication and the date of the second publication preceding the final date of submitting bids. The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, sending notification to the State's Small Business Development Center Division, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the State or its designated representative, bid documents and other evidence of compliance with these procedures. The resolution of bid and contract disputes is the responsibility of the Grantee.
- G) Grantees have the ability to procure professional and construction services, therefore, the design-build method (5-22A-1) is not allowable. Public agencies can only utilize design-build on building project. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

13. **Bonding and Insurance.** As otherwise required by law, a grant that requires the contracting or subcontracting for construction or facility improvements under \$100,000 shall provide for the Grantee to follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds provided that the Grantee's and State's interest is adequately protected and that such contracts can be executed in a timely manner; otherwise, bonding requirements shall be the same as for contracts exceeding \$100,000. Consistent with 2 CFR 200.325, if a contract or subcontract exceeds \$100,000, the minimum bonding and insurance requirements shall be as follows:
- i. A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required within the time specified.
  - ii. A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with a contract to secure fulfillment of the contractor's obligations under such contract.
  - iii. A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor or materials in the execution of the work provided for in the Contract.
14. **Facilities Operation.** The Grantee shall operate and maintain all facilities to which the general public has right of access constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable Federal, State and local statute, law, ordinance, or regulation as to actual construction procedures. The Grantee shall be responsible for maintenance and operation of such facilities upon completion. The Grantee may not change the use or planned use of any such facility (including the beneficiaries of such use) from that purpose initially approved unless the Grantee provides affected citizens with reasonable notice thereof and opportunity to comment on any proposed change all in accordance with 24 CFR Part 570.489(j).
15. **Amendments and Termination**  
The State and the Subrecipient will comply with the provisions of the Department of Treasury Circular 1075 and the CDBG CARES Policies and Procedures Manual in the process of requesting and administering funds from the State's Letter of Credit

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

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

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

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

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

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

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

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

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

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

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

## 16. **Reporting.**

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

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

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

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

## 17. **General Compliance**

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

### I. **Duplication of Benefits**

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

The Subrecipient must comply with HUD's requirements for duplication of benefits, imposed by Federal Register notice on the Grantee, which is exhibited in the completed *Duplication of Benefits Form (Attachment C, Form C3)* and the *Subrogation Agreement (Attachment E, Form C5)* attached hereto this agreement.

## II. Tie Back to COVID-19

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

## III. Drug-Free Workplace

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

## IV. Insurance & Bonding

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

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

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

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

### 18. **Financial & Program Management**

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

Performance under this Agreement is subject to 2 C.F.R Part 200, entitled “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards this Agreement includes:

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

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

### I. Cost Principles

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

- i. Depreciation methods for fixed assets shall not be changed without the approval of the Federal cognizant agency.
- ii. Fines penalties, damages, and other settlements are unallowable costs to the CDBG program.

- iii. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR 200.445);
- iv. Organization costs (2 CFR 200.455); and
- v. Pre-Award Costs, as limited by this Agreement.

## 19. Documentation and Record Keeping

### I. Records to be Maintained.

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

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

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

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

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

### II. Access to Records

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

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

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

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

- i. Records for activities subject to the reversion of assets provisions at 24 CFR § 570.503(b)(7) or change of use provisions at 24 CFR § 570.505 must be maintained for as long as those provisions continue to apply to the activity, otherwise, records for real property and equipment acquired under this Agreement must be retained for 3 years after final disposition;
- ii. Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained until such receivables or liabilities have been satisfied;
- iii. If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken;
- iv. When the Subrecipient is notified in writing by HUD, the cognizant agency for audit as defined in 2 CFR 200.18, the oversight agency for audit as defined in 2 CFR 200.73, the cognizant agency for indirect costs as defined in 2 CFR 200.19, or the Grantee, the Subrecipient shall extend the retention period consistent with the notification;
- v. When records are transferred to or maintained by HUD or the Grantee, the 3-year retention requirement is not applicable to the Subrecipient;
- vi. The retention period for the records pertaining to the earning of the program income (as defined in this Agreement) starts from the end of the Grantee's fiscal year in which the program income is earned; and
- vii. For indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates), and their supporting records:
  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 terms of this Agreement, all records the Subrecipient is required to maintain, including supporting documentation, shall be retained for the greater of three years from closeout of the Federal award to the Grantee, or the period required by other applicable laws and regulations as described in 24 CFR § 570.487 and 24 CFR § 570.488.

#### IV. 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.

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

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

## 21. **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.

## 22. **24 CFR part 6**

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

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

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

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

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

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

## 24. **State and Local Nondiscrimination Provisions**

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

### I. General Compliance

The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352), as amended [if the Grantee is subject to 24 CFR part 570, subpart K, insert: "and 24 CFR 570.601 and 570.602". No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this Agreement. The specific nondiscrimination provisions at 24 CFR 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Civil Rights Act of 1964 or 24 CFR part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 24 CFR part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 2 CFR part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

### II. Assurances and Real Property Covenants

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

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

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

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

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

### III. Affirmative Action Approved Plan

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

IV. 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.

V. 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.

VI. 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.

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

VII. Labor and Employment

i. Labor Standards

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

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

ii. 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)).

25. **Section 3 of the Housing and Urban Development Act of 1968**

I. Compliance

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

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

26. **Conduct**

II. Hatch Act

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

III. Conflict of Interest

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

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

IV. Lobbying Certification

The Subrecipient hereby certifies that:

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement;
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- iii. It shall require that the language of paragraph (a) through (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Agreements) and that all Subrecipients shall certify and disclose accordingly; and
- iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is required by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

V. Religious Activities

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

27. **Environmental Conditions**

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

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

This agreement does not constitute an unconditional commitment of funds or site approval. The commitment of funds to the project may occur only upon satisfactory completion of the project's environmental review in accordance with 24 CFR Part 58 and related environmental authorities. Provision of funding is further conditioned on the State's determination to proceed with, modify, or cancel the project based on the results of the environmental review. The Subrecipient agrees to abide by the special conditions, mitigation measures or requirements identified in the State's environmental approval and shall ensure that project contracts and other relevant documents will include such special conditions, mitigation measures or requirements. Until the State has approved the environmental review for the project, neither the Subrecipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance to the project or activity. The Subrecipient agrees to provide the State with all available environmental information about the project and any information which the State may request in connection with the conduct and preparation of the environmental review, including any reports of investigation or study which in the State's opinion is needed to fulfill its obligations under HUD environmental requirements. The Subrecipient agrees to advise the State of any proposed change in the scope of the project or any change in environmental conditions, including substantial changes in the nature, magnitude, extent or location of the project; the addition of new activities not anticipated in the original scope of the project; the selection of an alternative not in the original application or environmental review; or new circumstances or environmental conditions which may affect the project or have bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity

I. Prohibition on Choice Limiting Activities Prior to Environmental Review

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

II. 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;

III. Flood Disaster Protection

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

IV. Lead-Based Paint

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

V. 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.

28. **Final Closeout**

Final Closeout shall be completed when the State:

- i. is in receipt of a Final Performance Report;
- ii. has determined that all monitoring findings have been formally addressed and are resolved; and
- iii. has received a completed, final project audit and has determined that any findings have been resolved.

29. **Resolution of Disputes**

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



Resolution No. 2021-\_\_

**RESOLUTION**

The City Council of The City of Morgantown hereby resolves that the City Manager is authorized to reimburse expenses for the operation of a cold shelter at Hazel’s House of Hope in the amount of up to Ten Thousand Dollars (\$10,000.00), which may be incurred by the nonprofit organization or organizations operating the shelter, using the general funds of the City or such other funds as may be available for the purpose, including Local Fiscal Recovery Funds made available under the American Rescue Plan Act, and may execute any agreements necessary or helpful to effectuate the reimbursement and promote the purposes of this Resolution; provided, that, should the City Manager determine, in his reasonable discretion, that additional funding is necessary to continue operation of the cold shelter through the Winter season, he may reimburse up to an additional Ten Thousand Dollars (\$10,000.00) in costs as allowable pursuant to this Resolution.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk